

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2575

By: Beutler

COMMITTEE SUBSTITUTE

An Act relating to counties; amending 19 O.S. 1991, Sections 865.51, 865.52, 865.57, 866.19 and 869.4, which relate to county planning commissions and county boards of adjustment; modifying application of authority; removing certain establishment requirements; specifying authority of commissions; requiring certain plans; modifying jurisdiction of the commissions; providing for authority relating to transfer and disposal of waste products; providing and modifying procedures for termination of nonconforming uses; providing procedures and criteria for cleaning and moving of certain nonincorporated property; providing for notice, hearing costs for liens and abatement of certain conditions; defining terms; providing for condemnation of certain dilapidated buildings; providing for notice, removal, costs and liens therefor; defining terms; specifying nuisance; providing for liability; providing for payments; specifying contents of notice; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 19 O.S. 1991, Section 865.51, is amended to read as follows:

Section 865.51 For the purpose of cooperating with the State of Oklahoma in conserving the natural resources of the state, and in promoting the health, safety, peace and general welfare of the people of the state, there may be provided in any county of the State of Oklahoma county planning in the manner herein provided, and for that purpose there is hereby authorized to be created in each of such counties a county planning commission and a county board of adjustment with the respective powers and duties as set out in this act. ~~In no county shall there be at the same time a county planning commission established pursuant to this section and a metropolitan area planning commission established pursuant to Section 866.1 of Title 19 and Section 863.2 of Title 19 of the~~

~~Oklahoma Statutes. Provided that county County~~ commissioners may by proper resolution confer authority to any metropolitan area planning commission located in such county for the purposes of planning for unincorporated areas existing in county. ~~Provided further that any county planning commission created under the provisions of this act shall have no jurisdiction over the area covered by any Lake Area Planning and Zoning Commission in any county created pursuant to Section 866.36 of Title 19 of the Oklahoma Statutes~~ In those counties where a metropolitan area planning commission exists, the jurisdiction set forth in this act shall be exclusive to the unincorporated areas of the county. The commission may avail itself to provisions of Sections 866.1 through 866.35 of this title.

SECTION 2. AMENDATORY 19 O.S. 1991, Section 865.52, is amended to read as follows:

Section 865.52 Each county of the state which is hereby authorized to avail itself of the provisions of this act is hereby authorized to set up a planning commission by resolution of the board ~~and by a vote of the majority of the people voting at an election called for such purpose in said county~~ and to appropriate funds in the amounts necessary to carry out the purpose of this act. The commission, upon approval of the board, is hereby authorized to contract for, receive and utilize any grants or other financial assistance from the federal or state government or from any other source, public or private, in furtherance of its functions and may incur necessary expenses in obtaining said grants and/or financial assistance within the limits of its appropriations.

SECTION 3. AMENDATORY 19 O.S. 1991, Section 865.57, is amended to read as follows:

Section 865.57 A. The commission may prepare, adopt, and from time to time revise, amend, extend or add to a plan or plans for the development of the area for the purpose of bringing about an orderly, coordinated physical development in accordance with the present and future needs.

B. The commission shall have the authority to develop a plan which organizes the flow, collection, transfer and disposal of solid waste and hazardous waste. The plan developed by the commission shall address the needs of the county as they exist or develop, provided, the commission shall not regulate those entities regulated by any state environmental agency except as provided for by statute. The plan may also include recommendations for cost recovery through a fee schedule and a collection system. This plan will be presented to the board of county commissioners for approval and implementation. The jurisdiction of the commission shall not be diminished without the consent of the commission and the board of county commissioners. For the purpose of providing the orderly flow, collection, transfer and disposal of solid waste and hazardous waste, the commission shall have authority to avail itself to the provisions of Chapter 31 of Title 74 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 19 O.S. 1991, Section 866.19, is amended to read as follows:

Section 866.19 A. The board, within its area of jurisdiction, may provide for the termination of nonconforming uses either by specifying the period or periods within which they shall be required to cease, or by providing a formula or formulas whereby the compulsory termination of nonconforming use shall be so fixed as to allow a reasonable period for the recovery of amortization of the investment in the nonconformance, provided, that in each instance any such action of the board shall be taken only after public notice and hearing thereon has been had before the commission and that commission's recommendations with respect thereto certified to the board.

