Approved: May 1, 2003
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairman Vickrey at 3:30 p.m. on March 25, 2003 in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Theresa Kiernan, Office of the Revisor of Statutes
Mike Heim, Legislative Research Department
Kathie Sparks, Legislative Research Department
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:

Rep. Dillmore	
Rep. Rob Boyer	
Mike Pepoon	Sedgwick County
Annabeth Surbaugh	Board of County Commissioners, Johnson County
Don Jarrett	Board of County Commissioners, Johnson County
Greg Johnson	City of DeSoto

*John Parisi
*written testimony only

Others attending: See attached list

Chairman Vickrey opened the hearing on:

HB 2455 state agencies and political subdivisions of the state; powers and duties thereof

Rep. Dillmore testified as a proponent of the bill (Attachment 1). He testified that the bill gives all political subdivisions the authority to market the naming of their physical assets:

- Highways, bridges, interchanges, classrooms, science labs, playgrounds, bike paths, water towers, greeting signs

He said that the bill does not prevent the legislature or local units to continue the practice of memorializing individuals, does not require anyone to participate, and participation costs nothing.

Michael Pepoon, Director, Government Relations, Sedgwick County, appeared in support of the bill (Attachment 2). He said the bill would allow cities, counties, school boards and other state agencies to enter into contracts to sell or lease the naming rights of any property owned by such agency. He informed the committee that Sedgwick County supports the bill.

The Chairman closed the hearing on **HB 2455**.

Chairman Vickrey opened the hearing on:

SB 237 redevelopment of property located within a federal enclave in Johnson and Labette Counties

Annabeth Surbaugh, Chairman, Board of County Commissioners, Johnson County presented testimony on behalf of the Board of County Commissioners in support of the bill (Attachment 3). She stated that the Senate Commerce Committee amended the bill to make creation of the Redevelopment Authority mandatory rather than discretionary. She requested that the committee restore the original language, which provided that the Board of County Commissioners "may" create a Redevelopment District.

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT at on March 25, 2003 in Room 519-S of the Capitol.

At the request of Chairman Vickrey, portions of the question and answer periods are noted in the committee minutes.

Rep. Siegfried posed the question "Is it your plan to create a redevelopment authority?"

Annabeth Surbaugh replied "yes, sir."

Don Jarrett, Chief Counsel, Johnson County, testified in support of the bill on behalf of the Board of County Commissioners (Attachment 4). He requested that the bill be amended to restore the word "may" instead of "shall" in New Sec. (4), lines 30-31 on page 2. He stated that they believe the legislation is necessary to provide the county with reasonable methods and options to both encourage and control redevelopment at the Sunflower Plant.

Greg Johnson, City Administrator, City of De Soto, appeared as a proponent of the bill. He referenced written testimony by Mayor David Anderson (Attachment 5). He stated that the bill has the foundation of a working redevelopment process. He said that the property (Sunflower Ammunition Plan) has been a historical and economical part of De Soto for over 100 years.

Rep. Roy Boyer, testified in support of the bill (Attachment 6). He stated the purpose of the bill is to create a redevelopment authority to oversee the transfer, clean up, and development of Sunflower. He explained that the responsible action is to create a redevelopment authority and study the issue and proceed in the best interest of all involved. He urged support for the bill.

Written testimony in opposition to the bill was received from:

- John Parisi, Kansas Trail Lawyers Association (Attachment 7).

The Chairman closed the hearing on: **SB 237**

SB 237 **redevelopment of property located within a federal enclave in Johnson and Labette Counties**

Rep. Campbell made the motion to amend the bill by striking the word "shall" from Page 2, line 31 and inserting the word "may." Rep. Gilbert seconded the motion.

Rep. Petersen made a substitute motion to table the bill. Rep. Horst seconded the motion. The substitute motion failed.

The vote was then taken on the original motion made by Rep. Campbell to amend the bill. The motion to amend the bill by striking the word "shall" from Page 2, line 31 and inserting the word "may" carried.

Rep. Campbell made the motion for the favorable passage of the bill as amended. Rep. Reitz seconded the motion. The motion carried. Rep. Horst, Rep. Peterson, Rep. Gilbert and Rep. Huy asked to be recorded as voting "no" on the motion.

SB 238 **City-county reorganization; efficiency in Local Government Act**

Rep. Ostmeyer distributed copies of a proposed amendment to **SB 238** (Attachment 9) and copies of a Summarization of the Proposed Amendment (Attachment 8).

Rep. Ostmeyer made the motion to amend the bill to remove the contents of **SB 238** and insert the language as per his proposed amendment (Attachment 9) AND for the favorable passage of the bill as amended. Rep. Yonally seconded the motion. The motion carried. The amended bill relates to enacting the competitive livestock markets act.

The meeting was adjourned.

