

MINUTES OF THE SENATE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on February 16, 2009, in Room 446-N of the Capitol. Senator Huelskamp moved to accept the minutes of February 9<sup>th</sup> and 10<sup>th</sup>. Senator Ostmeyer seconded the motion. The motion carried.

All members were present except:

Senator Susan Wagle- excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes

Ken Wilke, Office of the Revisor of Statutes

Martha Dorsey, Kansas Legislative Research Department

Reed Holwegner, Kansas Legislative Research Department

Noell Memmott, Committee Assistant

Conferees appearing before the committee:

Tom Laing, Executive Director InterHab

Howard Mick, Comfort Care Homes of Kansas City

Dane Barclay, Alsop Sand Company

Dennis Lauver, President, CEO, Salina Chamber of Commerce

Others attending:

See attached list

**SB 114 - Zoning; group homes; certain restrictions.** Senator Owens reviewed the bill relating to the number of unrelated persons living in a single family area and compliance with neighborhood covenants and zoning regulations.

Tom Laing, Executive Director, Interhab, spoke in opposition to **SB 114 (Attachment 1)**. He wants to assure people with disabilities can live in neighborhoods. He would be willing to look at amendments.

Doug Stark, President, ComfortCare Homes, Inc., Wichita, Kansas, referred to his written testimony (**Attachment 2**) in opposition to **SB 114**.

Howard Mick, ComfortCare Homes of Kansas City, LLC, gave testimony against **SB 114 (Attachment 3)**.

Representative Jo Ann Pottorff made comments against **SB 114**. She was positive with her comments about the group homes she is familiar with in her district and sees no need for the proposed bill.

The hearing was closed.

**SB 253 - Zoning amendments; protest petitions; mining operations; extraordinary vote not required.**  
**SB 254 - Urban area counties; zoning amendments and conditional use permits; protest petitions, other; extraordinary vote not requires.**

Mike Heim, revisor, reviewed the bills. **SB 253** amends the statute dealing with rezoning to remove extraordinary vote requirements. **SB 254** the statute is part of planning and zoning law.

Dane Barclay, Alsop Sand Company, testified in favor of **SB 253 (Attachment 4)**.

Dennis Lauver, President, CEO, Salina Chamber of Commerce, gave testimony in favor of **SB 253 (Attachment 5)**.

The hearing on **SB 253** and **SB 254** will continue on Tuesday, February 17<sup>th</sup>.

The meeting was adjourned at 10:30 p.m.

# LOCAL GOVERNMENT GUEST LIST

DATE: 2/16/09

NAME	REPRESENTING
Woody Moses	ICAPA
Wendy Harms	✓✓
DANE BARCLAY	AHSOP SAND Co Inc
Wendy Mollums	KAPA - KRMCA
Brad Stauffer	Carter Group
Dennis Baker	SCL
Margaret Zillyer	SBS / DBHS
Josh Smith	Intern, Sen. Pyle
Barb Conant	KDOA
DICK CARTER	City of Manhattan
Sandy Jacquot	LKM
Neil Barnett	Comfort Care Homes of KC
DOUG STARR	COMFORT CARE HOMES WICHITA
MATT HOLLOMAN	INTERN - Sen. Kuyala
Rodney Nichols	DRC
DENNIS LOUISA	Salina Chamber of Commerce
FELLY DIPOCCO	LGR



INTERHAB

WWW.INTERHAB.ORG

TO: Senator Roger Reitz, Chair; and Members, Senate Local Government Committee  
FR: Tom Laing, Executive Director, InterHab  
RE: Senate Bill 114

Thank you Mr. Chair, and Members of the Committee, for this hearing today on Senate Bill 114. I represent InterHab, 40 community service organizations across the State most of which are engaged, in part, in the securing of residential settings for persons with developmental disabilities. We appear in opposition to SB 114.

Our members' efforts in the community changed for the better in the mid 1980s due to the good work of the Legislature to forbid local governments from enacting laws which discriminated against the location of group homes in neighborhoods. This resulted in literally thousands of Kansans with developmental disabilities living in neighborhoods and enjoying the same sense of community as anyone else. There has been perhaps no greater step ever by the Legislature than that act, for its positive effect on the rights of persons with disabilities, and the means by which centuries-old stereotypes and prejudices were put to rest in so many communities.