B. 1. The board may cause property located within residential subdivisions of the unincorporated limits to be cleaned of trash and weeds or grass to be cut or mowed in accordance with the following procedure:

- a. at least ten (10) days' notice shall be given to the owner of the property by mail at the address shown by the current year's tax rolls in the county

treasurer's office before the board of county planning commissions holds a hearing or takes action. The notice shall order the property owner to clean the property of trash, or to cut or mow the weeds or grass on the property, as appropriate, and said notice shall further state that unless such work is performed within ten (10) days of the date of the notice the work shall be done by the county and a notice of lien shall be filed with the county clerk against the property for the costs due and owing the county. At the time of mailing of notice to the property owner, the county shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee. However, if the property owner cannot be located within ten (10) days from the date of mailing by the commission, notice may be given by posting a copy of the notice on the property or by publication, as defined in subsection D of this section, one time not less than ten (10) days prior to any hearing or action by the county. If a board anticipates summary abatement of a nuisance in accordance with the provisions of paragraph 2 of this subsection, the notice, whether by certified mail, posting or publication, shall state: that any accumulations of trash or excessive weed or grass growth on the owner's property occurring within six (6) months after the removal of trash or cutting or mowing of weeds or grass on the property pursuant to such notice may be summarily abated by the commission; that the costs of such abatement shall be assessed against the owner; and that a lien may be imposed on the property to secure such payment, all without further prior notice to the property owner,

- b. the owner of the property may give his written consent to the county authorizing the removal of the trash or the mowing of the weeds or grass. By giving said written consent, the owner waives his right to a hearing by the county,
- c. a hearing may be held by the commission to determine whether the accumulation of trash or the growth of weeds or grass has caused the property to become detrimental to the health, benefit and welfare of the public and the community or a hazard to traffic or creates a fire hazard to the danger of property,
- d. upon a finding that the condition of the property constitutes a detriment or hazard, and that the property would be benefited by the removal of such conditions, the agents of the county are granted the right of entry on the property for the removal of trash, mowing of weeds or grass, and performance of the necessary duties as a governmental function of the county. Immediately following the cleaning or mowing of the property, the county clerk shall file a notice of lien describing the property and the work performed by the county and stating that the county claims a lien on said property for the cleaning or mowing costs,
- e. the county shall determine the actual cost of such cleaning and mowing and any other expenses as may be necessary in connection therewith, including the cost of notice and mailing. The county clerk shall forward by mail to the property owner specified in subparagraph a of this paragraph a statement of such actual cost and demanding payment. If the cleaning and mowing are done by the county, the cost to the property owner for said cleaning and mowing shall not exceed the actual cost of the labor, maintenance and equipment required. If the cleaning and mowing

are done on a private contract basis, the contract shall be awarded to the lowest and best bidder,

f. if payment is not made within thirty (30) days from the date of the mailing of the statement, the county clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located and the same shall be levied on the property and collected by the county treasurer as other taxes authorized by law. Until fully paid, the cost and the interest thereon shall be the personal obligation of the property owner from and after the date the cost is certified to the county treasurer. In addition the cost and the interest thereon shall be a lien against the property from the date the cost is certified to the county treasurer, coequal with the lien of ad valorem taxes and all other taxes and special assessments and prior and superior to all other titles and liens against the property, and the lien shall continue until the cost shall be fully paid. At the time of collection, the county treasurer shall collect a fee of Five Dollars (\$5.00) for each parcel of property. Said fee shall be deposited to the credit of the general fund of the county. At any time prior to the collection as provided in this subparagraph, the county may pursue any civil remedy for collection of the amount owing and interest thereon including an action in personam against the property owner and an action in rem to foreclose its lien against the property. A mineral interest, if severed from the surface interest and not owned by the surface owner, shall not be subject to any tax or judgment lien created pursuant to this section. Upon receiving payment, if any, the county clerk shall forward to the county treasurer a notice of

such payment and directing discharge of the lien,
and

g. the county may designate an administrative officer
or administrative body to carry out the duties of
the board in this subsection. The property owner
shall have a right of appeal to the board from any
order of the administrative officer or
administrative body. Such appeal shall be taken by
filing written notice of appeal with the county
clerk within ten (10) days after the administrative
order is rendered.

2. If a notice is given by the board to a property owner
ordering the property within the unincorporated limits to be
cleaned of trash and weeds or grass to be cut or mowed in
accordance with the procedures provided for in this subsection,
any subsequent accumulations of trash or excessive weed or grass
growth on the property occurring within a six-month period may be
declared to be a nuisance and may be summarily abated without
further prior notice to the property owner. At the time of each
such summary abatement, the county shall notify the property owner
of the abatement, and the costs thereof. The notice shall state
that the property owner may request a hearing within ten (10) days
after the date of mailing the notice. The notice and hearing
shall be as provided for in this subsection. Unless otherwise
determined at the hearing, the cost of such abatement shall be
determined and collected as provided for in subparagraphs e and f
of paragraph 1 of this subsection. Provided, however, that this
subsection shall not apply if the records of the county clerk show
that the property was transferred after notice was given pursuant
to this subsection.

