

Approved January 29, 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./~~p.m.~~ on January 24, 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  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Cindy Harmison, Assistant City Attorney, City of Lenexa  
Senator Wint Winter, Jr.  
Ron Mittag, Director, Planning & Development, City of Shawnee  
Roger Peterson, Director, Planning & Research, City of Overland Park  
M. S. Mitchell, Home Builders Association of Kansas  
David Corliss, City of Lawrence  
Janet Stubbs, Home Builders Association of Kansas  
Joyce Wolf, Kansas Audubon Council

The Chairman called on Theresa Kiernan, Revisor of Statutes, to explain the request for the introduction of two bills. The bills deal with technical corrections in legislation passed last session on two sales tax statutes.

Sen. Daniels made a motion to introduce the bills and put them on the consent calendar, Sen. Ehrlich seconded and the motion carried.

Attention was turned to SB 23, concerning planning and zoning, which had been continued from yesterday. The Chairman called on Cindy Harmison, Assistant City Attorney for the City of Lenexa, for her testimony in support of the bill. (Attachment 1).

The Chairman asked Ms. Harmison what objections the City of Lenexa has to manufactured housing to which she replied that it is not a matter of objection but a matter of compatability. She feels regulations are needed to insure compatability, and the bill as presently worded will not insure this. Sen. Allen asked if there is manufactured housing in the city limits of Lenexa. Ms. Harmison answered that there are a few scattered throughout the city at present and that she has been working with Terry Humphrey with the Kansas Manufactured Housing Association regarding the question of manufactured housing. Ms. Harmison confirmed for Sen. Steineger that mobile homes are considered as manufactured housing if they were manufactured after 1976 according to HUD standards and that SB 23 would include them.

Senator Wint Winter, Jr., of Lawrence, gave testimony expressing two concerns with the bill. One concern deals with the change from 20 days notice to 15 days notice required to the public about zoning changes. He feels that the 20 days notification should be put back in the bill. The second concern involves the striking of language from the statute for technical clean-up which has the unintentional effect of damaging the Planned Unit Development Law.

Ron Mittag, Director of Planning and Development for the City of Shawnee, followed with testimony in support of SB 23. (Attachment 2).

Roger Peterson, Director of Planning and Research, City of Overland Park, testified next in support of the bill but with some clarification.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT  
room 531-N, Statehouse, at 9:00 a.m./p.m. on January 24, 1991

(Attachment 3). The Chairman briefly discussed with Mr. Peterson his statement in his testimony regarding limitations on the regulation of agricultural land within the city limits. Staff assured the Chairman that the intent of the interim committee was to leave this as is in current law, and the bill would not repeal this part of the statute.

M. S. Mitchell, Home Builders Association of Kansas, testified in support of the bill and also expressed concerns regarding flood plain management in Section 16. (Attachment 4). The Chairman determined that Mr. Mitchell feels that the Federal Emergency Management Agency (FEMA) approval is sufficient. Sen. Daniels asked Mr. Mitchel to describe what kind of personnel FEMA has.

David Corliss, City of Lawrence, testified in support of the bill as a recodification and modernization of Kansas planning and zoning statutes. (Attachment 5). The Chairman asked Mr. Corliss if he had the same concerns as Mr. Mitchell with regard to FEMA. Mr. Corliss said he was not familiar enough with this to speak on it. When asked if he has the same concerns about manufactured housing expressed by other conferees, Mr. Corliss stated that if what the conferees suggest is needed to get the bill passed, he feels it is necessary and that the bill can be made workable. The Chairman asked if he had concerns about the notification time change from 20 to 15 days. Mr. Corliss said this may be a legitimate concern, but he feels there is a need to realize the desire to streamline the notification procedure by making it uniform. He knows of no problems in this area.

Janet Stubbs, Home Builders Association of Kansas, gave further testimony in support of SB 23. (Attachment 6).

Last to testify was Joyce Wolf, Kansas Audubon Council, who expressed opposition to the bill insofar as that possibly the process of recodification is being used to jeopardize the environmental integrity of Kansas' streams and rivers. (Attachment 7). Staff asked Ms. Wolf for an example of "floodway fringe area." She explained the three terms, floodplain, floodway and floodway fringe. She reiterated that the fill areas in the floodplain could cause erosion downstream from the fill area and that a more holistic approach by a state agency is needed.