Senate Bill 114 would reverse the State's course on this matter, and therefore, irrespective of the best intentions of the bill by persons who have asked for it, we respectfully request the Committee to carefully review the impact of this bill as to what happens when the door to discrimination is left ajar for any group, not just ours.

We oppose the legislation, but pledge to the proponents that we will work with them to see if alternative language might be developed. Keep in mind that any action by this body, or any local jurisdiction, which has the *de facto* effect of discriminating against persons based on their disability, is at cross purposes with matters already settled at the U.S. Supreme Court.

In particular, we recommend that the committee review the Edmonds case, settled in 1995, in the U.S. Supreme Court, in which a central point was made which is on point with respect to this legislation: rules that discriminate against groups of persons, based upon the number of persons in a home, must apply to related persons (i.e. families) as well as unrelated persons. Otherwise, it creates a discriminatory impact on persons based upon their disability or other protected status. This bill plainly differentiates between residences with disabilities, and all other persons. The Edmonds ruling, as we understand it, is a high hurdle for this legislation to overcome, as it should be, given the fundamental fact that housing discrimination strikes deep at the heart of freedom for persons with disabilities.

We also recommend that additional time be scheduled to consult with other advocacy organizations. InterHab members who are providers of residential services would be glad to assist in any way the committee requests, but in addition to our comments, we encourage that feedback be sought from the state's universities who have studied this matter. Michael J. Davis (KU Law School) has written on this matter. The Kansas Council on Developmental Disabilities and the Disabilities Rights Center both also would provide valuable feedback.

Thank you for your time.

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Attachment 1



COMFORTCARE  
HOMES™

To the Honorable Members of the Senate Local Government Committee:

Ladies and Gentlemen:

My name is Douglas C. Stark and I am the president of ComfortCare Homes, Inc. of Wichita, Kansas. My parents Charles and Mary Lou Stark were one of the pioneers of the concept of providing long-term care for the elderly in a residential setting. This was born out of our families experience in caring for my grandparents, both of whom suffered from Alzheimer's disease throughout the 1980's.

We learned a considerable amount about the disease process and its progression, including the extreme anxiousness that many dealing with impaired minds experience when exposed to a large institutional environment, simply overwhelming them. We operate eight homes in Wichita, with our first opening over fifteen years ago in 1993 and the last in 2001.

I received a call Friday, February 6th by the Executive Director of the Alzheimer's Association of South Central Kansas, quite upset about a call she had just received from someone at the Kansas City Alzheimer's Association warning her of this proposed bill. Her concern was what a "disastrous affect this could have on the progress made over the years in the care of the disease." I drove up Tuesday and attended the hearing regarding Senate Bill 114. I would like to offer some comments of opposition to the bill to be introduced in the upcoming session of the Committee that you spoke of for Monday, February 16th.

First, with all due respect to Senator Owens' testimony, there were comments made implying that our homes are able to, or do operate above all zoning laws and considerations of local Home Associations. He spoke of homes that could possibly be surrounded by extraordinary security lighting, fence heights that could exceed those of surrounding homes, etc. Comments were made about what "might happen" and as we have a fifteen plus years track record, we can speak not to speculation, but what does happen.

The whole premise behind our model of care was to offer a family with a loved one needing 24 hour care and assistance a warmer, homier, more dignified environment in which to live, than the large institutional alternatives. As stated earlier, when dealing with dementia this can become ever more important. In an effort to attract families to choose our homes over other options, we have no choice but to be very cognizant of the quality of our homes, their upkeep, appearance and charm. We also are very serious about neighborhood relations and go out of our way to make sure our homes are viewed by our neighbors as being as nice as any on the block. This is important to our overall reputation in the community, as we don't want negative comments to be made about us by neighbors attending social gatherings, or

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Attachment 2

Tele (316) 685 3322

Fax (316) 685 9822

7701 E. Kellogg

Suite 490

Wichita, Kansas 67207

PERSONALIZED

ALZHEIMER'S CARE

IN THE COMFORT OF HOME

there to be any hostility expressed by neighbors towards the families of our Residents.

