

PUBLIC HEARING

**Item D: 12-0427 PUBLIC HEARING REQUIRED BY K.S.A. 12-531 TO BE HELD
FIVE YEARS FOLLOWING UNILATERAL ANNEXATION BY
CITY OF VALLEY CENTER ORD. NO. 1145-07.**

VISUAL PRESENTATION

Mr. Robert W. Parnacott, Assistant County Counselor, greeted the Commissioners and said, "This is one of our postannexation hearings we hold. You are required to hold them five years after an annexation was done after a city that they were required to provide a service plan, this is City of Valley Center. We have a map up on the screen that shows you in blue the city limits, and the red parcels are the parcels that had been annexed into the city back in June of 2007. And this is the purpose of today's hearing, is to consider whether the city has provided services to those parcels as provided for in the service plan they prepared in conjunction with than annexation. The map, or the annexation ordinance consists of 24 different tracts. One of the tracks however was a subdivision that consisted of eight parcels, so we're looking at about 31 separate parcels that were annexed at the time. We've sent out notices to all the landowners that had been annexed. We gave them a prehearing questionnaire. We got two responses back out of the 30 or 31 notices we sent out on that. We then had a city response to a similar questionnaire. This is all in your backup.

"The city council has also passed a resolution stating their belief. A majority of the city council person's belief that they have provided services in accordance with the plan. Early this morning, I received an additional e[lectronic]-mail that has been distributed to you, it has also been provided to the city, that was from Gary and Jennifer Lee raising their comments on the annexation plan. We received some additional submittals, however I want to caution you at this point that the law allows you to consider testimony at the public hearing from the city and from the landowners in the area annexed. And I have also interpreted that to mean, when they say the city, to be the official representatives of the city and not particularly individual city councilpersons speaking on their own behalf or on behalf of their district. We did get two submittals from two separate city councilpersons on this. But again, I would tell you that, my belief, that is outside the record and should not be considered as part of the public hearing materials."

Commissioner Skelton said, "Bob, do you have a reason for that? I mean, I want, what is the reason? Why is the law written that way? What's going on with that?"

Mr. Parnacott said, "This process is entirely governed by statute. Your role and your authority is limited to what the statute says. And the statute very clearly says that you may receive testimony from the city and the landowners in the area annexed and nobody else."

Commissioner Skelton said, "What is the justification behind that statute, sir? Why did that statute come to be?"

Mr. Parnacott said, "That statute dates back more than 20 years. It came out of a comprehensive overview review and modification of the annexation laws. It created a post annexation review process for landowners to be able to challenge a city's services, that they were not provided, they could claim they were not provided services after an annexation, that was one of the concerns. And so this is a process by which the landowners are entitled to say, they promised me these services, and I did not get them."

"Because the annexations are directed to specific parcels and the service plan is prepared for specific parcels that were being annexed, the legislature chose to limit the testimony to those persons who had been annexed, and then, of course, the city has the right to defend their service plan, defend the services they provided and to testify on behalf of the city."

Commissioner Skelton said, "Okay, so this is based on a majority vote of the City Council of Valley Center then?"

Mr. Parnacott said, "The annexation was done certainly by a majority. The service plan was adopted by a majority. The resolution that is in your backup that states the city council's position, is that the services were provided, was done by a majority of the city councilpersons."

Commissioner Skelton said, "So the city representatives are representing the majority view of the city council, is what you're saying here today? Ma'am, you will be recognized in a minute."

Mr. Parnacott said, "We do have...I'm sorry."

Commissioner Skelton said, "There's no comments allowed until you're recognized."

Mr. Parnacott said, "We do have a representative of the city. Warren's here and he will speak at the public hearing on behalf of the city."

Commissioner Skelton said, "Okay. That answers my question. Commissioner Ranzau."

Commissioner Ranzau said, “Bob, you said the statute says that we'll hear testimony from the city and the landowner and nobody else. It doesn't actually say ‘and nobody else’; is that correct?”

Mr. Parnacott said, “It also doesn't say ‘and anybody else’. When the statute omits something, then we assume it means that those people are not included.”

Commissioner Ranzau said, “Well, you may assume that. My reading of it says that we shall, again, it says we shall hear testimony from the landowner and the city. That mandates that at the very least we hear testimony for it. There is nothing in that statute that it precludes us from hearing from elected officials who represent people in there. There's nothing that prohibits that. Beyond that, you can have a discussion about what is the city. Is it one person or one viewpoint within the city? The position of the city council on this particular issue is not unanimous. I believe it's imperative as elected officials to understand that, to understand that there are city elected officials who have a different viewpoint and to understand why they would have to do that. This is a representative republic here, and that's just part of what we do here, and the idea that we can't hear from other electorate officials is absurd, and I don't find any statutory prohibition on that.

“This is a quasi-judicial hearing, quasi. We are not a court. But even in any court, they make judgments about what testimony can and cannot be included, and this is no different. It's a basic responsibility I have as a County Commissioner to communicate and understand what other elected officials feel about things that are going on, and I think we need to understand that simply because Warren is here representing the majority view, it's important to understand that there is a minority voice out there. And in fact, my understanding is that three out of the six council members who represents these annexed areas don't believe the service plan has been met. That's important to know.”

Mr. Parnacott said, “Well, let me just add and clarify that where I'm coming from is again from an evidentiary standpoint. I mean, what would happen, hypothetically, if you took that testimony is relied upon that testimony from people outside the area annexed and outside the representatives of the city, and you relied on that testimony or that information provided in making a finding either for or against the city that they had provided services, and then we had to litigate that in court.

“A judge would very likely find that that evidence is not what we call competent evidence. And if you make a finding that's not supported by substantial competent evidence, in all likelihood the court will overturn your decision and direct you to have another hearing. So that's the concern, I think. It's not so much that you hear the information, it's whether you rely on the information in making your decision.”

Commissioner Ranzau said, "You're telling me that the city council people who are elected is not considered, what did you say?"

Mr. Parnacott said, "The technical legal term, unfortunately, is competent."

Commissioner Ranzau said, "Competent...Okay, well that's..."

Commissioner Skelton said, "That's very technical."

Mr. Parnacott said, "And that is a legal term. It does not mean anything about their capabilities. It just means whether that evidence can be considered in a court of law. In a medical malpractice situation, for example, you couldn't have a nurse testify on whether a doctor had committed malpractice because the nurse isn't competent to testify to the standard of care. The nurse may be competent to testify as to what happened, but she certainly couldn't offer opinion testimony. So, that's kind of what we're looking at here."

Commissioner Ranzau said, "I understand, but I think that elected city officials are competent to determine, to give us testimony on what's going on in the last five years in the areas they represent. And quite frankly I think the city is not just one person, is not just one viewpoint. It's everything, and I think it's important to hear, I'm not inclined to silence anyone."

Commissioner Skelton said, "Okay. Commissioner Peterjohn."

Commissioner Peterjohn said, "Thank you. Bob, question for you, do you happen to have in front of you a list of the people who own the properties that are under this hearing and would be considered, you know, whether we have a broad or narrow definition of competency for being able to testify at this hearing? Do you have that full is in front of you?"

Mr. Parnacott said, "I do. When we have one of these hearings, we get the annexation ordinance using the legal descriptions provided in the ordinance. We send that to a licensed abstracter. They prepare us a list of names and addresses of the owners, so I do have that."

Commissioner Peterjohn said, "Let me ask you is there a Gary and Jennifer Lee of 5335 West 81st North, Valley Center on that list?"

Mr. Parnacott said, "They are on that list. That was the e-mail that was distributed this morning, and so they are competent, and you can consider that part of your record."

Commissioner Peterjohn said, "How about Mr. Dan Houston? Spelled like the city in Texas."

Mr. Parnacott said, "I do not show him on my list of owners."

Commissioner Peterjohn said, "Thank you, Mr. Chairman."

Mr. Parnacott said, "Also, Mr. Peterjohn, Commissioner Peterjohn, you had asked me to make sure that I put into the record the size of the tracts. The parcels are generally from three to seven acres in size. The subdivision parcels are five acre lots generally, but that's the nature of these lots that were annexed."

Commissioner Peterjohn said, "So seven acres is the largest of any of these..."

Mr. Parnacott said, "Yes."

Commissioner Peterjohn said, "...any of the parcels. And so they're well under, if the current state law is that if you can avoid a mandatory annexation, forced annexation if you own property that is, is it 20 acres?"

Mr. Parnacott said, "There are some limitations on properties that are over 21 acres, so all of these are well under that and there is no challenge to the actual annexation itself that was made at the time."

