

February 4, 2013

RE: Written Testimony to House Local Government Committee
Kansas House of Representatives
Supporting HB 2089 and HB 2118

Mr. Chairman and Committee Members:

My name is Greg R. Vetter. I am a tenured professor at the University of Houston Law Center (UHLC). My primary areas of teaching and scholarship are intellectual property law. On occasion, I also teach the first-year Property Law course. My full CV is available at: <http://www.law.uh.edu/faculty/gvetter/documents/GregVetterCV.pdf>

I submit this written testimony with the objective of informing the public debate concerning HB 2089 and HB 2118. My policy assessment of the two bills in question represents my own views and not those of my employer, UHLC.

I am familiar with K.S. §§ 75-2701 through 75-2732 via self study over the last two years. My intellectual interest in these provisions of Kansas law relates, in part, to my spouse, who is a physician who operates her medical practice in a building in the downtown section of Chanute, Kansas. I also volunteered to serve on the Downtown Revitalization Committee chartered by the City of Chanute in late 2011.

In the basic Property Law course, I teach various ways in which real property can have a “cloud” on its title or in other ways have limitations placed on its use. Any public policy limitation on the use of real property should, in my view, have benefits sufficient to offset its burdens. The benefit/burden balance should apply to the property owner and the public at large. When I encountered the “environs” provision in K.S. § 75-2724, it did not seem to have that balance in either sense.

The goal of the environs provision is understandable: preserve cultural heritage by physically buffering the region of a property/district with the “historic” designation. This is thought to benefit the historic property/district directly because surrounding property will not deviate in historic character.

The burdens to obtain this benefit, however, are distributed to other property owners in the environs region. The primary benefit I can imagine for those in the environs is the speculation that the historic property at the center of the environs region might elevate property values in the entire region. The burdens to environs property owners relate to the \$25,000 civil penalty in § 75-2724(d). If one is to take this civil penalty seriously, there is an administrative review step necessary for external revisions to one’s structure that go much beyond simple painting. Regardless of the speed and efficacy of the bureaucratic machinery performing reviews, the assessment evaluates the proposed external revisions of one’s property according to the historic character of the property at the center of the environs.

Thus, the property owner within the environs has a potential limitation on use, without any tangible benefit. While the strength of the benefits and burdens are hard to quantify, and can change over time, the basic asymmetry of the benefit/burden calculus is what concerns me: benefit at the center; burden in the environs.

These policy considerations lead me to support both HB 2089 and HB 2118.

Of the two bills, I strongly favor HB 2118 because it cleanly removes the environs burden on property owners surrounding a historic property/district, but still allows a project that “directly involves” a historic property to fall within the regulatory scheme envisioned across K.S. §§ 75-2701 through 75-2732. The legal standard in words, “directly involves,” seems to me to be a better policy tool than the completely quantified “500 feet” or “1,000 feet” presently appearing in § 75-2724.

If HB 2118 did not become law, but HB 2089 did, this is still in my view a positive policy development. Localities that are concerned with the benefit/burden calculus I describe above could depart from the existing scheme as I understand the intent of HB 2089. However, properties in unincorporated areas would not, as I understand HB 2089, have a mechanism to depart the presently existing scheme.

Thanks and Warm Regards,



Greg R. Vetter

Chanute Address: 930 S. Highland Ave., Chanute, Kansas 66720