

Approved: 3-14-95
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Kent Glasscock at 1:30 p.m. on March 9, 1995 in Room 521-S of the Capitol.

All members were present except: Representative Kent Glasscock - Excused
Representative Bill Feuerborn - Excused
Representative Gary Hayzlett - Excused

Committee staff present: Mike Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Fulva Seufert, Committee Secretary

Conferees appearing before the committee: Senator Mark Parkinson
E. A. Mosher, City of Topeka

Others attending: See attached list

In the absence of Chairman Kent Glasscock, Vice-Chairman Doug Mays opened the meeting March 9, 1995 at 1:30 p.m. The minutes of the March 7, 1995 meeting were distributed and approved.

Vice-Chairman Mays opened the public hearing for **SB 192**.

SB 192: An Act regulating traffic; concerning the soliciting of contributions; amending K.S.A. 8-1538 and repealing the existing section .

The Vice-Chairman recognized Senator Parkinson who spoke in favor of **SB 192**. He said that he believed it was a very simple, non-controversial bill which was requested by Senator Burke who has been approached by several Rotary groups who want to be in obedience with the law when they solicit funds on the street. An example he used was that the Royals on opening day sell newspapers on the streets, and the proceeds of the sales go to charity. Senator Parkinson did not feel that it was necessary for any conferees to appear to speak to this bill because he believes it to be so simple. He said that the law has been widely violated across the state, but the Rotary Clubs want to be in compliance. Section 1 (d) would say, "the soliciting of contributions under subsection (b) shall not be prohibited, if such person has first obtained a permit authorizing such soliciting from the local authorities in their respective jurisdictions."

After a discussion concerning the language of person verses organization, Vice-Chairman Mays closed the public hearing on **SB 192**.

Vice-Chairman Mays asked the Committee if it desired to take action on **SB 192**. Representative Sloan moved that **SB 192** be reported out favorably by the Committee. Representative Tomlinson seconded.

Representative Toplikar made a substitute motion to add *or organization* after if such person. Representative Beggs seconded. Motion passed.

Representative Sloan's motion on **SB 192** as amended was voted on favorably.

Vice-Chairman Mays reopened the hearing on **SB 69**.

SB 69: An Act concerning cities and counties; relating to zoning; amending K.S.A. 12-757 and repealing the existing section.

Ernie Mosher, City of Topeka, requested the Committee's consideration of an amendment to K.S.A. 12-757

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT, Room 521-S Statehouse, at 1:30 p.m. on March 9, 1995.

which is designed to accommodate and expedite the "downzoning" of multiple tracts of land (i.e. neighborhoods), both when initiated by a city or county and when initiated by property owners. He said that this proposed amendment is offered as a good faith effort to accommodate those governments and property owners which desire to preserve the existing character of their neighborhoods. He stressed that it is not an effort to provide an easier means for governments to bring about rezonings, nor is it an effort to undercut the interests of adjoining property owners. He also said that in his opinion one of the principle things wrong with our communities is a lack of the "sense of community." He said that anything legislators can do to give neighborhoods some empowerment to improve their neighborhoods, they should do it. (Attachments 1)

The Vice-Chairman thanked Mr. Mosher and closed the public hearing on **SB 69**. He then called the Committee's attention to the balloon on **SB 69**. (Attachment 2).

Representative Powers moved that **SB 69** with the balloon be passed out favorably. Representative Toplikar seconded. Motion passed.

The meeting adjourned at 2:10 p.m.

The next meeting is scheduled for March 14, 1995.

TO: House Local Government Committee
FROM: E.A. Mosher, City of Topeka
DATE: March 9, 1995
RE: Bill to Amend K.S.A. 12-757; Neighborhood Downzoning

The City of Topeka respectfully requests this Committee's consideration of an amendment to K.S.A. 12-757 designed to accommodate and expedite the "downzoning" of multiple tracts of land (i.e. neighborhoods), both when initiated by a city or county and when initiated by property owners.

Issue: The City of Topeka is interested in resolving questions raised by neighborhood improvement associations (NIAs) in Topeka which are interested in preserving the single-family character of certain neighborhoods. Those NIAs have asked questions regarding the procedures which must be followed, under existing state law, in conjunction with a neighborhood-wide downzoning. A "downzoning," stated simply, is a rezoning whereby a lot, parcel or tract of land is reclassified from a less restrictive use to a more restrictive use. For example, a rezoning from multi-family to single-family residential use.