HOUSE LOCAL GOVERNMENT

DATE 3-25-2003

NAME	REPRESENTING
Mike Pepoon	Sedgwick County
MIKE DIKEMORE	[redacted]
GREG JOHNSON	CITY OF DE SOTO
Rob Heise	Ambassador Real Estate
PATRICK REALEY	CITY OF DE SOTO
ROB BOYER	District 38
Scott Young	Kessinger Hunter
Kristen Wheeler	KU student observer
Scott Anglemyer	KDOCH
Danielle Noe	Johnson County
DON JARRETT	JOHNSON COUNTY
[signature]	JoCo
Hannes Zacharoos	Jo County
Erik Sartorius	City of Overland Park
Ashley Sherard	Lenexa Chamber

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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNM
KING DEMOCRAT FINANCIAL INSTITU
MEMBER: CORRECTIONS AND JUVENILE
JUSTICE
UTILITIES

Testimony in support of HB 2455
March 25, 2003

Mr. Chairman I realize this bill has come to you at the last minute. I appreciate the time you are allowing for this hearing. This bill was introduced on Thursday of last week and therefore there has not been a lot of time to put together a long list of proponents. But a good idea is still a good idea.

What does HB 2455 do?
Very simply it gives all political subdivisions the authority to market the naming of their physical assets. We are talking about:

- Highways
- Bridges
- Interchanges
- Classrooms
- Science Labs
- Playgrounds
- Bike Paths
- Water Towers
- Greeting Signs

What does HB 2455 not do?
This bill does not prevent the legislature or local units to continue the practice of memorializing individuals, it does not require anyone to participate, and it costs nothing to participate.

I have spoken to the Governors office and the Secretary of Administration and both believe that this bill is a novel approach and neither stands in opposition. Both have indicated that they are leaving this to the wisdom of legislature.

How much is this worth?
I would ask you to refer to the memo from Legislative Research Department. I know this is not much help in putting a dollar amount on what this bill might generate in new revenue. However, if HB 2455 creates $1,000 or $10,000,000 in new revenue, that is money that would not be there otherwise.

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Close

This is a bill that allows every political subdivision to use their imagination. I would say to you that our constituents did not send us here to come up with creative ways to raise taxes and fees. They sent us here to imagine new ways to create revenue. We need to send a message to our constituents that we are willing to look at ideas that are new, that are creative, and that don't raise taxes or fees.

I ask you to look at HB 2455 with an open mind and I hope you will agree with me that this bill deserves to be worked and acted upon favorably today!

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March 21, 2003

To: Representative Nile Dillmore **Office No.:** 278W

From: Alan D. Conroy, Director

Re: Naming State Facilities

You had requested information on naming state facilities. In particular, you were interested in information that related to naming of state facilities in return for a fee or payment to the state, by individuals or corporations in return for the naming of the facility. I have contacted the National Council of State Legislatures (NCSL) and Council of State Government (CSG) for any information those organizations may have on this topic. As of this date, I have not heard from either organization, but just as soon as I do, I will forward that information to you.

I have checked with other sources of information and found multiple examples of governmental involvement through permitting the naming of facilities in return for payment of a fee. The most common examples of naming a public facility for a fee would include facilities at universities and sports arenas. A recent Internet search for "university-naming opportunities" yielded 103,000 results. Available for sale are the naming rights for:

colleges	gardens	institutes
laboratories	dormitories	lounges
offices	trees	classrooms
reading rooms	libraries	scholarships
alcoves	centers	cafeteria
		outdoor benches
		bricks

The Kansas Board of Regents currently has a policy for the naming of facilities. The policy states:

> "Building shall be named by the Board upon the recommendation of the chief executive officer of the Regents institution and the committee of the whole considering items related to facilities. At the time the agenda item is submitted the name shall not be included; however, the proposed name and a brief narrative shall be sent individually to Regents and the President and Chief Executive Officer at least one week prior to the Board meeting. No public communication of a proposed name shall be made until the name is presented for consideration to the open meeting of the Committee."

Some examples of sports arena naming include:

Facility/Location	Cost of Facility	Facility Naming
Philips Arena/Atlanta	$213.5 million	Philips Electronics signed a 20-year, $180 million deal for naming rights.
Fleet Center/Boston	$160.0 million	Fleet Bank paid $30 million for 15-year naming rights.
Pepsi Center/Denver	$164.5 million	Pepsi paid $68 million for naming rights.
American Airlines Center/Dallas	$300.0 million	American Airlines is paying $195 million for the 30-year naming rights.
Staples Center/Los Angeles	$375.0 million	Staples paid $100 million for naming rights for 20 years.

I hope this information is helpful as a start. If I receive any information from NCSL or CSG, I will forward them to you. If you have any further questions, please let me know.

