

MINUTES OF THE SENATE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on March 15, 2010, in Room 144S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Office of the Revisor of Statutes  
Sean Ostrow, 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 Hawk, Representative, 67<sup>th</sup> District  
Pat Cox, City Engineer, Ogden, Kansas  
Sheri Smiley, Representing the Office of the Secretary of State  
Brad Smoot, Legislative Counsel, No Annexation Coalition  
Brad Harrelson, Government Relations, Kansas Farm Bureau  
Sandy Jacquot, League of Municipalities  
Bob Watson, City Attorney, Overland Park

Others attending:

See attached list.

The hearing opened on **HB 2698 - Secretary of state; authorizing real property conveyance to the city of Ogden.** Martha Dorsey, Research, reviewed the bill. Tom Hawk, Representative, 67<sup>th</sup> District, gave testimony that the bill would allow the city to gain an easement across state land controlled by the Secretary of State (Attachment 1). Pat Cox, City Engineer, Ogden, Kansas, provided maps and a detailed description as well as circumstances for the need of this legislation (Attachment 2). Sheri Smiley, Representing the Office of the Secretary of State, made a neutral statement concerning the bill and indicated if **HB 2698** were passed it would be signed.

There were no opponents.

The hearing was closed.

The hearing continued on **HB 2029 - Annexation procedures; de-annexation, board of county commissioners duties, election required, when.** Brad Smoot, Legal Counsel, No Annexation Coalition, presented testimony as a proponent of the bill (Attachment 3). Brad Harrelson, Kansas Farm Bureau, Government Relations, also gave a statement as a proponent of **HB 2029** (Attachment 4).

Sandy Jacquot, Representing League of Kansas Municipalities presented Don Mohler's testimony (Attachment 5) in opposition to the bill. Bob Watson, City Attorney of Overland Park, also presented testimony in opposition to the bill (Attachment 6).

Written testimony in opposition to **HB 2029** was submitted by the following:

Eric Sartorius, City of Overland Park, Kansas (Attachment 7)  
Phil Perry, Home Builders Association of Greater Kansas City (Attachment 8)  
Jennifer Brunning, On behalf of the Overland Park Chamber of Commerce (Attachment 9)  
Kathleen B. Sexton, City Manager, Derby, Kansas (Attachment 10)

The next meeting is scheduled for March 16, 2010.

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

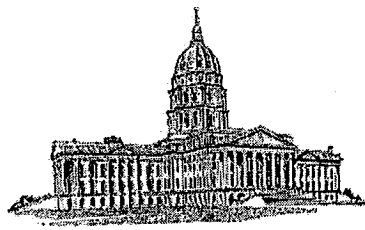
March  
15

# LOCAL GOVERNMENT GUEST LIST

DATE: *March 15, 2010*

NAME	REPRESENTING
<i>Robert J. WATSON</i>	<i>CITY OF OVERLAND PARK</i>
<i>PAT COX - BG Consultants</i>	<i>City of Ogdun</i>
<i>Marsha Cox</i>	
<i>Stephanie Ralston</i>	<i>Washburn Law</i>
<i>Ben Harrison</i>	<i>KFB</i>
<i>Rob HUTCHISON</i>	<i>SELF</i>
<i>Sandy Jacquot</i>	<i>LKM</i>
<i>Whitney Gamm</i>	<i>City of Topeka</i>
<i>Cheer Hosick</i>	<i>self &amp; neighbors</i>
<i>Luke Bell</i>	<i>KS Assoc. of REALTORS</i>
<i>Bobbie Patterson</i>	<i>Wichita Alumnae Chapter of DST</i>
<i>Hortense Mand</i>	<i>" " " "</i>
<i>Karen Ware</i>	<i>Wichita Alumnae Delta Sigma Theta Sorority, Inc.</i>
<i>Demi Sherrin</i>	<i>Delta Sigma Theta Sorority</i>
<i>Stephanie Cousin</i>	<i>Delta Sigma Theta Sorority</i>
<i>Alicia Thompson</i>	<i>Delta Sigma Theta Sorority</i>

Tom Hawk  
REPRESENTATIVE, 67TH DISTRICT  
STATE CAPITOL BUILDING  
300 SW 10<sup>th</sup> Ave. (mail)  
Docking State Office Building (office)  
7<sup>th</sup> Floor—L10  
TOPEKA, KANSAS 66612  
(785) 296-7665  
1-800-432-3924 Tom.Hawk@House.ks.gov  
3115 HARAHEY RIDGE  
MANHATTAN, KANSAS 66502  
(785) 537-1225 tom@tomhawk.com



STATE OF KANSAS  
TOPEKA  
HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER:

Tax (M-F, 9 AM, Docking 783)  
Social Services Budget (M-T, 3:30 PM, D785)  
State Employee Pay Plan Oversight

RANKING MINORITY:

Vision 2020 (M,W; 1:30 PM, D785)

March 15, 2010

Chairman Reitz and Local Government Committee Members: I am pleased to have the opportunity to support HB2698 as the City of Ogden, next to the Ft. Riley military installation, takes the appropriate statutory action to build an important sanitary treatment facility.

HB2698 allows the city to gain an **easement across state land** controlled by the **Secretary of State**.

James Patrick Cox, P.E., acting on behalf of the City of Ogden will provide detailed testimony about the actual request and the reasons for this necessary action from the Legislature. I will attempt to summarize some of the major points and count on Mr. Cox to provide the additional history and circumstances for the project. I also note that the Reviser has a **technical amendment** to comply with a request from KDOT to make a more accurate description, by their coordinates, for some of the land related to the Ogden project.

The City of Ogden has been required, through the recommendations of a study, to construct improvements on its treatment facility and to convert the non-discharging lagoons into a continuously discharging lagoon facility. KDHE has approved the study and the recommendations.

Due to the construction of K-18 and the planned use by KDWP for land that would be a more direct route for the "outfall piping", an alternative path is needed. While the alternative route does fall along the south edge of the KDOT borrow site, the last approximately 300ft. crosses a tract of land deeded to the State of Kansas, Office of the Secretary of State.

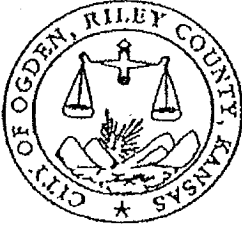
I have visited with the legal counsel for the Secretary of State, Diane Mineer, and she and Mr. Cox have discussed the bill prepared by our Legislative Reviser that would meet the legal requirements of this easement. I have also asked and been informed that Mr. Cox has discussed the project and the easement plans with KDHE, KDOT, KDWP, and USACE.

As a result of the necessity for the City to upgrade their sanitary sewer treatment facility and to comply with the Standards of Design for Water Pollution Control Facilities, I support this bill and realize that it is a critical piece to allow Ogden to move forward with its construction project.

I offer my appreciation to the Committee for action on this bill to allow this necessary project to proceed.

Senate Local Government

3-15-2010



## City Of Ogden

222 Riley Avenue  
P.O. Box C  
Ogden, Kansas 66517

February 22, 2010

Kansas State House of Representatives  
Rep Tom Hawk  
300 SW 10<sup>th</sup>  
Room DSOB  
Topeka, KS 66612

RE: Request for Easement – City of Ogden, KS  
HB-2698

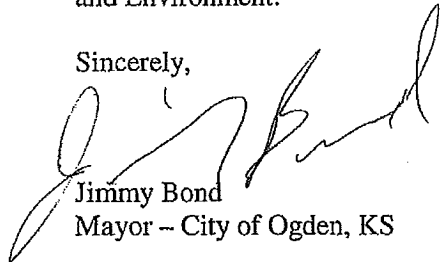
Dear Mr. Hawk:

The City of Ogden, KS is requesting an easement for the construction and maintenance of an outfall pipe and headwall for the City of Ogden's sanitary sewer treatment facility discharge pipe on a parcel of property deeded to the State of Kansas, Office of the Secretary of State. The City of Ogden requires this easement in order to construct required improvements to their existing wastewater treatment facility. See attached Exhibit for location.

The proposed improvements are required in order to fully comply with the schedule of compliance issued from the Kansas Department of Health and Environment to the City in our current water pollution control permit. During the design of this project State and Federal agencies were contacted and requested to comment on the proposed improvements. The current proposed improvements satisfy the concerns presented by the responding agencies. A further explanation of the regulatory compliance schedule and agency concerns is included in the enclosed memorandum from BG Consultants, Inc. to Representative Tom Hawk.

The City of Ogden respectfully requests the State of Kansas to grant this easement at the earliest possible convenience in order to effectively and responsibly treat the wastewater generated within the City of Ogden, and to meet the requirements mandated by the Kansas Department of Health and Environment.

Sincerely,



Jimmy Bond  
Mayor – City of Ogden, KS

Enclosures

Senate Local Government

3-15-2010

Attachment 2-1

## Memorandum

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**Project:** Ogden Wastewater Treatment Facility Improvements  
**Project Number:** 08-1191M  
**Date:** February 2, 2010  
**To:** Representative Tom Hawk  
**From:** James Patrick Cox, P.E.

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The City of Ogden, KS is requesting an easement for the construction and maintenance of an outfall pipe and headwall for the City of Ogden's sanitary sewer treatment facility discharge pipe on a parcel of property deeded to the State of Kansas, Office of the Secretary of State. This easement is described in the attached exhibit. The City of Ogden requires this easement in order to construct required improvements to their existing wastewater treatment facility.

The City was issued a schedule of compliance in their most recent water pollution control permit. This mandated the City to hire a Professional Engineer to conduct a study to verify the facility was operating within the Kansas Minimum Standards of Design for Water Pollution Control Facilities and to make the necessary improvements to the facility to comply with these requirements. The study was conducted and found that the current treatment facility did not meet these requirements. The study recommended the City construct improvements to convert the non-discharging lagoons into a continuously discharging lagoon facility. The study was submitted and approved by the Kansas Department of Health and Environment (KDHE).

The City applied for a CDBG block grant and KDHE SRF Loan to construct the proposed improvements. The grant was awarded in February 2009 at which time the City began designing the project. During design several alternative routes for the proposed outfall piping were examined with KDHE. KDHE recommended the effluent be discharged directly into the Kansas River. The existing treatment facility property does not directly border the Kansas River, thus in order to meet KDHE's recommendations the outfall piping would have to cross additional properties.

The most direct route from the treatment facility to the Kansas River is across K-18 Hwy and through a field between the highway and the river. This portion of K-18 is currently under major construction and the Kansas Department of Transportation (KDOT) purchased the property between the existing highway and the Kansas River for use as a borrow site. This tract of land will be transferred from KDOT to the Kansas Department of Wildlife in Parks (KDWP) upon completion of the highway construction. Due to the large amount of excavation in this area, placement of a gravity pipe would not be feasible and the outfall piping would have to be constructed around the excavation limits of the borrow site. An alignment for the proposed outfall pipe along the north edge of the borrow site, herein referred to as the north option, was evaluated and discussed with the various state agencies involved. The KDWP has plans to construct a public river access directly downstream of the north option and present concerns about water quality near this facility. A south option was then evaluated that would propose to construct the outfall pipe along the south edge of the KDOT borrow site. This alignment is the current proposal; however the KDOT tract does not directly border the Kansas River along this alignment. The last approximately 300' of this proposed alignment crosses a tract of land deeded to the State of Kansas, Office of the Secretary of



State (Book 483, Page 766). It is this land that the City of Ogden is requesting an easement. It is our understanding that no State Department is in control of this parcel and the only way to acquire this easement is by passing a State Statute.

Construction Documents for the proposed project have been submitted and approved by KDHE. Construction for the portion of the alignment that is located on KDOT property has been approved by a KDOT use of Right of Way Permit and is attached for your reference. KDWP has reviewed the proposed alignment and has had no negative comments for the south alignment. USACE has reviewed the proposed discharge location and has stated that the proposed construction is authorized by nation wide permit (NWP) 7. The following is a list of the individuals along with their contact information from the various agencies listed above.

KDHE	Rod Geisler, P.E., Chief Municipal Programs	785-296-5527
KDHE	Larry Molder, P.E., Environmental Engineer	785-296-1567
KDOT	Dale Hershberger, P.E., Area Engineer	785-632-3108
KDWP	John Silovsky, Regional Public Lands Supervisor	785-273-6740
USACE	Steven Whetzel, Regulatory Specialist	785-546-3029

Per the requirement of the CDBG Grant and KDHE Loan, the following agencies have been contacted and requested to review and comment on the current proposed alignment. KDHE issued a Finding of No Significant Impact for the proposed project and is attached for your reference.

<u>Agency</u>	<u>Summery of Comments</u>
Kansas Corporation Commission	A review failed to indicate any drilling activity
Kansas Dept. of Wildlife & Parks	No KDWP or special authorizations are required
US Dept of Interior	No Federally threatened or endangered species are likely to be present in the project area.
Kansas Conservation Commission	Clearance for this project should be granted
US Army Corps of Engineers	Construction is authorized by nation wide permit (NWP) 7.
Kansas Biological Survey	Clearance for this project should be granted
Kansas Water Office	No comments and do not oppose approval of the project
Kansas Dept of Agriculture	It does not appear authorization is required from the Chief Engineer of Division of Water Resources
Kansas Historical Society	No Objection to implementation of this project
Kansas Geological Survey	There are no unduly adverse geological conditions that should affect this project
Kansas Dept of Health & Environment	Clearance for this project should be granted

If you have any questions about the information presented please do not hesitate to contact me at 785-537-7448, ext. 1108 or my cell phone 785-532-8069. Thank you for your consideration in this matter.





**KANSAS**  
DEPARTMENT OF TRANSPORTATION

Mark Parkinson, Governor  
Deb Miller, Secretary

<http://www.ksdot.org>

September 29, 2009

City of Ogden  
222 Riley Ave  
Ogden KS 66517-0843

Re: Highway Permits 2-09-125 & 2-09-126

Dear Sir:

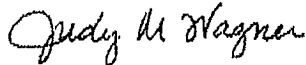
Enclosed please find approved Highway Permit, Use of Right of Way, Nos. 2-09-125 & 126, KDOT Form No. 304, with attachments.

As stated in the Permit Agreement, Petitioner agrees to notify Kenny Shivers, Area Superintendent, at (785) 632-3108, before work is initiated and again when the work is completed.

If further information is needed, please contact this office at (785) 823-3754.

