

Approved: 3-19-09
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:00 a.m. on March 10, 2009, in Room 784 of the Docking State Office Building.

All members were present except:

Representative Bob Bethell- excused
Representative Broderick Henderson- excused

Committee staff present:

Renaë Jefferies, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Jerry Donaldson, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Stephen Bainum, Committee Assistant

Conferees appearing before the Committee:

Renaë Jefferies, Assistant Revisor
Phil Perry, Home Builders of Greater Kansas City
Rick Oddo, Oddo Development Co. Inc
Eric Stafford, Associated General Contractors of Kansas Inc
Chris Wilson, Kansas Building Industry Association

Others attending:

See attached list.

The meeting was called to order by Chairman Steve Brunk at 9:00 a.m. He opened the hearing on **SB 91**.

SB 91 - Planning and zoning; vesting of development rights.

Renaë Jefferies, Assistant Revisor said that the bill would expand the statute's application from a single family residential development to all residential developments. Also the vesting of development rights in land for purposes other than residential development would have those rights vest upon issuance of all permits and expire if at least 35% of the work has not been completed within 10 years of the issuance of permits (Attachment 1).

Renaë Jefferies' proposed **Substitute for Senate Bill 91** was introduced to address the question of what happens to development rights that have vested prior to July 1, 2009, when the bill takes effect because the bill is prospective in nature and does not have a retroactive effect. The Substitute bill addressed that issue under subsection (a) by having all development rights that are vested prior to July 1, 2009, continue under the currently existing law under which the rights were vested. Subsection (b) of the Substitute bill addressed the prospective effect by providing that all development rights that vest after July 1, 2009, be vested under the statutory language changes contained in **SB 91** as amended by senate committee (Attachment 2).

Phil Perry, Staff VP of Governmental Affairs for the Home Builders Association of Greater Kansas City presented testimony as a proponent of **Sub SB 91** (Attachment 3). He said that today's markets typically include a variety of housing types and often include retail and/or an office component. Financial deals are complex and time consuming and the approval process has been complicated with additional requirements for codes and environmental issues. Extending the time of vesting to ten years creates a more sensible time frame in today's markets. Additionally the bill creates a defined percentage for completion of the project as opposed to the undefinable "substantial amount of work".

Representative Tietze requested an explanation of the 35% of all work completed versus the substantial amount of work language of the bill. How do you decide what 35% is and would it be accepted by everyone? Phil said that 35% was more measurable than substantial. With the substantial language there is no uniformity from one district to the next. Phil said that it would be up to the cities to determine what 35% was.

Representative Pottorff mentioned that there were no opponents to the bill and ask if there had been opponents in the Senate. Phil said that they had talked to the cities and there was no opposition. It passed the Senate 36

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to 3 so there has not been any opposition to this bill.

Representative Worley said that since the bill is effective from July 1st it does not help those who have existing projects that may be coming up on the five year deadline. Phil said that was probably true.

Representative Brunk asked for further explanation of the 35% completion. What is it 35% of? Is it 35% of the whole project or 35% of the first phase. Phil said that the 35% does not apply to all residential projects. The 35% applies to commercial contracts. Representative Brunk asked how do you measure the 35% when the project is part residential and part commercial? Phil said that in most cities the commercial would be separated out from the residential. Phil said his opinion was that 35% equaled getting all the permits and you have done 35% of the work. He was not sure how that would be measured but he said there would be an amendment to change 35% back to substantial and they were not opposed to the amendment. Representative Brunk asked for the reason for 10 years saying that it seemed like a long time. Phil said that 10 years was reasonable because of the complexity of the projects today.

Representative Quigley asked what is done at the end of 5 years and you lose your vesting rights? Phil said at that point you have to start all over. You don't stop building if you have begun, you lose your rights only when you have not begun building.

Representative Brunk asked if this was a problem across the state or are we trying to fix a problem in one isolated situation? Phil said the potential for problems is higher today because of economic conditions.

Rick Oddo, Oddo Development Co. Inc provided written only testimony as a proponent of **Sub SB 91** (Attachment 4). His testimony consisted of an example whereby his company lost their vested rights.