Certain NIAs in Topeka have approached the City with proposals to downzone entire neighborhoods. For example, a residential neighborhood may be predominantly or entirely residential, however, some or all of that land may be currently zoned to permit duplexes or other multi-family uses. Out of a desire to protect and preserve the existing single-family character of the neighborhood, the NIAs have inquired as to what actions the City of Topeka could take to "downzone" those multi-family zoned properties to single-family.

It is important to note that such proposals would not entail any change of present use -- i.e. such rezoning would not require any existing multi-family use to change to single-family use. Such rezoning would make an existing multi-family use a legal nonconforming use.

Problem: In attempting to respond to the NIAs, the City of Topeka has concluded that the operative statutory provision, K.S.A. 12-757, was not drafted with neighborhood-wide downzonings in mind. K.S.A. 12-757 governs the procedures for cities and counties to follow when changing (amending or revising) its zoning regulations both with respect to text amendments (deemed to be legislative actions) and site-specific rezonings (deemed by the courts to be quasi-judicial actions).

Rezoning procedures for city and county planning commissions and governing bodies, as set out in K.S.A. 12-757, distinguish between amendments which are "general revisions" and amendments affecting "specific property." Presumably, an amendment affecting "specific property" is meant to be an amendment which is targeted at one or a few parcels of land, such as a property owner-initiated rezoning. A large-scale multiple-ownership rezoning, whether initiated by a city or county or by the affected property owners, could fall under the category of a "general

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revision," rather than a site-specific rezoning. However, K.S.A. 12-757 can be read in a way that such a rezoning is one which alters district boundaries and thereby affects "specific property."

In its present form, K.S.A. 12-757(b) describes notice procedures for "all such proposed amendments" including both publication and written notice procedures. Publication notice requires notice at least once in the official city or county newspaper at least 20 days prior to the date of the hearing before the city or county planning commission. Written notice requires notice "mailed at least 20 days before the (planning commission) hearing to all owners of record of lands located within at least 200 feet of the area proposed to be altered for regulations of a city . . .".

As presently worded, K.S.A. 12-757 is simply unclear as to whether a multiple parcel, multiple ownership downzoning is a legislative text amendment or a quasi-judicial site-specific rezoning. If it is a legislative procedure only newspaper notice of the general public would be required. If it is a quasi-judicial site-specific rezoning newspaper publication, written notice and an opportunity for a protest petition all would be required by K.S.A. 12-757.

If characterized as a quasi-judicial, site-specific rezoning, a neighborhood-wide downzoning would be a cumbersome, expensive and time-consuming procedure. Complying with the mechanics of a quasi-judicial rezoning could effectively prevent neighborhood downzonings even when initiated by 100% of the affected property owners.

Solution: The City of Topeka proposes an amendment to K.S.A. 12-757 which essentially creates a third type of rezoning procedure -- but one which borrows from the legislative and quasi-judicial rezoning procedures.

In a nutshell, the proposed amendment to K.S.A. 12-757 would create a new subsection (c) which operates as follows:

Neighborhood rezonings initiated by the city or county

1. Applicable only to downzonings (i.e. rezonings where property is moved from a less restrictive zoning classification to a more restrictive zoning classification).
2. 10 or more parcels, having five or more owners must be involved in the proposed rezoning.
3. Newspaper notice would be required to be provided by the city or county.
4. The city or county would be required to provide written (mailed) notice to all owners of record of land which are proposed to be downzoned.
5. A protest petition provision, as currently provided for in quasi-judicial site-specific rezonings, would be provided. Specifically, if the owners of 20% or more of the

land proposed to be downzoned bring a protest petition following a downzoning recommendation by the planning commission, such a petition would trigger a 3/4 supermajority vote requirement of the city or county governing body in order to approve the downzoning.

Neighborhood Rezoning Initiated by Affected Property Owners

1. Downzoning only.
2. 10 or more parcels, having five or more owners.
3. Public (newspaper) notice.
4. No written (mailed) notice to affected property owners, and no protest petition provision, as downzoning has been initiated by the affected property owners.

Summary: Topeka's proposed amendment to K.S.A. 12-757 has two important purposes. First, it would expressly recognize in the statutes the authority of a city or county to rezone multiple tracts of land. Secondly, it would provide an expedited procedure whereby rezonings of multiple tracts can occur -- but only in the context of a downzoning -- without compromising the rights and interests of affected property owners. When the downzoning is initiated by the city or county the affected property owners would continue to receive written notice of such proposed downzoning and would have the right to bring a protest petition which would require the supermajority vote of the city or county governing body. When the proposed neighborhood downzoning is initiated by the affected property owners such written notice and protest petition opportunity is obviously surplusage, therefore, only the published notice to the public would be required of the city or county.