To that end, we choose intentionally not to put a sign out designating it as different, or a "facility." We intentionally do not convert our garages to bedrooms so our CareGivers can park in the garages with the doors down. I have a yard maintenance company that keeps up the properties, yards, gutters, etc. year round. I have a gardener. We contract with commercial companies to feed our lawns and trees, and in the last four years the exteriors of five of my homes have been completely repainted. Three have received new roofs. I tell people all of the time when describing our homes, that you could drive up and down the streets of Wichita all day and never pick out one of my homes from any other on the block. Other homes in our neighborhoods have teenagers, or in the case of the large (albeit very sweet) family that lives across from my own personal home; with seven children ranging from 24 to 5 that all still live in the home. There is considerably more activity at any of those homes than a ComfortCare Home.

A comment was made at Tuesday's hearing about charging up to \$5,000 for a Resident to live in a group home. I do not understand why this issue was even brought up as other larger institutional care options offering dementia care charge that much and more. And, I can assure you that our economies of scale are quite different when you consider providing 24 hour care for the limited number of Residents in one of our homes. I also have four supervisory nurses, activity coordinators and other management staff that oversee the care we provide in our homes. As a quality employer we offer all CareGivers comprehensive health, dental and life insurance, which along with many other fixed expenses lend to a narrow bottom line. It costs far more per Resident to provide the type of individualistic care we provide our Residents. In addition, our overhead is basically fixed whether we house three or six Residents.

The bottom line of course is property values and the concern that group homes could push them down. Again, we do not have to talk about what could happen, or what might happen; as we have fifteen years of operating in nice quiet neighborhoods of Wichita. We have never had any legal opposition from any of our neighbors. In fact, we take it upon ourselves to meet our neighbors and let them know what we are doing. When taking a Resident for a walk we get friendly waves and hellos, much the same as any other elderly person taking a walk would.

My father was at a lunch meeting one day sitting with Nestor Weigand, Jr., a principle of J.P. Weigand and Sons Realty, and past president of the National Association of REALTORS. They were having a casual conversation about what was going on with each other and somewhere in the discussion he asked my dad if we ever had any problems with neighbors. With my Dad's response being no, Mr. Weigand stated that he knew his organization didn't have problems selling homes in the neighborhoods in which we operated. In over fifteen years many homes have been sold next door and around us at market value.

In closing, ComfortCare Homes is a well known quantity in our city. We do not face problems with the neighbors we coexist with, and have garnered a stellar reputation within the Wichita medical community. We have cared for, or are currently caring for attorneys who names adorn some of our most prominent law firms. We have cared for a Federal Court Judge, the parents of

other current sitting judges, and the parents of well know city officials and community leaders. A number of the communities prominent physicians have been Residents, and many, many other Wichita families who, out of wanting to provide the best for their loved ones, chose ComfortCare Homes over the nursing home option.

As I mentioned to Senator Wagle upon leaving the hearing Tuesday, I would love the opportunity to show her and any other interested parties that the concerns expressed in the bill are really of no merit. To adopt Senate Bill 114 would be a major step backwards and will most certainly face a successful legal challenge here, as it has in other cases over the years across the country.

I have hundreds of testimonial letters that we have received over the years, but I know your schedules are tight so I chose only to include a couple of them for your review should you wish to take the time.

Thank you for your consideration, and if you would like any further comments or wish for me to come back up to testify to the Committee on Monday, I would be glad to do that. Just let me know. I can be reached by phone at 316-685-3322, or by email at [dstark5050@aol.com](mailto:dstark5050@aol.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Stark', written over the word 'Sincerely,'.

Douglas C. Stark  
President  
ComfortCare Home, Inc.

5/26/08

Doug,

Thank you for the card and for coming to my Dad's service. It meant so much to me. I wanted to thank you in person but didn't have the opportunity that day. (Maybe we'll have a chance to chat at Dillon's some day!)

I also want to thank you and all the caregivers for helping our family adjust to the change when my Dad moved into the Comfort Care home. I'm so glad we made that choice and that he was able to stay those seven months.

I appreciate each person who contributed to the exceptional care he received.

Sincerely,  
Diane Blythe

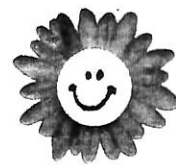
To Everyone at  
Comfort Care Homes,

We thank you all from  
the bottom of our hearts for  
all of the wonderful care  
& love you showed my  
Grandma Helen Lybarger.

We all appreciate your  
kindness so much,  
Especially Helen.

(We'll never forget what  
you did for us)

Thank you.



Thank you for every  
thing + God bless you all.

Diane Myers, Heather + Rachel  
Myers,  
+ The entire Myers Family.