ADC/aem

1-4

GOVERNMENT RELATIONS

Sedgwick County Courthouse
525 N. Main, Suite 365
Wichita, KS 67203
Phone: (316) 660-9378
Fax: (316) 383-7946

Michael D. Pepoon
Director

TESTIMONY HB 2455
Before The House Committee on Local Government
MARCH 25, 2003

Chairman Vickrey and members of the committee, I appreciate the opportunity to testify in support of HB 2455. I am the Director of Governmental Relations for Sedgwick County and have also been a lawyer in the County Counselor's Office for the past nineteen years. I am appearing on behalf of the Board of County Commissioners of Sedgwick County in support of this legislation.

HB 2455 is a bill that has been introduced by Rep. Dillmore that would allow cities, counties, school boards and other state agencies to enter into contracts to sell or lease the naming rights of any property owned by such agency. Counties already have a great deal of authority over the control and use of county property under K.S.A. 19-101; which includes the authority to make contracts and to do all other acts in relation to the property and concerns of the county. Counties also have broad home rule authority under K.S.A. 19-101a to transact county business. But this bill gives Sedgwick County the clear and unambiguous authority to sell the naming rights for county-owned property—and for that reason we believe this bill has merit. We also appreciate the efforts of Rep. Dillmore for thinking of innovative ways to help cities and counties raise additional revenues. Sedgwick County has already had to address state funding cuts in an amount of approximately $6 million from the loss of demand transfer monies. This bill provides a means for cities and counties to raise additional revenues at the local level without being dependant on state revenues and without raising taxes.

There are several opportunities in Sedgwick County to raise revenue from selling or leasing the naming rights of county property. We are currently in the process of bringing the Kansas Coliseum into compliance with the Americans with Disabilities Act (ADA) and we will likely sell the naming rights for this facility. We have already named some county property in response to substantial donations. This is true with the Koch Orangutan and Chimpanzee Habitat at the Sedgwick County Zoo and Britt Brown Arena in the Kansas Coliseum. So it is not that big of a jump to lease or sell the naming rights for the entire zoo or the Coliseum—which could mean substantially more revenue for Sedgwick County.

For the above reasons Sedgwick County supports HB 2455.

March 25, 2003

TESTIMONY BEFORE THE HOUSE LOCAL GOVERNMENT COMMITTEE
IN SUPPORT OF SENATE BILL 237, AS PROPOSED

Presented By

Annabeth Surbaugh, Chairman
Board of County Commissioners
Johnson County, Kansas

Good Afternoon. My name is Annabeth Surbaugh, and I am the Chairman of the Board of County Commissioners of Johnson County, Kansas. On behalf of the Board, I appreciate the opportunity to address the Committee and to present our testimony in support of Senate Bill 237, as proposed by the County.

The disposal of the Sunflower Army Ammunition Plant by the U.S. Army is a significant issue for Johnson County – and potentially for the State of Kansas. The Sunflower Plant contains over 9,000 acres of land located along a primary growth corridor, the K-10 Highway, in northeast Kansas. How that property is redeveloped can provide benefits or create burdens. To best ensure that redevelopment at Sunflower occurs in a positive and beneficial manner, our Board is requesting that the Legislature pass Senate Bill 237, as it was proposed by the County.

The Legislation provides options for the County, for potential developers, and even for the State to encourage and to regulate the overall redevelopment at Sunflower.

Essentially, the key enactments in Senate Bill 237 are:

1. The Bill enables Johnson County (and Labette County) to create a redevelopment district for the purpose of encouraging and controlling the redevelopment;
2. The Bill permits the use of Tax Increment Financing within the District;
3. The Bill retains authority for the Kansas Development Finance Authority to create, with approval of the County, a redevelopment district at Sunflower (or Parsons); and
4. The Bill has protections and requirements to ensure completion of environmental remediation while protecting the State and County from pollution liability during redevelopment.

In addition, the Bill provides procedures for using STAR Bonds in the redevelopment district, but does not provide direct authority for those bonds. Separate authority – either through a general application STAR Bond statute or by future specific legislation – would be necessary before STAR bonds could be used in the district.

Also, Senate Bill 237, as proposed by the County does provide a specific structure for the creation of a redevelopment authority, and details the specific powers that such an authority, if created, would have. Those powers would include the ability to request and take title to the property, if some specified conditions were met.

The Senate Commerce Committee amended the Bill proposed by the County and made creation of the Redevelopment Authority mandatory rather than discretionary. By doing so, it removed the ability for local control and elected official accountability – two issues we believe are important for local government. We also note that the Commerce

Committee amendment would require Labette County to create an authority, which is not intended by either the Committee or the County. We would therefore respectfully request that this Committee correct that amendment and restore the original language, which provided that the Board of County Commissioners "may" create a Redevelopment District.