The minutes of January 23 were approved. The hearing was continued on SB 23.

The meeting was adjourned at 10:02 a.m.

Date: 1-24-91

GUEST REGISTER,  
 SENATE  
 LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Tommy Humphrey	KMHA	Topeka
Colony Holdeman	City of Wichita	Wichita
JANET STUBBS	HBAK	Topeka
M. S. MITCHELL	HBAK	Wichita
BOB ALDERSON	KMHA	TOPEKA
J. H. SCHUBERT	TOP-SHAWCO METRO	TOPEKA
Jerry Hazlett	Ks Wildlife Fed	Topeka
Joyce Wolf	Ks Audubon Council	LAWRENCE
Nancy Shultz	League of Women Voters of Lawrence - Pol Co	Lawrence
John Henderson	Div Wtr Res., St. Bd of Ag	Topeka
GEORGE AUSTIN	DWR, KSBA	Topeka
Steve Adams	Wildlife & Parks	Topeka
GERRY RAY	Johnson Co Commission	Olathe
Anne Smith	Ks. Assoc of Counties	Topeka
Art Davis	City of Lenexa	Lenexa
DAVE CORLISS	CITY OF LAWRENCE	LAWRENCE
Jeff Montague	Budget	
ROGER Peterson	City of Overland Park	Overland Park
Ron Mittag	City of Shawnee	Shawnee
PRILE BANICKS	KANSAS PANHANDLE ASSOC.	LAWRENCE
Art Chambers	KS PLANNING ASSOC.	Olathe
Don Siefert	City of Olathe	Olathe



TESTIMONY TO SENATE  
LOCAL GOVERNMENT COMMITTEE

RE: SB 23

CYNTHIA L. HARMISON, ASSISTANT CITY ATTORNEY  
LENEXA KANSAS

TOM PHILLIPS, DIRECTOR OF PLANNING AND DEVELOPMENT  
LENEXA, KANSAS

January 23, 1991

Mr. Chairman and Members of the Committee:

My name is Cindy Harmison and I am an Assistant City Attorney with the City of Lenexa, Kansas. Some of my primary responsibilities are advising the City Planning Commission, assisting the Department of Planning and Development with legal issues which accompany land use decisions and regulations and representing the City in litigation arising out of land use decisions. I have also brought with me today, Tom Phillips, Director of Planning and Development. Tom may wish to address you later and is certainly available for questions. Tom deals with these enabling regulations day in and day out, as well as other issues which are directly affected by these regulations.

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 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

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*1-24-91*

*Attachment 1*

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. 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. Our comments will be separated into two areas: First, those which involve substantive changes; and secondly, those which are merely typographical or nonsubstantive and only clarifying comments.

#### SUBSTANTIVE ISSUES

1. Incorporate a new section prefacing these codes with language clarifying the cities and counties ability to exercise Home Rule. Because of the recent Supreme Court decision, Blevins v. City of Lawrence, there is some question as to a city's ability to Home Rule with regard to planning and zoning because this Bill is enabling legislation. We previously submitted draft language but have no problem with this language being modified and improved.

2. Page 16, New Section 19: The City understands the Legislative Committee removed the reference to amortization on Page 16, new Section 19. We would still like to see this language added, perhaps draft language could read:

"Amortization regulations may be adopted under authority of this Act; however, no other regulation adopted under authority of this Act 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 to that proposed 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."

3. Page 16, New Section 20: 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. Alternatively, we would like to see the word "arbitrarily" inserted before the word "excluded" in the manufactured housing section which would result in this section mirroring the current state law. Or alternatively, the City would also support the League's position of the following language:

"The Governing Body shall not adopt or enforce zoning regulations which have the effect of excluding manufactured homes from the entire zoning jurisdiction."

4. Page 6, New Section 8(a) and Page 11, New Section 13: With regard to the use of the formula "three (3) miles and not more than one-half (1/2) the distance", the City would like to have a reference inserted which states:



"The provisions of this Section may be varied through interlocal agreements."