Sincerely,

Randy H. West, P.E.  
District Engineer

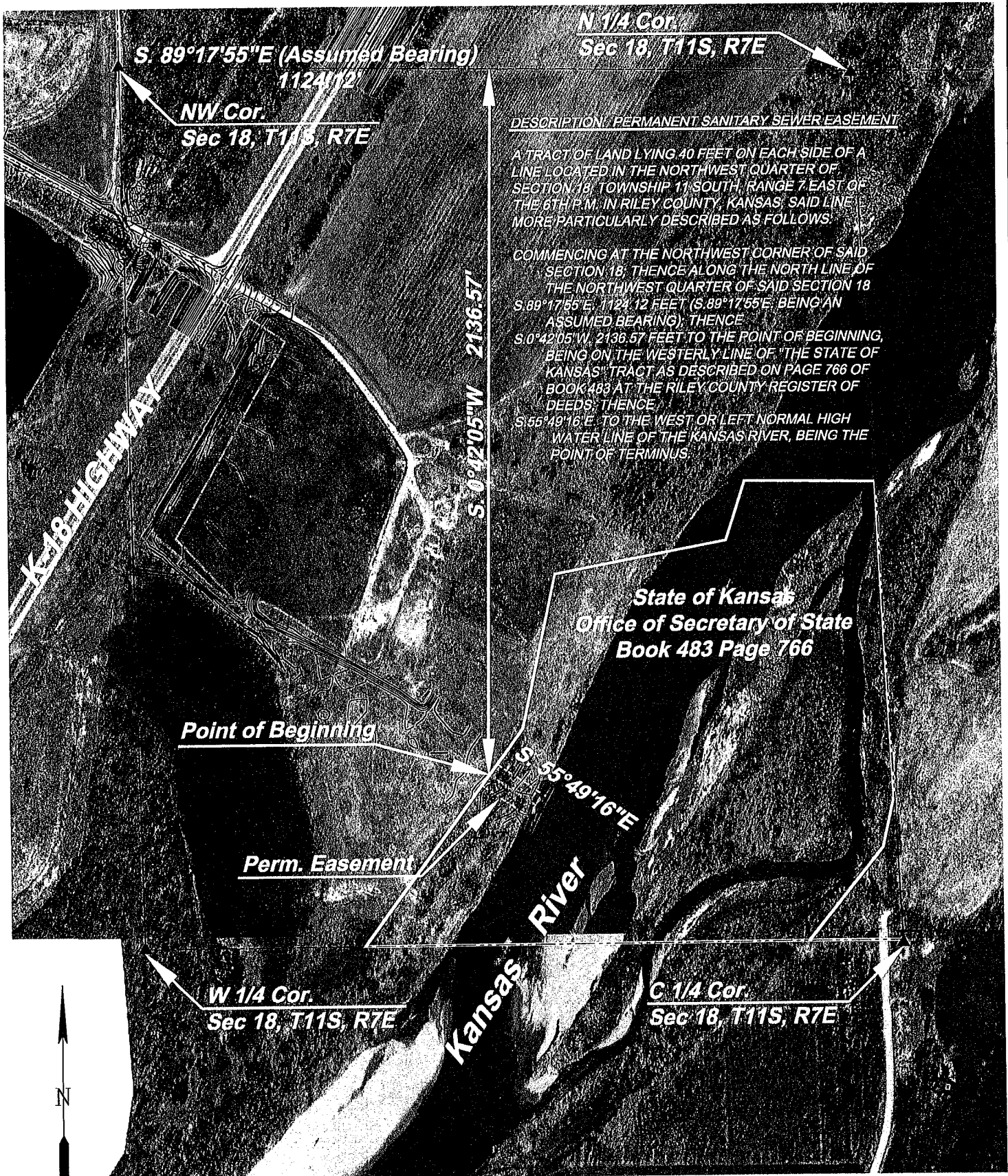


Judy M. Wagner  
District Office Coordinator

cc: Dale E. Hershberger, P.E.

Post-It® Fax Note	7671	Date	10/1/09	# of pages	5
To	Patrick Corp	From	Vince		
Co./Dept.	BA Consultants	Co.			
Phone #		Phone #			
Fax #		Fax #			

# EASEMENT EXHIBIT A



S. 89°17'55"E (Assumed Bearing)  
1124.12'  
NW Cor.  
Sec 18, T11S, R7E

N 1/4 Cor.  
Sec 18, T11S, R7E

**DESCRIPTION: PERMANENT SANITARY SEWER EASEMENT**

A TRACT OF LAND LYING 40 FEET ON EACH SIDE OF A LINE LOCATED IN THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 11 SOUTH, RANGE 7 EAST OF THE 6TH P.M. IN RILEY COUNTY, KANSAS; SAID LINE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 18, THENCE ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 18 S. 89°17'55"E, 1124.12 FEET (S. 89°17'55"E BEING AN ASSUMED BEARING); THENCE S. 0°42'05"W, 2136.57 FEET TO THE POINT OF BEGINNING, BEING ON THE WESTERLY LINE OF "THE STATE OF KANSAS" TRACT AS DESCRIBED ON PAGE 766 OF BOOK 483 AT THE RILEY COUNTY REGISTER OF DEEDS; THENCE S. 55°49'16"E TO THE WEST OR LEFT NORMAL HIGH WATER LINE OF THE KANSAS RIVER, BEING THE POINT OF TERMINUS.

State of Kansas  
Office of Secretary of State  
Book 483 Page 766

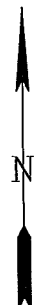
Point of Beginning

Perm. Easement

Kansas River

W 1/4 Cor.  
Sec 18, T11S, R7E

C 1/4 Cor.  
Sec 18, T11S, R7E



NO SCALE

**BG CONSULTANTS, INC.**

ENGINEERS—ARCHITECTS—SURVEYORS

MANHATTAN, KANSAS  
LAWRENCE, KANSAS

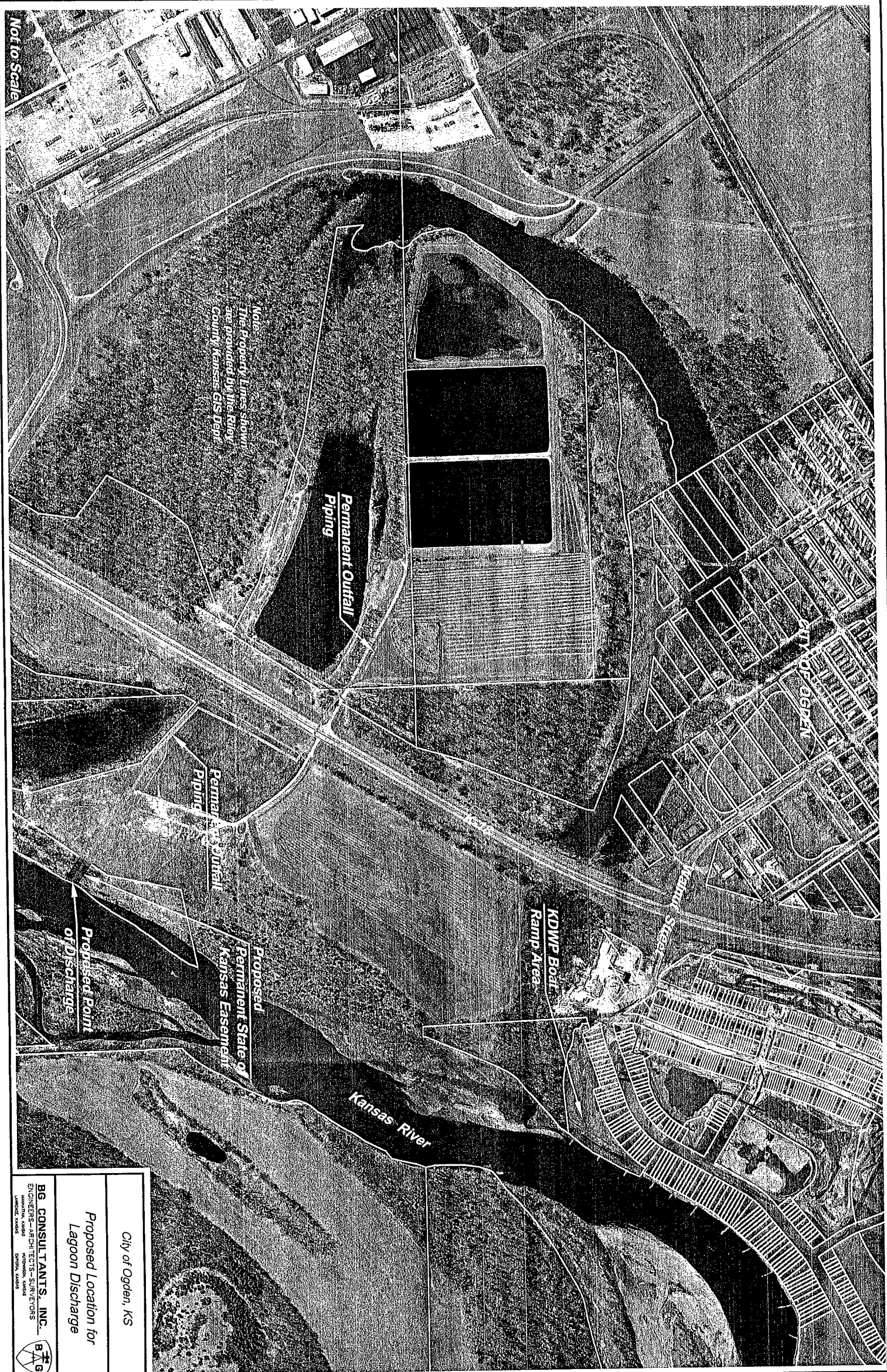
HUTCHINSON, KANSAS  
EMPORIA, KANSAS



March 2010

08-1191M





City of Ogden, KS

Proposed Location for Lagoon Discharge

**B.G. CONSULTANTS, INC.**  
ENGINEERS-ARCHITECTS-SURVEYORS  
Sedalia, Kansas      Springfield, Kansas



2-09-126

Const./Maint.  
Petitioner  
District  
Area  
City or Sub-Area

KANSAS DEPARTMENT OF TRANSPORTATION  
Bureau of Construction and Maintenance

HIGHWAY PERMIT  
USE OF RIGHT OF WAY

Permit No. 2-09-126  
Route K-18  
Co. RILEY-081  
State Highway K-18   
City Conn. Link   
City Ogden, KS

THIS AGREEMENT, made and entered into, between the Secretary of Transportation of the State of Kansas, referred to as

"Secretary" and City of Ogden (Name of Firm or Individual) (785) 539-0311 (Tel. No.)  
222 Riley Ave (Street), Ogden (City), Kansas (State), 66617-0843 (Zip)  
referred to as "Petitioner" and the City of Ogden, KS (If Not Applicable, Enter N/A), referred to as "City".

Secretary has jurisdiction over highway right-of-ways within the State Highway System of Kansas, and

Secretary (and City) believe it is in the interest of the Citizens of the State of Kansas to permit certain work or projects to be performed upon Highway right-of-ways, and

Petitioner requests permission and authority from Secretary (and City) to perform certain work, described as follows:

The City is proposing the improvements shown on the plan and profile sheets. The City is constructing improvements to the sanitary sewer treatment facility, which requires a discharge pipe to the Kansas River. The proposed improvements include a 26" diameter steel casing to be jacked and bored under the existing and proposed K-18 highway and proposed access roadway. The proposed improvements also provide for a 21" PVC gravity main with manholes to be placed outside of the controlled access limits in current KDOT right of way.

Said work is located on public right-of-way in, upon or along State Highway Route K-18, Reference Point 180-039 (or City  
Connecting Link Route \_\_\_\_\_ on \_\_\_\_\_ St.) in Sec. 18 TWP. 11S Range 7E, Riley County,  
0.50 Miles(km) south (direction) from Walnut Street (Jct. or county line) and

Secretary has delegated full and complete authority to the District Engineers of the Kansas Department of Transportation (KDOT) to execute Highway Permit Agreements, referred to as "Permits," for and on Secretary's behalf.

In consideration of the permission granted by the Secretary (and City) to utilize Highway right-of-way(s) in the manner described above, the following terms and conditions are mutually agreed to by the Petitioner, the Secretary (and the City).

1.0 PLANS: Petitioner shall furnish five (5) sets of comprehensive plans or sketches, 8 1/2" x 11" or 11" x 17", of the proposed work.  
1.1 Plans for utility installations must include a description of the size, type, and method of installation for the proposed Facilities to be located within highway right-of-ways, and adequate sketches to indicate the location of the proposed installation with respect to the traveled way of the highway, the right-of-way lines and, where applicable, the control of access lines.

1.2 An accurate "As Built" Construction Plan shall be provided for deviation from the approved Plan.

2.0 MATERIAL AND METHODS: All requests to perform work in, upon or along Highway right-of-ways must be approved by the District Engineer (and City). In Cities, Petitioner will obtain additional Permits, as required by City.

2.1 The Petitioner shall furnish all material, do all work and pay all costs for the work described on this Permit.

2.2 All utility installations shall comply with the conditions and applicable requirements of the KDOT Utility Accommodation Policy, current edition, which is incorporated by reference in its entirety (and City standards when they exceed those of KDOT).

2.3 Drainage structure requirements shall be determined by Petitioner, but requirements are subject to review and approval by the District Engineer (and City).

2.4 All materials and construction methods used on work within the limits of the right-of-way shall meet or exceed the requirements of the "Standard Specifications for State Road and Bridge Construction," current edition. The Standard Specifications are available at www.kdot.org.

3.0 INITIATION AND COMPLETION OF WORK: Petitioner agrees to notify the District Engineer (and City) or their duly authorized KDOT representative Kenneth Shivers 785-632-3108 before work is initiated and again when the work is completed.

3.1 An approved signed copy of this Permit shall be on the premises at the start and during the period any work is performed.

3.2 All work, including right-of-way restoration, shall be completed within 180 calendar days of APPROVAL DATE, otherwise this Permit is rescinded. If work has not been started within the completion time, this Permit becomes null and void.

4.0 INSPECTION: Petitioner will be responsible for supervising construction to insure compliance with KDOT (and City) policies and standards.

5.0 ACCEPTANCE: (Check One) KDOT  ; City  ; will be responsible for acceptance of restored right-of-way.

6.0 RIGHT-OF-WAY: Except for authorized changes, Petitioner shall restore the right-of-way to a condition equal to or better than existed prior to approval of the work described on this Permit.

6.1 Any sod, shrubs or trees destroyed by this work shall be replaced as directed by the District Engineer (and City).

6.2 The right-of-way shall be kept free from parking, advertising signs or any other commercial activity.

7.0 OBSTRUCTION OF TRAFFIC: Petitioner shall ensure highway (and connecting link) traffic will be free of interference unless specifically provided for as a part of this Permit. All temporary traffic control devices and their installation and maintenance shall comply with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD) for streets and highways which has been adopted by the Secretary). Whenever the temporary Traffic Control Standards conflict with the MUTCD, the Standards shall govern. Workers shall wear approved safety vests according to 23 CFR Part 634, Worker Visibility.

