

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

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

All members were present except:

Representative Bob Bethell- excused
Representative Broderick Henderson- excused

Committee staff present:

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

Conferees appearing before the Committee:

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

Others attending:

See attached list.

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

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

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

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

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

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

Representative Pottorff mentioned that there were no opponents to the bill and ask if there had been opponents in the Senate. Phil said that they had talked to the cities and there was no opposition. It passed the Senate 36 to 3 so there has not been any opposition to this bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

After hearing Representative Worley's comments, Renae asked if the term "mobile" home should be stricken

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and the terms “manufactured and modular” homes should be put in its place. Chris Wilson and Martha Neu Smith agreed that would be an appropriate change. The consensus of the Committee was that that was a good change.

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

The next meeting is scheduled for March 11, 2009.

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