Often in urban areas, adjoining cities will execute interlocal agreements so as to specify each city's responsibilities with regard to planning and zoning. These agreements assure that no area slips through the cracks, whereby they are covered by no regulations at all.

5. Page 9, New Section 11: 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.

6. Page 1, New Section 1: 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.

QUESTIONS AND COMMENTS REGARDING  
CLARIFICATION OF EXISTING PROVISIONS

1. Page 6, New Section 8(a) and Page 13, New Section 12: Language stating "including but not limited to" needs to be inserted in conjunction with the laundry list of permitted regulations.

2. Page 9, New Section 11(a): There is a typographical error in Line 8 and the word "or" should be "and", otherwise it permits an individual to submit a plat that only shows the location of streets, parks, etc., and not lots.

3. Page 9, New Section 11(e): The City recommends using the term "building and zoning permit" rather than "zoning and building permit" as we believe "zoning" by itself is ambiguous.

4. Page 10, New Section 11(g): We realize that this language mirrors current state law; however, we are still uncertain as to "which action" this Section is referring to.

5. Page 12, New Section 17(b): The City would like to see the language "shall elapse" be inserted in the proposed Statute as it clarifies the exact date upon which a public hearing may be held. We believe there has been a court case or an Attorney General's Opinion which states a set number of days "must have elapsed" prior to the commencement of a hearing.

6. Page 19, New Section 22: Language in the paragraph regarding the vesting of development rights should be changed to reflect the typographical error in Line 17 in the use of "or" instead of "and".

In summary, SB 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. Tom Phillips or I would be happy to answer any questions the Committee may have at this time.



## CITY OF SHAWNEE

11110 JOHNSON DRIVE  
SHAWNEE, KANSAS 66203-2799  
(913) 631-2500  
FAX (913) 631-7351

January 23, 1991

The Honorable Senator Don Montgomery  
Chairman, Senate Committee  
Senate Local Government Committee  
State Capital Building  
Topeka, Kansas 66612

RE: Senate Bill 23

Dear Senator Montgomery:

The City of Shawnee supports the Planning and Zoning Recodification contained in Senate Bill 23. The Shawnee Planning Commission, at their January 21, 1991, meeting, discussed the changes proposed, and unanimously voted to support the recodification.

The amendments generally address innovative developments in the planning and zoning field, allowing cities and counties the ability to develop in a rational and coordinated manner. It is especially important that all matters relating to planning, zoning, subdivision and development legislation be placed as a single set of simplified statutes.

The City of Shawnee does recommend consideration of one additional item. We would recommend that prior to the Register of Deeds acceptance of a survey to subdivide land, as opposed to a plat, an administrative approval from the city or county accompany the survey. Indiscriminant

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Attachment 2

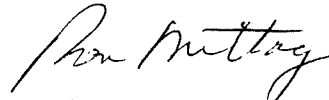
The Honorable Senator Don Montgomery  
RE: Senate Bill 23  
January 23, 1991  
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acceptance of surveys has resulted in the creation of lots which do not meet subdivision standards, or it has created additional lots out of those which have already been split and thus require platting. Numerous times we find persons who wish to build on property that has been illegally split, causing additional time to be spent in subdividing, and in some instances rezoning, the property before it is possible to issue a building permit.

We urge your support of Senate Bill 23. Thank you for your kind consideration.

Sincerely,

CITY OF SHAWNEE



Ron Mittag, Director  
Planning & Economic Development

RM:mjs

cc: Committee Members

TESTIMONY CONCERNING SENATE BILL NO. 23  
SENATE LOCAL GOVERNMENT COMMITTEE  
JANUARY 24, 1991

Roger W. Peterson  
Director of Planning and Research  
City of Overland Park, Kansas

Senator Montgomery and Committee Members:

Thank you for this opportunity to express my views on this important piece of legislation. To start, I would like to stress that the City of Overland Park fully supports the concept of revised planning enabling statutes. The existing statutes are outdated and badly in need of being upgraded to reflect current planning techniques and current development trends. I would furthermore like the record to reflect that my comments and opinions are those of the professional staff of the City of Overland Park and that the City wishes to reserve the right to comment additionally on the bill as it moves through the legislative process.