C - 07 - 126

8.0 MAINTENANCE: All utility installations shall be maintained or caused to be maintained by Petitioner.  
9.0 PERMIT REVOCATION: In lieu of bond, Secretary may revoke the permit and remove any work performed. The Petitioner shall reimburse the Secretary for any cost incurred by Secretary to restore the right-of-way. The Secretary will not authorize any other highway permits until Petitioner has either reimbursed Secretary or restored the right-of-way.

10.0 LIABILITY: Petitioner shall indemnify and hold harmless Secretary from personal injury and property damage claims arising out of any act or omission of Petitioner. If Secretary defends a third party's claim, the Petitioner shall indemnify Secretary for personal injury damages, property damages and related expenses Secretary incurs arising out of Petitioner's act or omission. For purposes of this provision, the term Petitioner includes Petitioner's employees, agents, subcontractors (at any tier), suppliers (at any tier), successors, and assigns.

10.1 INSURANCE: Liability Insurance. Petitioner shall carry "General Liability" insurance under an occurrence policy that has a minimum combined single limit of \$2,000,000 for personal injury and property damage and that contains the following coverage: Comprehensive Form, Premises-Operation, Underground Hazard, Products/Completed Operations Hazard, Contractual Insurance, Broad form Property Damage, Independent Contractors, and Personal Injury. Worker's Compensation: Petitioner shall carry "Worker's Compensation and Employer's Liability" insurance that complies with Kansas Statute. Automobile Liability: Petitioner shall carry "Automobile Liability" insurance under an occurrence policy that has a minimum combined single limit of \$1,000,000.00 for personal injury and property damage and that contains the following coverage: Comprehensive Form, Owned, Hired, and Non-Owned.

10.2 "Certificate of Insurance". This permit shall not take effect unless Petitioner provides Secretary a "Certificates of Insurance" confirming Petitioner carries insurance in the amounts and type this section requires. Petitioner shall obtain insurance only from insurers on the approved Federal Treasury List and authorized by the Kansas Commissioner of Insurance. The "Certificates of Insurance" shall include a clause requiring the insurer to notify Secretary thirty (30) calendar days in advance of a change in or cancellation of the insurance contracts.

10.3 Petitioner shall maintain the insurance required in Section 10.1 until the District Engineer releases the Petitioner from any Permit obligation.

11.0 DAMAGE TO UTILITIES: KDOT shall not be liable for damage to any utility not installed in the location authorized by any permit or agreement issued pursuant to the Utility Accommodation Policy.

12.0 PIPELINE LIABILITY: For attachments to bridges or other structures and for roadway crossings of PIPELINES CARRYING PETROLEUM, HAZARDOUS AND/OR CORROSIVE PRODUCTS, Petitioner shall solely assume all risk and liability for accidents and damages that may occur to persons, property or natural resources by reason of the operation of the pipeline attached to said bridge, structure or crossing of roadway.

12.1 Petitioner shall maintain the insurance required in Section 9.0 for as long as the pipeline remains attached to the bridge or other structure or for as long as the pipeline crosses the roadway. The insurance contract shall cover claims for such length of time as the law permits such claims.

13.0 ENVIRONMENTAL LIABILITY AND INDEMNIFICATION: Petitioner shall assume all risk and liability for all claims suits, actions, causes of actions, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Petitioner now has or which Petitioner may have in the future on account of or arising out of or in connection with any known or unknown physical or environmental condition of the Petitioner's property or operation. Petitioner shall comply with federal, state and local statutes, rules and regulations. These include, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the Oil Pollution Act, the Federal Drinking Water Act, the Clean Air Act, the Resource Conservation Recovery Act, and the state analogs. Petitioner shall indemnify the Secretary against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking investigation, clean-up, removal or remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources. For purposes of this provision, the term Petitioner includes Petitioner's employees, agents, subcontractors (at any tier), suppliers (at any tier), successors, and assigns.

14.0 HIGHWAY IMPROVEMENTS AND/OR MAINTENANCE: If Secretary makes any alteration or improvement along or upon the highway right-of-way which is the subject of this Permit, Petitioner shall hold Secretary harmless for any and all damage or injury to Petitioner's facilities, whether finished or unfinished, as well as damage or injury to Petitioner's equipment, materials, employees, agents or contractors. Petitioner shall conduct all work approved on this permit in such a manner as not to interfere with construction or other work being performed by the KDOT (or City) or its contractors in the vicinity of Petitioner's work or project.

14.1 Within a reasonable time after receiving written notice from Secretary that Petitioner's facilities are in conflict with KDOT's new construction or major maintenance operations, Petitioner shall alter, change location or move their construction work or facilities without cost or expense to the Secretary. If Petitioner fails to relocate their facilities within a reasonable time, KDOT may move the facilities. Except for Rural Water Districts meeting the requirements of K.S.A. 68-415(c), Petitioner shall reimburse KDOT for the costs of relocating the facilities upon receipt of an itemized statement. (See, K.S.A. 68-415). Petitioner shall reimburse KDOT for any construction costs, claims or expenses KDOT incurs as a result of Petitioner's failure to timely relocate the facilities.

14.2 Written notice will not be required for KDOT's normal maintenance.

15.0 ABANDONED OR RETIRED IN PLACE: Petitioner shall notify Secretary when the facilities will be abandoned or retired in place and shall submit a plan for abandonment or retirement in place to the District Engineer or designee for review and approval. Petitioner shall remove or abandon the facilities in place in accordance with the approved plan. Petitioner shall pay all costs associated with removal of abandoned or retired in place upon highway right-of-way facilities.

This Permit is hereby accepted and its provisions agreed to by the Parties.

APPROVED:

PETITIONER

CITY OF Ogden, KS  
(when applicable)

Signature  
James Patrick Cox, P.E.

Printed Name  
City of Ogden, PO Box C, Ogden, KS 68517-0843  
Street Address (City, State, Zip Code)

Mayor  City Mgr.  City Engr.  
  
City Clerk

Agent  Lease  Contractor  
Street Address (City, State, Zip Code)  
pat@bgcons.com  
Contact Email

RECOMMENDED BY: Thomas Shum  
 Area/Metro Engr.  Area Supt.  Utility Coord.

PERMIT APPROVAL DATE: SEP 29 2009

SECRETARY OF TRANSPORTATION  
OF THE STATE OF KANSAS

BY: Judith Wagner for Randy H. West  
District Engineer DISTRICT ENGINEER



Const./Maint.  
Petitioner  
District  
Area  
City or Sub-Area

KANSAS DEPARTMENT OF TRANSPORTATION  
Bureau of Construction and Maintenance

Permit No. 2-09-125  
Route K-18  
RILEY-081  
State Highway K-18   
City Conn. Link   
City Ogden, KS

HIGHWAY PERMIT  
USE OF RIGHT OF WAY

RECEIVED  
EP 2 3 2009

THIS AGREEMENT, made and entered into, between the Secretary of Transportation of the State of Kansas, referred to as

"Secretary" and City of Ogden (785) 539-0311  
(Name of Firm or Individual) (Tel. No.)  
222 Riley Ave, Ogden, Kansas, 66517-0843  
(Street) (City) (State) (Zip)  
referred to as "Petitioner" and the City of Ogden, KS, referred to as "City".  
(If Not Applicable, Enter N/A)

Secretary has jurisdiction over highway right-of-ways within the State Highway System of Kansas, and

Secretary (and City) believe it is in the interest of the Citizens of the State of Kansas to permit certain work or projects to be performed upon Highway right-of-ways, and

Petitioner requests permission and authority from Secretary (and City) to perform certain work, described as follows:

The City is proposing the temporary piping shown on the aerial figure. The City is constructing improvements to the sanitary sewer treatment facility, which requires a temporary discharge of treated effluent during construction. The proposed temporary piping would be placed and anchored on the surface of the backslope along the west side of K-18 to a point of discharge where the treated effluent would open flow north down the KDOT ditch to Dry Branch Creek. The temporary piping would be installed in late 2009 or early 2010 and would be removed no later than May 1st, 2010. The Kansas Department of Health and Environment has reviewed this plan and gave their preliminary approval.

Pipe on right-of-way 180.639 to 180.933 (L)

Said work is located on public right-of-way in, upon or along State Highway Route K-18, Reference Point \_\_\_\_\_ (or City  
Connecting Link Route \_\_\_\_\_ on \_\_\_\_\_ St.) in Sec. 18 TWP. 11S Range 7E, Riley County,  
0.50 Miles(km) south (direction) from Walnut Street (Jct. or county line) and

Secretary has delegated full and complete authority to the District Engineers of the Kansas Department of Transportation (KDOT) to execute Highway Permit Agreements, referred to as "Permits," for and on Secretary's behalf.

In consideration of the permission granted by the Secretary (and City) to utilize Highway right-of-way(s) in the manner described above, the following terms and conditions are mutually agreed to by the Petitioner, the Secretary (and the City).

1.0 PLANS: Petitioner shall furnish five (5) sets of comprehensive plans or sketches, 8 1/2" x 11" or 11" x 17", of the proposed work.

1.1 Plans for utility installations must include a description of the size, type, and method of installation for the proposed Facilities to be located within highway right-of-ways, and adequate sketches to indicate the location of the proposed installation with respect to the traveled way of the highway, the right-of-way lines and, where applicable, the control of access lines.

1.2 An accurate "As Built" Construction Plan shall be provided for deviation from the approved Plan.

2.0 MATERIAL AND METHODS: All requests to perform work in, upon or along Highway right-of-ways must be approved by the District Engineer (and City). In Cities, Petitioner will obtain additional Permits, as required by City.

2.1 The Petitioner shall furnish all material, do all work and pay all costs for the work described on this Permit.

2.2 All utility installations shall comply with the conditions and applicable requirements of the KDOT Utility Accommodation Policy, current edition, which is incorporated by reference in its entirety (and City standards when they exceed those of KDOT).

2.3 Drainage structure requirements shall be determined by Petitioner, but requirements are subject to review and approval by the District Engineer (and City).

2.4 All materials and construction methods used on work within the limits of the right-of-way shall meet or exceed the requirements of the "Standard Specifications for State Road and Bridge Construction," current edition. The Standard Specifications are available at www.ksdot.org.

3.0 INITIATION AND COMPLETION OF WORK: Petitioner agrees to notify the District Engineer (and City) or their duly authorized KDOT representative Kenneth Shivers 785-632-3105 before work is initiated and again when the work is completed.

3.1 An approved signed copy of this Permit shall be on the premises at the start and during the period any work is performed.  
3.2 All-work, including right-of-way restoration, shall be completed within 240 calendar days of APPROVAL DATE, otherwise this Permit is rescinded. If work has not been started within the completion time, this Permit becomes null and void.

4.0 INSPECTION: Petitioner will be responsible for supervising construction to insure compliance with KDOT (and City) policies and standards.  
5.0 ACCEPTANCE: (Check One) KDOT  ; City  ; will be responsible for acceptance of restored right-of-way.

6.0 RIGHT-OF-WAY: Except for authorized changes, Petitioner shall restore the right-of-way to a condition equal to or better than existed prior to approval of the work described on this Permit.

6.1 Any sod, shrubs or trees destroyed by this work shall be replaced as directed by the District Engineer (and City).  
6.2 The right-of-way shall be kept free from parking, advertising signs or any other commercial activity.

7.0 OBSTRUCTION OF TRAFFIC: Petitioner shall ensure highway (and connecting link) traffic will be free of interference unless specifically provided for as a part of this Permit. All temporary traffic control devices and their installation and maintenance shall comply with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD) for streets and highways which has been adopted by the Secretary). Whenever the temporary Traffic Control Standards conflict with the MUTCD, the Standards shall govern. Workers shall wear approved safety vests according to 23 CFR Part 634, Worker Visibility.

2-09-125

8.0 MAINTENANCE: All utility installations shall be maintained or caused to be maintained by Petitioner.

9.0 PERMIT REVOCATION: In lieu of bond, Secretary may revoke the permit and remove any work performed. The Petitioner shall reimburse the Secretary for any cost incurred by Secretary to restore the right-of-way. The Secretary will not authorize any other highway permits until Petitioner has either reimbursed Secretary or restored the right-of-way.

10.0 LIABILITY: Petitioner shall indemnify and hold harmless Secretary from personal injury and property damage claims arising out of any act or omission of Petitioner. If Secretary defends a third party's claim, the Petitioner shall indemnify Secretary for personal injury damages, property damages and related expenses Secretary incurs arising out of Petitioner's act or omission. For purposes of this provision, the term Petitioner includes Petitioner's employees, agents, subcontractors (at any tier), suppliers (at any tier), successors, and assigns.

10.1 INSURANCE: Liability Insurance. Petitioner shall carry "General Liability" insurance under an occurrence policy that has a minimum combined single limit of \$2,000,000 for personal injury and property damage and that contains the following coverage: Comprehensive Form, Premises-Operation, Underground Hazard, Products/Completed Operations Hazard, Contractual Insurance, Broad Form Property Damage, Independent Contractors, and Personal Injury. Worker's Compensation: Petitioner shall carry "Worker's Compensation and Employer's Liability" insurance that complies with Kansas Statute. Automobile Liability: Petitioner shall carry "Automobile Liability" insurance under an occurrence policy that has a minimum combined single limit of \$1,000,000.00 for personal injury and property damage and that contains the following coverage: Comprehensive Form, Owned, Hired, and Non-Owned.

10.2 "Certificate of Insurance". This permit shall not take effect unless Petitioner provides Secretary a "Certificates of Insurance" confirming Petitioner carries insurance in the amounts and type this section requires. Petitioner shall obtain insurance only from insurers on the approved Federal Treasury List and authorized by the Kansas Commissioner of Insurance. The "Certificates of Insurance" shall include a clause requiring the insurer to notify Secretary thirty (30) calendar days in advance of a change in or cancellation of the insurance contracts.

10.3 Petitioner shall maintain the insurance required in Section 10.1 until the District Engineer releases the Petitioner from any Permit obligation.

11.0 DAMAGE TO UTILITIES: KDOT shall not be liable for damage to any utility not installed in the location authorized by any permit or agreement issued pursuant to the Utility Accommodation Policy.

12.0 PIPELINE LIABILITY: For attachments to bridges or other structures and for roadway crossings of PIPELINES CARRYING PETROLEUM, HAZARDOUS AND/OR CORROSIVE PRODUCTS, Petitioner shall solely assume all risk and liability for accidents and damages that may occur to persons, property or natural resources by reason of the operation of the pipeline attached to said bridge, structure or crossing of roadway.