We are aware of the interests that urged the Senate Commerce Committee to make creation of the Authority mandatory. With due respect to those interests, our Board is the applicable local government which is responsible for governmental services, governmental regulation, and public infrastructure and improvements for the area. We do have a comprehensive master plan developed and adopted for the property, which was adopted prior to and totally without consideration of the Oz Entertainment proposal, and, since 1998, our Board has been steadfast in our position that redevelopment of the property must:

1. Be consistent with the adopted Master Plan;
2. Provide the full environmental remediation to residential standards;
3. Provide for appropriate public land and uses;
4. Be approached in a comprehensive whole rather than piecemeal to avoid cherry-picking; and
5. Be buffered from and/or compatible with surrounding development.

Each and all of those issues can best be addressed through local elected officials. We believe that the County can best do that with the discretionary options provided in the Bill as proposed by the County. We do not see those issues in conflict with the City of De Soto, or any other City, and regret that the City attempts to make them a conflict.

The Legislation is intended to be enabling, not mandatory. We believe that it provides us with the most viable and reasonable means to address the coming but uncertain development issues at Sunflower, which issues are best addressed as issues of local control, rather than state law mandate.

We are aware of the sense of urgency that continues to surround this issue, and our Board is committed to addressing the challenge. Passage of Senate Bill 237 with restoration of "may" instead of shall for creation of the redevelopment authority, will give us valuable tools with which to meet that challenge.

We ask for your favorable consideration and action recommending passage of Senate Bill 237, as proposed by the County.

Thank you.

March 25, 2003

TESTIMONY BEFORE THE SENATE COMMERCE COMMITTEE
IN SUPPORT OF SENATE BILL 237, AS PROPOSED

Presented By

Don Jarrett, Chief Counsel
Johnson County, Kansas

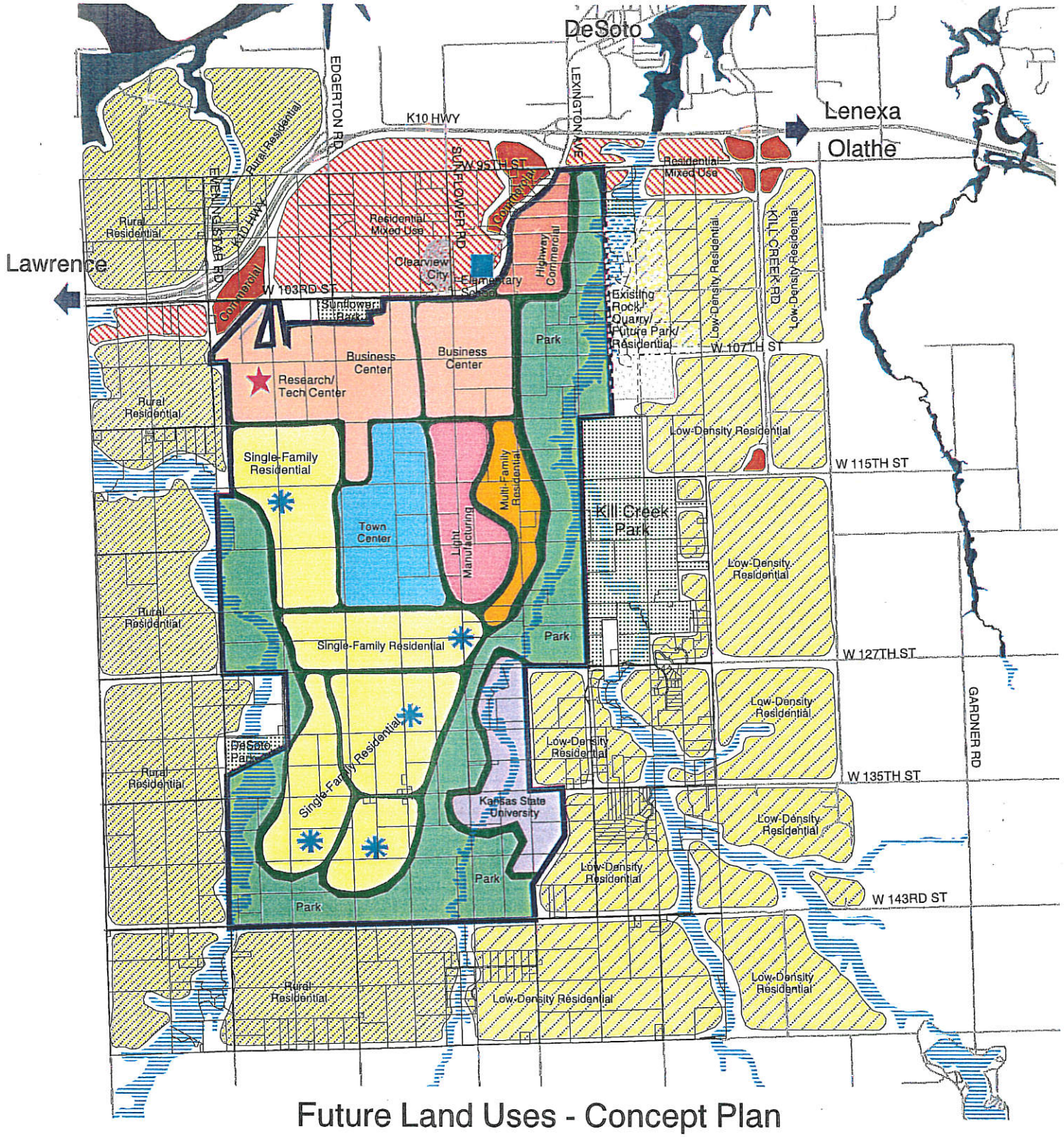
Good Afternoon. My name is Don Jarrett. I am the Chief Legal Counsel for Johnson County, Kansas and appear here today on behalf of the Board of County Commissioners. We appreciate the opportunity to address the Committee and to present our testimony in support of Senate Bill 237, and I will gladly address any questions you may have on the proposed legislation.