RESIDENTIAL LIVING FOR THE MEMORY IMPAIRED

To the Honorable Members of the Senate Local Government Committee:

Ladies and Gentlemen:

The undersigned are members of the ownership group of Comfort Care Homes of Kansas City, LLC. Our company operates two group homes in Johnson County, Kansas pursuant to a license agreement with Comfort Care Homes, Inc., which is headquartered in Wichita. We have recently acquired our third home and anticipate opening that home next month. Currently 5 persons, all suffering from Alzheimer's or another form of dementia, reside in each of our homes. Substantially all of our residents are elderly and our homes are among 80 similar homes licensed and supervised by the Kansas Department on Aging throughout the State of Kansas. We believe that a far larger number of homes for the developmentally disabled operate within the State.

We attended the hearing regarding Senate Bill 114 on Tuesday, February 10, 2009. We are offering this statement in opposition to the Bill for consideration at the reconvened session of the Committee on February 16. We will also make ourselves available to answer any questions that Committee members may have about our company and the reasons for our opposition to this Bill.

**SB 114 would have an immediate and adverse impact on several hundred, if not thousands of elderly and disabled Kansas and locally-owned Kansas businesses and would immediately spawn a raft of litigation throughout the State.**

We understand from Senator Owens' testimony that the City of Overland Park limits the number of unrelated persons who may live in a residence located in an area zoned for single family occupancy is four. We now have five residents in our home in Overland Park that is currently operating. Apparently, this bill would require one of them to move out, making it necessary for the family to find another living arrangement for their loved one.

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The financial impact on the remaining residents would also be severely adverse. Our Overland Park home has one care giver who is a Certified Medication Aide on duty at all times. Each works a 12-hour shift. In the Kansas City metropolitan area, the annual cost of having a CMA on duty around the clock is about \$140,000. In addition, we have a nurse supervisor who serves that home and our other home. The costs associated with our caregivers and nurse will be the same whether there are four or five residents in the home. We also have other fixed costs that would not change with a reduction in the number of residents. In order to absorb the cost of reducing the number of residents from five to four, it would be necessary to increase our charges to the other residents by more than 20%. This would place the cost of providing care out of reach for many families we now serve.

This type of change could also drive many care providers who are now providing a needed service out of business. In Johnson County, our principal competitors are the large chains that provide institutional care. In nearly all cases they are not locally owned and their earnings are taken out of the community. Most are publicly owned. The typical group home, on the other hand, is locally owned and the owners take an interest in each resident. This is very much appreciated by the families of residents. We can understand our government wanting to attract business to Kansas, but it should not be at the cost of placing local business at such a competitive disadvantage as this bill would create.

We believe that the current law establishes a good balance between accommodating the needs of the mentally impaired and other disabled persons with the concerns of the community. As the Committee is well aware, federal law requires states and communities to make reasonable accommodation for the handicapped. A change of this magnitude that would disrupt current living arrangements and place the cost of group home care beyond the reach of more of our citizens would surely be challenged. Kansas communities would be placed in the position of either having to defend their ordinances in federal court or make accommodations similar to what the State has done under current law. Other local ordinances and rules that are burdensome but are now accepted by care providers could well become additional casualties of such litigation. Ground rules regarding group homes crafted by the federal courts may well be less responsive to the interests of local communities and residents than those that are now embodied in Kansas law.

Although Federal law does not specify the number of occupants that a group home must be allowed to have, we believe a strong case could be made that the appropriate number to provide a reasonable accommodation is about 8 or 10. In our experience, the optimum number of caregivers per resident that balances the financial considerations with the needs of residents is about five or six. This assumes, however, that they do not require substantial assistance with mobility and daily living functions. In those circumstances, a lower ratio of residents to caregivers is necessary. By increasing the occupancy level to seven or eight, it can become economically feasible for providers to add another caregiver to decrease the ratio to about three or four residents per caregiver. This flexibility is essential to address the needs of Alzheimer's sufferers as their illness progresses and their physical abilities decline.

**The proponents of SB 114 have failed to demonstrate a need for change in the existing law.**

It is important to note that the arguments made by proponents of the Bill have nothing to do with perceived deficiencies of group homes in caring for the handicapped or disabled. The arguments are based solely on conjecture about possible effects on the character of neighborhoods and property values. Since group homes have been operating for a number of years in Kansas, it is not necessary to rely on conjecture. History and experience are readily available.