Commissioner Peterjohn said, "So if it's 21 acres or more, you can avoid forced annexation. Okay. Thank you Mr. Chairman."

Commissioner Skelton said, "Commissioner Ranzau."

Commissioner Ranzau said, "I know we're going to have a public hearing."

Commissioner Skelton said, "Yes."

Commissioner Ranzau said, "I'd like to disclose my ex parte communications, if that would be appropriate. I have several."

Mr. Parnacott said, "Yes, if there were any ex parte contacts, you would make those disclosures when we get ready to have the hearing."

Commissioner Skelton said, "Yes, sir. Please."

Commissioner Ranzau said, "I've had e-mail and phone conversation with Kate Jackson, who's one of the city council members who, and I forwarded her e-mail, and I think the city has a copy of that, as well. She's made it clear that she does not believe the city met the plan. I've also had an e-mail that I received today from Al Hobsin, who is also city councilmen who says the city did not meet the service plan, and I forwarded that to our attorney. And I got an e-mail this morning from Gary and Jennifer Lee, as well, who is a citizen that lives in this area, and I forwarded that, as well.

"Last night, I spoke to Judy Leftoff, who is here with us, and she represents one of the areas, she's a city council person. And she told me originally she voted in favor, but she's done more investigation, and she now believes the city did not meet the service plan. And I spoke with Dan Smith this morning, he called me, he represents this but he was not at the meeting and has no opinion because he wasn't there to hear the information. And also this morning I spoke with Warren Utecht from the City of Valley Center who made his case and why he thinks that they did. So, that's my list of people that contacted me in a variety of ways about this issue."

Commissioner Skelton said, "Okay, well, I think I can say safely that Kate Jackson sent the e-mail to all the Commissioners."

Mr. Parnacott said, "Yes."

Commissioner Skelton said, "So I would believe all Commissioners have had that communication with her. So there's my ex parte communication, with her only. Yes, sir. Commissioner Unruh."

Commissioner Unruh said, "Thank you, Mr. Chairman. I have not had any phone or face-to-face conversations with anyone that would be ex parte communications, have received several e-mails that have already been mentioned, so I just want to say that for the record at this time."

Commissioner Skelton said, "Okay. Commissioner."

Commissioner Peterjohn said, "Thank you, Mr. Chairman. I will also add in, in terms of ex parte communications, that I have been involved with the e-mail exchange with Councilwoman Jackson and also have received the other e-mail material and ex parte communications with people who I believe are considered competent under the law to consider testimony from. So, I want to get me ex parte communications on the record, like my colleagues."

Commissioner Skelton said, "Okay. Thank you. All right, is there other to..."

Mr. Parnacott said, “A few more things to tie up. To the extent you do want to consider that information that was submitted by people other than the landowners and the city representative that's here, we've had the city also respond to the submittal from Ms. Jackson, councilperson Jackson, so you might want to concern that. If you're going to consider the other, you would have to consider them together. I think you also, to the extent you consider that, have to look at, again weighing the evidence, how specific the claims are, do they go to services that are mentioned in the service plan or do they raise issues that are not related to the service plan. So even if you consider that evidence, I think you have to take a good hard look at it and see how much weight you should provide that. Usually at this point I will go over the service plan quickly and give you the highlights of what the service plan promised, add any comments from the materials we received and recommend that you open the hearing.

“The service plan was fairly basic and limited, but that is the service plan that you have in front of you, so that's what you have to be looking at. Fire and police services were to be provided at the time of the annexation. Street lights were to be provided as per a city plan. We've been doing these annexations with Valley Center, these reviews for several years now. And when we first started them, we found out that they had not prepared that street light plan at the time we were having our post annexation hearing. They rectified that and adopted a street light plan. So they were able to adopt a street light plan during that five year period, and I understand that the city has responded. They have provided street lights in conformance with that plan that they've adopted.

“Similarly, they had a promise in the service plan that they would provide emergency siren coverage as per city plan. That plan was also adopted during that five year period, so it's in place, and I understand the sirens are available. Sewer and water were only to be provided upon petition, and then roads were generally, in this particular service plan, they noted the roads were primarily in the county and township's responsibility and the city had not annexed any of the roads. So, they have provided some services, the city response, their service plan response indicates what grading they've done and what other maintenance work they've done. So that is what's in front of you right now. You have had submittals, some you should consider, some of them, if you choose to consider, you can, I suppose. But at this point, I would recommend you open the public hearing, receive any testimony, and then after you've heard all the testimony, close the hearing and make the appropriate findings.”

Commissioner Skelton said, “Mr. Parnacott, okay, this has been going on for a year. Every time we've had several of these Valley Center annexations come before us, and every time you tell us the service plan is inadequate or weak. Okay, you know what, okay, after all of this time, I am tired of that. I don't want to be presented with that which is inadequate or weak. We all have a professional duty here to do the next maximum we can for the public. So my question is, is how

much longer are we going to have to tolerate here on this bench asking to support weak service plans?”

Mr. Parnacott said, “Well, we, again, are at the mercy of the cities, in terms of they prepare the service plan at the time of the annexation, and you don't see it until five years later, although it's now been changed of course and you'll start seeing these post annexation reviews come three years after annexation. We also do not see the service plan generally at the time of the annexation. That's another change in the law. We're going to start seeing the service plans upfront, and so if we see a service plan that we feel is inadequate or that is going to present us problems down the road when we do a postannexation review, we'll have an opportunity at that point to tell the city, we think your service plan may be inadequate. This service plan here, however, was prepared five years ago. At a time, before some of the present city administration was there. It's unfortunate, but those are the service plans that were used at the time, and that's what we've had to deal with.”

Commissioner Skelton said, “Okay. That's fine. I appreciate that. But you're telling me they're going to get it right next time when they come back, if they should have another annexation. Is that what you're...?”

Mr. Parnacott said, “I can't guarantee the cities are going to get it right. But I think they will try...”

Commissioner Skelton said, “I will respect that. I'm telling you what, I'm just, you know, over and over and over, I'm asked to approve something that's substandard and that doesn't go well with me. I mean I'm just really tired of it and based on that fact my future votes may be impacted by that. Because if somebody knows something is wrong, I say get it right ASAP (as soon as possible). And if it takes five years to get it right, well that's just a shame in my opinion. But those are my comments. Commissioner Ranzau.”

Commissioner Ranzau said, “Thank you, Mr. Chairman. Bob, I know you're trying to be nice, but let's clarify. When you say the plans are lacking and inadequate, this is the service plan. What you're really saying is they didn't follow the state law. Is that correct?”

Mr. Parnacott said, “Yes.”

Commissioner Ranzau said, “They did not include items that they were supposed to include?”

Mr. Parnacott said, “Yes.”

Commissioner Ranzau said, "For example, a sketch that has at least three things that are supposed to be in there. They're supposed to have an estimated cost, et cetera, and a variety of other things that are supposed to be included, and it simply was not. So they didn't follow, they violated the state statute when they did this?"

Mr. Parnacott said, "They didn't comply with state statute, you're correct."

Commissioner Ranzau said, "Okay. And beyond that, there are, in the one page they did provide, there are actually, for example, inaccuracies here. It says the road is currently maintained by Grant Township. Well, that's true for part of it, but some of them are actually maintained by Valley [Center] Township. Is that correct?"

Mr. Parnacott said, "Yes."

Commissioner Ranzau said, "So I just want to make sure that when we say it's inadequate or lacking that they just failed to comply with the state statute, and the one that they did provide has inaccuracies in it, and it's just, most of the service plans we've seen before were at least several pages in a packet. This is it. All right, thank you."

Commissioner Skelton said, "Commissioner Unruh."

Commissioner Unruh said, "Thank you, Mr. Chair. Bob, I need a little help understanding what is our responsibility here? Are we supposed to decide that they have fulfilled the service plan as presented or are we supposed to make a judgment on whether that service plan was consistent with state law? Where lies our responsibility?"

Mr. Parnacott said, "Again, the statute is very narrowly drawn, that your responsibility is solely to determine whether the city has provided services in conformance with the service plan prepared at the time of the annexation. So you're not here to determine and rule on whether the service plan is adequate or not. Obviously an inadequate service plan presents you some challenges in reviewing whether the services have been provided. But to the extent the service plan that was adopted back then is what it is, you have to look at it and determine only whether the city provided the services in conformance with that service plan. There's an opportunity for landowners to challenge the service plan at the time of annexation, and that very well could have been done, it apparently was not done. So again, you are stuck with this service plan."