12.1 Petitioner shall maintain the insurance required in Section 9.0 for as long as the pipeline remains attached to the bridge or other structure or for as long as the pipeline crosses the roadway. The insurance contract shall cover claims for such length of time as the law permits such claims.

13.0 ENVIRONMENTAL LIABILITY AND INDEMNIFICATION: Petitioner shall assume all risk and liability for all claims suits, actions, causes of actions, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Petitioner now has or which Petitioner may have in the future on account of or arising out of or in connection with any known or unknown physical or environmental condition of the Petitioner's property or operation. Petitioner shall comply with federal, state and local statutes, rules and regulations. These include, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the Oil Pollution Act, the Federal Drinking Water Act, the Clean Air Act, the Resource Conservation Recovery Act, and the state analogs. Petitioner shall indemnify the Secretary against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking investigation, clean-up, removal or remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources. For purposes of this provision, the term Petitioner includes Petitioner's employees, agents, subcontractors (at any tier), suppliers (at any tier), successors, and assigns.

14.0 HIGHWAY IMPROVEMENTS AND/OR MAINTENANCE: If Secretary makes any alteration or improvement along or upon the highway right-of-way which is the subject of this Permit, Petitioner shall hold Secretary harmless for any and all damage or injury to Petitioner's Facilities, whether finished or unfinished, as well as damage or injury to Petitioner's equipment, materials, employees, agents or contractors. Petitioner shall conduct all work approved on this permit in such a manner as not to interfere with construction or other work being performed by the KDOT (or City) or its contractors in the vicinity of Petitioner's work or project.

14.1 Within a reasonable time after receiving written notice from Secretary that Petitioner's Facilities are in conflict with KDOT's new construction or major maintenance operations, Petitioner shall alter, change location or move their construction work or Facilities without cost or expense to the Secretary. If Petitioner fails to relocate their Facilities within a reasonable time, KDOT may move the Facilities. Except for Rural Water Districts meeting the requirements of K.S. A. 68-415(c), Petitioner shall reimburse KDOT for the costs of relocating the Facilities upon receipt of an itemized statement. (See, K.S.A. 68-415). Petitioner shall reimburse KDOT for any construction costs, claims or expenses KDOT incurs as a result of Petitioner's failure to timely relocate the Facilities.

14.2 Written notice will not be required for KDOT's normal maintenance.

15.0 ABANDONED OR RETIRED IN PLACE: Petitioner shall notify Secretary when the Facilities will be abandoned or retired in place and shall submit a plan for abandonment or retirement in place to the District Engineer or designee for review and approval. Petitioner shall remove or abandon the Facilities in place in accordance with the approved plan. Petitioner shall pay all costs associated with removal of abandoned or retired in place upon highway right-of-way Facilities.

This Permit is hereby accepted and its provisions agreed to by the Parties.

APPROVED:

CITY OF Ogden, KS  
(when applicable)

Mayor  City Mgr.  City Engr.  
[Signature]  
City Clerk

PETITIONER:

[Signature]  
Signature  
James Patrick Cox, P.E.  
Printed Name  
City of Ogden, PO Box C, Ogden, KS 66517-0843  
Street Address (City, State, Zip Code)  
 Agent  Lessee  Contractor  
Street Address (City, State, Zip Code)  
pat@hgcons.com  
Contact Email

RECOMMENDED BY: [Signature]  
 Area/Metro Engr.  Area Supt.  Utility Coord.

PERMIT APPROVAL DATE: SEP 21 2009

SECRETARY OF TRANSPORTATION  
OF THE STATE OF KANSAS

BY: [Signature] RANDY H. WEST  
District Engineer DISTRICT ENGINEER



Mark Parkinson, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

[www.kdheks.gov](http://www.kdheks.gov)

Division of Environment

KANSAS WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM  
FINDING OF NO SIGNIFICANT IMPACT

**SEP. 14 2009**

TO: All Interested Government Agencies and Public Groups

In accordance with procedures for implementing the Kansas Water Pollution Control Revolving Loan Fund Act (K.S.A. 65-3321 to 65-3329, K.A.R. 28-16-110 to 28-16-138 effective May 29, 1989 and 28-16-137 amended December 26, 1989, and the Kansas Environmental Review Procedure for the Kansas Water Pollution Control Revolving Loan Program dated February 1989) an environmental review has been performed on the proposed agency action below:

Project Name: Ogden, Kansas

Project No. C20 1711 01

Estimated Project Amount: \$1,790,000

Loan Amount: \$2,190,000  
CDBG Amount: \$ 400,000

Project Description, Location and Purpose

The City of Ogden is an incorporated community, with an estimated population of 1900, located within Riley County Kansas. Ogden serves as the east gateway to Fort Riley military reservation. The city's wastewater needs are presently served via central gravity sewer collection system, influent pump station, and a three-cell, non-discharging lagoon facility. The City's current water pollution control permit (M-KS51-NO01) mandated a study of the lagoon system be performed to determine the condition and permeability of the existing clay liner within all cells. The study results indicated that the first two cells of the lagoon system met the requirements of K.A.R. 28-16-160 et seq., but the seepage rate of the third cell was exceeding regulatory limits. The quantity of sewage flow received at the lagoon exceeds the rated capacity for a non-discharging lagoon system. Immediate improvements are required to achieve compliance with K.A.R. 28-16-160 et seq., the lagoon seepage control regulations, and as a result of the reduced seepage rate the lagoons will overflow with discharge to the Kansas River.

The lagoon facility is located in the southeast quarter of Section 12, Township 11S, Range 6E and the new discharge will be into the Kansas River Basin (HUC 10270101-6). The new NPDES permit (M-KS51-OO02) is based on an average discharge flow of 0.45 MGD. Pursuant to the Kansas Surface Water Quality Standards K.A.R. 28-16-28 (b-f), the first classified stream is the Kansas River, segment 6. The Kansas River is a general purpose stream designated for expected aquatic life, all water use designations, and primary "B" contact recreation.

CURTIS STATE OFFICE BLDG.,  
Voice (785) 296-1567

Bureau of Water  
1000 SW Jackson, Suite 420  
Fax Number: (785) 296-0086

Topeka, KS. 66612-1367  
<http://www.kdheks.gov>

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The proposed project will consist of rehabilitation of the Walnut Street Pump Station and the rehabilitation of the third cell of the lagoons, which will require the installation of a plastic liner and the installation of a new discharge pipe from the lagoons to the Kansas River. The lagoon rehabilitation is the first phase of improvements planned by the city to serve future growth wastewater treatment needs. As the population increases and sewage flows approach 0.45 MGD, the second phase improvements will be constructed to provide an activated sludge system for additional treatment capacity.

All aspects of the project are eligible for loan assistance, with the exception of the purchase of land and easements.

The primary environmental impacts of the project include noise of heavy construction, slight erosion of exposed soil, and slight alteration of existing land forms at the construction site. No adverse impact on groundwater is anticipated.

Steps taken to minimize environmental impacts include implementation of erosion and sediment control measures, proper storage and disposal of construction materials. Land, materials, fuel and other forms of energy utilized in construction and operation of the facility will be irretrievably committed to the project.

Intergovernmental review comments have been requested and received with favorable response from the following agencies: Kansas Department of Agriculture-Division of Water Resources, Kansas Department of Wildlife and Parks, Kansas Department of Health and Environment, Kansas State Historical Society, Kansas Geological Survey, Kansas Biology Survey, Kansas Corporation Commission, Kansas Water Office, Kansas Conservation Commission, State Conservationist of the Natural Resource Conservation Service, U.S. Fish and Wildlife Service of the Department of Interior, and the U.S. Army Corps of Engineers. The KDHE Bureau of Environmental Remediation (BER) noted in the approval there are eight (8) Superfund sites within one mile of the project, and that the City's old dump is just east of the lagoon site. The KDHE BER requires any waste exposed via excavation be disposed of within a landfill permitted by the KDHE. The Division of Water Resources indicates a permit for the construction of the outfall into the Kansas River will be required. Portions of the property along the route of the new outfall are owned by the State of Kansas, and so an easement must be obtained. (See attached aerial photos.) Approval of the final design of the outfall sewer and discharge headwall by the U.S. Army Corps of Engineers is required. Construction of the new outfall sewer and discharge headwall will be delayed until all permits and approvals have been obtained by the City.

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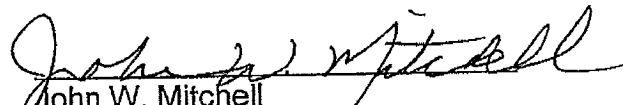
A public meeting and a public hearing were held concurrently on 31 August 2005. Environmental and financial impacts were discussed. The City adopted Ordinance No. 552 on 21 September 2005, establishing a Sewer Service Charge of \$8.00 per connection per month for the first 2000 gallons, and \$1.61 for every additional 1000 gallons used. A typical household will pay a total monthly sewer bill of approximately \$19.00. This user charge schedule appears adequate to finance both O, M & R and debt service expenses of the pump station replacement, lagoon rehabilitation, and new outfall sewer construction.

After considering both short-term and long-term effects of the project on the environment, it was determined that any short-term adverse impacts during construction will be offset by the long-term benefits derived from an improved wastewater treatment. No known endangered or threatened species occur in the project area. The review did not indicate a significant environmental impact will result from the proposed action. Consequently a preliminary decision has been made that an EIS will not be prepared.

This action is taken on the basis of a careful review of the facility plan, the environmental information document, environmental assessment and other supporting data, which are on file at the State Office. A copy of the environmental assessment is attached. Other information is available for review on request.

This agency will not take any administrative action on this project for at least thirty days from the above date. Persons wishing to comment on this Finding of No Significant Impact may submit comments to the Department of Health and Environment during this period to the attention of Rod Geisler, Chief, Municipal Programs.

Sincerely yours,

  
John W. Mitchell  
Director, Division of Environment

Attachments  
EAD  
Distribution List  
Map



EXHIBIT A

ENVIRONMENTAL ASSESSMENT DOCUMENT

- A. Project Identification: Ogden WWTF Upgrade
- |                                  |               |                          |
|----------------------------------|---------------|--------------------------|
| Applicant: City of Ogden         | County: Riley | Project No. C20 1711 01  |
| City: Ogden                      |               | State: Kansas            |
| Est. Project Amount: \$1,790,000 |               | Loan Amount: \$2,190,000 |
|                                  |               | CDBG Amount: \$400,000   |

- B. Community Description:

Location: The City of Ogden is an incorporated community located in Riley County in north central Kansas.

Population; Present, Projected, and Design Year: Ogden's current population is approximately 1900. The city's population growth is expected to increase in the near future as Fort Riley is expanded. The design of the new facility should meet the needs for a projected population equivalent (PE) of 4500 residents to the year 2025.

Current Methods of Waste Treatment: The city's wastewater needs are presently served via central gravity sewer collection system, influent pump station and a three-cell, non-discharging lagoon facility. The third cell of the lagoon has excessive seepage rates in violation of K.A.R. 28-16-160 et seq.

- C. Project Description:

Purpose: The city's existing 3-cell, non-discharging treatment lagoon and main pump station have been in service since 1977. The non-discharging lagoon system was examined and found to not meet current KDHE regulations pertaining to seepage rate, and sewage flow exceeds the rated capacity. Therefore, the City of Ogden proposes to rehabilitate the Walnut Street Pump Station, and rehabilitate the third cell of the lagoon system by installing a plastic liner and placing new discharge piping from the lagoons to the Kansas River.

Design Factors: A Population Equivalent of approximately 4,500 residents, Design flow = 0.45 million gpd, which is expected to provide capacity for growth through 2025. Beyond this, a phase 2 project will be needed to construct an activated sludge system for additional capacity.

Receiving Stream: The lagoon facility is located in the southeast quarter of Section 12, Township 11S, Range 6E, and will discharge into the Kansas River Basin (HUC 10270101-6).

- D. Alternatives Considered: Several different alternatives were considered. Taking no action is not considered as a feasible option due to the current violations of K.A.R. 28-16-160 et seq. Continuing to operate the lagoon as a non-discharging system after the third cell is sealed is not possible, as existing sewage flows exceed this available capacity. Also, this does not provide for the projected future expansion of the city. Adding a fourth cell was considered but not pursued, as the enlarged lagoon system is not cost effective, and a higher degree of pollutant removal is desired by construction of an activated sludge process in phase 2 improvements to serve future growth. The selected alternative is to rehab the third cell and convert the lagoon to a discharging wastewater treatment system.

Reasons for Selection of Proposed Alternative: The alternative selected was found to be most cost-effective, reliable and implementable, and meets the long-term wastewater collection and treatment needs of the City.

E. Impact Summary:

1. Construction: Slight wind and water erosion of exposed soils, noise from heavy construction equipment and disruption of normal traffic patterns.
2. Population Impacts: No significant population impacts are anticipated.
3. Land Use and Trends: Land use patterns will not be significantly affected.
4. Financial: The user charge fees will be used to cover the cost of the project. The City adopted Ordinance No. 552 on 21 September 2005, establishing a Sewer Service Charge of \$8.00 per connection per month for the first 2000 gallons, and \$1.61 for every additional 1000 gallons used. A typical household will pay a total monthly sewer bill of approximately \$19.00. This user charge schedule appears adequate to finance both OM&R and debt service expenses of this project. The city has applied for and received a \$400,000 Community Development Block Grant.
5. Mitigation measures necessary to eliminate adverse environmental effect: Proper grading, drainage and slope protection to minimize erosion.
6. Irreversible and irretrievable commitment of resources: Materials used in construction of permanent structures; fuel and other forms of energy consumed during construction.

F. Measure taken to ensure Environmental Soundness:

1. Public Involvement: A public meeting and public hearing were held at the Ogden City Hall on 31 August 2005 to discuss the project alternatives, user charges and environmental impacts.
2. Coordination and Documentation with Other Agencies and Special Interest Groups
  - a. Preliminary Engineering Report dated October 2005 as prepared by BG Consultants, Inc., Manhattan, KS. The Walnut Street Pump Station Design Summary dated March 2009 as prepared by BG Consultants, Inc. Construction plans and specifications dated June 2008 (Aerial Crossing) and March 2009 (Pump Station) as prepared by BG Consultants, Inc.
  - b. Federal/Others:
    1. U.S. Fish and Wildlife Service—Department of Interior
    2. U.S. Army Corps of Engineers
    3. State Conservationist—Natural Resource Conservation Service
  - c. State:
    1. Kansas Department of Wildlife and Parks
    2. Kansas Department of Health and Environment
    3. Kansas State Historical Society
    4. Kansas Geological Survey
    5. Kansas Biology Survey
    6. Kansas Corporation Commission
    7. Kansas Water Office
    8. Kansas Conservation Commission
    9. Kansas Department of Agriculture—Division of Water Resources
  - d. Consulting Engineers: BG Consultants, Inc.