3. The commission may enact ordinances to prohibit owners of
property or persons otherwise in possession or control located
within the unincorporated limits from allowing trash to accumulate
or weeds to grow or stand upon the premises and may impose
penalties for violation of said ordinances.

C. A commission may cause dilapidated buildings located within residential subdivisions of the unincorporated limits to be torn down and removed in accordance with the provisions of this section.

1. At least ten (10) days' notice that a building is to be torn down or removed shall be given to the owner of the property before the board holds a hearing. A copy of the notice shall be posted on the property to be affected. In addition, a copy of said notice shall be sent by mail to the property owner at the address shown by the current year's tax rolls in the office of the county treasurer. Written notice shall also be mailed to any mortgage holder as shown by the records in the office of the county clerk to the last-known address of the mortgagee. At the time of mailing of notice to any property owner or mortgage holder, the county shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee. However, if neither the property owner nor mortgage holder can be located, notice may be given by posting a copy of the notice on the property or by publication as defined in subsection D of this section. Such notice may be published once not less than ten (10) days prior to any hearing or action by the county pursuant to the provisions of this section.

2. A hearing shall be held by the commission to determine if the property is dilapidated and has become detrimental to the health, safety or welfare of the general public and the community, or if said property creates a fire hazard which is dangerous to other property.

3. Pursuant to a finding that the condition of the property constitutes a detriment or a hazard and that the property would be benefited by the removal of such conditions, the commission may cause the dilapidated building to be torn down and removed. The commission shall fix reasonable dates for the commencement and completion of the work. The county clerk shall immediately file a notice of dilapidation and lien describing the property, the findings of the county at the hearing and stating that the county

claims a lien on said property for the destruction and removal costs and that such costs are the personal obligation of the property owner from and after the date of filing of said notice. The agents of the county are granted the right of entry on the property for the performance of the necessary duties as a governmental function of the county if the work is not performed by the property owner within dates fixed by the commission.

4. The commission shall determine the actual cost of the dismantling and removal of dilapidated buildings and any other expenses that may be necessary in conjunction with the dismantling and removal of the buildings, including the cost of notice and mailing. The county clerk shall forward a statement of the actual cost attributable to the dismantling and removal of the buildings and a demand for payment of such costs, by mail to the property owner. In addition, a copy of said statement shall be mailed to any mortgage holder at the address provided for in paragraph 1 of this subsection. At the time of mailing of the statement of costs to any property owner or mortgage holder, the county shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee. If a county dismantles or removes any dilapidated buildings, the cost to the property owner shall not exceed the actual cost of the labor, maintenance and equipment required for the dismantling and removal of the dilapidated buildings. If dismantling and removal of the dilapidated buildings is done on a private contract basis, the contract shall be awarded to the lowest and best bidder.

5. When payment is made to the county for costs incurred, the county clerk shall file a release of lien, but if payment attributable to the actual cost of the dismantling and removal of the buildings is not made within six (6) months from the date of the mailing of the statement to the owner of such property, the county clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located. Said costs shall be levied on the property and collected by the county treasurer as are other taxes

authorized by law. Until finally paid, the costs and the interest thereon shall be the personal obligation of the property owner from and after the date of the notice of dilapidation and lien is filed with the county clerk. In addition the cost and the interest thereon shall be a lien against the property from the date the notice of the lien is filed with the county clerk. Said lien shall be coequal with the lien of ad valorem taxes and all other taxes and special assessments and shall be prior and superior to all other titles and liens against the property. The lien shall continue until the cost is fully paid. At the time of collection, the county treasurer shall collect a fee of Five Dollars (\$5.00) for each parcel of property. Said fee shall be deposited to the credit of the general fund of the county. At any time prior to collection as provided for in this paragraph, the county may pursue any civil remedy for collection of the amount owing and interest thereon including an action in personam against the property owner and an action in rem to foreclose its lien against the property. A mineral interest, if severed from the surface interest and not owned by the surface owner, shall not be subject to any tax or judgment lien created pursuant to this section. Upon receiving payment, the county clerk shall forward to the county treasurer a notice of such payment and shall direct discharge of the lien.