With these comments of support aside, I think there are several points within the current draft of the legislation which need additional clarification and possible modification. The draft legislation is a very good piece of legislation and accomplishes many of the changes which need to be made, however, the following points need to be addressed before Overland Park could fully support the bill.

1. Page 7, Line 23 - 43: This section deals generally with the adoption of subdivision regulations. The draft bill provides that upon recommendation from the planning commission the governing body has three options for action:
  1. approve the recommendations of the planning commission;
  2. override the planning commission's recommendations by a 2/3rds majority vote;
  3. return the matter to the planning commission for further consideration.

The question we have is what percentage or number of votes is needed by the governing body to approve an application that has been returned to the governing body by the planning commission for a second consideration. We assume that a simple majority vote is sufficient to approve, however, the legislation is not clear. We are concerned that with the present wording a 2/3rds majority vote may be argued as being necessary when the item returns from the planning commission. This same concern holds true for Page 12, Line 9 - 23 and Page 15, Line 11 - 23. These two sections deal with the adoption of zoning regulations and rezoning ordinances, respectively.

2. Page 9, Line 16: This section will be referred to as the "deemed approved" section. Basically, as written, the legislation places a 60 day time limit for action by the City

on plat applications. If, for whatever reason, the City does not take final action on the plat within a 60 day period from initial consideration by the planning commission, the plat is deemed approved. I recognize the need for prompt action in response to development requests and the City of Overland Park does everything it can to keep the approval process moving along as smoothly and quickly as possible. However, I strongly object to this "do or die" approach to the decision making process. Development decisions, particularly those including large or complex applications, often include neighborhood associations, adjacent developers, utility companies, and a variety of other interested parties who may be affected by the proposed development. In addition, the issues raised by an applicant may require special study or analysis by the staff. Limiting the time within which a decision must be rendered simply increases the likelihood of poorly informed decisions being made. I believe that this would not be in the best interests of the general public and probably not even in the interests of the development community.

Furthermore, this provision raises the possibility of applications being approved simply due to clerical errors in scheduling or filing. The unintentional impact on the public could be disastrous. I believe that developers should have

the right to compel action by the City if there are unreasonable delays.

Page 10, Section (g), Line 16 - 20: This section is unclear in that we are not certain as to what it refers to. If Section (g) is meant as a clarification for Section (f) lot splits immediately above, then we think it should become part of that section to avoid confusion. If that is not the case, we simply do not understand the meaning of this section.

Page 11, Line 41 - 43, and Page 12, Line 1 - 7: This new section provides authority to adopt zoning regulations to include techniques such as planned unit developments, transfer of development rights, overlay zones etc. It is my opinion that this section should be expanded to include the right to declare moratoriums on development under certain circumstances. At many times during the development of a city, especially where rapid development is occurring, time may be needed to analyze a particular issue without the pressure of also processing applications dealing with that issue. I would recommend consideration be given to specifically add moratoriums to the list of zoning regulation authority.

Page 16, Line 22 and 23: This comment is a point of clarification more than anything. This Section refers to K.S.A. 12-715b which provides for extraterritorial area



planning and zoning authority. We assume that the limitations on the regulation of agricultural land is meant to apply only to those areas covered by extraterritorial areas and not to land within the corporate limits of a city.

Page 16, Line 28 - 30: We are unclear as to the intent of this section. Presently in Overland Park, our zoning ordinance includes a mobile home park district which sets minimum standards for mobile home parks. This standard includes a minimum district size of 40 acres, maximum density requirements of 5 units to the acre, and minimum individual mobile home lot size at 50 feet by 100 feet. As a result, mobile homes can be located anywhere in Overland Park provided they are within an approved mobile home park zoning district. The City of Overland Park is interested in determining the intent of this new section in light of our existing zoning regulations regarding mobile homes. It is unclear to us if Overland Park would or would not meet the statutory provisions as written.

Thank you for this opportunity to appear before you to express views regarding this important piece of legislation. Updating the planning statutes is a task which is long overdue, but it is important that considerable care be taken in drafting the new legislation due to the complexity of the subject matter and the immediate impact of those laws on the citizens of Kansas.