- G. Positive Environmental Effects to be realized from the Proposed Project: Excessive seepage of partially treated wastewater from the existing lagoon system is eliminated. More enhanced and consistent wastewater treatment capacity and compliance with NPDES permit requirements.

H. Reasons for concluding there will be no significant impacts: Population densities and land use patterns will not be affected, no historical sites or sites of archeological significance will be affected. No wetlands or other sensitive environmental areas will be affected. The Division of Water Resources will require a permit for construction of the outfall sewer and discharge headwall. The U.S. Army Corps of Engineers will need to review and approve the design of the outfall sewer and discharge headwall. Construction of the new outfall sewer and discharge structure will be delayed until all permits and approvals have been obtained by the city.



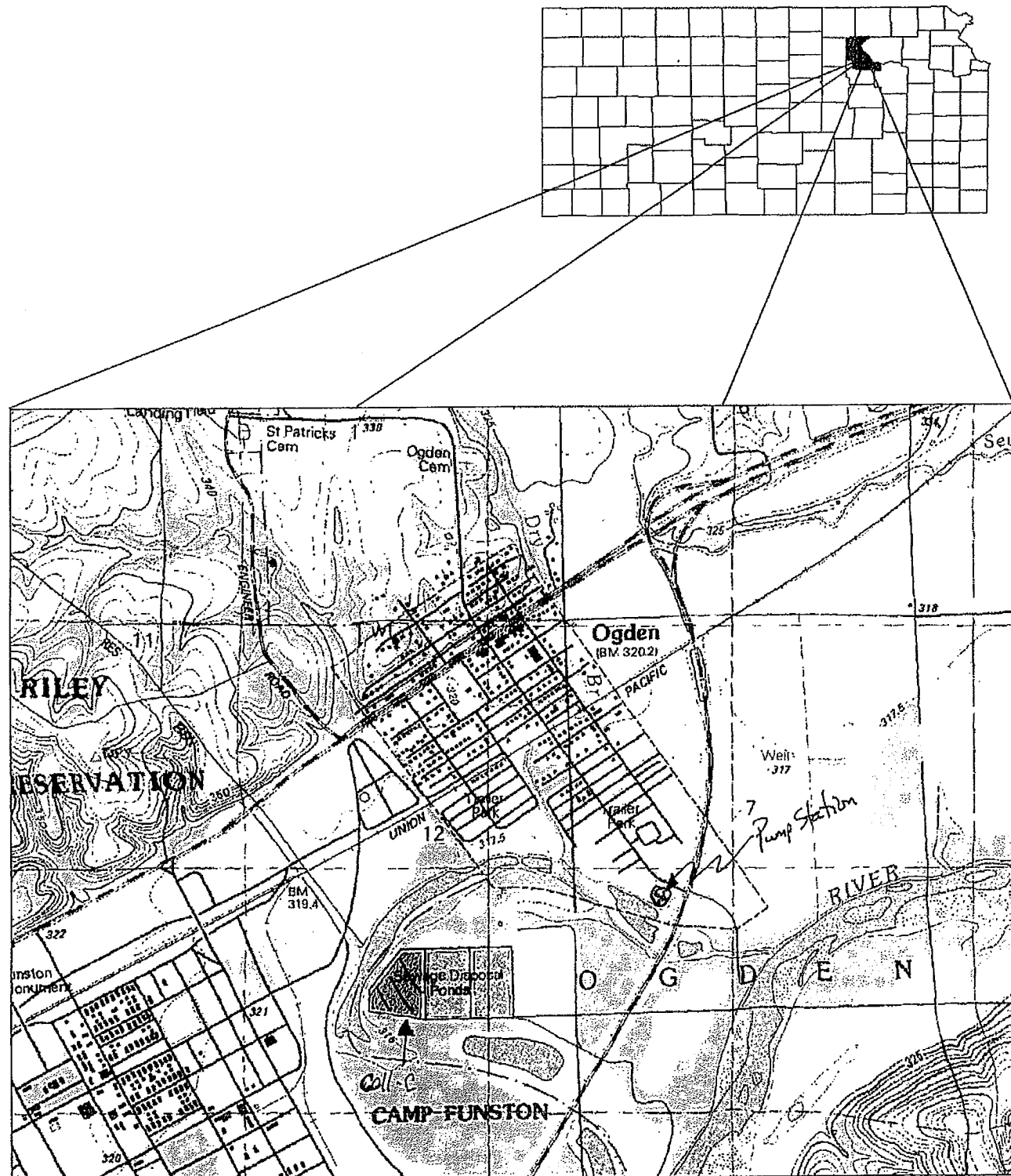
A handwritten signature in cursive script, appearing to read "L. M. Miller", is written over a horizontal line.

REVIEWING ENGINEER

10 Aug 2009

DATE

OGDEN, KANSAS WASTEWATER TREATMENT FACILITY IMPORVEMENTS PROJECT  
LOCATION MAP: RILEY COUNTY



DISTRIBUTION LIST  
OGDEN, KANSAS WASTEWATER IMPROVEMENTS  
FINDING OF NO SIGNIFICANT IMPACT

Kansas Dept. of Wildlife & Parks  
Environmental Services Section  
512 SE 25th Avenue  
Pratt, Kansas 67124-8174

State Conservationist  
Natural Resources Conservation Service  
760 South Broadway  
Salina, Kansas 67401

Executive Director  
Kansas State Historical Society  
6425 SW 6th Ave  
Topeka, Kansas 66615

Kansas Geological Survey  
Dr. William Harrison  
University of Kansas  
1930 Constant Ave - Campus West  
Lawrence, Kansas 66047

Kansas Biological Survey  
University of Kansas  
2041 Constant Ave  
Lawrence, Kansas 66047-2906

U.S. Army Corps of Engineers  
700 Federal Building  
601 E. 12<sup>th</sup> Street  
Kansas City, Missouri 64106

Environmental Protection Agency  
Region VII  
NPDES & Facilities Management  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Kansas Water Office  
901 S. Kansas Avenue  
Topeka, Kansas 66612

Kansas Dept. of Agriculture  
Division of Water Resources  
109 S.W. 9th Street  
Topeka, Kansas 66612

State Conservation Commission  
109 S.W. 9th Street  
Topeka, Kansas 66612

U.S. Dept. of the Interior  
Fish & Wildlife Service  
Ecological Services/  
Partners for Fish & Wildlife  
2609 Anderson Avenue  
Manhattan, Kansas 66502-2801

Kansas Corporation Commission  
130 S. Market - 2nd Floor  
Wichita, Kansas 67202

Environmental Protection Agency  
Office of Federal Activities  
Ariel Rios (2252A)  
1200 Pennsylvania Ave. NW  
Washington, D.C. 20004

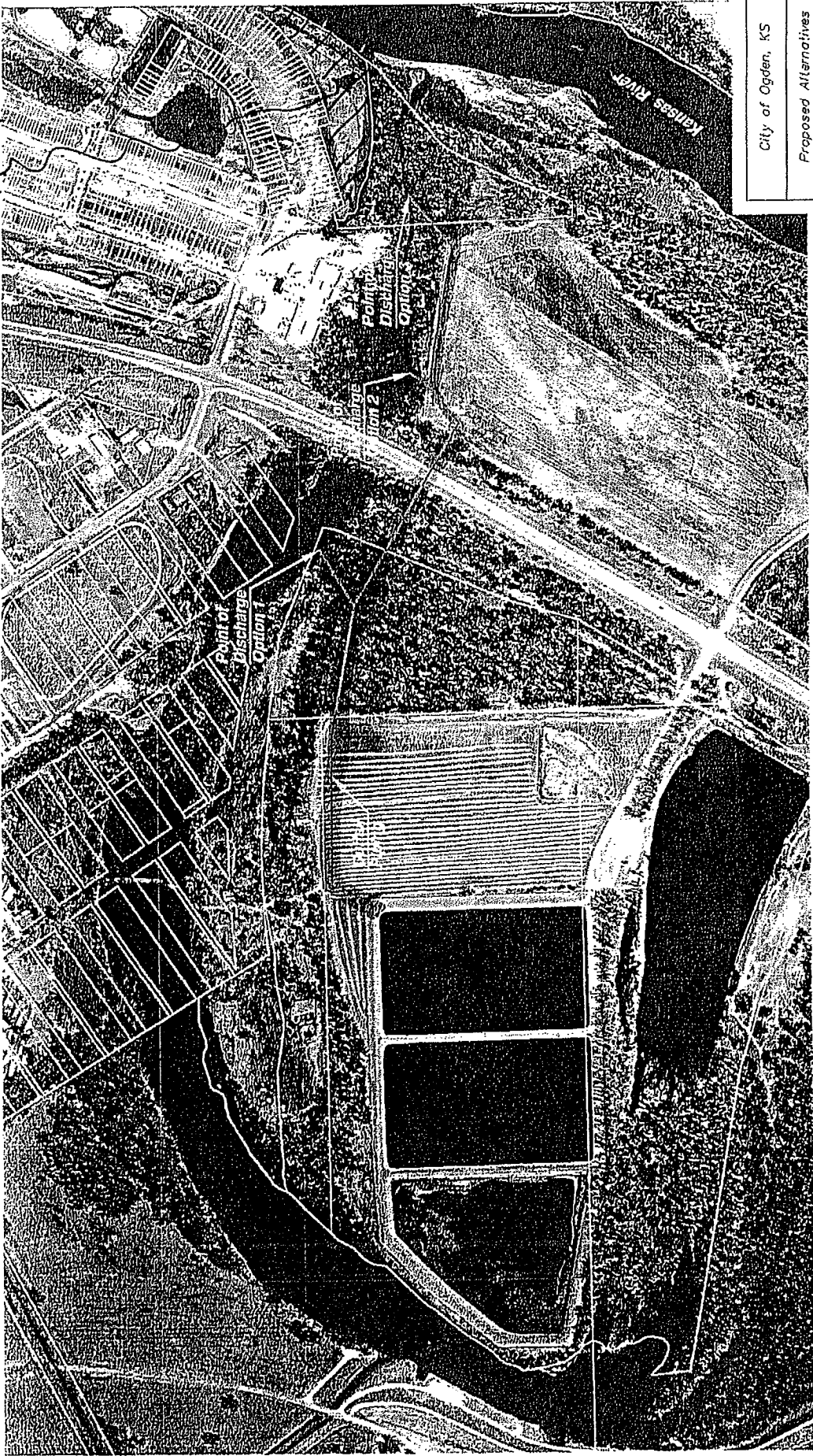
City of Ogden  
City Hall – PO Box C  
222 Riley Avenue  
Ogden, KS 66517-0843

BG Consultants, Inc.  
4806 Vue de Lac Place  
Manhattan, Kansas 66503

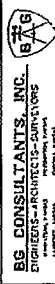
The Manhattan Mercury  
318 N. 5<sup>th</sup> St.  
P.O. Box 787  
Manhattan, Kansas 66505

Original 3 Options Considered.

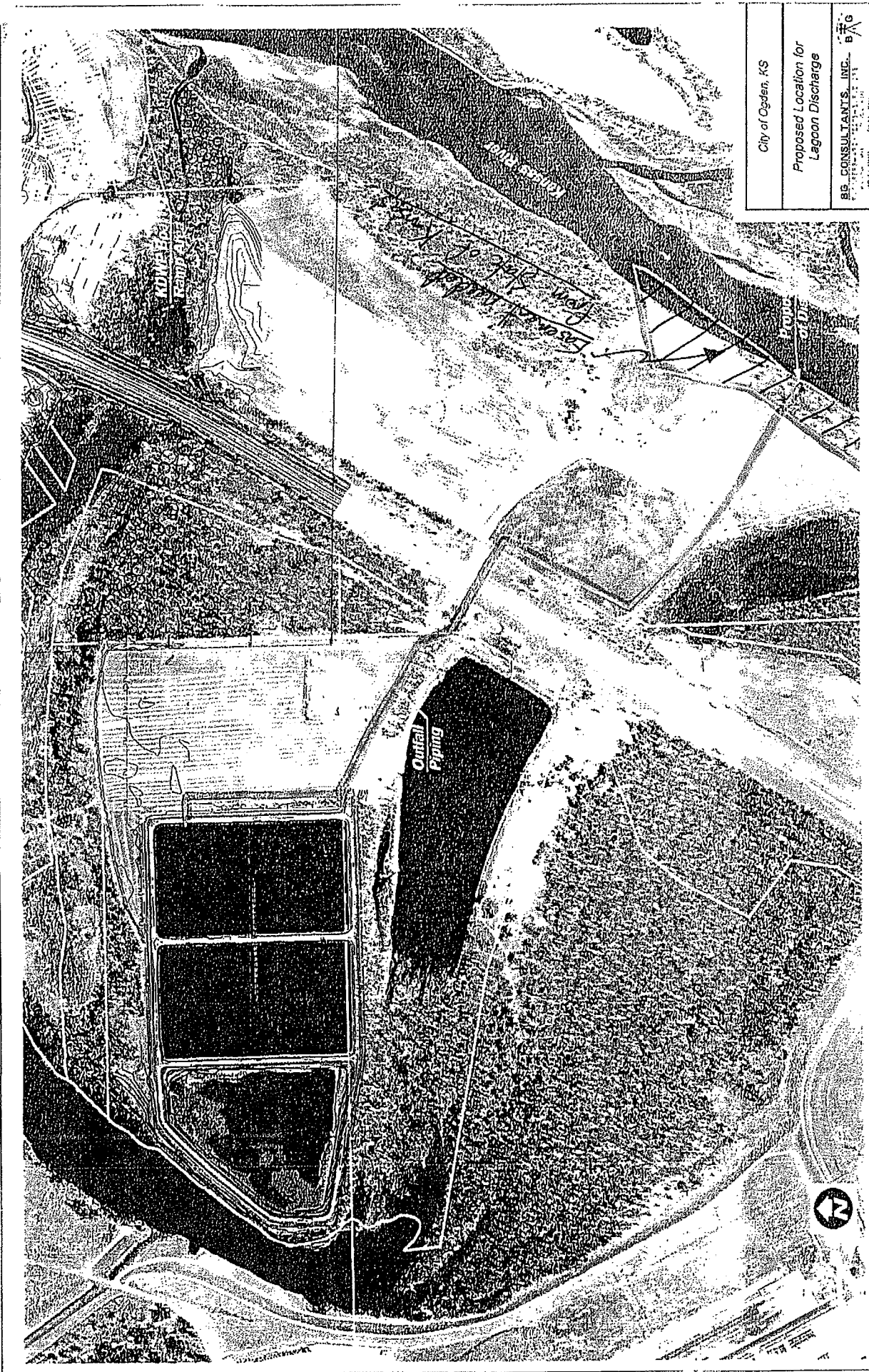
\* New City of Ogden  
Boat Ramp.