6. The county may designate an administrative officer or administrative body to carry out the duties of the board specified in this section. The property owner shall have the right of appeal to the board from any order of the administrative officer or administrative body. Such appeal shall be taken by filing written notice of appeal with the county clerk within ten (10) days after the administrative order is rendered.

7. Nothing in the provisions of this section shall prevent the county from abating a dilapidated building as a nuisance or otherwise exercising its police power to protect the health, safety or welfare of the general public.

8. The officers, employees or agents of the county shall not be liable for any damages or loss of property due to the removal

of dilapidated buildings performed pursuant to the provisions of this section or as otherwise prescribed by law.

D. For purposes of this section:

1. "Weed" includes but is not limited to poison ivy, poison oak or poison sumac and all vegetation at any state of maturity which:

- a. exceeds twelve (12) inches in height, except healthy trees, shrubs or produce for human consumption grown in a tended and cultivated garden unless such trees and shrubbery by their density or location constitute a detriment to the health, benefit and welfare of the public and community or a hazard to traffic or create a fire hazard to the property or otherwise interfere with the mowing of said weeds,
- b. regardless of height, harbors, conceals or invites deposits or accumulation of refuse or trash,
- c. harbors rodents or vermin,
- d. gives off unpleasant or noxious odors,
- e. constitutes a fire or traffic hazard, or
- f. is dead or diseased.

The term weed shall not include tended crops on land zoned for agricultural use which are planted more than one hundred fifty (150) feet from a parcel zoned for other than agricultural use;

2. "Trash" means any refuse, litter, ashes, leaves, debris, paper, combustible materials, rubbish, offal, or waste or matter of any kind or form which is uncared for, discarded or abandoned;

3. "Owner" means the owner of record as shown by the most current tax rolls of the county treasurer;

4. "Cleaning" means the removal of trash from property;

5. "Publish" or "publication" means printing in a newspaper

which:

- a. maintains an office in the county and is of general circulation in the county. If there is no such newspaper, then in any newspaper which is of general circulation in the county, and

b. meets the requirements of a legal newspaper as provided in Section 106 of Title 25 of the Oklahoma Statutes.

If there is no newspaper meeting the requirements as provided for in this paragraph, the term publish or publication shall mean posting a copy of the item to be published in ten or more public places in the county. When a notice is required to be published for a prescribed period of time, publishing the notice one (1) day each week during the prescribed period of publication is sufficient in accordance with Section 103 of Title 25 of the Oklahoma Statutes; and

6. "Dilapidated building" means a structure which through neglect or injury lacks necessary repairs or otherwise is in a state of decay or partial ruin to such an extent that said structure is a hazard to the health, safety or welfare of the general public.

E. The provisions of this section shall not apply to any property zoned and used for agricultural purposes.

SECTION 5. AMENDATORY 19 O.S. 1991, Section 869.4, is amended to read as follows:

Section 869.4 A. The jurisdictional area of a Lake Area Planning Commission may include all or part of the unincorporated area of any county or counties authorized to create such a planning commission, provided that the jurisdictional area shall be limited to a three-mile perimeter from the normal shoreline elevation of the upstream terminal port or turnaround where navigation ends, or any reservoir or reservoirs constructed by the Bureau of Reclamation, the U.S. Army Corps of Engineers or the Grand River Dam Authority, regardless of the population of the county or counties or the cities or towns therein. In the event that the three-mile perimeter described above includes portions of two or more counties, the counties may cooperate in a joint Lake Area Planning Commission; provided, that no Lake Area Planning Commission may establish or maintain any jurisdictional area within any county or counties without a resolution of

participation from the board of county commissioners of the county or counties.

B. In the event that all or part of an incorporated city or town lies within the three-mile perimeter, as described above, the incorporated areas may elect to come under the jurisdiction of the Lake Area Planning Commission. In the event that an incorporated area elects to come within the jurisdiction of a Lake Area Planning Commission, the commission shall become the planning commission or zoning commission, or both, for the incorporated area or areas in their entirety, without regard for the three-mile perimeter from the normal shoreline elevation.

C. In counties where a Metropolitan Area Planning Commission exists, the board of county commissioners may utilize that commission in forming a Lake Area Planning Commission.

D. In no event shall the boundaries of any statutorily authorized planning commissions overlap, and where a situation of overlap does occur, the jurisdictional question shall be settled on the basis of prior jurisdiction except for the exclusive jurisdiction granted to the county planning commission in regard to the orderly flow, collection, transfer and disposal of waste products.

SECTION 6. This act shall become effective September 1, 1994.

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