TESTIMONY OF M. S. MITCHELL

LEGISLATIVE CHAIRMAN

FOR HOME BUILDERS ASSOCIATION OF KANSAS

BEFORE THE SENATE COMMITTEE ON LOCAL GOVERNMENT

SENATE BILL 23

Chairman Montgomery, members of the Local Government Committee:

As Janet Stubbs has previously testified, she and I have attended meetings of the Committee of Kansas Planners which drafted the outline from which the interim committee worked to produce Senate Bill 23. Throughout those meetings she and I have attempted to keep the perspective of the small builder in mind in our recommendations and compromises. That we don't necessarily agree with all of the language of this bill does not alter our resolve to achieve consensus and see passage of provisions which are a vast improvement over present law.

I particularly want to address the changes in the position of the Planning Committee on the proper role of the State Division of Water Resources staff in the matter of flood plain management ordinances, resolutions and regulations which appear on page 12 in Section 16. Based on my long term experience in the field, and consultation with local administrators of city and county flood plain management programs under the Federal Flood Insurance Program, the language which continues the present law provisions which require prior approval of such actions by the Chief Engineer serves no useful purpose and sets up the awkward situation where a community may have to choose between the requirements of the Federal Emergency Management Agency (FEMA) and the state agency.

FEMA provides the subsidized flood insurance (which cannot be obtained anywhere else), performs the studies which produces the maps, tables and reports which must become the basis for the community's flood plain management, provides the model ordinance which the community must adopt, reviews and either amends or approves the ordinance which the community may then adopt, advises the community if it needs help, monitors flood plain management program performance by the community, and threatens or enforces sanctions if community performance is not in compliance with FEMA rules, regulations or policies.

THE STATE OF KANSAS DOES NONE OF THESE !

With the present situation, the only role of KSA 12-734 and 12-735, with respect to local implementation of flood plain management, is to provide enabling legislation. Prior approval of the Chief Engineer of the Division of Water Resources of a community's ordinances, resolutions and regulations has not resulted in improved management practices, because communities are not complying with provisions of

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KSA 12-734 & 12-735.

Specifically, on line 10 of Page 12, the word "and" should be deleted; as should the word "approval" on line 11. Also on line 11, the words "variances or" should be deleted. On line 12, the word "approved" should be deleted. On line 13, the words "and approved" should be deleted.

On line 23, the words "approve or disapprove" should be deleted and the word "review" should be substituted.

On line 24, the words "or variances" should be deleted.

The staff of the Division of Water Resources has administratively determined that the word "variation" in KSA 12-734 & 12-735 has the same meaning as "variance" does in the zoning and land use context. Based on that ruling, DWR insists that all variances granted by communities to their flood plain management ordinances, resolutions or regulations be submitted to the Chief Engineer for prior approval.

At least one community has had the experience of approving a variance in accord with the FEMA regulations only to be advised some time later that such variance was not approved by DWR.

Mr. Chairman, it is my sincere belief that communities have enough oversight in the flood plain management program administered by the federal government, and that the responsibility of also trying to satisfy the Division of Water Resources staff is akin to double jeopardy.



# City of Lawrence KANSAS

CITY COMMISSION

MAYOR

SHIRLEY MARTIN-SMITH

COMMISSIONERS

ROBERT L. WALTERS

DAVID PENNY

MIKE RUNDLE

BOB SCHUMM

CITY OFFICES

6 EAST 6th

BOX 708

66044-0708

913-841-7722

MIKE WILDGEN, CITY MANAGER

TO: Honorable Chairman Senator Don Montgomery and  
Members of the Senate Local Government Committee  
FROM: David Corliss, City of Lawrence  
DATE: January 24, 1991  
RE: Senate Bill 23

On January 8, 1991, the Lawrence City Commission adopted a Legislative Program which included the following section supporting the recodification and modernization of Kansas planning and zoning statutes:

Lawrence is a community that has benefited from the progressive practice of land use controls and regulations. However, existing state statutes authorizing cities to exercise zoning and other land use powers are old and cumbersome and in need of updating. There is confusion regarding certain statutory procedural requirements, court interpretations are at variance with sound planning policy, and the statutes -- in many cases dating back to the founding days of zoning -- neither reflect current practices nor account for modern land use control tools.