Commissioner Unruh said, "So without considering the quality or the comprehensiveness of the service plan, only on whether or not they fulfilled it, we are also supposed to, according to your interpretation, consider evidence from landowners or the official position of the city?"

Mr. Parnacott said, "Yes."

Commissioner Unruh said, "And dissenting members of the city council, according to your interpretation, they do not represent the official position of the city?"

Mr. Parnacott said, "That's correct, just like an individual, any individual council person or commission member doesn't represent the commission as a whole. The commission acts as a body. The city council acts as a body. It's a governing body."

Commissioner Unruh said, "Well, I want to make my considerations in such a way that's in conformance with what our responsibility is and what can be defensible in case there is litigation subsequent to this action. So that's why I have my question. So thank you. That's all I have."

Commissioner Skelton said, "Okay. Commissioner Ranzau."

Commissioner Ranzau said, "One other thing, in addition to the requirements of the service plan, the state statute requires them to provide service of equal or greater services than what they got prior to the annexation. Is that correct?"

Mr. Parnacott said, "The statute does use that language, yes."

Commissioner Ranzau said, "Okay. So that's another standard we can look at."

Mr. Parnacott said, "Yes."

Commissioner Ranzau said, "Once again, I'll reiterate, this is an important decision. There are majority opinions, and there are minority opinions. The same is true with any position of elected officials or elected body commission, city council makes. It's not one size fits all. There are differing opinions. And to say that we can't get all, I'm not going to run and hide from an elected official because we might be concerned that we might get sued by the City of Valley Center. Okay? City councilmen were elected by their people to represent them. If they have a viewpoint that's differing than the majority, there's nothing wrong with hearing the minority opinion. Thank you."

Commissioner Skelton said, "Okay, Commissioner. Bob, is there initial additionally you wish to say at this time? Okay, I will open up the public hearing at this time. Who is present that wishes to speak? Okay, all right. Well, I'll just recognize these two folks up front, whichever one of you wishes to go first. Please limit your comments to five minutes. Thank you. And you will be allowed to speak one time, by the way. Thank you."

Mr. Dan Houston, 5219 West 77th Street North, Valley Center, greeted the Commissioners and said, "Well, the gentleman that was up here a minute ago said I didn't..."

Commissioner Skelton said, "Sir, I do apologize. Can I please get your name and address for the record."

Mr. Houston said, "Dan Houston, 5219 West 77th Street North. And this paper I got in the mail says resident number 518-07, so I should have been on that list that he was talking about. First of all, I'd like to say that I was proud the way this meeting started out with the flag salute and prayer. That honoring God and country is the way government should be. And also, I'm a poor speaker. I'm a mechanic by trade, and I'm poorly trained on government issues, but I know the difference between liberty and tyranny. And it's costing me a day's vacation to be here. I had to take off work. Now, I have no bitterness towards the people of Valley Center, only the government.

"And that government boils down to basically one, and that's the Mayor of Valley Center. They said by majority that that went through. Well, it wasn't. It was four to four. I made a mistake on a letter I sent, I said three to three. But the actual vote was four to four, and the Mayor broke the tie. And so by one vote, this is what the annexation has done for me. My property value has declined as a result. People that want to buy out in the county, that's one of the things they want to know, is can they be annexed or are they annexed, because they know it's going to cost them. Ask a real estate agent if you don't believe me. My taxes have gone up \$800, and my tax statement shows right there \$770 some dollars to Valley Center, and then we pay another \$24 a year to Valley Center for some drainage thing. I'm clear out close to Hoover Road, away from Valley Center. I have no drainage problems. And they want more. The city always wants to build swimming pools and things that the common man can't afford. This is an unexpected burden and an unacceptable burden on us two years before retirement.

"I cannot afford to maintain my place in Valley Center also. I cannot go to my neighbor and take money from him just because I'm running short without giving him some labor or something for it. But Valley Center did. I have lost faith in government. It's not of the people, by the people or for the people. It's not equal justice or service under the law. It's not protection of personal property rights. There is no consideration of what is morally right or what damages cause to families. Only the will of the Mayor and three councilmen. I ask this Board to help us undo this great injustice. Please vote to end this annexation and the damage it has caused. And this room should be full of people. I've talked to people, and they see it as hopeless. They said, they're not going to listen.

"It's just like that night they had the vote, we spoke, we told them we didn't want it, and it was just, they just sat there like communists, weren't interested. It was going to be their way. They already knew what they were going to do, and these people, we couldn't vote for. They were in

their positions voted for by the people in Valley Center. We are outside of Valley Center. So we had no representation. And by the way, the people in Valley Center, all of them that I know, my circle of friends, and I've lived there since 1983, out there in the middle of that alfalfa field, is what it was when we bought it, and nobody that I've talked to thinks this is right.

“It's just somebody's big government plan of what they want to do with someone else's money. And there is a more capable speaker coming after me, but I would like to read one quote from Abraham Lincoln. ‘We all declare for liberty; but in using the same word we do not all mean the same thing. With some the word liberty may mean for each man to do as he pleases with himself, and the product of his labor; while with others, the same word may mean for some men to do as they please with other men, and the product of other men's labor. Here are two, not only different, but incompatible things, called by the same name, liberty. And it follows that each of the things is by the respective parties called by two different and incompatible names, liberty and tyranny.’ Now, when we bought out there, I paid 13 percent interest.”

Commissioner Skelton said, “Sir, you're going to have to conclude your comments within a minute. I'd appreciate that.”

Mr. Houston said, “Okay. In 1983, when we bought that land, it cost us \$3,000 an acre. It was good land. There was good water there, because we moved from a place where there was poor water. It was good farm ground, because I like to farm, and my share of the wheat, we have almost five acres of wheat, brings a little over \$100, and my taxes is, like, \$2,200-\$2,300. So that's pretty bad. So I just ask you to consider the human side of this thing.”

Commissioner Skelton said, “Thank you. Sir, we do have a couple questions. Would you please stay at the mic.”

Mr. Parnacott said, “If I could interject real quickly, this gentleman is on the ownership list. If I misunderstood your question before, it was because I was confusing the names of Mr. Hobsin who is a city councilperson who sent the e-mail. But he was referring to Mr. Houston. So, Mr. Houston is part of the ownership area, is a qualified witness.”

Commissioner Skelton said, “Thank you.”

Commissioner Peterjohn said, “Mr. Chairman?”

Commissioner Skelton said, “Yes, Commissioner. Please.”

Commissioner Peterjohn said, “If I can have a question for...”

Commissioner Skelton said, "Absolutely. Go ahead."

Commissioner Peterjohn said, "...for Mr. Houston, and I'm going to preface it first by thanking him for coming down and taking the time to testify. And I know what it means, I've been in the same position to be able to do something that needed to be done with government, I had to take a vacation day, and it's something I'd really rather not do. I wanted to clarify just for the record, you said you own five acres or is it a different size track?"

Mr. Houston said, "It's about five and..."

Commissioner Peterjohn said, "Is it five acres plus your homestead?"

Mr. Houston said, "About five and a half."

Commissioner Peterjohn said, "About five and a half."

Mr. Houston said, "Yeah, we, like I said, I was the first one there, and then they started building up out there. And we gave land for the west of the road that goes on the west side of my property, which is a private drive, which we maintain our self, and it's a long one. It goes 10 acres down. It was 80 acres platted out to a little over five acres a piece. And since the annexation, I have seen no change except, you know, we had to go on city service trash, and there was no choice there, so nothing else has changed except what's coming out of my wallet that I can't afford."

Commissioner Peterjohn said, "Let me ask you this. How many times have you testified concerning this annexation at Valley Center City Hall?"

Mr. Houston said, "I wrote a letter. I spoke the night they had a vote, and I wrote a letter, and they just ignore me."

Commissioner Peterjohn said, "Thank you very much. Thank you, Mr. Chairman."

Commissioner Skelton said, "Okay, you're welcome. Commissioner Ranzau."

Commissioner Ranzau said, "Mr. Houston, I just wanted to take the time to say thank you for coming and sharing your words. 'The price of freedom is eternal vigilance.' [Thomas Jefferson] And I share your frustration with government sometimes. That's why I decided to run for office, and now that I'm here, I'm still frustrated. Sometimes I still don't think it matters or makes a difference, but you can't give up. You've got to continue to fight, and I appreciate you coming here sharing with us. Thank you."

Commissioner Skelton said, "Okay, ma'am. Were you wanting to speak also, please? You're welcome."