City of Ogden, KS  
Proposed Alternatives  
for Lagoon Discharge



City is moving forward w/  
option 4 Discharge Location.



City of Ogden, KS
Proposed Location for Leagoon Discharge
BE CONSULTANTS, INC. 



800 SW JACKSON, SUITE 808  
TOPEKA, KANSAS 66612  
(785) 233-0016  
(785) 234-3687 (fax)  
bsmoot@nomb.com

**BRAD SMOOT**  
ATTORNEY AT LAW

10200 STATE LINE ROAD  
SUITE 230  
LEAWOOD, KANSAS 66206

STATEMENT OF BRAD SMOOT  
LEGISLATIVE COUNSEL  
NO ANNEXATION COALITION  
SENATE LOCAL GOVERNMENT COMMITTEE  
REGARDING 2009 HOUSE BILL 2029  
March 8, 2010

Mr. Chairman and Members:

On behalf of the No Annexation Coalition, a group of rural landowners whose land was annexed into the city of Overland Park in 2008, we thank you for this opportunity to discuss HB 2029. This bill is the result of years of study by the Kansas Legislature. The Special Committee on Eminent Domain in Condemnation of Water Rights recommended the contents of HB 2029 in 2008 and the House Local Government Committee combined all three into this bill last year and passed it to the Senate.

As Committee members probably know, Kansas law has two statutes that allow municipal annexations. One, K.S.A. 12-520, contains several specific situations in which annexation is allowed (for example, when the owner consents) and some limitations (such as when the land to be annexed involves more than 21 acres). K.S.A. 12-520 is the statute used by most cities most of the time and the one with which most of you may be very familiar. The other statute, K.S.A. 12-521, gives cities authority to annex land of any size, without owner consent and without a public vote of those to be annexed. All that is required is approval by the county commission. Only a few cities have even used this "521" annexation procedure and even these cities rarely use it. The provisions of HB 2029 only affect "521" annexations; not normal "520" annexations and thus this bill has no impact on the overwhelming majority of Kansas cities.

While there are several safeguards built in to the routine "520" annexations, there is only one landowner protection contained in the "521" annexation process: county commission approval. To begin with, there is no limit on the amount of land that may be annexed under this provision. For example, the city of Overland Park attempted to annex about 15 square miles of agricultural land in 2008, probably the largest city land grab in state history. The Johnson County Commission disallowed about half the annexation but still the annexation was enormous and unusual by any standard. Many of your colleagues who have reviewed this issue, some of them former city or county officials, are stunned to realize that "521" annexations do not contain the 21 acre limitation found in the more commonly used "520" annexation statute. Since nothing in the "521" statute limits the size of the annexed territory, the interim committee and the House have recommended the 21 acres limit on unplatted agricultural land. See Section 5(b). It's worth noting that even this limitation only applies if the land is "agricultural" and "unplatted." All other land would remain fair game for cities to annex under K.S.A. 12-521.

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A second safeguard for "521" annexations is built into a new election process (see Section 5(f)). The electors in the area to be annexed would be given an opportunity to vote by mail ballot on whether the annexation should be approved with the decision being made by majority rule. Again, many lawmakers are surprised to learn that we don't permit elections on a matter as important as annexation. We have reviewed the laws of other states and can only find a handful of states that allow such annexations without the right to vote. Indeed, such involuntary annexations are not allowed at all in many states. House members found it odd that Kansas voters are allowed to express themselves at the ballot box on issues such as city/county consolidation; city incorporation; expansion of city services to unincorporated areas; creation of a variety of service districts like water and libraries, etc., but not involuntary annexations. Voters even have a say in noxious weed control but no say in whether they will be forced against their will into the zoning, traffic and taxing obligations of a city.

A House floor amendment would limit the election provisions to Johnson, Sedgwick and Shawnee Counties. See Section 5(f)(2). We do not think this provision is necessary and would encourage the Committee to remove it if the committee opts to work HB 2029.

The final piece of the interim committee recommendation was the proposal to shorten the time in which counties must review whether a city has met its obligations to provide municipal services to a newly annexed area. See Section 1. Previous law required the review after 5 years and the amendment contained in HB 2029 shortens that period to 3 years. We also support this provision and believe that newly annexed landowners shouldn't have to wait 5 years before a city is held accountable for providing the promised services.

You are likely to be told that HB 2029 will cripple economic development although few, if any, specific illustrations of this claim have been provided. Since most states either don't allow involuntary annexations or allow landowners the right to vote and most cities don't even use the "521" statute, we fail to understand why this bill creates the "sky is falling" catastrophe the opponents have alleged. Instead, we think it is time Kansas got in line with other states in protecting its property owners from unwarranted and unlimited municipal land grabs.

Thank you for consideration of our views.



*PUBLIC POLICY STATEMENT*

**SENATE COMMITTEE ON LOCAL GOVERNMENT**

**RE: HB 2029; Restrictions on annexation**

**March 7, 2010**

**Submitted by:  
Brad Harrelson  
KFB Government Relations**

---

Chairman Reitz and members of the Senate Committee on Local Government, thank you for the opportunity to share the policy developed and adopted by our members. I am Brad Harrelson, State Director – Government Relations for Kansas Farm Bureau. As you know KFB represents farmers, ranchers and rural residents totaling more than 110,000 who live and work in each of the states 105 counties.

KFB members continually express a great deal of concern regarding the practices of cities seeking to annex surrounding lands. These practices have numerous negative consequences for agricultural operations and rural landowners, including but certainly not limited to financial impacts on land values and homeowners who will undoubtedly face higher tax bills for services they may not receive benefits from.

We wholeheartedly support the revisions suggested by HB 2029. The measure would provide increased transparency in the process of extending services and in the review of those efforts by County Commissions.

We also strongly support the prospects of expanding the 21 acre agricultural lands exclusion to County Commission approved annexations as proposed in HB 2030 and would view passage of that legislation alone as a significant improvement in the current state of the law. This provision would provide protection for owners of large tracts of land devoted to agricultural use.

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Finally, we support the provisions requiring annexation only after a majority vote of the residents of the area to be annexed. We would suggest that such a procedure should be applicable in all counties of the state.

Thank you once again for the opportunity to comment on this issue. We respectfully ask for your favorable consideration and stand ready to assist as you seek solutions for all Kansans.

For more information please contact:

Brad Harrelson  
Kansas Farm Bureau  
800 SW Jackson, Suite 1300  
Topeka, KS 66612  
785.234.4535  
[harrelsonb@kfb.org](mailto:harrelsonb@kfb.org)

*Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.*



League of Kansas Municipalities

300 SW 8th Avenue  
Topeka, Kansas 66603-3912  
Phone: (785) 354-9565  
Fax: (785) 354-4186

**To:** Senate Local Government Committee  
**From:** Don Moler, Executive Director  
**Re:** Opposition to HB 2029  
**Date:** March 8, 2010

First I would like to thank the Committee for allowing the League to appear today in opposition to HB 2029. The history of the Kansas annexation statutes is long and storied. I will not bore the Committee with all of the details and nuances of its development today. Suffice it to say, the annexation laws, as they are currently structured, are the result of a major conflict and compromise which occurred in the mid-1980's. The League was a major player in this struggle and worked with many interested parties to reach the eventual compromise which led to the current statutes we see today. As far as the League knows, the annexation statutes have worked well over the past 23 years, and we believe they continue to work well today.

The Committee should be aware that what is suggested by HB 2029 is a significant change in public policy and one which should not be undertaken lightly. There is always a natural tension involved between landowners and cities when cities are growing as a result of economic development, population changes, and the need for public services. We understand that landowners feel the need to be protected, and that is why there are so many protections currently found in the Kansas annexation statutes. The simple reality is that to adopt the language found in HB 2029 would effectively obliterate many K.S.A. 12-521 annexations, and would completely reverse many years of sound public policy in this state.

HB 2029, which passed the House last session on a vote of 75-47, provides that: "(b) No portion of any unplatted tract of land devoted to agricultural use of 21 acres or more shall be annexed by any city under the authority of this section,( K.S.A. 12-521) and amendments thereto, without the written consent of the owner thereof."

It goes on to say that in Johnson, Sedgwick, and Shawnee counties that: "If there are qualified voters residing in the area proposed to be annexed, then the county election officer shall conduct a mail ballot election under the provisions of K.S.A. 25-431, et seq., and amendments thereto, in the area proposed to be annexed within 60 days of such certification. If a majority of the qualified electors residing in the area proposed to be annexed and voting thereon approve the annexation, the city may annex the land by passage of an ordinance. If a majority of the qualified electors residing in the area proposed to be annexed and voting thereon reject the annexation, the lands shall not be annexed and the city may not propose the annexation of any such lands in the proposed area for at least four years from the date of the election."

HB 2029 would effectively eliminate petitioned for annexations under K. Sedgwick, and Shawnee counties, where the county commission now h

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land whether they are currently devoted to agricultural purposes or simply vacant. Planners will confirm that land use planning is done best when it can be done comprehensively rather than on a piecemeal basis.

There is no reason that agricultural lands cannot be located within the boundaries of a city. Overland Park and other metropolitan cities have zoning classifications for agricultural land. Indeed, in its 1985, 2002 and 2008 annexations, Overland Park adopted Johnson County's zoning regulations so that the annexations would not affect existing agricultural uses. Under state law, annexed land comes into a city with its county zoning in place, and the use of such land becomes a lawful non-conforming use that the city cannot prohibit. Even if the city were to rezone the agricultural land after it is annexed, the owner of the land has the right to continue the agricultural use.

Most importantly, the mere fact that a city annexes agricultural land does not mean that such land must cease its agricultural use and be converted to urban development. The land use will change only if the owner of the land chooses to change it. In addition, the land cannot be negatively affected by city development if it is annexed any more than it would be by county development or city development that would occur at the boundaries of the enclave if it is not annexed. In any event, agricultural land in urban areas will face pressures from surrounding development whether the agricultural land is within cities or outside of cities.

In short, the annexation of tracts of land of 21 acres or more and devoted to agricultural use can provide benefits to the community as a whole and is not detrimental to the owner of the land or the community. Where such danger exists as part of an annexation, the board of county commissioners has the right to deny a city from annexing such land.

House Substitute for House Bill 2029 will needlessly complicate an annexation process that has suited the state well for over forty years in its current version – over 100 years overall. The legislature carefully crafted statutes that recognize the need of cities to grow while placing proper oversight with counties to weigh the benefits of larger annexations on the community as a whole. The City of Overland Park disagrees with proponents who say this will not harm cities, and asks that the committee reject House Substitute for House Bill 2029.

approve or reject proposed city annexations. It would substitute the decision-making of the county commission in those counties with a vote of the people who live in the area, who would be largely motivated by self-interest, not what is best for the community at large. Secondly, the League is convinced that the nonuniform nature of the legislation also makes it clearly unconstitutional pursuant to Article 12, Section 5 of the Kansas Constitution.

Ultimately, HB 2029 takes the decision-making authority away from the elected officials of Johnson, Sedgwick, and Shawnee counties, who represent the individuals in the area to be annexed, and replaces it with a vote of the people who live in the area. The idea that a handful of landowners should be determining what is best for the community at large we think is bad public policy, and we would strongly urge this committee to reject it out of hand. Similarly, the 21 acre limitation is merely a device intended to eliminate the current city power to request approval from the county commission to annex larger tracts of land. This too is poor public policy, and the League would urge the committee to reject it as well.

# OVERLAND PARK

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Overland Park, Kansas 66212-2899  
TEL 913.895.6080/6083 • FAX 913.895.5095  
E-MAIL Bob.Watson@opkansas.org

## Oral Testimony to the Senate Local Government Committee Regarding House Substitute for House Bill 2029

By Robert J. Watson, City Attorney of Overland Park, Kansas

March 15, 2010 (Written Revised on March 19, 2010)

Chairman Reitz and Members of the Committee, I am Robert J. Watson, City Attorney of Overland Park. Thank you for the opportunity to speak to you on behalf of the City in opposition to House Substitute for HB 2029.

The City's written testimony submitted to you last week by Erik Sartorius, who is with me here today, sets out in detail why Overland Park considers HB 2029 to be a bad bill. You can read it at your leisure. I won't repeat the points made there.

Instead, I will touch on a couple of things that are not in our written testimony, and also rebut some of the misinformation that was conveyed to you by the proponents who spoke last week and today.

First, a little bit about the history of annexation in Kansas and its interrelationship with the history of Overland Park. Here are three maps that illustrate the points I will now make. [Pass out Map 1 -- Annexation by Decade; Map 2 -- 1968 Annexation; and Map 3 -- 2008 annexation.]

- For more than 100 years Kansas has allowed its local elected representatives to determine whether a city should be allowed to annex land and has not given the owners of the annexed land a veto. It so happens that Overland Park is celebrating its 50th birthday on May 20 of 2010. Over the 50 years of its existence, Overland Park has made frequent use its annexation powers. The first map that I passed out, the one in color, depicts the growth of the City over the 50 years. The original City is shown at the top in light yellow. During the 50-year span of time since May 20, 1960, Overland Park has increased its physical size more than 5-fold (13 to 75.3 square miles). It has increased its population more than 6-fold (from 28,000 to 173,000 persons). And it has increased its assessed valuation 100-fold (from \$27.7 million to \$2.7 billion). These increases are due, in no small part, to the City's ability to annex. I mention these things merely because I'm sure it is not lost on this body that this growth has greatly benefited the State of Kansas along with the local jurisdictions.

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HB 2029 would end that 100 year precedent in order to placate the special interests of persons who want the benefits of being near a city, but who do not want to share in the burdens that come with being part of a larger community.