The proposed amendment to K.S.A. 12-757 is offered to this Committee as a good faith effort to accommodate those governments and property owners which desire to preserve the existing character of their neighborhoods. It is not an effort to provide an easier means for governments to bring about rezonings, nor is it an effort to undercut the interests of adjoining property owners.

The City of Topeka respectfully requests this Committee's favorable action on its proposed amendment to K.S.A. 12-757.

_____ **BILL No.** _____

By _____

AN ACT concerning cities and counties; relating to zoning; amending K.S.A. 12-757 as further amended by 1995 Senate Bill No. 69 and repealing the existing section.

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

Section 1. K.S.A. 12-757 is hereby amended to read as follows: 12-757. (a) The governing body, from time to time, may supplement, change or generally revise the boundaries or regulations contained in zoning regulations by amendment. A proposal for such amendment may be initiated by the governing body or the planning commission. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the amendment may be initiated by application of the owner of property affected. Any such amendment, if in accordance with the land use plan or the land use element of a comprehensive plan, shall be presumed to be reasonable. The governing body shall establish in its zoning regulations the matters to be considered when approving or disapproving a rezoning request. The governing body may establish reasonable fees to be paid in advance by the owner of any property at the time of making application for a zoning amendment.

(b) All such proposed amendments first shall be submitted to the planning commission for recommendation. The planning commission shall hold a public hearing thereon, shall cause an accurate written summary to be made of the proceedings, and shall give notice in like manner as that required for recommendations on the original proposed zoning regulations provided in K.S.A. 12-758. Such notice shall fix the time and place for such hearing and contain a statement regarding the proposed changes in regulations or restrictions or in the boundary or classification of any zone or district. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the property shall be designated by legal description or a general description sufficient to identify the property under consideration. In addition to such publication notice, written notice of such proposed amendment shall be mailed at least 20 days before the hearing to all owners of record of lands located within at least 200 feet of the area proposed to be altered for regulations of a city and to all owners of record of lands located within at least 1,000 feet of the proposed area proposed to be altered for regulations of a county. If a city proposes a zoning amendment to property located adjacent to or outside the city's limits, the area of notification of the city's action shall be extended to at least 1,000 feet in the unincorporated area. Notice of a county's action shall extend 200 feet in those areas where the notification area extends within the corporate limits of a city. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the planning commission or the governing body. Such notice is sufficient to permit the planning commission to recommend amendments to zoning regulations which affect only a portion of the land described in the notice or which give all or any part of the land described a zoning classification of lesser change than that set forth in the notice. A recommendation of a zoning classification of lesser change than that set forth in the notice shall not be valid without republication and, where necessary, remailing, unless the planning commission has previously established a table or publication available to the public which designates what zoning classifications are lesser changes

authorized within the published zoning classifications. At any public hearing held to consider a proposed rezoning, an opportunity shall be granted to interested parties to be heard.

(c)(1) Whenever a city or county initiates a rezoning from a less restrictive to a more restrictive zoning classification of ten or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification having five or more owners of record, such zoning amendment shall require notice by publication and hearing in like manner as that required by subsection (b) of this section. In addition, written notice shall only be required to be mailed to owners of record of the properties to be so rezoned and only such owners shall be eligible to initiate a protest petition under subsection (f) of this section. (2) Whenever five or more property owners of record owning ten or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification initiate a rezoning of their property from a less restrictive to a more restrictive zoning classification, such amendment shall require notice by publication and hearing in like manner as required in subsection (b) of this section. Such zoning amendment shall not require written notice and shall not be subject to the protest petition provision of subsection (f) of this section.

