

The Missouri Bar – Guidebook Practice Series

1.

URBAN DEVELOPMENT, ZONING AND PLANNING, SUBDIVISIONS, & ANNEXATION

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Agenda/Time Allocation

2.

- **Opening Comments (5 min.)**
- **Urban Development (25 min.)**
- **Zoning and Planning (20 min.)**
- **Subdivisions (17 min.)**
- **Annexation (8 min.)**
- **Questions and Answers (15 min.).**

3.

URBAN DEVELOPMENT

“Blighted Area”

4.

- ▶ **Constitutionally required for local grants of tax relief or exercise of eminent domain** Mo. Const. art. VI, §21; art. X, § 7.
 - ❖ Source of controversy/misunderstanding
 - ❖ Point of attack
- ▶ **Prerequisite for action under:**
 - ❖ LCRA Law §§99.300-99.660 RSMo.
 - ❖ Urban Redevelopment Corporations Law Ch. 353 RSMo.
 - ❖ Planned Industrial Expansion Law §§100.310-100.590 RSMo.
 - ❖ Tax Increment Financing §§99.800-99.865 RSMo.
 - ❖ Enhanced Enterprise Zones §§135.950-135.970 RSMo.

What is a “Blighted Area?”

5.

- ▶ **"Blighted area"**, an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use;

Real Property Tax Increment Allocation Redevelopment Act § 99.805(1) RSMo.

- ▶ **"Blighted area"**, that portion of the city within which the legislative authority of such city determines that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration have become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes;

Urban Redevelopment Corporations Law § 353.020(2) RSMo.

Community Improvement District Act

§§67.1401-67.1571 RSMo.

6.

▶ What a “CID” is:

- ❖ Separate Political Subdivision governed by a Board of Directors (*5 members minimum*)
- ❖ Verified Petition to City (*Owners:50% per capita and A.V.*)
- ❖ Levies Property Taxes, Special Assessments, Sales Tax in addition to/independent of other local levies; revenues used for “public improvements”

▶ What “Public Improvements” are Authorized:

- ❖ Wide Variety of Improvements/Services
- ❖ Expanded Authority in *Blighted Areas*
- ❖ Must Be Undertaken within District boundaries

Transportation Development District Act

§§228.200-238.275 RSMo.

7.

▶ What a “TDD” is:

- ❖ Separate Political Subdivision governed by a Board of Directors (*5 minimum; each a property owners*)
- ❖ Petition to Circuit Court (*all owners or City or 50 registered voters*)
- ❖ Levies Property Taxes, Special Assessments, Sales Tax in addition to/independent of other local levies

▶ What “Projects” are Authorized:

- ❖ Transportation-Related Improvements/Services
- ❖ Can Be Undertaken outside District boundaries

Neighborhood Improvement District Act

§§67.453-67.475 RSMo.

8.

- ▶ **Neighborhood Improvement District (“NID”)**
 - ❖ Special Assessment Area Initiated by Vote or Owner Petition (*2/3 of proposed land area*)
 - Funds “Public Improvements”
 - Levies special assessments on “benefited properties” based on share of improvement costs
 - ❖ City issues limited General Obligation Bonds
 - ❖ Single bond issue for multiple projects
- ▶ **“Creative” use:**
 - ❖ Public facilities – G.O. Bond rates without voter requirements

Taxable Industrial Revenue Bonds

§§100.010-100.200 RSMo.

9.

“Chapter 100 Bonds”

Bonds Component

1. City Issues and
Company (as Bondholder)
Buys Bonds



2. Bond Proceeds Deposited in
Acquisition Fund



3. City Purchases
Facilities/Equipment

Lease Component

4. Company (as Lessee)
Pays Rents to City



5. Rent Payments Deposited in
Bond Fund



6. Bond Fund Monies
Pay Principal & Interest

Other Incentive Programs/Techniques

10.

- ▶ **Special Business Districts** §§71.790-71.808 RSMo.
 - ❖ City-Established Separate Special Taxing District
 - ❖ Subject to Voter Approval (*residents or owners*) levies property taxes, special assessments, business licenses
 - Property Tax: maximum \$0.85/\$100 assessed valuation
 - Business License: maximum 50% of existing
 - ❖ Funds Services and Improvements within SBD.
- ▶ **“Sales Tax Rebates”** §§70.210-70.325 RSMo.
 - ❖ Cooperation Agreement with private party
 - ❖ “Pay as you go” financing (*City revenues only*) for “public” improvements

Some Tips on Using Urban Development Incentives

11.

▶ **Avoiding Challenges**

- ❖ Pay Attention to Procedural Requirements
- ❖ Support Your Findings
- ❖ Assess the Political Landscape

▶ **Applications**

- ❖ Match the Tool to the Job
- ❖ “Layering” – Incentives are not Mutually Exclusive
- ❖ A Word on Governance and Control

12.

PLANNING AND ZONING

Working Definitions: What's the Difference?

13.