Eric Stafford, Director of Government Affairs for the Associated General Contractors of Kansas Inc gave written only testimony as a proponent of **Sub SB 91** (Attachment 5). His testimony indicated that the bill prevents local governments from rezoning property once construction has begun. The consequences in that case could be great enough to put a company out of business.

Chris Wilson, Executive Director of Kansas Building Industry Association presented testimony as a proponent of **Sub SB 91** (Attachment 6). In her testimony she asked that the Committee return the language "construction has begun and substantial amounts of work have been completed" and keep the change to within 10 years.

Representative Brunk requested a definition of "substantial". He said it could include platting, surveying, dirt-work, putting in sewers and tying up a lot of money in the project before ever going vertical. Chris said they could accomplish this change by unstriking lines 27 and 28 of the bill and replace 35% with substantial amount of work done.

The consensus of the Committee was that substantial amounts of work completed would include preliminary and planning work for the project, including but not limited to such activities as design, obtaining permits, and infrastructure development. Substantial is understood to be work of real worth and importance; of considerable value.

Representative Pottorff asked about issues discussed in the Senate. Chris said they wanted to define "residential" and they did adopt that amendment in Section 1. (a).

Representative Brunk asked if mobile homes were treated the same as manufactured or modular homes.

Martha Neu Smith stepped up to explain that mobile homes in parks are considered personal property and are not considered in the bill.

Representative Worley said that manufactured housing is a HUD approved product and mobile homes refer to things that are not HUD approved products. Most mobile home parks are considered commercial development from the start and probably would not fall under the definition in the bill.

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After hearing Representative Worley's comments, Renae asked if the term "mobile" home should be stricken and the terms "manufactured and modular" homes should be put in its place. Chris Wilson and Martha Neu Smith agreed that would be an appropriate change. The consensus of the Committee was that that was a good change.

There being no neutral or opponent testimony the hearing was closed on **Sub SB 91**. The Chairman advised the Committee that we would work **Sub SB 91** tomorrow and **SB 29** also. We are still waiting on Secretary Garner for more information on **SB 160**.

The next meeting is scheduled for March 11, 2009.

The meeting was adjourned at 09:40 a.m.

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MEMORANDUM

To: House Committee on Commerce and Labor
From: Renae Jefferies, Assistant Revisor
Date: March 10, 2009
Subject: SB 91

SB 91, as amended by senate committee, amends K.S.A. 12-764 regarding the vesting of development rights.

Subsection (a) of the bill expands the statute's application from a single family residential development to all residential developments. The phrase "residential development" would "include single family housing; multiple family housing such as apartments, duplexes, townhomes and similar configurations; condominiums; and mobile homes." Additionally, subsection (a) changes the time for expiration of such rights if construction has not commenced on such land from five years to 10 years.

Subsection (b) regarding the vesting of development rights in land for purposes other than residential development would have those rights vest upon issuance of all permits by a city or county and expire "if at least 35% of the work has not been completed withing 10 years of the issuance of permits required for such use." This is a change from the current language which states that the right to use such land for a particular purpose would vest upon issuance of all permits and "construction has begun and substantial amounts of work have been completed under a validly issued permit."

Subsection (c) containing current statutory language was struck from the bill and then reinserted in the bill. It would not be a change from the current language.

The bill would be effective upon publication in the statute book.

According to the fiscal note, passage of the bill would have no fiscal effect on state revenues or expenditures.

Substitute for SENATE BILL NO. 91

By

AN ACT concerning planning and zoning; dealing with vesting of development rights; amending K.S.A. 12-764 and repealing the existing section.

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

Section 1. K.S.A. 12-764 is hereby amended to read as follows: 12-764. (a) For development rights vested prior to July 1, 2009:

(1) For the purpose of single-family residential developments, development rights in such land use shall vest upon recording of a plat of such land. If construction is not commenced on such land within five years of recording a plat, the development rights in such shall expire.

(2) For all purposes other than single-family developments, the right to use land for a particular purpose shall vest upon the issuance of all permits required for such use by a city or county and construction has begun and substantial amounts of work have been completed under a validly issued permit.

(3) The governing body may provide in zoning regulations for earlier vesting of development rights, however, vesting shall occur in the same manner for all uses of land within a land-use classification under the adopted zoning regulations.