To address this problem, the Kansas Chapter of the American Planning Association and other interested groups have sought legislation to recodify city and county planning and zoning statutes. During the 1990 interim, the Special Committee on Local Government has extensively reviewed this issue (Proposal No. 22). The Special Committee has drafted a bill for introduction in the 1991 Session which addresses many recodification concerns. It is hoped that through committee hearings and legislative debate a comprehensive rewriting of Kansas planning and zoning laws can be accomplished that reflects the need of Kansas cities and counties, landowners and other community members.

**POSITION ADOPTED:** The City Commission generally supports the recodification and modernization of planning and zoning laws.

The City of Lawrence appreciates this opportunity to express its support for the modernization of our Kansas zoning laws.

Senate L.G.

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Attachment 5



SENATE COMMITTEE ON LOCAL GOVERNMENT

SB 23

JANUARY 23, 1991

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Executive Director and Lobbyist for the Home Builders Association of Kansas. Our organization has appeared before you previously on this subject during hearings on previous versions of legislation.

We have attended meetings of the Kansas Chapter of the APA's Legislative Committee over the extended period of time on which they have studied, discussed and formulated their position in the attempt to rewrite the planning and zoning statutes into uniform, understandable, and up-to-date guidelines for cities and counties.

Over the years, we have disagreed and debated numerous points regarding this legislation. HBAK has approached this from the position, or philosophy, of making the land use laws fair and equitable, with protection for the landowner, while giving local units of government guidelines under which to plan and govern. Although we have not agreed with the KAPA on all points contained in their position, we have worked together to achieve compromises and have adamantly supported Home Rule.

We believe S.B. 23 is an improvement over current law and should be "fine tuned" by the Legislature and recommended for passage. As you know, S.B. 23 is a product of an interim study committee and does not entirely reflect the original proposal and intent of our study group. We believe that some of the changes made by the Special Committee need further consideration and revision. Therefore, M.S. Mitchell, the Legislative Chairman for the HBAK, would like to speak to the Floodplain section of S.B. 23.

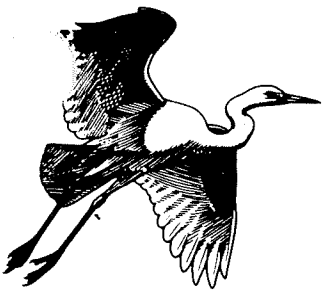
We believe that progress brings change, and those changes should be made under clear and workable guidelines which protect the public and provide assistance to government enabling it to provide for orderly progress.

Thank you for the opportunity to appear today in support of S. B. 23. I ask your favorable consideration of this legislation and urge you to make amendments you deem necessary for passage. I believe those who will comment on specific points in this legislation share the view that it is needed and are willing to make compromises to obtain its passage.

*Senate L.G.*

*1-24-91*

*Attachment 6*



# Kansas Audubon Council

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January 24, 1991  
Senate 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 the sentence in Section 28, page 24, lines 35 through 38, which exempts fills other than levees placed in floodway fringe areas from the review and approval process of the Chief Engineer of the Division of Water Resources, State Board of Agriculture.

If this sentence 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.)

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 laws and programs of the State Water Plan. The programs we are referring to are the Non-Point

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1-24-91

Attachment 7

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. It does not seem appropriate to be asking some Kansans to put erosion and siltation control structures in place on their lands at the same time we are allowing communities to add to these problems. Likewise, the intent of the Riparian and Wetland Protection Plan (SB 51, 1987 session) which has been incorporated in the State Water Plan will likely be violated by the damage caused to woodland areas along streams and rivers.

The Kansas Audubon Council firmly believes that the multi-agency review which takes place under the leadership of the DWR is critical to the protection of these laws and vital components of the State Water Plan. Furthermore, we believe that deletion of the above-mentioned line will send a strong message to communities that these laws and programs should become an integral part of community planning procedures, and must be followed.

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