Ms. Judy Leftoff, Councilmember, City of Valley Center, greeted the Commissioners and said, "I'm about 10 blocks from city hall. I am a council member, I'm a newbie, so a lot of this is new to me, but I have spoken to people in Valley Center, not only in my area one, but in all four areas, inside the town and outside, and in annexed areas. And I have spoken to maybe two or three families who would like a new swimming pool indoor, but the rest of them, I would say more than 50, cannot afford it. They cannot afford being outside of town and paying for water service that they do not get, sewer service that they do not get, not even a street light, and then we have a monopoly for the garbage collections. So I'm wondering previously, previous to my seat in the city council, what happened? Is the philosophy to quickly grab annexed, annex, quickly charge the taxes, this expense, this expense, this expense, and then for five years let it wait in limbo while we continue to collect the tax? It doesn't seem fair, and I'm here to speak to that point."

"Why should people pay the extra water tax and sewer tax when they have septic tanks and wells? Why should people have to pay for monopoly of garbage pickup? Why is that a monopoly for out in the country? Why is it that they cannot hear the tornado siren out in the country? That should be provided, and I hear that the county is going to take that over. Please, fix it. All right. So there are some things that are happening outside even in the annexed areas that do not add up. It looks like all we're doing is being greedy, and I took my council pin off. I humbly come before you disappointed, because we're not treating our own citizens right, and as an elected councilperson, I'm supposed to represent the citizens. That's all."

Commissioner Skelton said, "Thank you. Any questions? Yes. Commissioner Peterjohn."

Commissioner Peterjohn said, "Thank you, Mr. Chairman. Question for you, and this goes to the issue. Bob, was this member of the city council on the list of people who reside in the area or is she, she's got people who are in her district who are in the area? Could you please clarify where you view her testimony as under, I hate to use that word competency, but I..."

Ms. Leftoff said, "Don't use it."

Commissioner Peterjohn said, "Well, allowable. Let me use this as a synonym. What is allowable under these circumstances under your interpretation, Bob?"

Mr. Parnacott said, "I don't show her on my list of ownership. Again, we have the parcels flagged in red. She had indicated she lives about 10 blocks from city hall, roughly."

Ms. Leftoff said, "Oh, I was just being sarcastic."

Mr. Parnacott said, "Oh, okay, well, if you could point on the map where you live, that would be helpful."

Ms. Leftoff said, "Right there."

Mr. Parnacott said, "So right in the blue area and not part of the red area. So, again, the red area is who we consider to be landowners who are part of the annexation that's being considered today."

Commissioner Skelton said, "She's not on the list, right?"

Mr. Parnacott said, "Right."

Commissioner Skelton said, "Supposedly."

Ms. Leftoff said, "Sirs..."

Commissioner Peterjohn said, "As a fellow elected official, I wanted to express my appreciation for you coming down and speaking to us this morning. Thank you."

Ms. Leftoff said, "Area 1 has some read areas, and I represent Area 1. I don't live there, but I represent it as a council member. Thank you."

Commissioner Peterjohn said, "Thank you."

Commissioner Skelton said, "Okay. Commissioner Ranzau, please."

Commissioner Ranzau said, "I wanted to clarify. Councilwoman Leftoff, you represent Ward 1."

Ms. Leftoff said, "Yes."

Commissioner Ranzau said, "There are two council people for each Ward, and there are four Wards."

Ms. Leftoff said, "Yes."

Commissioner Ranzau said, “And in your estimation, has the city met the service plan?”

Ms. Leftoff said, “Has what?”

Commissioner Ranzau said, “In your estimation, has the city met the service plan?”

Ms. Leftoff said, “No.”

Commissioner Ranzau said, “Thank you.”

Commissioner Skelton said, “Okay. At this time, I'm going to be willing to entertain comments from the City of Valley Center.”

Unknown said, “Is anyone else here?”

Commissioner Skelton said, “Are there other citizens present? Yes, sir, please, absolutely. I apologize. Thank you.”

Mr. Gary Lee, 5335 West 81st North, Valley Center, greeted the Commissioners and said, “I am part of the red area. At the time all of this annexation took place, there was a rush to annex between the City of Valley Center, Park City, Maize, and I think what we have here is a very disjointed map. Some of these people may be getting the services that fall under the service plan, but because it's spread out on three sides of Valley Center, I don't believe all of us are. Our biggest, Mr. Lamkey made a good point a while ago, it's the rubber meets the road. Well in a lot of cases, it's where the rubber meets the dirt road, and a lack of maintenance by the City of Valley Center and a disagreement with the county township.

“My biggest complaint is, I have several complaints, one of them is code enforcement. There is a disconnect between the City of Valley Center and Sedgwick County on code enforcement, whether it's stray animals, whether, and we have talked, there's one of our landowners that's inside the city, this area here, has a broken well. It's been broken for over a year now. We're all on well water, so we're all at risk of our water being contaminated. We've called both the city and the county, and they've written citations to this person, but there is no enforcement on making them fix it.

“The road maintenance is another issue out there. On the area that we're on, it's kind of hard to see right here, it's approximately a mile road of dirt road to get there. And I've been out there since 2000, I knew there was a dirt road out there, that's not the issue. But a third of it has now been taken over by the City of Valley Center. They have a different philosophy and different schedule on maintaining that road than the county does. So equal or greater services, that's not being provided on 81st Street North. The first third of the road is a different schedule than the

second third of the road, and it's never good at one time. I mean, they take turns grading, and they have different philosophies, like I said. I'd like to see that taken care of. There are no services in that area. We're on the west side of the river. So there's no city water, there's no city sewer, there's no gas out there, and if that was ever to be extended to our area, we would have to pay for that, from what I understand. That's not going to be provided by the city.

“And another thing I would like to know is what's the future in annexation? We're on the cul-de-sac with eight homes, five homes...five acre homes, eight of us. Three of us are annexed, the other five are not. Their annexation plan on the homes in that area went up to the property that was adjacent to the road, and that eliminated any kind of responsibility from the city taking ownership of maintaining that road, because all of the properties along these roads are county roads. So if you're inside of this area, and there's not a city road that goes to our land. It's all, it's county once you get out there. So what are the future plans? I would like to know that. I'm trying to read some of my scribbles here.

“I have been out there since 2000. I was not at the original annexation meeting. I had taken a six month overseas assignment, and I was out of the country, my family and I were out of the country at the time. But we have contacted council, Sedgwick County council members and Valley Center city commissioners [sic], and we have called city services and county services several times on issues. Let me see. Of course, this was three Commissioners ago when this started, when we moved out there. That's the biggest issue I have right now, is the, if this remains in place, is it possible for the City of Valley Center and Sedgwick County to work together in providing some of the services that we asked for? Because I don't think the City of Valley Center, like the gentleman mentioned, there is not a lot of trust with the City of Valley Center. We're all paying quite a bit more money, several hundred dollars more of money. You know, over five years, that's \$3,000 to \$5,000 for a lot of us. And when we don't receive equal or greater services, it's kind of, it defeats the purpose. You don't see any benefits. So that's why a lot of people aren't here, and it is during the daytime, and a majority of the people work. So I don't have any other comments.”

Commissioner Skelton said, “Okay. Any questions? Commissioner Ranzau.”

Commissioner Ranzau said, “Mr. Lee thanks for coming today and testifying. Let me clarify, because you said something about equal or greater service. In your estimation, are you receiving equal or greater service now compared to what you did before?”

Mr. Lee said, “Well, I don't receive any services directly from the city, and the thing that, the main service that it would take to get to our home is a dirt road. And when we moved out there in 10...in 2000, the county did a good job of maintaining that road. But since then, since the annexation, that's not all county road. So the road is split in half, and like I said earlier, the city uses a different philosophy on maintaining and scheduling grading of the road. The county has a different schedule, so the city might grade a third of it one week and a week later the county

grades their part, and it's never good. And there has been, our home is a safe home for the bus route. And there has been a couple times during heavy rain and snow that the bus driver has called my wife, wanting to know if our road was passable for the bus to get down. Just because when it rains, it's really, it's not in good shape, and we videotaped it, and we've sent that in before. So we have evidence of the road deteriorating over the last five years.”

Commissioner Ranzau said, “So it's worse than what it was before?”

Mr. Lee said, “Yes, sir, noticeably worse. It was about three years ago, I was following a neighbor, driving 40-45 miles an hour on that dirt road, and the washboards were so bad, she lost control and went off into the ditch. And everything was fine, we got out and pushed her back onto the road, but just the fact that the washboards were so severe that at normal speed limit she lost control and slid off. That's the state of the road deterioration maintenance since annexation.”