We cannot speak for all group homes, but we believe that our experience is not atypical. We have been in operation slightly more than three years. We pride ourselves in being good neighbors and maintaining our homes at a high level. We have no exterior signs. We have no exterior lighting other than what might be found in any other home in the neighborhood. We have no 8 foot fences. All of our fences are either 5 ft. or 6 ft. in keeping with the neighborhood and Homes Association requirements. Since our residents do not drive and most are visited only once or twice a week, our homes generally do not bring more cars or traffic to the neighborhood than a typical residence. While like the residents in Senator Owens' neighborhood, some have expressed concern about our moving into their neighborhood before we arrive, once we are there, we have experienced no complaints and we have been gratified by the neighborhood support that we have received.

The state cannot easily pass a law that would guarantee to all persons in a single family zoned area that all new residents will be desirable additions to the neighborhood. We believe that group homes are a much better risk than the average new resident, however, because we have an economic incentive to maintain our homes and respect the character of the neighborhood. Those attributes that home owners and homes associations seek to promote are the same as those that make our homes attractive to families of persons with dementia. If our homes were not well kept and maintained or if they had an institutional aura about them, there would be no reason for families to place their loved ones under our care. At least in Johnson County, the cost of providing care in a group home is as much or more than in large institutions because group homes generally have a lower ratio of residents to staff. Since we can't offer lower prices, we have to concentrate on quality of care and offering a pleasant well-maintained home environment or we will be out of business.

We also seriously doubt the claims about decreases in property values. Our experience is only anecdotal, but less than a year ago the house next door to our Overland Park home was sold. The price was not out of line with prices paid for other similar homes in the area. Bad neighbors and unkempt homes can drive down property values, but we do not see anything inherent in the group home concept that makes their residents bad neighbors or their homes unkempt. If a home is a nuisance to the neighborhood with five residents, reducing the number to four is not likely to make much difference.

We respectfully submit that KSA 12-736 in its current form has served the needs of the elderly, the handicapped and Kansas neighborhoods well. There is no need for the changes that would be made by SB 114. The adoption of the Bill would be a giant step backward for the State in its accommodation of the needs of the handicapped and disabled and would put many local governments in the position of either having to change or defend their ordinances in federal court.

Thank you for your consideration of our statement. Again, we will be available to testify further or answer questions if the Committee so desires.

Howard Mick  
Howard H. Mick      LNB  
Prairie Village, Kansas

L. Neil Barnett  
L. Neil Barnett  
Prairie Village, Kansas

**Alsop Sand Co. Inc.**  
105 Industrial Road  
Concordia, Kansas 66901  
Voice 785-243-4249 Fax 785-243-4255

February 16<sup>th</sup>, 2009

Mr. Chairman, ladies and gentlemen

My name is Dane Barclay; I am President of Alsop Sand Co. Inc...

I am here today to urge you to support Senate Bills 253 & 254.

My grandfather Jack Alsop started the sand business in 1931, near Wakefield Kansas.

We currently have sand plants at Abilene, Salina, Concordia and Scandia Kansas.

We work in narrow valleys along the Republican River, the Smoky Hill River and the Saline Rivers.

In 1987 we had the three sand plants on the Republican River alluvium, including Clay Center.

As the sales markets in the Clay Center and Scandia declined proportionally with the population; we made an effort to find sand reserves near Abilene. Abilene Sand Company had gone out of business after starting a new sand plant in an unworkable sand deposit. Dickinson County had been without a sand producer for a decade.

For eight years I core drilled from Solomon to Chapman along the Smoky Hill River and found two workable deposits. That is about 100 acres of accessible workable sand deposits in Dickinson County.

Near Christmas of 1995 Salina Sand Company announced that they would sell out their sand inventory and they were out of business. One of the reasons given was an inability to find a workable sand deposit.

Immediately I started looking for a workable sand deposit near Salina. We were able to find a good deposit, received all the necessary permits and broke ground in July 1997.

Within a couple years I started looking for additional long term reserves to supply sand for the Salina market area.

I found two contiguous properties one north and one south of the river and started the permitting process.

March 23, 2005 after sending letters to all the neighbors, we had the first of several town hall meetings.

Shortly after we applied for a Conditional Use Permit (CUP).

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Attachment 4

Saline County counselor insisted that we had to work out a road agreement in which we would help the county with the cost of maintaining the road that our trucks would drive on the access the sand plant, before we went before the Planning and Zoning Board (P&Z).