We do, however, have the one amendment to the Bill that we would request that the Committee approve. That amendment would restore the word "may" instead of shall in New Sec. (4), lines 30-31 on page 2 of the Bill. The amendment would retain the ability for the County to create the Redevelopment Authority but would not mandate the creation. Clearly, that amendment is necessary to relieve Labette County of an unintended burden. But, more so, the amendment is more consistent with the principal of local control and related or similar statutory provisions. For example, cities have authority to establish redevelopment districts and <u>are</u> <u>not</u> required to create a redevelopment authority. We, therefore, request that you approve the proposed amendment, and provide the County the same degree of local government discretion, control and respect that is provided to cities.

We believe that this Legislation is necessary to provide the County with reasonable methods and options to both encourage and control redevelopment at the

Sunflower Plant. For that reason, we ask that you act favorably on Senate Bill 237, as proposed by the County, and urge its passage by the House.

Thank you for your time and consideration.



Future Land Uses - Concept Plan

Surrounding Area*

- Low-Density Residential
- Rural Residential
- Residential Mixed Use
- Commercial

* Generally consistent with DeSoto and County Comprehensive Plans.

Sunflower Site

- Business Center
- Highway Commercial
- Town Center
- Kansas State University
- Light Manufacturing
- Multi-Family Residential
- Park
- Single-Family Residential
- Neighborhood Center

Pedestrian/Bicycle Trails

Streets

Flood Plains

- FLOOD ZONE A
- FLOOD ZONE AD/AE/AR
- FLOODWAY

N

5280 0 5280 Feet

4-3

4/28/08

City of De Soto
"Building On Small Town Values"

DE SOTO

David R. Anderson
Mayor

Gregory S. Johnson
City Administrator

Lana R. McPherson, CMC
City Clerk

Patrick G. Reavey
City Attorney

Michael D. Brungardt, P.E.
City Engineer

City Council

Tim Maniez

Brad Seaman

John D. Taylor

Emil Urbanek

Linda Zindler

March 25, 2003

David R. Anderson, Mayor of De Soto

Senate bill 237 is about a PROCESS. The transfer, clean up, infrastructure and land uses at the former Sunflower Army plant in De Soto has been without any formal process since the GSA put it on the surplus property list.

Oz Entertainment Corp. attempted to develop the property. They had a plan, but Johnson County had no process in place to fully review all of the transfer, clean up, infrastructure and land use issues that this particular site demands. There was no measuring standard to compare this proposal to any other option.

Today, a request by the Kessinger- Hunter group has taken the place of Oz Entertainment in requesting taking the transfer of the property. Today there is still no PROCESS and there is no plan other than to take the property and clean it up and sell.

Senate Bill 237 has the foundation of a working redevelopment process.

Johnson County has not fully supported this open redevelopment process. The bill they submitted gave them only the option to begin this public process. The Senate has agreed with the citizens of De Soto that the county "SHALL" begin the creation of an at large, citizen represented, redevelopment board.

Earlier it was mentioned that the current Kessinger proposal has no plan. The plan is to take transfer of the land, give it to the parks, the city, KSU, KU and JOCO Water #1 and USD 232, which are the public benefit transfers that have been approved by GSA. This would give the developer tax credits that will be sold to investors. The clean-up process that the Army currently puts a price tag of $55,000,000 would be completed. With Federal brownfield tax credits of $2 for every $1 of clean-up and the public benefit tax credit, that would mean that they can clean up the property for NO cash out of pocket! They would also have over 6000 acres net of property on K10 in Johnson County, Ks between Lenexa and Lawerence free and clear.

Why hasn't the state or the county formed a task force to study the unique possibilities and potential this particular property holds?

Why has no one at the state or county created a board to study the real value now and future?

Why has no other developers been solicited for proposals?

Some of the reasons are:

1) We all have been told that the white knight "one entity" approach would save us all from this dreaded evil -- the clean up problem. The truth is that less than 300

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acres out of the 9000 acres is contaminated with manageable waste. Currently the clean up process is simply digging up the material, mixing it with cement and hauling to the JoCo landfill.