Commissioner Ranzau said, “And the school bus has to call to see if it's good enough to get through?”

Mr. Lee said, “They have called my wife before to make sure that one mile section of the road is passable.”

Commissioner Ranzau said, “Just so you know, I've been advocating to get 81st [Street] paved. Once I get a majority of this Commission to understand the importance of that, we'll get that done for you. But, we'll see...”

Mr. Lee said, “I guess that's just one, that's one thing I wanted to point out. This map, this annexation map is so large and so spread out, that to have a one page, like he showed, a one page service agreement that covers everyone in three, east, west, and north, I don't know how the city can do that and say that they have provided equal services. Some areas, they may. That's fine. But I just want to let the Commission know that in all areas, they have not.”

Commissioner Ranzau said, “Thank you.”

Mr. Lee said, “All right.”

Commissioner Skelton said, “Commissioner Peterjohn, please.”

Commissioner Peterjohn said, “Mr. Lee, I appreciate both your oral testimony this morning, as well as the written testimony that was provided to us, too. Thank you for coming down, and I particularly appreciate the written testimony that you provided.”

Mr. Lee said, "Okay. Thank you very much for the time."

Commissioner Peterjohn said, "Are there any other citizens wishing to be heard today? Yes, sir."

Commissioner Skelton said, "Name and address for the record."

Mr. Anthony Sirignano, 5325 West 81st Street North, Valley Center, greeted the Commissioners and said, "I live one house to the north of Mr. Lee. I want to agree with everything that was said so far today, Mr. Houston and Mr. Lee. I completely agree with everything so far. I do want to add that I moved into the property about 4.5 years ago, shortly after the annexation took place. So I obviously did not have an opportunity to say much at that time. Since then, we've spoken with Commissioner Ranzau, participated in local elections to get rid of the city commissioners that we didn't agree we, and I'm participating now in our Commission meeting to voice our opinion on what's going on out there."

"I do want to point out one thing that Mr. Lee alluded to a little bit, is that in our area, the county road there on 81st Street North, the first one-fourth of it is now maintained by the city, and the rest of it is maintained by the county. So that means you cannot get to our house, our private drive, by driving on the city road. Even though we currently now reside in the city. So with that in mind, how is the city going to incorporate its plan with street lights if that road is a county road to our private drive? That's all I have to add."

Commissioner Skelton said, "Okay, thank you. Questions? Commissioner Peterjohn."

Commissioner Peterjohn said, "Thank you, Mr. Chairman. Bob, I just wanted to reconfirm with you if, Mr., help me out. I apologize, Sirignano?"

Mr. Sirignano said, "Sirignano."

Commissioner Peterjohn said, "Sirignano."

Mr. Parnacott said, "He's on the list."

Commissioner Peterjohn said, "He's on the list. Thank you. Mr. Sirignano, thank you for coming down and speaking this morning."

Commissioner Skelton said, "Okay. At this time, thank you very much, sir. At this time, any other citizens present to speak on this issue? Okay, I'd like to recognize the City of Valley Center at this time."

Mr. Warren Utecht, Community Development Director, Valley Center, greeted the Commissioners and said, “I’ve been put in an envious position here to represent a service plan that I did not author, but it is the service plan and I would like to suggest to you that you look beyond the service plan to say has the city provided services equal to or better than the town and the counties. I would suggest to you that I had submitted to you paperwork previously through Bob Parnacott this morning, it was a very quick response to Kate Jackson’s comments, but in that you can see that the City of Valley Center, from a road standpoint, we’ve been striving to try and improve the roads in those annexation areas. I know that 81st Street has been on that has been talked about in previous annexation hearings. It is a road that we’ve been maintaining, and so we do have, do realize it is not in good shape and we continually strive to maintain it as best we can, and we’ll, over a period of time, probably budget monies for improvement to the road.

“Similarly, we did that for a subdivision on the north end of the property, I should say the city limits, and that would be Meadow Lake Circle, and there is a picture of Meadow Lake Circle in the handout I gave to you this morning. We spent \$137,500 to do a seal coat slurry on that road, and that was in 2010 at the city’s expense. We have been adding gravel to, and sand to some of these roads and trying to bring them up to better conditions, and we will continue to do that. As far as street lighting, we passed the street lighting plan in 2010 and we added 13 street lights to all of the areas that had been annexed in the last five to seven years.

“In fact, there are new street lights out in this particular annexation at Meadow Lake Circle entrance where there had not been one previously. We can say that we have provided better police service in the sense that before the annexations. The major source of police service was the Sheriff’s department, excellent service, but the fact that they have eight people trying to cover the whole county, we were called at times to have backup. We were always there before the county Sheriff, no fault to the county. But we just are right in that area, we have **four, under four** officers on duty at any one time 24/7. So we feel like we have been able to provide better service for police.

“Fire protection is probably equal to or better. Our rating system was a six at the time the county was nine, the ISO (International Organization for Standardization) rating, and we have full-time fire people, as well as volunteer firemen, but in the case of a structure fire, whether it be in the city or outside of the city, there’s equal service because of our jurisdictional service agreements. So there’s no drop in that quality of service from the police standpoint, and fire department standpoint. So I would say that we have met and actually exceeded the services that we provide to these people, and if you have any questions, I would be happy to answer them.”

Commissioner Skelton said, “Sir, what about, I got some things I’ll ask you.”

Mr. Utecht said, “Sure.”

Commissioner Skelton said, "Tell me about the mowing activity over there. What are you responsible for, what are you doing, what is not done, et cetera."

Mr. Utecht said, "Okay, all right. First of all, the mowing was not part of this plan."

Commissioner Skelton said, "Okay."

Mr. Utecht said, "Secondly, there was a lot of discussion about that. It was a debated issue last year. And it ended up that we decided that we would not be mowing ditches unless they were petitioned. Now, we have, we put that provision in the regulations because we wanted it make sure that people, if they felt that they needed to have their ditches maintained, they would. We would consider that. If you look at..."

Commissioner Skelton said, "Is that policy of petition consistent around your municipality. Is everybody treated the same way?"

Mr. Utecht said, "Yes."

Commissioner Skelton said, "So they will pay special to have their ditch mowed?"

Mr. Utecht said, "I am not sure how the city council would work that. That wasn't a part of the discussion. It was just said that if you wanted to petition for us to do your ditches, we would do that. However, if you look at over 90 percent of the properties in this annexation, this annexation, if you drive out and look at them, they are almost all swales rather than deep ditches. They were mowed by those people before the annexation..."

Commissioner Skelton said, "By those people?"

Mr. Utecht said, "By the people that lived out there."

Commissioner Skelton said, "Oh, the residents."

Mr. Utecht said, "Right."

Commissioner Skelton said, "Okay, thank you."

Mr. Utecht said, "And they mowed, and they are still mowing them after the annexation, because again they are not deep ditches, they are swales in the ground. So they are easily mowable, and we've never mowed them before and neither did the county."

Commissioner Skelton said, "I understand that. There's different areas that have different needs, so I understand that if they want their ditches mowed they have to submit a petition to the city council."

Mr. Utecht said, "That's right."

Commissioner Skelton said, "And is that part of the service plan?"

Mr. Utecht said, "That was not part of the service plan."

Commissioner Skelton said, "Okay, all right. Okay, now what about water and sewer service?"

Mr. Utecht said, "Water and sewer would be petitioned by them, because they already have water and sewer. I am not sure where the thought is coming that they are paying for water and sewer service."

Commissioner Skelton said, "Okay, well that's done, that's widely used that if you want water in subdivisions or new areas you petition for it and the same with sewer."

Mr. Utecht said, "Exactly. Correct."

Commissioner Skelton said, "So, is there any water and sewer service in this area at all?"

Mr. Utecht said, "I don't believe so."

Commissioner Skelton said, "What about street lights?"

Mr. Utecht said, "As I said before, we passed a street light plan in 2010, and we have since then have installed 13 street lights throughout all of the areas of the annexations. And they are mostly in locations of major street intersections, or for instance, in this case for this one subdivision comes out to the street, it is very dark out there, we installed a light at the entrance to the subdivision."

Commissioner Skelton said, "Okay, so you have one light installed out there?"

Mr. Utecht said, "I believe we have installed three on Seneca [Street]."

Commissioner Skelton said, "Okay, so you have three new lights out there in this area?"

Mr. Utecht said, "Right."

Commissioner Skelton said, "Okay. As far as road maintenance is concerned, what's your practices there?"