Saline County Road and Bridge hired a consultant to analyze Water Well road between our proposed entrance and Ohio Street.

We postponed appearing at both the January and March P&Z hearings awaiting the consultants report

The consulting firm designed a road that could not fail  
It was grossly over designed and the resulting price tag was so high that Saline County and Alsop Sand Co. combined could not possibly stand the cost.

Talks with Road & Bridge Dept. about the road agreement stalled out.

At the April 3<sup>rd</sup>, 2007 P & Z meeting I requested that our application be tabled indefinitely. We could not reach a workable road agreement.

At this time we permitted the site in the Saline River Valley just north of I-70. It was my belief that even though this sight was generally considered too small it would fill the gap between our original site and the site we were having trouble permitting.

Insert →

When county staff started questioning me about the competitor's problems producing the quality and quantity required, we renewed our discussion of the road issues and I restarted the process. I provided information how other entities, including KDOT had improved gravel roads with price tags that were affordable.

In late May I spoke with the County Road & Bridge staff and delivered copies of Dickinson Co. quarry road agreements for them to review.

We appeared before Planning & Zoning Board on 6-4-07, our application was tabled.

July 31st I presented the Power Point presentation to the neighbors and gave a tour of the proposed site...

8-2-07 I met with the P&Z Director, County Engineer and the County Counselor to discuss a road agreement policy.

Rather than paying a per ton fee as was done in Dickinson Co, the county counselor insisted that we negotiate every detail of the road maintenance agreement with the County Commission.

On August 6<sup>th</sup>, 2007 we appeared at the P & Z hearing —our application was tabled over road concerns.

The same County Counselor that required the road agreement earlier reversed his position and declared that we could not work out a road agreement, until after the CUP had been approved.

Insert on page 2

The protest petition raised its ugly head during the permitting process on our Saline River Site just north of I-70 at Salina.

On that site we only had one opponent. He lived far enough away that he was ~~not eligible~~ to sign the petition. He coerced an elderly landowner to sign the petition. That one signature met the 20% land ownership requirement for the petition.

Fortunately our one opponent hand delivered the petition to county staff and the elderly gentleman did not care enough to attend the P & Z meeting.

These facts were not missed by the County Commissioners and we received a 3-0 vote.

However had the elderly gentleman really been opposed, one landowner signature could have put us out of business in Salina.

How can anyone believe that is fair?

October 9<sup>th</sup>, 2007 several P & Z Board members declared that they could not support the CUP until after the road agreement was finalized, the application was tabled until the next meeting.

November 6<sup>th</sup>, 2007 at the P & Z meeting, the Chairman of the P&Z Board explained the counselor's position on the road, 17 conditions were added to the CUP and they voted. Eight of the nine Board members were present, a 4 to 4 vote was cast which is a failure to move. This failure to move is treated the same as a unanimous NO vote.

In December we appealed to County commission, the County Commission voted 2-1, which fails to meet the 75% requirement and counts as a no vote?

One County Commissioner was engaged in a feud with the other two, we were collateral damage.

One of the 17 conditions of the CUP was that we would have to work out an acceptable road agreement with the county commission.

The county commissioner that voted NO stated that his reason for the NO vote was that the road in its present condition would not support truck traffic.

He was one of the three Commissioners that we were to negotiate the future road agreement with.

If you are having trouble understanding that statement do not feel bad, I have been thinking about it for a year and a half and I do not get it either.

Zoning a Sand production site is very different than picking a site for another business, for example a truck stop.

For a truck stop you need good access to the highway and a steady flow of potential customers. You can locate a truck stop any where those two things occur. You can choose a site where you will have few objections.

You have to locate a sand plant where a quality natural sand deposit exists. There is no other option.

Keep in mind that there were only a finite number of workable sand deposits ever created. Man has been extracting sand from those sites in Kansas since the 1930's. The most accessible and economically feasible sand deposits were extracted by my grandfather and his peers. My father and his peers took the next best deposits. Of the remaining deposits many are not coarse enough to be workable, some are so intermingled with mud and clay that they are unworkable, some have had cities built on top of them or highways, flood control dikes, houses or in some other way are made inaccessible.

Earlier I told you that in 1995 I had acquired and permitted 100 acres of workable sand reserves in Dickinson County. Since that time the railroad built a second track between Solomon and Abilene and parks trains across our driveway for weeks at a time. The railroad cut off access to one of my two tracts and made 40 acres of my sand reserves inaccessible.