(b) For development rights vested on and after July 1, 2009:

(1) For the purpose of residential developments, development rights in such land use shall vest upon recording of a plat of such land. If construction is not commenced on such land within

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10 years of recording a plat, the development rights in such shall expire. For purposes of this section, residential developments may include single family housing; multiple family housing such as apartments, duplexes, townhomes and similar configurations; condominiums; and mobile homes.

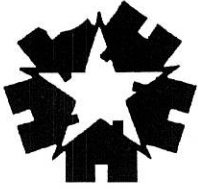
(2) For all purposes other than residential developments, the right to use land for a particular purpose shall vest upon the issuance of all permits required for such use by a city or county and construction has begun. If at least 35% of the work has not been completed within 10 years of the issuance of such permits, the development rights shall expire.

(3) The governing body may provide in zoning regulations for earlier vesting of development rights, however, vesting shall occur in the same manner for all uses of land within a land-use classification under the adopted zoning regulations.

~~{d}--The-provisions-of-this-section-shall-become-effective-on and-after-January-1, 1992-~~

Sec. 2. K.S.A. 12-764 is hereby repealed.

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



**HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY**



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**Testimony on SB 91
Phil Perry, Staff VP, Governmental Affairs
House Committee on Commerce and Labor
March 10, 2009**

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today. My name is Phil Perry and I am the Staff VP of Governmental Affairs for the Home Builders Association of Greater Kansas City and I am appearing before you today to speak in favor of SB 91, an act concerning vesting of development rights.

The Home Builders Association of Greater Kansas City believes that these changes proposed in SB 91 will create a “regulatory certainty” in the development process. These changes will allow developers, investors, and financial institutions to achieve a greater level of comfort in making the necessary investment towards helping our economy recover.

The current law was written in 1991 and 18 years later the marketplace for housing and development in general is decidedly different. In the past single family developments were the norm, financing was less complicated, and the approval process was much simpler, resulting in projects that were completed in a shorter time frame.

In today’s market, projects typically include a variety of housing types and often include retail and/or an office component, financial deals are complex and time consuming, and the approval process has been complicated with additional requirements for codes and environmental issues. All of these changes have lengthened the time required to get projects started and the current market place has only complicated these issues. Our members believe that the time has come to create greater certainty in the development process.

Do Business With A Member

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The changes proposed in SB 91 treat all residential property as the same, regardless of zoning classification and extends the time of vesting to ten years, creating a more sensible time frame in today's markets. In addition the bill provides more certainty to all other projects by creating a defined percentage for completion of the project as opposed to the undefinable "substantial amount of work".

I would also direct to you to the written testimony of Rick Oddo, Oddo Development, that tells his story, an example of "regulatory uncertainty" that will certainly cost him hundreds of thousands of dollars. I would be glad to answer any questions you may have..

Thank you very much for your time.

Testimony on SB 91
Rick Oddo,
President, Oddo Development Co., Inc.
March 10, 2009

Mr. Chairman and members of the Committee, I offer the following written testimony concerning SB 91. Changes need to be made to the current laws which define vesting rights in the State of Kansas. These changes are needed to protect the rights of land owners.

I offer this testimony as a developer and landowner whose rights have been trampled. Oddo Development Company currently has a two-phase residential community being developed in the City of Leawood. Our company was given a six year time of performance to begin construction or to "diligently pursue" each phase of the project. We thought that during this six year time frame our zoning was secure. We also thought that we would receive final approval as long as the final plan submitted was in substantial compliance with our approved preliminary plan so that we could move forward with the construction of the project. We never dreamed that our zoning could be removed or that the city could take punitive actions against us while imposing a devastating plan on our company.

In 2002, we had our preliminary plans approved by the City of Leawood for 292 units with two conditions:

- 1) Single-family subdivision must be very high end homes
- 2) Time of performance of six years to apply for final approval

Once a preliminary plan is approved, a developer cannot make substantial changes to it. A developer must seek a final approval on a plan that has all of the engineering details and meets all current codes. As long as there aren't any substantial changes, final approval should be an administrative issue and not a re-evaluation of the project.

Phase I of our community, a very high end single-family subdivision, was completed in 2006. In 2007, four months before our time of performance was due to expire, we applied for our final plan approval. No changes were made to the plan except to update/incorporate the new city codes. The City, however, refused to approve the final plan.