Mr. Utecht said, "According to the service plan, we grade frequently. And we have been told, I don't want to mention the source, but we've been told by an authoritative person that we have probably do double the amount of street maintenance that has been done previously."

Commissioner Skelton said, "Okay. What about, okay, now, who is responsible for, is that the city's responsibility to install outdoor warning devices and then they're operated by the county, is that how it works?"

Mr. Utecht said, "I believe so. We've been working with the county on this, hand in hand. So I think we view it as more of a regional issue than just a city issue."

Commissioner Skelton said, "All right. Hey, look, I appreciate all your comments, sir. Really, where I'm, I want to see in the future is an improved service plan. If I got to make a decision, you know, it can be a difficult one based on, you know, less than desirable information, or I can have the information that helps me make a decision. You know, if I got something that is messed up coming back to me several times in a row, I'm tired of it. I apologize about that, but what is your city's intentions to improve the service plan. When are you going to make your next annexation, and this next annexation, is it going to be under the new service plan or this old inadequate one?"

Mr. Utecht said, "I can tell you whole heartedly that I will follow to the letter of the law the regulations and state requirements of a service plan. I had no responsibility for the one you are reviewing right now and I apologize for that one. Also, I can say that I do not see any time in the future that we would have an annexation, other than if someone wanted to desperately wanted to get into the city and they would want to petition for their own purposes. In my view, I don't believe that the city is going to be doing this kind of annexation. In fact the law doesn't allow it anymore, it has to have a different process of annexation now, and so I would tell you emphatically that we will follow all state laws on how to write a service plan."

Commissioner Skelton said, "Okay, well that sounds like you are going to improve your service plan next time..."

Mr. Utecht said, "Yes."

Commissioner Skelton said, "...before you do any annexation."

Mr. Utecht said, "Absolutely."

Commissioner Skelton said, "Okay. I understand that. I appreciate that. Okay, one final question, and that would be for my attorney back there. Have they annexed in accordance with state law that requires them to annex perimeter roads?"

Mr. Parnacott said, "State law does not require them to annex perimeter roads."

Commissioner Skelton said, "Okay."

Mr. Parnacott said, "They are allowed to annex those roads at the time they annex the properties adjoining the roads. After the annexation, if they don't annex the roads, there's a process by where the County Commission can notify them they are, that they should annex the roads, and then they are required at that point to annex the road."

Commissioner Skelton said, "Well we've had discussions about this with other annexations. I mean, and you've said that they need to annex this road. And I think you said there's some statute somewhere, is it our statute, the state statute? I'm interested if they have properly annexed this area in accordance with the policies that exist on perimeter roads."

Mr. Parnacott said, "The short answer is yes. There is no state statute that requires them to annex the roads."

Commissioner Skelton said, "Okay. Because there has been cases where that has not been done. But it has been done in this case."

Mr. Parnacott said, "They of course, again, they did not take in any of the roads that I'm aware of. The only time they are required to take in the road is when after the annexation, the County Commission adopts a resolution directing them to do so. So that is after the fact."

Commissioner Skelton said, "Okay, okay. All right, thank you. Commissioner Ranzau."

Commissioner Ranzau said, "Thank you, Mr. Chairman. Warren, thank you very much for coming today and speaking, and I'm not going to beat you up about the service plan anymore, because you didn't do it. But you appreciate your comments today. I appreciate the apology for the service plan. This is the first time I've ever heard anyone from the city express any remorse about the inadequate service plans that they provided. Okay, now there's nothing to be done about what's done in the past, necessarily, but I do appreciate that. I have a few questions for you. With respect to the street lights you're talking about, can you, I don't know if you can see

there is a map in the front there, can you point to the map roughly where the street lights are that you have installed?"

Mr. Utecht said, "The one that is the very northern tier of lots that are red, that's that Meadow Lake subdivision. That is at the entrance to Seneca, is where the one street light I was referring to. I'm sorry. Okay, so if you can see the cursor that spot right there. And then at the corner of 93rd [Street] and Seneca, and then there is another one down on 89th Street entrance to a subdivision right in here."

Commissioner Ranzau said, "Okay. All on that Seneca Street there, okay."

Mr. Utecht said, "And I can also say that we had installed street lights, I can't read the street and I'm still not totally familiar, but at this location just on the other side of the river, there is a street light there, and a street light down here on 77th Street. There are no streets lights out on 77th [Street] at this location or this location."

Commissioner Ranzau said, "Now with respect to the mowing, didn't the township mow some ditches in some of these areas?"

Mr. Utecht said, "We were told by the township, one of the townships that we, they did not mow, either. Now, I think this is general thought that they did mow. They did say that they mowed maybe, let me take that back, they said they mowed maybe once a year, if that. And that's five years ago. As you would know, all communities have had to make cuts and look for ways of allocating their time, and I think that is a certain assumption that everybody would say, as well, they would still be mowing once a year, possibly. I don't know if we could say that, make that assumption, because of the fact that I think all communities, all, everyone is cutting back. So, if that's the case, I would say that we would provide equal or greater service."

Commissioner Ranzau said, "That's all, thank you."

Mr. Utecht said, "Thank you."

Commissioner Skelton said, "Okay. Commissioner Unruh."

Commissioner Unruh said, "Thank you, Mr. Chair. Do the folks in the proposed annexation area, do they receive more or less service, and I'm talking down the one on the far west area, but do they receive more or less services than the folks on Palos Verdes [Street] and West Street?"

Mr. Utecht said, "No, equal. Equal service."

Commissioner Unruh said, "The people on the northern end, do they receive more or less services than the folks on Osage [Street] and Kanza [Street]?"

Mr. Utecht said, "Equal service."

Commissioner Unruh said, "Okay. Another question I'd have is, and you may not be able to answer this, but why did the city not take the perimeter, on the west...why did they not take the perimeter lots, and only took the, I mean, it appears from a very cynical view that you just didn't want to take the road."

Mr. Utecht said, "Thank you for that question, because I was told, and this is again because I wasn't here, but I was told they were doing phase at a time, phases, and that after this annexation, it was felt that maybe it was because of the vote, that they would not take the next phase. And the next phase would have been all those perimeter lots. We really wanted to go out to the next street and include the streets. But because of the fact that I think it was decided not to go any more further with unilateral annexation, that that's why they weren't taking in."

Commissioner Unruh said, "Okay, all right. So...I understand, thank you."

Commissioner Skelton said, "Okay. Commissioner Peterjohn, please."

Commissioner Peterjohn said, "Thank you. I have got a question for Mr. Parnacott related on the road aspect of this issue. Bob, you made a statement that is different from what my understanding had been. The county is, when a municipality annexes up to a road, it is not automatic under state law that the city is supposed to annex at that time, and so it is incumbent upon the county to notify them that they are supposed to annex at that point, is that your understanding of what state law is?"

Mr. Parnacott said, "That is what the state law is. The state law provides, first that it allows cities to annex roads at the time they annex the properties adjacent, but does not require them. Then following an annexation where the city has not annexed the road, the County Commission can initiate the process. It starts by you adopting a resolution. You have to prepare a map that shows the roads that are adjacent to city limits that you want the city to annex. You have to pass that resolution and send it to the city and then they are required to annex at that point."

"So it is subject to your initiation of the process, and once you've initiated that, then they are required to annex. We haven't done that yet. We've been working with cities voluntarily. They've been annexing roads in as we've been going through this process the last few years, on a voluntary basis. Probably not as fast as some might like, and Mr. Spears isn't here, but I know he's been heavily involved in the process."

Commissioner Peterjohn said, "Well, this is an interesting, this isn't quite what my understanding had been, so I appreciate the clarification. But let me ask you this question, Bob, then, if you have a city that annexes up to, annexes a property that's adjacent to a road, and there's another city that's on the other side of the road and we haven't already said which one it is, is the county basically free to basically say, well, we think it ought to go to city X or city Y? Or do we have some other criteria we are supposed to provide when there's two municipalities on opposite sides of the street, because I can think of several cases where, and not just in my district, where we have that situation right now."

Mr. Parnacott said, "The problem is that if you have cities, different cities on each side of the road, and neither city has annexed any of the road, you are limited, you as the County Commissioner are limited to only telling each cities to take their half of the road. You can't make one city take the entire road in that situation. Now, if you've got the city on one side of the road, other side of the road is unincorporated you could tell the city at that point to take the entire road. But the way the statute is drafted, when there's two cities involved, you are going to have to split it, theoretically you would want to work out an agreement with the cities where they would take which would take what portions of the road, so that you don't have a city line running down the middle of a road, because that's usually problematic for several different reason. But you are, in that situation you described, you would only be allowed to direct each city to take their half of the road."