- It seems to the City that during the economic doldrums we find ourselves in the Legislature should be removing obstacles to economic development, not adding new ones. There already are a massive number of procedural hoops in K.S.A. 12-521 that cities must jump through in order to annex land. The proponents of HB 2029 would add still more hoops, including an election among the resident owners of land in the annexed area. These additional hoops would effectively end the ability of cities to annex, even if the Board of County Commissioners finds it to be in the best interests of the County, unless the landowner consents to be annexed. I think it might be instructive to contrast an annexation undertaken by the City in 1968 with the one undertaken 40 years later, in 2008, that some of the proponents are critical of.
- The second map that I passed out shows that in 1968, in one proceeding, the City annexed 11.5 square miles. That annexation increased the size of the City by 32%. The record in that annexation consisted of a single sheet of paper. [Show annexation Ordinance No. A-505.] The land annexed then is now the heart of the City. For those of you who are familiar with Overland Park, the annexed land now contains the Corporate Woods Office Park and a 2-mile stretch of College Boulevard, among other things. It also contained approximately \$746 million of assessed value as of tax year 2008.
- The third map that I passed out shows that the City's 2008 annexation annexed 8.35 square miles. That annexation increased the size of the City by only 11%. The record generated in that annexation contains more than 3,000 pages, and stands just under 15 inches high. The whole process from the initial application to the decision of the BOCC took 6 months to complete. In addition to the material that ended up in the official record, the City has generated, so far, 23 banker boxes of documents in support of its position, not to mention whatever the opponents have generated. HB 2029 would create even more obstacles to annexation and development by requiring an election on top of everything else. The City of Overland Park believes that there is no need for any more process.
- The 8.35 square miles that the City annexed in 2008 is not rural land out in the middle of the state; rather it lies immediately adjacent to and abuts the boundary of Overland Park as that boundary existed just prior to the annexation. The eastern edge of the land annexed in 2008 is a mere 4.5 miles from the Missouri state line and from Kansas City, Missouri.
- Also, I would point out that 27 % of the land annexed in 2008 is platted, another 26% is unplatted but either developed or owned by business entities and another 15% is located within a proposed or existing sewer district.

- HB 2029 ties the hands of the BOCC that is charged with looking out for the greater good of the community as a whole. It gives a group of landowners, who are not charged with looking out for the greater good, extraordinary power to act in their own narrow self-interests and thereby trump the greater good.
- Finally, subparagraph (b) on page 6 of House Substitute for HB 2029 doesn't make sense when applied to the southernmost reach of the land annexed by OP in 2008. That subparagraph prohibits the Board of County Commissioners from allowing a city to annex an unplatted tract of land devoted to agricultural use of 21 acres or more without the written consent of the owner thereof. Had that subparagraph been in effect in 2008, for example, the Johnson County Board of County Commissioners could not have allowed the City of OP to annex a 133-acre tract of land unless the property owner approved, when the 133-acre tract is owned by a business entity called AMS Properties, LLC, and when the north 71 acres of the tract has been zoned for a 450,000 square foot shopping center at the request of the owner. This result would have occurred because the tract is more than 21 acres in size, is unplatted and currently is being used for agricultural purposes.

And now to address a couple of the misstatements made by proponents of House Substitute for HB 2029 last week and today. Time does not permit me to address all of the misstatements.

- First, their statement that there is a constitutional right to vote on an annexation is incorrect. There is no Kansas case that holds that a person has a constitutional right to vote on an annexation. Nor have we been able to find a case so holding anywhere else in the country. On the contrary, in *State ex rel. Jordan v. City of Overland Park*, 215 Kan. 700 (1974) and in *Callen v. Junction City*, 43 Kan. 627 (1890) the Kansas Supreme Court held that the annexation statutes do not violate due process or equal protection, and in those cases they cite to cases from other states holding no constitutional right to vote.
- Second, the City does not tell people how to use their land. There will be no strip mall on anyone's land if they don't want a strip mall on their land.

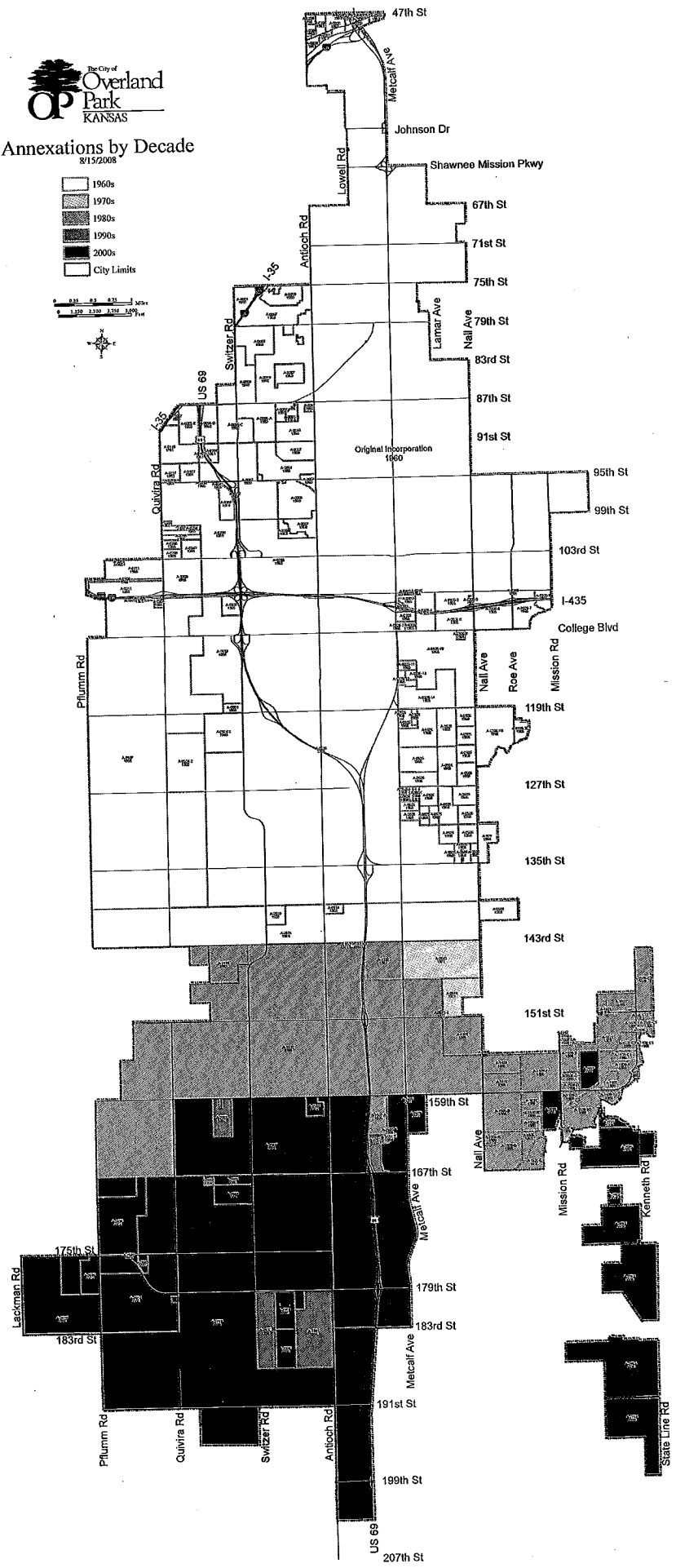
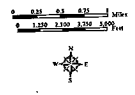
I will try to answer any questions, if anyone has any.

1960s  
 1970s  
 1980s  
 1990s  
 2000s  
 City Limits  
 Original Incorporation 1960  
 US 69  
 I-435  
 State Line

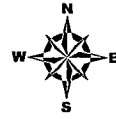




**Annexations by Decade**  
8/15/2008

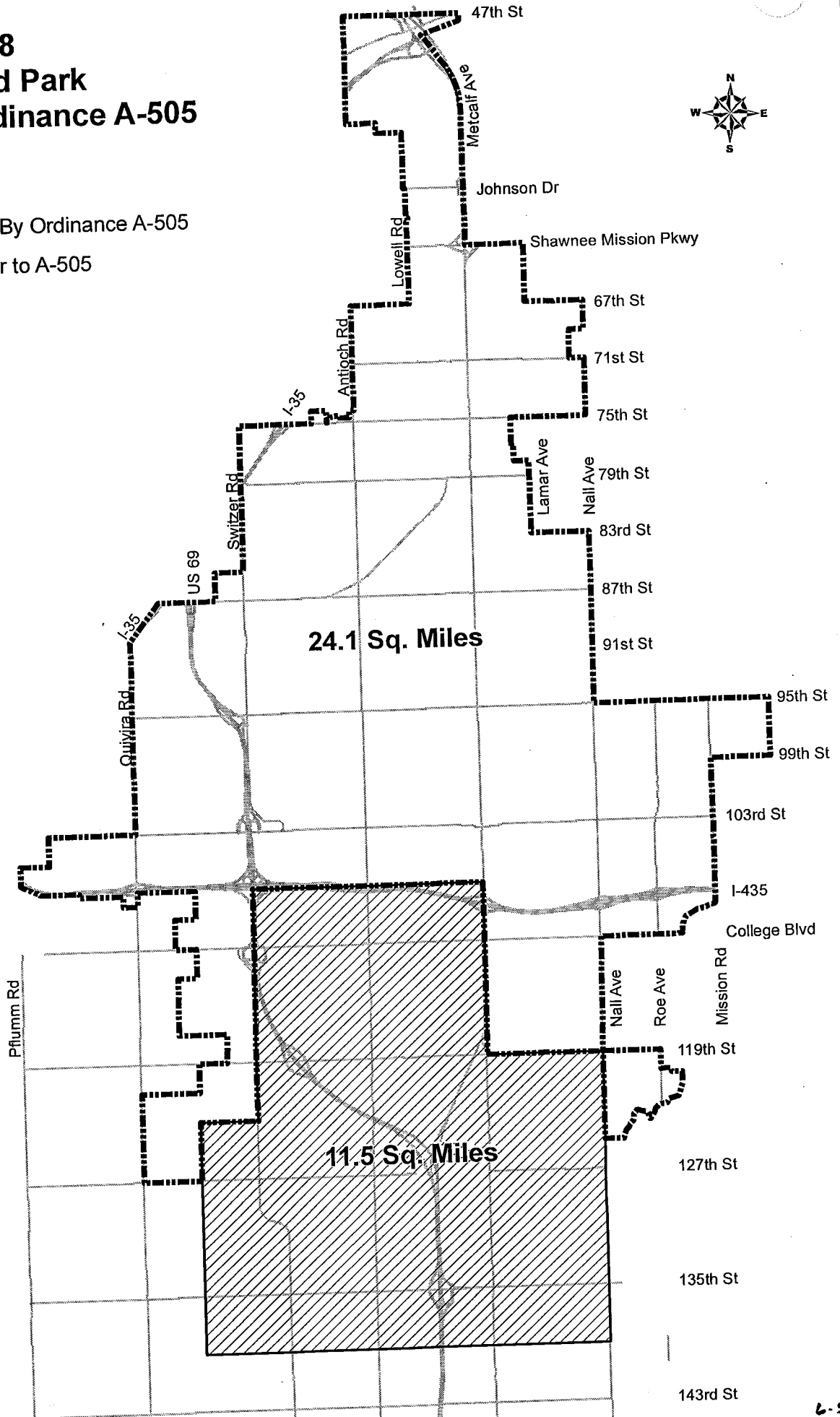
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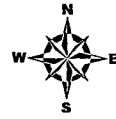
# 1968 Overland Park Annexation Ordinance A-505





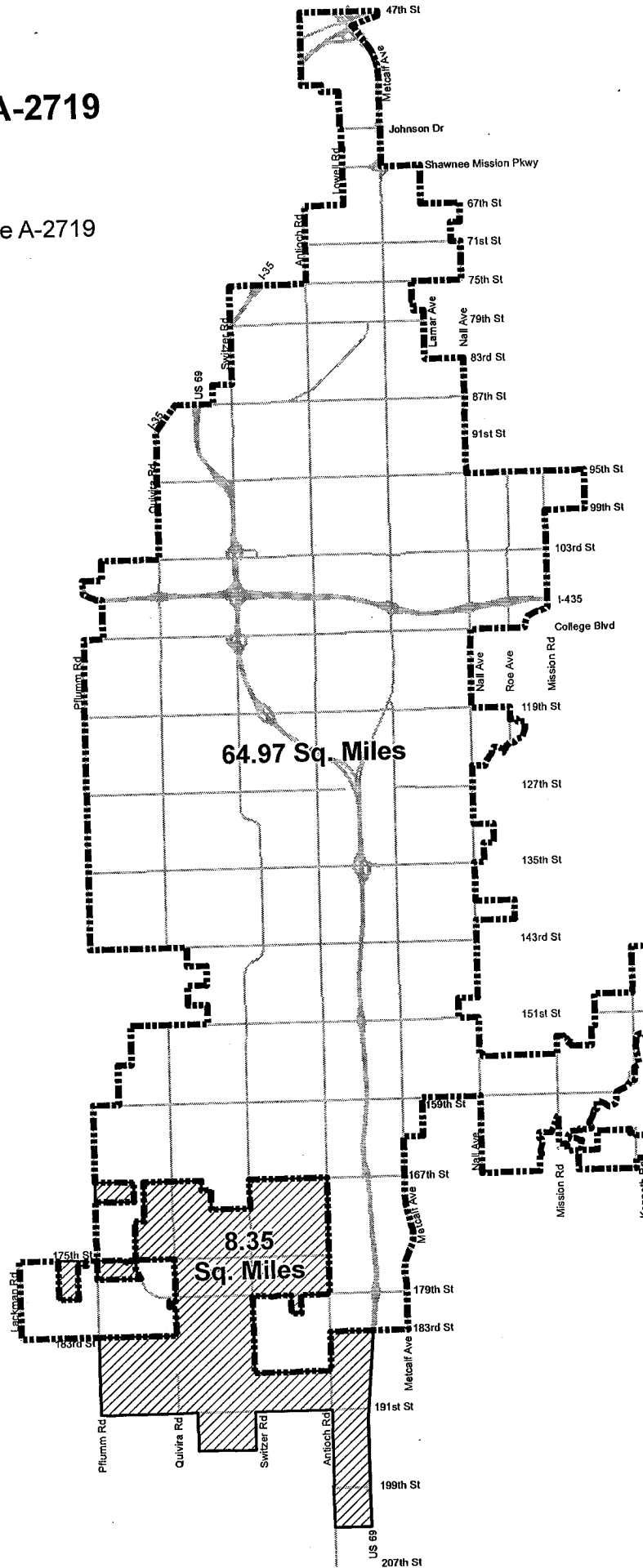
-  Land Annexed By Ordinance A-505
-  City Limits Prior to A-505



# 2008 Overland Park Annexation Ordinance A-2719



-  Land Annexed By Ordinance A-2719
-  City Limits Prior to A-2719



ORDINANCE NO. A-505

AN ORDINANCE RELATING TO THE ANNEXATION AND ADDITION OF LAND TO THE CITY OF OVERLAND PARK, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

SECTION 1. The following described land in Johnson County, Kansas, having a common perimeter with the City boundary line of the City of Overland Park, Kansas, of more than fifty percent (50%) is hereby added and annexed to the City of Overland Park, Kansas:

- The South one-half of Section 12, Township 13, Range 24.
- The South one-half of Section 7, Township 13, Range 25.
- Section 13, Township 13, Range 24.
- Section 18, Township 13, Range 25.
- The Southeast one-quarter of Section 23, Township 13, Range 24.
- Section 24, Township 13, Range 24.
- Section 19, Township 13, Range 25.
- Section 20, Township 13, Range 25.
- The East one-half of Section 26, Township 13, Range 24.
- Section 25, Township 13, Range 24.
- Section 30, Township 13, Range 25.
- Section 29, Township 13, Range 25.
- The Northeast one-quarter of Section 35, Township 13, Range 24.
- The North one-half of Section 36, Township 13, Range 24.
- The North one-half of Section 31, Township 13, Range 25.
- The North one-half of Section 32, Township 13, Range 25.