The City claimed that a developer doesn't have any "vested" rights to build until the developer has obtained all the building permits to complete a project and has begun construction. The City makes this claim under Kansas statute 12-764 which says the right to use land for a particular purpose vests upon the issuance of all permits required for such use and after substantial amounts of work have been completed.

Put another way, the City is saying that it can change its mind at almost any time about whether to allow a developer to build out a plan, even though the city gave the Developer

a "Time of Performance". This means that a developer can no longer depend on an approved preliminary development plan.

In the past, lack of "vesting" has been saved for imminent domain issues, NOT to give the City the ability to change its mind at any time, thus taking a developer's zoning rights away. We don't think that the law allows a City to do an about face once a developer's preliminary plan has been approved when the City has no legitimate or true basis for its denial.

A developer, whether large or small, can not realistically conduct business in an atmosphere where the City can change its mind at will. Obtaining financing for a project could be nearly impossible.

As developers, we need to have some certainty that, when given preliminary approval of a plan, we will be allowed to build. If the city can change its mind at any time before permits are obtained, developers will have spent time, money and energy, and may have even obtained financing (with all of its obligations), in vain. Without this basic condition in place, we're all in jeopardy.

We ask that you take the rights of all landowners into consideration and vote to approve SB 91. Doing so would ensure a 10-year vesting period allowing ample time for a developer to achieve a dream.



Building a Better Kansas Since 1934
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**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE HOUSE COMMITTEE ON COMMERCE & LABOR
SB 91**

March 10, 2009

By Eric Stafford, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Eric Stafford. I am the Director of Government Affairs for the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

The AGC of Kansas supports Senate Bill 91 and asks that you recommend it favorably for passage.

AGC fully supports legislation which prevents local governments from rezoning property once construction has begun. Several AGC members develop commercial property in addition to their role as general contractors.

If a government pulls the permits or rezones the property on which a company is building, the consequences could be great enough to put a company out of business. At this point, a contractor has already signed multiple contracts with subcontractors and suppliers and has scheduled crews for the duration of the project. The contractor would have to break those contracts, try to reschedule crews and most importantly, fight with the owner to receive money for the completed work.

SB 91 would establish clear guidelines for local governments to follow regarding development rights for residential and commercial property.

Again, the AGC of Kansas respectfully requests that you recommend SB 91 favorably for passage.
Thank you for your consideration.

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**STATEMENT OF THE
KANSAS BUILDING INDUSTRY ASSOCIATION
TO THE HOUSE COMMERCE COMMITTEE
REPRESENTATIVE STEVE BRUNK, CHAIR
REGARDING S.B. 91
TUESDAY, MARCH 10, 2009**

Chairman Brunk and Members of the Committee, thank you for the opportunity to provide comments regarding Senate Bill 91, which concerns the vesting of development rights. I am Chris Wilson, Executive Director of Kansas Building Industry Association (KBIA), the state association of the residential construction industry, with over 2300 members.

S.B. 91 expands the five year vesting for single-family residential development to all residential developments and extends the development period from five to ten years. Cities have a variety of definitions of residential – that may be 1-4 units or include single-family and duplexes, and may or may not include dwellings of more than 4 units. State statutes generally consider residential 4 units or less, but that varies at the local level. So, it makes sense in the statute to have the residential portion apply to all residential units and provide a consistent definition.

With the current development climate and cases such as anticipated development in the Ft. Riley area that will take more years to develop, it makes sense to extend the period of vested development rights from five to 10 years.

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KBIA supports the amendments to the bill made in the Senate. However, upon continued study of the bill, our commercial developers have asked that the current statutory language be retained with regard to the amount of work completed. The bill changes the test for when the rights vest for commercial properties from “construction has begun and substantial amounts of work have been completed,” to a test of 35% of the work being completed within 10 years. We would ask the committee to return to the language “construction has begun and substantial amounts of work have been completed,” and keep the change to within 10 years. We believe it will be clearer should there be a question that the current language would include substantial amounts of pre-construction work, such as architectural and infrastructure work.

Thank you for the opportunity to provide these comments regarding S.B. 91.