Commissioner Peterjohn said, "Thank you, Mr. Chairman."

Commissioner Skelton said, "Okay, thank you. Commissioner Ranzau, please."

Commissioner Ranzau said, "I have a question for Mr. Utecht. I want to make sure here, the city, we've been provided at some point, a resolution here from the City of Valley Center, this is in our supporting documentation, that voted to say that the city has provided or met the requirements of the service plan; correct?"

Mr. Utecht said, "Yes."

Commissioner Ranzau said, "That was not an unanimous vote, was it?"

Mr. Utecht said, "It was not an unanimous, and my understanding it was a, possibly a 5-2 vote with the Mayor abstaining. There were two, there was one member that was not absent."

Commissioner Ranzau said, "Dan Smith was absent."

Mr. Utecht said, "Right."

Commissioner Ranzau said, "He represents one of these areas."

Mr. Utecht said, "That's right."

Commissioner Ranzau said, "Al Hobson and Kate Jackson both voted no."

Mr. Utecht said, "That's right."

Commissioner Ranzau said, "And since then..."

Mr. Utecht said, "So there is a council of nine, and so it was 5-2 vote. I just wanted to clarify that."

Commissioner Ranzau said, "Okay, good. And to clarify since then, Councilwoman Leftoff has actually changed her position on that after getting more information. So..."

Mr. Utecht said, "That's the first time I heard that today."

Commissioner Ranzau said, "The three wards affected, there's six, well, she stated earlier in her testimony, but there's six representatives or council people that represent this area."

Mr. Utecht said, "That would be right, in a sense."

Commissioner Ranzau said, "Right, and three of them are of the opinion no, two of them yes, and one of them did not attend and has no opinion. Thank you."

Mr. Utecht said, "Okay."

Commissioner Skelton said, "Yes, sir, go ahead, please."

Commissioner Unruh said, "Thank you, Mr. Chair. Bob, irrespective of our decision today, the city council with that divided of opinion can decide to do whatever they please, can they not? I mean, they can go back and rescind the annexation, they can decide to do more, less or indifferent. I mean, they're evenly divided and they can make that decision on their own, can they not?"

Mr. Parnacott said, "Cities have the authority to de-annex any property they feel appropriate to de-annex. They can do that by annexation ordinance, and there's statutory authority for that. But it is their call."

Commissioner Unruh said, "Okay. So in that sense, what we're doing today is not finally binding."

Mr. Parnacott said, "No. Of course, what you're doing today, again, is only making a finding whether or not the city has provided the services in accordance with the service plan. If you were to find, by a majority vote, that they had not provided the services, that would trigger a 2.5 year period by where the city would have the opportunity to provide the services that you found were lacking. At the end of that 2.5 year period, it would be up to the land owners if they felt they were still not receiving the services to petition you for another hearing. You would have to have another hearing, you would have to make findings at that time whether or not they provided the services during that 2.5 year period. You would have to determine, based on some statutory factors, whether de-annexation is appropriate. There are factors in the statute that would indicate that even though they may not have provided the services for whatever reason, it may not be appropriate to order de-annexation, but that would be the ultimate result after the 2.5 year period if you find they still had not provided the services and the factors were not met, that you could order the city to de-annex a property at the time and they would have to do that."

Commissioner Unruh said, "All right, thank you. I appreciate the explanation. I was just trying to clarify the fact that there is relief for these citizens through their own council, especially one that's as evenly split as it is, no matter what we do, it seems."

Mr. Parnacott said, "Yes."

Commissioner Skelton said, "Okay. I appreciate that. Is there any more testimony today, or, seeing no other testimony, I will close the public hearing and bring the discussion back to the bench. Commissioner Peterjohn."

Commissioner Peterjohn said, "Yes. In light of our discussion on Public Works, with the road situation there, in terms of whether Valley Center had been notified, I know we sent out a letter to the, to a number of cities in the past, in terms of annexing roads where they annexed up to, next to the road. I was curious, Mr. Spears, if you happened to recall whether Valley Center had received notice concerning any of the property that we've discussed here that are affected by the annexation this morning?"

Mr. David Spears, Director, Public Works, greeted the Commissioners and said, "The County Commission has never sent out a letter telling a small city to annex a road. We have tried to work

instead of doing that, we have tried to work with all of the little cities and ask them to follow the intent of the law to, if they annex up to a road, to please annex that road, and we do that with most of the cities about once a year or so.”

Commissioner Peterjohn said, “Okay, so, in terms of some of the discussions we've had, I know that we've communicated with them, but it's never been a formal, always been informal letters type of thing? Okay. I think that's important and I appreciate you adding that for the record. Thank you, Mr. Chairman.”

Commissioner Skelton said, “Okay.”

Mr. Parnacott said, “I would note that in this case the city did, my understanding is they did annex part of 81st Street in 2009, I believe it was. That was adjacent, I think it's the part of 81st Street to the east of those red parcels, I'm talking about this portion, if you can see the cursor, this portion here running, and again, I can't read my cross street it's too small of a print, but in that area there where you see more of the blue, I believe they took in that part of 81st Street in 2009, perhaps.”

Commissioner Peterjohn said, “Bob, do you know if they took in the area of the northernmost parcel? Because it looks like the section line road that's on the north boundary of that northernmost red area.”

Mr. Parnacott said, “Up here at the very northern boundary?”

Commissioner Peterjohn said, “Yes.”

Mr. Parnacott said, “That does not appear to be in the city limits. I believe it would blue line, if that's the case, it's hard to say at this point. There may be a tinge of blue there.”

Commissioner Peterjohn said, “I am looking at the parcel that's also the easternmost boundary, as well as the northernmost.”

Mr. Parnacott said, “It does appear to be, again, and maybe I can enlarge this a little bit. That does appear to be some blue on that side. So perhaps they have annexed that, Warren might know better. That would be, I think, it looks like Osage, isn't it? Running to the north. So they certainly have taken in some of the roads, but there are other roads they have not yet taken in.”

Commissioner Skelton said, “Mr. Parnacott, so if this body were to make a finding that they have not met the tenets of their service plan, it doesn't mean it's de-annex, it just means, as you

said, it continues for a given period of time, they try to make the improvements, and then there's the possibility that the citizens there can request another hearing. Is that correct?"

Mr. Parnacott said, "That's correct."

Commissioner Skelton said, "And then at a later time if no progress has been made, the county does have the authority to un-annex the area. Is that my understanding?"

Mr. Parnacott said, "Would you have that authority if you received a petition."

Commissioner Skelton said, "If I received a petition."

Mr. Parnacott said, "You would not automatically hold a new hearing, you would have to wait for a petition."

Commissioner Skelton said, "That is understandable."

Mr. Parnacott said, "But if you got one, you would."

Commissioner Skelton said, "Absolutely. Well, okay. Any other discussion here among the Commission? You know, personally I've struggled to support this. I mean, there's a lot of reasons here. I am not up to support any more substandard information. I'm tired of that. I mean it's come before us many times, and that to me is not acceptable. I know the current city staff may not have had this to do, but, you know, there's always ways to fix things. Secondly, you know, this issue with road annexations, I mean that's something that is costing the county a lot of money and it is not fair to the county. It is reasonable, fair and expected for the cities that annex the neighborhoods adjacent to a collector or arterial to annex that road, because they are going to be supplying the maintenance to those people that go into those neighborhoods. I'm hearing this testimony of the citizens present that they are not met the service plan. So my vote is not going to be in favor of this today. Comments, questions, motions, please. Commissioner Ranzau."

Commissioner Ranzau said, "Well, I share your frustration, Commissioner Skelton and I am tired of these annexation hearings as well. This is what, our fourth one, I think, that we've had since I've been here. I think this is the third one for Valley Center, and I dearly love Valley Center, but these are some of the most frustrating hearings we've had. I voted in favor of the city twice and in favor of constituents once. It comes down to a he said, she said. The constituents say they haven't gotten equal or better service, they haven't met the service plan, the roads are worse, ditches aren't mowed, et cetera, whatever the complaints are."