2) We are also being told that if we do not surrender to this "one entity " approach surely we will have a piecemeal patchwork development. What city or large property has ever been developed ALL AT ONE TIME? The county has a master plan that was published for the community in a park concept under OZ. It needs to be revised, but it as a master plan assures against patchwork development. The planning process with the county planning staff and City of De Soto has worked well in the past. We have an interlocal agreement that cross manages planning and development proposals. It has worked to insure solid unified development to our master plan.

As you can see a public process like a redevelopment authority, in which these questions would be publicly debated and acted upon would insure this property is returned to a tax paying status and public used space most efficiently.

Who better to serve as lead on this than representatives of the community of De Soto?
This property has been a historical and economical part of De Soto for over 100 years!

Thank you in advance for your support.

David R. Anderson
Mayor of De Soto, KS

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
COMMERCE AND LABOR
ECONOMIC DEVELOPMENT
FINANCIAL INSTITUTIONS
PUBLIC SAFETY BUDGET

March 26, 2003

House Committee on Local Government

Support for SB 237

Sunflower Army Depot

-Approximately 9,000 acres in Western Johnson County
-Site of the infamous "Oz" project
-Two lawsuits pending; Shawnee Indians and TOTO (Taxpayers Opposed to Oz)
-U.S. Army is currently cleaning the land; completion due in 2011

The purpose of SB 237 is to create a re-development authority to oversee the transfer, clean up, and development of Sunflower. The duties of this authority are outlined on page 3 beginning at line 30. Since the failed OZ project, the future of Sunflower has been an unresolved issue. GSA (Government Services Administration) represents the U.S. Army at Sunflower and has repeatedly expressed their frustration over our inability to provide coherent leadership and strategies for the future of the site. SB 237 is step one out of a thousand that need to be contemplated. We need to begin that process now and begin working on a plan for the transfer, clean up, and development of Sunflower.

The problem we face is that there is currently no process in place to determine the course of action for this land. The County loosely suggests that we give Kessinger-Hunter time to develop a plan and take ownership of the property. There are no provisions for public hearings, discussion of land use, determination of the value of the land, or bid processes to seek the best vendor to complete the work. We are on pace to hand this land over to Kessinger-Hunter, a reputable firm that is most notably a "broker" not a "developer".

There are at least 3 proposals floating around Sunflower; the County master plan, a plan to create a research park, and a plan to focus the area on parks and rec. There is also much dispute over the cost of clean up with ranges from $35 million to $148 million. We also don't know the true value of the land. Perhaps the Kessinger-Hunter plan which takes the land in exchange for clean up is generous. It might also be true, as numerous developers have suggested,

that the Kessinger-Hunter plan is nothing more than a land grab and that we are party to helping a private firm reap millions of dollars in brokerage fees. The truth of Sunflower is that we don't know. The responsible action is to create a re-development authority and study the issue and proceed in the best interest of all involved.

The question is often asked, "Isn't this an issue of local control?" The answer is Yes and No. Any transfer of this land and the liability associated with it will likely come through the State. If the State is going to be in the title of custody and expose itself to the potential for lawsuit than the State has every right and a duty to ensure responsible activities at Sunflower.

The County has complete control over the work of the redevelopment authority. They determine zoning, planning, and have ultimate approval of anything that occurs at Sunflower. SB 237 is very reasonable legislation. It helps the State protects its interest while giving full local control to the Johnson County Commission.

Thank you and I urge your support for SB 237.

Rep. Rob Boyer

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the House Local Government Committee

FROM: John Parisi
President
Kansas Trial Lawyers Association

RE: 2003 SB 237

DATE: March 25, 2003

Chairman Vickrey and members of the House Local Government Committee, I am John Parisi, president of the Kansas Trial Lawyers Association (KTLA). KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to express our opposition to SB 237.

KTLA has concerns regarding exposing the State to unknown liability during the remediation of the land which once housed the Sunflower Ammunition Plant. The amendment passed by the Senate does not address our concerns. I would like to take this opportunity to explain KTLA's opposition to SB 237, amending K.S.A. § 74-8921(c)(1). Although KTLA has several concerns about SB 237, the most significant concern is Sec. 10(c)(1) which states:

> "Under no circumstances shall the State of Kansas, any of its political subdivisions, the Kansas Development Finance Authority, or any unit of local government, assume responsibility or otherwise be responsible for any environmental remediation, or any fees which may relate thereto, which may be required to be performed within the redevelopment district designated through any redevelopment plan, and any attorneys fees incurred by the State of Kansas as a defendant in any litigation arising from any such environmental remediation or fees relating thereto shall be paid by the party or parties bringing the litigation or otherwise causing the State of Kansas to be a party to the litigation."