Sand deposits that are accessible now, may not be in the future.



The sand in the Solomon River Valley fails today's KDOT quality tests.

Sand along the Saline River occurs in small pockets and has 32 feet of dirt overlying 28 feet of sand. Half of that dirt is the consistency of pudding (to wet to use as fill dirt), which makes the deposits in the Saline River Valley economically unworkable.

In Salina area that leaves the Smoky Hill River Valley where pockets of workable sand occur, but when you eliminate all the area without sand, the areas that are no longer accessible because of flood control dikes, roads, houses, cities, sewer lines, oil and gas pipelines, railroads, drainage ditches, the landowners that committed their land to other uses, the depleted sand plant sites of the past, there are very few areas left.

In twelve years of looking for future sand reserves near Salina I have only found four properties.

The first is the site that we opened in 1997, from which all the accessible sand has been extracted.

The second is the site along the Saline River just north of I-70 where we are producing sand now. This deposit was made workable when the dirt contractor removed the top 20 feet of dirt to be used in the last major improvements on I-70. That deposit will be depleted in about 2 ½ years.

The third is the site that I spent 4 years and more money than I care to admit, in an attempt to get it permitted. All that investment went down the drain with a 2-1 vote.

The last site has some real access issues and will not be approved by a unanimous vote.

I did what others could not. I found workable sand deposits where past sand producers have given up. However I can not get them permitted.

We started the permitting process on the third site in March 2005, four years later we have no conditional use permit that enables us to stay in business and no chance of obtain one.

To give you some background information, this site is not even visible from the road; the nearest neighbors are three depleted sand plants and agricultural fields. On the 5/8 of a mile road that is the source of the road issues; our trucks would drive by two lakes created by past sand operations, several agricultural fields, one feedlot, one livestock trucking firm and four houses.

We were caught in a feud that one County Commissioner had with the other two.

Sand is a major component in all concrete and asphalt.

Only when you truly understand that sand is a building block in all infrastructures can you begin to see the economic impact of doubling and tripling the cost of that building block, by trucking sand in from a distance.

Recently I got acquainted with an engineer from McLanahan Corporation. He was delighted to show me pictures of a state of the art sand processing plant that he had designed. It was on the west coast of Canada and loaded all the concrete sand into ocean going ships.

When I asked where all that sand was going I was shocked to find, that it goes to San Diego and San Francisco.

There are reserves near both those cities, but they will not permit them.

Is it any wonder that California is on the verge of bankruptcy when their idea of how to permit sand reserves is to ship the sand in from Canada?

Senate Bills 253 & 254 are a much more reasonable solution?

If you required a unanimous vote to move bills out of committee, would that work here?

Please move Senate Bills 253 & 254 out of committee as amended.

Thank you---Questions.

**Our objective is to support expansion of the Salina and Kansas economy.**

We are focused on things that impact the cost of doing business and price of workforce housing because these both effect the Salina economy. We are also concerned about the quality of life in Salina because we know this also impacts our ability to create progress.

On October 1, 2007, I spoke to the Saline County Planning & Zoning Commission about a zoning issue. Here are the highlights of what I said that day:

“I want to start with I have a lot of respect for those in the room that are opposed to this. My comments then (and today) are focused really on the economic impact associated with this. I had spoken to folks in Iowa, Topeka, Lawrence and Salina that provided me with some important information. A long time friend of mine is kind of an expert in this area. He lives in Minneapolis, Minnesota. His family is actually from here in Salina. I checked with some folks I know in North Carolina.

I did that because those folks had no stake in the issue and could provide some objective information. I assumed that denial of the application will mean that sand will come in from the outside the county. The long story made short is that we are probably going to see an increase in costs. The estimates ran from about an \$8.00 increase per ton for the sand element in aggregate. Others warned of an approximately five percent increase in the price of the sand that is in the mix for aggregate. Triangulating that all out based on a lot of information told me that given that there are in the typical new home built in Salina there is approximately 400 tons of aggregate that are used.

That number seemed very high to me but I was told to consider the volume of aggregate that goes into the foundation, the aggregate that goes into the driveway, the aggregate that goes into the street, the curb, the water, gutters, etc. I told the commission that they could follow the math through about a \$3,200 impact in the price of each home. As a community, we have challenges as relates to affordability and availability of housing for working families so that employers can add jobs to the community. I pointed out that this creates a challenge because housing is certainly one of those factors related to the labor availability issue.