SECTION 2. Said land described in Section 1 hereof shall become subject to the provisions of all ordinances of the City.

SECTION 3. This Ordinance shall take effect and be in force from and after its official publication.

PASSED by the City Council this 9th day of April, 1968.

APPROVED by the Mayor this 9th day of April, 1968.

ATTEST:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
City Attorney

# OVERLAND PARK

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Testimony before the  
Senate Local Government Committee  
Regarding House Substitute for House Bill 2029  
By Erik Sartorius

March 8, 2010

The City of Overland Park appreciates the opportunity to appear before the committee and present testimony in opposition to House Substitute for House Bill 2029. For over 100 years, Kansas has allowed its elective representatives to determine whether a city should be able to annex land, and there has never been a referendum on annexations. In 1967, pursuant to the constitutional home rule amendment for cities, the Kansas legislature adopted a carefully crafted set of statutes for municipal annexations. The 1967 law was the result of careful and lengthy analysis with all of the stakeholders at the table.

Primarily, HB 2029 seeks to amend K.S.A. 12-521. This statute generally applies when a city cannot annex land under K.S.A. 12-520 or -520c, and the city must petition the board of county commissioners for approval to annex all or some of the land set out in the petition. The city must prepare a plan for the extension of services to the area and present other information to the county board which holds a public hearing on the proposed annexation. The board of county commissioners determines if the proposed annexation will result in manifest injury to the residents of the area proposed to be annexed if the annexation is approved, or to the petitioning city if the annexation is denied. In determining manifest injury, the board must consider a minimum of 14 factors. Any aggrieved landowner can appeal the board's decision to the courts if the annexation is approved.

If the board of county commissioners rules in favor of a petition to annex land, HB 2029 dictates an election must be held in the area proposed to be annexed (apparently even if the county approves an area smaller than the area the city proposed to annex). Curiously, the bill only applies this procedure to annexation occurring in Johnson, Sedgwick, and Shawnee Counties, which brings into question the constitutionality of the bill. If a majority of the qualified electors "residing in the area proposed to be annexed and voting" reject the annexation, the petitioning city may not propose to annex the land for four years following the election. This prohibition would apply even if landowners consented to annexation.

The proposed bill is based upon the erroneous assumption that we cannot trust local elected officials to do their jobs and make decisions that are in the best interest of the people they serve. Elected officials in cities and counties are committed to serve the public interest. In our system

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of government, officials are elected to represent the people and to make decisions on their behalf, in most instances without any right of referendum. In large measure, this is due to the complexity of the decisions that elected leaders have to make.

It is hard to imagine why a decision this complicated (the public record for Overland Park's 2008 annexation contained 3,000 pages of documents) should be left to what might be a handful of voters. An annexation under K.S.A. 12-521 might have only a dozen or fewer residents who are registered to vote. Even when there are many landowners in the area proposed to be annexed, under this bill a majority might not be eligible to vote. In the 2008 Overland Park annexation, 61% of the land (other than right-of-way tracts) is owned by resident and non-resident entities (businesses and trusts) with no right to vote.

Finally, an underlying premise for petition annexations reviewed by a board of county commissioners is that consideration is given to what is best for the community at large. Narrowing the focus only to the effect of the annexation on the immediate area via an election would remove the broader perspective current law requires.

In a time when as a nation we must figure out how to grow the economy and promote job development, it is extraordinarily difficult to see why we should change 100 years of annexation law to placate the special interests of persons who want the benefits of being near a city, but who do not want to share in the burdens that come as part of being part of a community.

Another provision contained within HB 2029 would prohibit cities from annexing pursuant to K.S.A. 12-521 any portion of any tract of land that is 21 acres or more and devoted to agricultural use. Such a parcel could only be annexed with the consent of the landowner. Although the provision might seem well-intended, it will interfere with the proper growth and development of city and county governments and the regions in which they exist.

K.S.A. 12-520(b) already prohibits cities from annexing such tracts unilaterally—meaning without the consent of the property owner and without the approval of the board of county commissioners. This same prohibition does not need to be applied to when cities must petition the board of county commissioners for approval to annex land.

Under K.S.A. 12-521(c)(1), the first factor for the board of county commissioners to examine when determining whether to permit a city to annex an area is the “extent to which any of the area is land devoted to agricultural use.” However, the legislature recognized when they drafted K.S.A. 12-521, that numerous other factors might weigh in favor of annexation even if some the area proposed to be annexed consisted of parcels of land of 21 acres or more and devoted to agricultural use. The City believes that the board of county commissioners is in the best position to make decisions on the annexation of such parcels on a case by case basis applying the specific criteria that a board is required to consider.

It is important that as cities grow, they be able to bring in large parcels of land as well as smaller ones. At least in growing metro areas such as Johnson County, it is imperative that cities be able to plan, in conjunction with the present landowners, for the future use of large parcels of



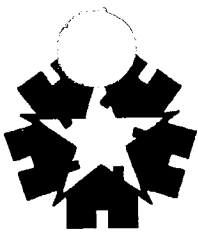
land whether they are currently devoted to agricultural purposes or simply vacant. Planners will confirm that land use planning is done best when it can be done comprehensively rather than on a piecemeal basis.

There is no reason that agricultural lands cannot be located within the boundaries of a city. Overland Park and other metropolitan cities have zoning classifications for agricultural land. Indeed, in its 1985, 2002 and 2008 annexations, Overland Park adopted Johnson County's zoning regulations so that the annexations would not affect existing agricultural uses. Under state law, annexed land comes into a city with its county zoning in place, and the use of such land becomes a lawful non-conforming use that the city cannot prohibit. Even if the city were to rezone the agricultural land after it is annexed, the owner of the land has the right to continue the agricultural use.

Most importantly, the mere fact that a city annexes agricultural land does not mean that such land must cease its agricultural use and be converted to urban development. The land use will change only if the owner of the land chooses to change it. In addition, the land cannot be negatively affected by city development if it is annexed any more than it would be by county development or city development that would occur at the boundaries of the enclave if it is not annexed. In any event, agricultural land in urban areas will face pressures from surrounding development whether the agricultural land is within cities or outside of cities.

In short, the annexation of tracts of land of 21 acres or more and devoted to agricultural use can provide benefits to the community as a whole and is not detrimental to the owner of the land or the community. Where such danger exists as part of an annexation, the board of county commissioners has the right to deny a city from annexing such land.

House Substitute for House Bill 2029 will needlessly complicate an annexation process that has suited the state well for over forty years in its current version – over 100 years overall. The legislature carefully crafted statutes that recognize the need of cities to grow while placing proper oversight with counties to weigh the benefits of larger annexations on the community as a whole. The City of Overland Park disagrees with proponents who say this will not harm cities, and asks that the committee reject House Substitute for House Bill 2029.



**HOME BUILDERS ASSOCIATION  
OF GREATER KANSAS CITY**



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**NAHB**

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**Written Testimony on H.B 2029  
Phil Perry, VP of Governmental Affairs  
Home Builders Association of Greater Kansas City  
March 8, 2010**

Mr. Chairman and members of the committee, thank you this opportunity to present written testimony concerning H.B. 2029. As the bill is presently written the Home Builders Association of Greater Kansas City stands in opposition to this change in the way that annexations would occur in the State of Kansas.

The present statute was originally adopted in the late 1960's and has had minor changes made over the past 40 years, indicating that by and large, this law works. We see no reason to change the current law for several reasons:

- 1) Annexation provides the ability for cities to grow in an organized and orderly fashion;
- 2) Cities are better able to provide planning for future growth;
- 3) County governments are unable to provide for the infrastructure needs of developing unincorporated areas;
- 4) The current system, where elected officials hold public hearings and deliberations, before casting their votes, provides fair and reasonable public input and a responsible decision making process.

It is the belief of the Home Builders Association of Greater Kansas City, that to allow a small group of citizens to control the historically orderly patterns of growth could disrupt the economic development and well being of an entire community. Specifically, we do not understand how this bill would require the county commissioners to consider the impact upon the entire community that has proposed the annexation, but allow only the registered voters in the impacted area to decide the fate of the annexation. If there is to be a vote, it should include all those that are affected in this process, including those in the city that has proposed such an annexation.

The Home Builders Association of Greater Kansas City is also greatly concerned with the restriction created by this bill to for agricultural lands greater than 21 acres. We feel again that this restriction will prohibit cities from adequately planning for future growth.

Senate Local Government

3-15-2010

*Do Business With A Member*

Attachment 8-1



## Testimony in opposition to HB 2029

Submitted by Jennifer Bruning  
On behalf of the Overland Park Chamber of Commerce

Senate Local Government Committee  
Monday, March 8, 2010

Chairman Reitz and Committee Members:

My name is Jennifer Bruning, and I am Vice President of Government Affairs with the Overland Park Chamber of Commerce. I am submitting written testimony today in opposition to House Bill 2029 on behalf of our board of directors and our nearly 1,000 member companies.

One of the standing priorities of the Overland Park Chamber is to oppose changes to statutes further restricting a city's ability to annex unincorporated land needed for growth. Our chamber has witnessed the successful growth of Overland Park for many years, and we believe it is due in large part to the city's willingness and ability to plan strategically to accommodate the growth.

Throughout our history of development and growth, annexation has been a tool used by area cities to successfully allow our area to grow. Planning for growth is a fundamental responsibility of cities, and we believe HB 2029 will severely impact that ability should the proposed service form reforms, additional voting requirements, and annexation prohibitions be put in place.

First, we see several possible issues associated with the voting provisions of this bill. First off, it appears that residents already have a "vote" in the process because they elect the county commission that is involved in determining if the annexation should go forward or not. We believe the process currently in place has been shown to work well and provides multiple opportunities for review and evaluation before annexation moves forward.

Second, the agricultural land restriction (21 acres or more) would cause future growth to have unnatural gaps in an otherwise orderly development pattern by causing "leap frog development." This would leave "holes" because of land tracks over 21 acres that would not be allowed to be annexed. This results in inefficient development. These fragmented and non-contiguous land uses can result in higher development costs and higher service costs resulting in higher taxes to citizens in the area.

HB 2030 would impede a city's ability to plan for and accommodate growth, causing the growth that is going to occur to be less efficient and more costly. In our area, policies and procedures are in place now to allow a

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3-15-2010

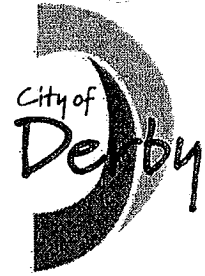
Attachment 9-1



rural area to be joined to a city when it begins to be urbanized. HB 2030 will disrupt the natural development pattern that is occurring now.

Finally, the reforms proposed in this bill to the annexation review process are costly and unnecessary. With the crippling economic conditions our municipalities are facing, the state should not place increased restrictions on a city's ability to develop land in a healthy and safe, yet economical way.

For all these stated reasons, we urge you to oppose HB 2029. Thank you very much for your time.



**Kathleen B. Sexton**  
**City Manager**

March 5, 2010

Senator Roger Reitz, Chair  
Senate Local Government Committee  
Capital Office Room 235-E  
Topeka, KS 66612

Re: Three House Bills concerning Annexation of Territory by Cities

Dear Chairman Reitz and Committee Members:

Thank you for this opportunity to provide written testimony to the Local Government Committee in opposition to three annexation bills: HB 2471, HB 2478 and HB 2029. The ability of cities in Kansas to promote and plan for orderly growth is inherent to the ultimate success of our cities and therefore our state.

It is no secret that the vast majority of counties in Kansas are depopulating and that our state's population base is congregating in and around certain metropolitan and micropolitan areas. Economically, people need to live where they can find work. As people congregate, systems must be established to adequately and equitably pay for public services. Annexation is a necessary tool to ensure public services are paid for by those benefitting from them and can be provided well into the future.

HB 2471, perhaps instigated by the actions of one city, is not good reason to change well-established public policy. More importantly, because the primary purpose of annexation is to modify city boundaries, state policy should be clear as how requirements are to be met.

State laws governing annexation are adequate in defining the requirements of cities and the role of county commissions to oversee the annexation process when cities and neighboring property owners cannot come to terms independently. State laws are respectful of the rights of property owners as well as the benefits that cities provide such as safe drinking water systems, sanitary sewer systems, and other infrastructure to support modern-day living for denser populations than are possible in rural areas. HB 2478 will change the annexation process from a carefully considered planning process that already includes a state-required service plan, into a purely political decision by the board of county commissioners.

**City of Derby**  
**City Manager's Office**

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*Our mission is to create vibrant neighborhoods, nurture a strong business environment, and preserve beautiful green spaces.*

Senate Local Government

3-15-2010

Attachment 10 - 1

Senator Roger Reitz, Chair  
March 5, 2008  
Page 2

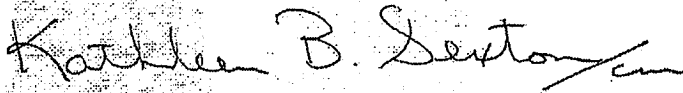
Property owners facing annexation understandably often focus on the increased taxes rather than the benefits they have received or will receive in the future from municipal services. As proposed in HB 2029, an election solely involving those on one side of the issue is not as democratic as it may sound on the surface. If a vote of the people were required, it should include a much larger contingent of those actually paying the bills for public services that are available to those not paying the bills.

Regardless, an election really should not be required because the elected county commission currently decides such matters and serves as a check against a city that may occasionally get overly rambunctious. County commissioners currently weigh all sides of the issue in an open, public setting and make a determination for the good of the entire community. Sometimes they tell cities "no" and sometimes they ask us probing questions, which ensures the check and balance that the legislature intended.

The state's current annexation policy works. In fact, Kansas should be proud of its annexation laws. Our system is better than that of many states.

Thank you for your consideration of rejecting all three annexation bills.

Highest regards,



Kathleen B. Sexton  
City Manager

KBS/sk