This provision of the bill, which attempts to immunize the State from remediation costs, conflicts with liability provisions of the Comprehensive Environmental Response and Liability Act (CERCLA), codified at 42 U.S.C. § 9601, et seq, a federal statute which provides for liability for environmental contamination by an owner or other "potentially responsible party" (PRP) of the contaminated property. Despite the apparent attempt of SB 237 to immunize the State from liability, federal law imposes potential liability on the

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Terry Humphrey, Executive Director

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E-Mail: triallaw @ ink.org

State of Kansas for environmental remediation, in the event the State is named as a responsible party or as a potentially responsible party under CERCLA.

An attempt to shift the responsibility to pay the State's attorneys fees to a party who brings an action which ultimately causes the State of Kansas to pay attorneys fees is misguided and potentially unconstitutional. To the extent the federal government names the State of Kansas as a potentially responsible party (PRP) under CERCLA, the State can not make the federal government pay the attorney fees of the State.

Moreover, the act could result in an individual who was injured during a remediation activity having to pay the State's attorneys fees in the event that someone else in the litigation compares the State's fault. The basis for such a comparison of fault is the Kansas One Action Rule, embodied in K.S.A. § 60-258a which provides that the fault of all parties is to be compared in one action. The "One Action" Rule of K.S.A. § 60-258a further provides that any party to the litigation may seek to compare the fault of any other entity responsible for the damage sustained by the plaintiff.

In the event a defendant in a lawsuit brings in the State for purposes of comparing fault under K.S.A. § 60-258a, the plaintiff in that lawsuit would have to adopt those allegations in order to be able to fully recover their damages in the event damages were available from the State. In such instance, because the plaintiff "brought" an action in which claims were made against the state, pursuant to SB 237 the plaintiff would be forced to pay the State's attorneys fees. Importantly, even if the plaintiff did not adopt the defendant's allegations against the State, the plaintiff could arguably be made to pay attorney fees to the State under SB 237 because the plaintiff instituted the original action which "caused" the State to incur fees when a defendant to the original suit brought the State into the litigation. Such a result is unjustified and clearly unfairly penalizes the injured party.

KTLA also opposes SB 237 because it shifts the burden of attorney's fees from the State of Kansas to the plaintiff. KTLA opposes this fee shifting provision because it violates the long-standing American Rule that requires each party to litigation pay their own attorney's fees. In contrast to the American Rule, the English Rule requires the losing party to pay the other side's fees. The English Rule runs counter to the longstanding common law American tradition that both sides pay their own attorney fees in a litigated dispute. KTLA strongly supports the American Rule and condemns the English Rule as it blocks access to the courthouse for those with legitimate claims but are least able to afford to litigate if they should lose the dispute and have to pay the attorney fees of the other side.

As you are aware, the result in litigation is by no means a certainty. Many legitimate disputes are filed, and lost, by the parties seeking redress. Access to the courthouse should not be effectively closed by the threat of having to pay the other side's attorney fees should they lose a legitimate but disputed claim. That is exactly why the English Rule has been uniformly rejected in America. SB 237 goes even further than the English Rule by, in every instance, requiring the party who brings the lawsuit which ultimately

causes the State to incur attorney fees, to pay the State's fees regardless of the outcome. **This provision is unprecedented under Kansas law**. It erects a barrier to the courthouse which goes beyond the unfavored English Rule and in the view of KTLA, presents an impermissible barrier to Kansans' constitutional right of access to the courts.

Moreover, to the extent that the bill tries to insulate Kansas from the effects of federal environmental laws, such as CERCLA, the Resource Conservation and Recovery Act (RCRA), Clean Water Act (CWA), Clean Air Act (CAA), or other federal environmental statutes, it is unenforceable. In that regard, please see the attached April 9, 2002 letter that was sent by Randy Rathbun, a Kansas attorney and recognized practitioner in environmental law and former United States Attorney for the State of Kansas, to Sen. John Vratil opposing this bill in its 2002 form, SB 611.

We appreciate this opportunity to explain KTLA's opposition to SB 237. The bill unfairly penalizes plaintiffs and effectively closes the courthouse doors to any individual who is injured by remediation activity. The threat of paying the State's attorney fees will preclude most injured parties from being able to afford to bring an action.

This amendment is current federal law. It will, in addition to the US Attorney General, allow the Kansas Attorney General to enforce this law.

A provision passed two years ago allows the Attorney General to keep 20% of monies collected through anti-trust litigation. Currently there is enough money in this fund to cover the costs of implementing this law. In a nut shell it gives the state another tool in upholding what is currently in federal law.

The provisions of the bill makes it a unlawful for any packer to:

1. Engage in or use any unfair, unjustly discriminatory or deceptive practice.

2. Give any unreasonable preference or advantage to any particular person in any respect whatsoever.

3. Manipulating or controlling prices, or of creating a monopoly or of restraining commerce.

4. Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices.