I then tried to quantify the impact in terms of on a commercial or industrial project using a 300,000 square foot factory with a 300,000 square foot foundation. Bringing sand from outside the county will add an additional \$533,000 to the cost of a project. A 300,000 square foot project could be a multi-million dollar project but \$533,000 certainly becomes an issue if we're in a competitive environment to attract capital investment and jobs to Kansas.

Senate Local Government

2/16/09

Attachment 5

### **Process was followed, yet progress stunted**

County staff defined three issues that needed to be addressed for approval. They reviewed the concerns about the county staff report contained phrases like: **“If the access issues are addressed to the satisfaction of the Saline County Public Works Department and the site design mitigates any negative impact on adjacent property owners, staff believes that this criterion can be met.”** and **“With proper site planning, staff believes that this criterion can be met.”** and **“Staff finds that a sand mining operation does provide an essential use to the community or region.”**

Westar Energy signed off on the project. The City of Salina Planning Department and Utilities Director reviewed the proposal and raised several questions. Those issues were all items that could be overcome by the project developer.

The State Conservation Commission, Division of Water Resources, Saline Saline County Health Department, Saline County Road & Bridge Department, Saline County Emergency Management, City of Salina Public Works Director, RFD #2, DS&O Electric and Southwestern Bell were all consulted and all had no comments regarding the proposed use.

### **A solution**

SB 253 and SB 254 will emphasize a process that relies on the opinions and expertise of local officials. A logical and clearly defined process will result. Planning for growth will be more predictable, more objective and will encourage the capital investment and job creation that we need.

**1. Civil Rights ⇌131**

The reasonable accommodation provision of the Fair Housing Amendments Act (FHAA) prohibits the enforcement of zoning ordinances and local housing policies in a manner that denies people with disabilities access to housing on par with that of those who are not disabled. Civil Rights Act of 1968, § 804(f)(3)(B), as amended, 42 U.S.C.A. § 3604(f)(3)(B).

**2. Civil Rights ⇌107(1)**

Under the ADA, a public entity must reasonably accommodate a qualified individual with a disability by making changes in rules, policies, practices, or services when needed. Americans with Disabilities Act of 1990, § 3(2), 42 U.S.C.A. § 12102(2); 28 C.F.R. § 35.130(b)(7).

**3. Civil Rights ⇌240(1, 3)**

The burden is on plaintiffs in a claim brought under Americans with Disabilities Act (ADA) and Fair Housing Amendments Act (FHAA) to show that the accommodation it seeks is reasonable on its face; once the plaintiffs have made this prima facie showing, the defendant must come forward to demonstrate unreasonableness or undue hardship in the particular circumstances. Civil Rights Act of 1968, § 804(f)(3)(B), as amended, 42 U.S.C.A. § 3604(f)(3)(B); Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[6] “Whether the requested accommodation is necessary requires a ‘showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects of the disability.’” *Dadian*, 269 F.3d at 838 (citing *Bronk*, 54 F.3d at 429). In other words, the plaintiffs must show that without the required accommodation they will be denied the equal opportunity to live in a residential neighborhood.

[7] In this context, “equal opportunity” means the opportunity to choose to live in a residential neighborhood. *Lapid-Laurel, L.L.C.*, 284 F.3d at 460; *Smith & Lee Assoc.*, 102 F.3d at 794. The FHAA “prohibits local governments from applying land use regulations in a manner that will . . . give disabled people less opportunity to live in certain neighborhoods than people without disabilities.” *Smith & Lee Assoc.*, 102 F.3d at 795 (internal citation omitted). Often, a community-based residential facility provides the only means by which disabled persons can live in a residential neighborhood, either because they need more supportive services, for financial reasons, or both. *Erdman*, 84 F.3d at 963; *Brandt v. Village of Chebanse, Illinois*, 82 F.3d 172, 174 (7th Cir.1996); *Larkin*, 89 F.3d at 291; *Hovsons, Inc.*, 89 F.3d at 1105; *Smith & Lee Assoc.*, 102 F.3d at 795–96. When a zoning authority refuses to reasonably accommodate these small group living facilities, it denies disabled persons an equal opportunity to live in the community of their choice. *Erdman*, 84 F.3d at 963.