“You know, they are clearly saying that they haven't. The city clearly says that it has. So how do you decide which one to go with? Who is right, who is wrong? None of us have been out there all five years looking at that. You know, I haven't been out there five years ago. I didn't know what it looked like then. I don't recollect what it looks like then, what services were there, what they're getting now. So, we have to rely on the testimony that we're given. And which side to go to is very difficult. So, but for me, I have to look at who knows what's going on out there. Well the citizens that live out there know what's going on, they were there. The council people who represent them know. Some of them have been dealing with these issues for many years, some of them are new, but they have all taken the time to get information and to figure out what's going on.

“So for me, it is very interesting that three out of the six city council people at Valley Center who represent this area are under the belief that they have not met the service plan. That's compelling information. And it supports what the citizens are saying. Beyond that, you have to look at the service plan itself, which I've shown earlier, which is a single page. This demonstrated that at that point in time the city, clearly demonstrated a lack of concern for state statute and the citizens they were annexing. They had, they intentionally, or unintentionally did not follow state statute. This is not the first time. There's a pattern of behavior.

“So, the citizens are saying they disregarded their requirement to provide equal or better service under the state law. That's what they're alleging. They're saying that their not, that the city didn't meet the service plan. Well that allegation is consistent with the type of work that the city provided with respect to the service plan in and of itself. This shows that they did not meet their standards. So the allegations made by the citizens and the councilmember's who feel differently than the majority support that. So I guess when I look at it, I think there's evidence that when the annexation began they didn't care about the service plan, they didn't care about meeting the statute, they didn't care about providing equal or greater service, so why would I believe that changed over the last five years? Now, I understand some of the people in key positions now were not in positions then, and they did not create this situation and I appreciate their commitment to fixing that in the future, but we're dealing with what happened over the last five years.”

MOTION

Commissioner Ranzau moved to find that the City of Valley Center did not meet the service plan provided.

Commissioner Peterjohn seconded the motion.

Mr. Parnacott said, "If I could interject at this point. It would be very helpful if you could be more specific in terms of which services you felt were not being provided."

Commissioner Ranzau said, "It is not required by state statute, however, is it?"

Mr. Parnacott said, "No. But the court, if we get into litigation, the court may want to know, and certainly in similar situations if litigation proceeds and the court isn't sure why you made that finding, they will send it back to you and ask you to make more specific findings. So this is just a precautionary measure. You are not required to do that, but it would be probably advisable."

Commissioner Ranzau said, "I understand that, and I expected you to say such, but I've read the state statute and I think I will keep my motion. You know, if we get to that point and the courts wants to know more, then I will be happy to provide them more. As the state statute says, and I am going to follow the state statute, unlike the City of Valley Center, it says we need to make a determination as to whether or not they met their service plan. Period. It does not say we have to require any specifics, even though specifics were given by some of the citizens. What we are here to decide is, just did they meet the service plan, yes or no. And I have made the motion that they did not."

Commissioner Skelton said, "Okay. Well, the motion has been moved and seconded that the Valley Center did not meet the requirements of their service plan. I will discuss the motion. Commissioner Peterjohn."

Commissioner Peterjohn said, "Thank you, Mr. Chairman. Bob, question for you, just for clarification. If this would end up in litigation going forward, the entire transcript from today's County Commission meeting on this subject would become part of the record for any court reviewing this, I believe. Is that correct?"

Mr. Parnacott said, "Yes."

Commissioner Peterjohn said, "Okay. Let me state for the record, I'm going to provide why I seconded this, and I am going to also thank everybody for coming out today. I appreciate the City of Valley Center representative, his candor in terms of the challenges that are faced here. And I have certainly am highly respectful of whenever a fellow elected official speaks out, or provides information to this Commissioner, I am listening and I am very interested in what they may have to say. But my second today is solely reflecting the testimony that was provided by Mr. Houston, Mr. Lee, and Mr. Sirignano. And in terms of the inadequacy of the previsions, in terms of the roads side of the issue is particularly compelling to me, but everything that they provided in the record is the basis for my second. And while I appreciate all citizens comments at

all times from anyone in Sedgwick County who has a problem, my second today and my vote later on this morning is going to reflect the testimony that was provided in this public hearing by these three property owners able to come here.

“And let me again thank everyone who came down this morning for their participation in this event, because I have voted on both sides of these issues in the past. But in the past, the citizen testimony sometimes was just not there, and my understanding was if that's not the case, if we have a hearing, and no one who has a problem or concern comes up and says anything, then we are basically put in a position where we need to ratify that plan. And I'm not going to get into a general discussion of the annexation statutes and the annexation rules or the history that's occurred in Valley Center, but I do very much appreciate the representative from the City of Valley Center coming in here and talking about, basically his apology for the inadequacy of the service plan that he had nothing to do with, and basically having to live with actions that were taken prior to a lot of the folks who are currently responsible in operating the City of Valley Center, weren't in office at the time when it came in. But, that's one of the challenges that all of us in the public sector have to face. And so, my comments this morning are, I hope to provide the strength for the public record going forward so there will be clarity concerning the action that this Commission will take later on this morning. Thank you, Mr. Chairman.”

Commissioner Skelton said, “Yes, sir. Thank you, Commissioner. And I did give my reasons for why I was voting the way that I am going to vote. When I, immediately after the discussion, so that is on the record. Commissioner Unruh.”

Commissioner Unruh said, “Thank you, Mr. Chairman. I would also express appreciation to those citizens who came to express their opinion about this issue to us today. I know that it, for some, it was a sacrifice and I appreciate that. If the decision was based on emotion or neighborliness, I think it would be a much easier decision for me. However, I clearly see this as a requirement on the County Commission to see whether or not the services were provided according to the plan and not to decide whether or not this was an adequate plan, comprehensive plan, and sufficient plan. The plan that is before us, I think, as has been admitted to by the city representative is pretty thin, and perhaps we could even use the term inadequate, but nevertheless that is the plan.

“We have a response from the city that addresses each of the complaints having to do with roads, the ditches, the mowing, street lights, water questions, issues about the fire department, trash services and all those sort of things, some of which are not included in the plan, but are concerns. I find the city's response to be in my opinion clear evidence that they have fulfilled the service plan, and in light of the fact that, not judging on whether or not it is a good plan, because I think it is not, but whether or not they have fulfilled the plan as presented to us, I find that they have fulfilled the plan. And we have testimony from the city rep[resentative] that these folks are

receiving the same services as their directly adjacent properties and directly adjacent parts of the City of Valley Center. There is no difference according to the testimony, so I am going to be voting no on the motion as much as it's not a very pleasant vote for me, in light of the concerns of the citizens, but from a perspective of following what the law says, I think that I will find that the service plan has been met. That's all I have, Mr. Chair.”

Commissioner Skelton said, “Okay, fair enough. Yes, sir, Commissioner Ranzau.”

Commissioner Ranzau said, “Thank you, Mr. Chairman. I want to make this very clear. The testimony by the citizens today, and the landowners, and the emails from the landowners serve as the majority for the basis of my reasoning here. In addition to that, we have backup material, documentation provided from the City of Valley Center. Which also, which includes the service plan and the resolutions that they passed stating that they did. But when you investigate further and you understand as a result of this hearing, that there's not unanimity within the city council itself, I believe that's constructive and beneficial to understand. And the annex, the service plan itself, which was provided to us from the city, was also very constructive and beneficial. All that information that we've gained here today as a result of this testimony both from the city, and from the constituents in writing, and in person, serve as the basis for my decision today. Thank you.”

Commissioner Skelton said, “Thank you. And my comments will be on the service plan. That, you know, we have to make a decision based on the information we receive, and if we had a better defined service plan, certainly that would make my job easier, give me more information, cover a wider variety of parameters, and just lower your risk here. I mean, this would, I mean, we can talk legally or we can talk practically, I mean, maybe there is a blend between the two somewhere in life, but practically I can see what's on the paper in a better expanded format, look at a better service plan and that would make my decision easier. Nobody is going to argue with me on that, because I have more information to make my decision with. Period. And no, it is not a part of my decision, the road annexation issues are part of my decision and the testimony of the citizens are part of my decision, so that is, those are my comments. Are there any other comments by Commissioners? Madam Clerk, call the vote.”

VOTE

Commissioner Unruh	No
Commissioner Peterjohn	Aye
Commissioner Ranzau	Aye
Commissioner Skelton	Aye
Chairman Norton	Absent

Mr. Parnacott said, “Commissioners, it is our standard practice in these matters to prepare this as a formal document, your finding you made today, and we will put that on your next available Consent Agenda for your approval and forward it. Or if you would like it on the regular agenda we would do that as well. But we will have that on your next available agenda.”

Commissioner Skelton said, “Thank you, sir. Okay, Madam Clerk, call the next item.”

DRAFT