5. Conspire, with any other person to apportion territory for carrying on business.

The attorney general or any county or district attorney may bring an action:

1. To obtain a declaratory judgment that an act or practice violates this act.

2. To obtain a restraining order against a packer who has violated.

3 To recover damages on behalf of a person by reason of violations of this act.

4. To recover reasonable expenses and investigation fees.

Proposed Amendment to SB ~~237~~ 238
(As Amended by House Committee)

On page 22, following line 10, by inserting:

"New Sec. 17. The provisions of this section and section 18 through 23, and amendments thereto, shall be known and may be cited as the competitive livestock markets act.

New Sec. 18. As used in the competitive livestock act, and amendments thereto:

(a) "Packer" means any person engaged in the business of:

(1) Buying more than 5,000 animal units of livestock per year in commerce for purpose of slaughter;

(2) manufacturing or preparing meats or meat food products for sale or shipment in commerce; or

(3) marketing meats, meat food products or livestock products in an unmanufactured form acting as a wholesale broker, dealer or distributor in commerce.

(b) "Animal units" means the same as prescribed by K.S.A. 65-171d, and amendments thereto.

New Sec. 19. It shall be unlawful for any packer with respect to livestock, meats, meat products, livestock products in unmanufactured form to:

(a) Engage in or use any unfair, unjustly discriminatory or deceptive practice or device;

(b) make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject any particular person or locality to any unreasonable prejudice or disadvantage in any respect whatsoever;

(c) sell or otherwise transfer to or for any other packer or buy or otherwise receive from or for any other packer any article for the purpose or with the effect of apportioning the supply between any such persons if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly;

(d) sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any

article for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of buying, selling or dealing in any article, or of restraining commerce;

(e) engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of buying, selling, dealing in any article or of restraining commerce;

(f) conspire, combine, agree or arrange with any other person to apportion territory for carrying on business, to apportion purchases or sales of any article or to manipulate or control prices; or

(g) conspire, combine, agree or arrange with any other person to do, or aid or abet the doing of any act made unlawful by subsections (a), (b), (c), (d) or (e).

New Sec. 20. (a) The attorney general or any county or district attorney may bring an action:

(1) To obtain a declaratory judgment that an act or practice violates this act;

(2) to enjoin, or to obtain a restraining order against a packer who has violated, is violating or is otherwise likely to violate this act;

(3) to recover damages on behalf of a person by reason of violations of this act; and

(4) to recover reasonable expenses and investigation fees.

(b) In lieu of instigating or continuing an action or proceeding, the attorney general may accept a consent judgment with respect to any act or practice declared to be a violation of this act. Such a consent judgment shall provide for the discontinuance by the packer of any act or practice declared to be a violation of this act, and it may include a stipulation for the payment by such packer of reasonable expenses and investigation fees incurred by the attorney general. Any consent judgment entered into pursuant to this section shall not be deemed to admit the violation, unless it does so by its terms.

Before any consent judgment entered into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all the penalties provided by law therefor.

(c) In any action brought by the attorney general or the county or district attorney, the court may, without requiring bond of the attorney general or the county or district attorney:

(1) Make such orders or judgments as may be necessary to prevent the use or employment by a packer of any practices declared to be a violation of this act;

(2) make such orders or judgments as may be necessary to compensate any person for damages sustained;

(3) revoke any license or certificate authorizing that packer to engage in business in this state;

(4) issue a temporary restraining order or enjoin any packer from engaging in business in this state;

(5) award reasonable expenses and investigation fees, civil penalties and costs; and

(6) grant other appropriate relief.

New Sec. 21. (a) Whether a person seeks or is entitled to damages or otherwise has an adequate remedy at law or in equity, a person aggrieved by an alleged violation of this act may bring an action to:

(1) Obtain a declaratory judgment that an act or practice violates this act; or

(2) enjoin or obtain a restraining order against a packer who has violated, is violating or is likely to violate this act.

(b) A person who suffers a loss as a result of a violation of this act may bring an individual or a class action for the damages caused by any violation of this act together with reasonable attorney fees.

New Sec. 22. Every packer shall keep such accounts, records

and memoranda to fully and correctly disclose all transactions involved in such person's business, including the true ownership of such business by stockholders or otherwise. Whenever the attorney general finds that the accounts, records and memoranda of such person do not fully and correctly disclose all transactions involved in such person's business, the attorney general may prescribe the manner and form in which such accounts, records and memoranda shall be kept. Any such person who fails to keep such accounts, records and memoranda in the manner and form prescribed or approved by the attorney general is guilty of a nonperson misdemeanor and shall be subject to a fine of not more than $5,000 or imprisonment of not more than three years, or both.

New Sec. 23. The attorney general shall be responsible for enforcement of this act and shall promulgate such rules and regulations and make orders as may be necessary to carry out the provisions of this act. The attorney general, to carry out the provisions of this act, may cooperate with any state department, agency or any local municipality and any department or agency of the federal government and state, territory, district or possession or department or agency or political subdivision thereof or any person.";

By renumbering sections accordingly;

Title changes