~~(e)~~(d) Unless otherwise provided by this act, the procedure for the consideration and adoption of any such proposed amendment shall be in the same manner as that required for the consideration and adoption of the original zoning regulations. A majority of the members of the planning commission present and voting at the hearing shall be required to recommend approval or denial of the amendment to the governing body. If the planning commission fails to make a recommendation on a rezoning request, the planning commission shall be deemed to have made a recommendation of disapproval. When the planning commission submits a recommendation or approval or disapproval of such amendment and the reasons therefor, the governing body may: (1) Adopt such recommendation by ordinance in a city or by resolution in a county; (2) override the planning commission's recommendation by a 2/3 majority vote of the membership of the governing body; or (3) return such recommendation to the planning commission with a statement specifying the basis for the governing body's failure to approve or disapprove. If the governing body returns the planning commission's recommendation, the planning commission, after considering the same, may resubmit its original recommendation giving the reasons therefor or submit new and amended recommendation. Upon the receipt of such recommendation, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation by the respective ordinance or resolution, or it need take no further action thereon. If the planning commission fails to deliver its recommendation to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendation and proceed accordingly. The proposed rezoning shall become effective upon publication of the respective adopting ordinance or resolution.

~~(d)~~(e) If such amendment affects the boundaries of any zone or district, the respective ordinance or resolution shall describe the boundaries as amended, or if provision is made for the fixing of the same upon an official map which has been incorporated by reference, the amending ordinance or resolution shall define the change or the boundary as amended, shall order the official map to be changed to reflect such amendment, shall amend the section of the ordinance or resolution incorporating the same and shall reincorporate such map as amended.

~~(e)~~(f) Regardless of whether or not the planning commission approves or disapproves a zoning amendment, if a protest petition against such amendment is filed in the office of the city clerk or the county clerk within 14 days after the date of the conclusion of the public hearing pursuant to

the publication notice, signed by the owners of record of 20% or more of any real property proposed to be rezoned or by the owners of record of 20% or more of the total area required to be notified by this act of the proposed rezoning of a specific property, excluding streets and public ways, the ordinance or resolution adopting such amendment shall not be passed except by at least a 3/4 vote of all the members of the governing body.

(f)(g) Zoning regulations may provide additional notice by providing for the posting of signs on land which is the subject of a proposed rezoning, for the purpose of providing notice of such proposed rezoning.

Sec. 2. K.S.A. 12-757 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL No. 69

By Senator Bogina

1-18

10 AN ACT concerning cities and counties; relating to zoning; amending
11 K.S.A. 12-757 and repealing the existing section.
12

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

14 Section 1. K.S.A. 12-757 is hereby amended to read as follows: 12-
15 757. (a) The governing body, from time to time, may supplement, change
16 or generally revise the boundaries or regulations contained in zoning reg-
17 ulations by amendment. A proposal for such amendment may be initiated
18 by the governing body or the planning commission. If such proposed
19 amendment is not a general revision of the existing regulations and affects
20 specific property, the amendment may be initiated by application of the
21 owner of property affected. Any such amendment, if in accordance with
22 the land use plan or the land use element of a comprehensive plan, shall
23 be presumed to be reasonable. The governing body shall establish in its
24 zoning regulations the matters to be considered when approving or dis-
25 approving a rezoning request. The governing body may establish reason-
26 able fees to be paid in advance by the owner of any property at the time
27 of making application for a zoning amendment.

28 (b) All such proposed amendments first shall be submitted to the
29 planning commission for recommendation. The planning commission
30 shall hold a public hearing thereon, shall cause an accurate written sum-
31 mary to be made of the proceedings, and shall give notice in like manner
32 as that required for recommendations on the original proposed zoning
33 regulations provided in K.S.A. ~~12-758~~ 12-756, and amendments thereto.
34 ~~In addition, written notice of the proposed amendment shall be mailed at~~ ✓
35 ~~least 20 days before the hearing to all owners of record of land property~~ ✓
36 ~~within the area proposed to be altered.~~ Such notice shall fix the time and ✓
37 place for such hearing and contain a statement regarding the proposed
38 changes in regulations or restrictions or in the boundary or classification
39 of any zone or district. If such proposed amendment is not a general
40 revision of the existing regulations and affects specific property, the prop-
41 erty shall be designated by legal description or a general description suf-
42 ficient to identify the property under consideration. In addition to such
43 publication notice, written notice of such proposed amendment shall be

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1 mailed at least 20 days before the hearing to all owners of ~~record of lands~~
 2 ~~property within the area to be altered and to all owners of~~ **property**
 3 located within at least 200 feet of the area proposed to be altered for
 4 regulations of a city and to all owners of ~~record of lands~~ **property** located
 5 within at least 1,000 feet of the area proposed to be altered for regulations
 6 of a county. If a city proposes a zoning amendment to property located
 7 adjacent to or outside the city's limits, the area of notification of the city's
 8 action shall be extended to at least 1,000 feet in the unincorporated area.
 9 Notice of a county's action shall extend 200 feet in those areas where the
 10 notification area extends within the corporate limits of a city. All notices
 11 shall include a statement that a complete legal description is available for
 12 public inspection and shall indicate where such information is available.
 13 When the notice has been properly addressed and deposited in the mail,
 14 failure of a party to receive such notice shall not invalidate any subsequent
 15 action taken by the planning commission or the governing body. Such
 16 notice is sufficient to permit the planning commission to recommend
 17 amendments to zoning regulations which affect only a portion of the land
 18 described in the notice or which give all or any part of the land described
 19 a zoning classification of lesser change than that set forth in the notice.
 20 A recommendation of a zoning classification of lesser change than that
 21 set forth in the notice shall not be valid without republication and, where
 22 necessary, remailing, unless the planning commission has previously es-
 23 tablished a table or publication available to the public which designates
 24 what zoning classifications are lesser changes authorized within the pub-
 25 lished zoning classifications. At any public hearing held to consider a
 26 proposed rezoning, an opportunity shall be granted to interested parties
 27 to be heard.

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28 (c) Unless otherwise provided by this act, the procedure for the con-
 29 sideration and adoption of any such proposed amendment shall be in the
 30 same manner as that required for the consideration and adoption of the
 31 original zoning regulations. A majority of the members of the planning
 32 commission present and voting at the hearing shall be required to rec-
 33 ommend approval or denial of the amendment to the governing body. If
 34 the planning commission fails to make a recommendation on a rezoning
 35 request, the planning commission shall be deemed to have made a rec-
 36 ommendation of disapproval. When the planning commission submits a
 37 recommendation of approval or disapproval of such amendment and the
 38 reasons therefor, the governing body may: (1) Adopt such recommen-
 39 dation by ordinance in a city or by resolution in a county; (2) override the
 40 planning commission's recommendation by a $\frac{2}{3}$ majority vote of the
 41 membership of the governing body; or (3) return such recommendation
 42 to the planning commission with a statement specifying the basis for the
 43 governing body's failure to approve or disapprove. If the governing body

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1 returns the planning commission's recommendation, the planning com-
 2 mission, after considering the same, may resubmit its original recom-
 3 mendation giving the reasons therefor or submit new and amended rec-
 4 ommendation. Upon the receipt of such recommendation, the governing
 5 body, by a simple majority thereof, may adopt or may revise or amend
 6 and adopt such recommendation by the respective ordinance or resolu-
 7 tion, or it need take no further action thereon. If the planning commission
 8 fails to deliver its recommendation to the governing body following the
 9 planning commission's next regular meeting after receipt of the governing
 10 body's report, the governing body shall consider such course of inaction
 11 on the part of the planning commission as a resubmission of the original
 12 recommendation and proceed accordingly. The proposed rezoning shall
 13 become effective upon publication of the respective adopting ordinance
 14 or resolution.

15 (d) If such amendment affects the boundaries of any zone or district,
 16 the respective ordinance or resolution shall describe the boundaries as
 17 amended, or if provision is made for the fixing of the same upon an official
 18 map which has been incorporated by reference, the amending ordinance
 19 or resolution shall define the change or the boundary as amended, shall
 20 order the official map to be changed to reflect such amendment, shall
 21 amend the section of the ordinance or resolution incorporating the same
 22 and shall reincorporate such map as amended.

23 (e) Regardless of whether or not the planning commission approves
 24 or disapproves a zoning amendment, if a protest petition against such
 25 amendment is filed in the office of the city clerk or the county clerk within
 26 14 days after the date of the conclusion of the public hearing pursuant to
 27 the publication notice, signed by the owners of ~~record~~ *property* of 20%
 28 or more of any real property proposed to be rezoned or by the owners of
 29 ~~record~~ *property* of 20% or more of the total area required to be notified
 30 by this act of the proposed rezoning of a specific property, excluding
 31 streets and public ways, the ordinance or resolution adopting such amend-
 32 ment shall not be passed except by at least a 3/4 vote of all of the members
 33 of the governing body.

34 (f) Zoning regulations may provide additional notice by providing for
 35 the posting of signs on land which is the subject of a proposed rezoning,
 36 for the purpose of providing notice of such proposed rezoning.

37 (g) ~~The provisions of this section shall become effective on and after~~
 38 ~~January 1, 1992.~~

39 Sec. 2. K.S.A. 12-757 is hereby repealed.

40 Sec. 3. This act shall take effect and be in force from and after its
 41 publication in the statute book.

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