- **Planning**: A policy guide to development and land use within an area in relation to a *long-range* development plan.
- **Zoning**: Local law controlling use of land, including the types of use, density and development of land.
- **Subdivision**: Local law controlling the division of land.
- **Building Code**: Local law controlling construction standards



Planning determines policy; zoning implements policy

Working Definitions

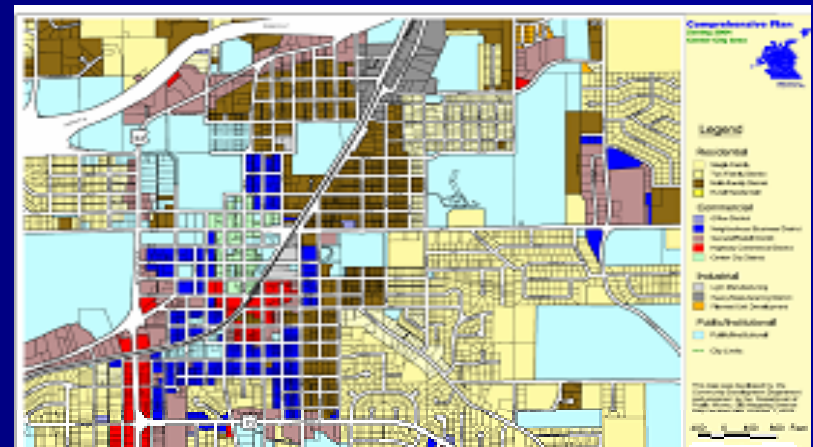
14.

➤ Official Zoning Map:

- ❖ Depicts location and boundary of each zone

➤ Zoning Ordinance:

- ❖ Establishes zones and detailed regulations for each zone
- ❖ Provides rules for interpretation
- ❖ Provides for administrative procedures



Sources of City Authority

15.

- **Dillon's Rule v. Home Rule City**
- **State Statute**
- **Local Ordinances**
- **State Courts**

Sources of City Authority

16.

➤ State Statute

❖ Chapter 89 - (§§89.010 - 89.250)
establishes zoning powers

❖ Even Home Rule cities must follow zoning
and subdivision statutes. *City of Springfield v. Goff*,
918 S.W.2d 786 (Mo. 1996)

❖ Zoning (limited) v. Police Powers (broad
power) – e.g., construction regulation not
zoning

Master Plan

17.

➤ Master Plan - defined

- ❖ "a city plan for the physical development of the community..." §89.340 RSMo.
- ❖ Other terminology: "Comprehensive Plan" or "City Plan"

➤ Master Plan as "Guide" -

- ❖ A master plan is "a guide to development rather than an instrument to control land use." *State ex rel. Schaefer v. Cleveland*, 847 S.W.2d 867 (Mo.App.1992).

➤ Master Plan as "Law" - the Exceptions:

- ❖ Where redevelopment statute requires consistency with comprehensive plan, deviation is fatal. (TIF) *DeVault v. City of St. Charles*, 959 S.W.2d 815 (Mo. App. 1997).
- ❖ Home rule – establishment of a similar plan that is law and binding.

Master Plan (Cont.)

18.

➤ Master Plan Adoption

❖ City Plan is adopted by Planning Commission, not Council - BUT:

➤ MO County Plans adopted by County Commission after Planning commission preparation. §64.815 RSMo.

➤ Why is a Plan important - consistency with adopted comprehensive plan is a factor in zoning reasonableness. *J.R. Green Properties v. City of Bridgeton*, 825 S.W.2d 684 (Mo. App. 1992).

Plan May Trigger Review of Proposed Public Improvements

- §89.380 RSMo. – Whenever the commission adopts the plan . . . or any part thereof, *no street or other public facilities , or no public utility*, whether publicly or privately owned, and, the location, extent and character thereof having been included in the recommendations and proposals of the plan or portions thereof, *shall be constructed* or authorized . . . until the location, extent and character thereof has been submitted to and approved by the planning commission.

19.

Amending the Zoning Ordinance

20.

- **Public hearing and at least 15 days' notice of hearing shall be published in an official paper or a paper of general circulation in the City. §89.050**
- **Public hearing must be before the "legislative body." See *Murrell v. Wolff*, 408 S.W.2d 842 (Mo. 1966); but see *Moore v. City of Parkville*, 156 S.W.3d 384 (Mo. App. 2005) (P&Z hearing satisfied statutory requirement).**
- **Planning Commission review is not required for amendments under §89.050 RSMo., but many city codes require Commission review.**

Procedural Compliance

21.

➤ Adoption & enforcement of local planning and zoning laws must conform to state enabling legislation. **Failure to conform to enabling legislation is fatal.**

❖ State ex. rel. Casey's General Stores, Inc. v. City of Louisiana, 734 S.W.2d 890, 895 (Mo. App. E.D. 1987) (“Where the enabling statutes are not complied with, the ordinance is invalidly acted and cannot be enforced.”)

Zoning Approval Standards

22.

- **Rezoning decisions are *legislative* in nature.** *Hoffman v. City of Town and Country*, 831 S.W.2d 223 (Mo. App. 1992).
- **Missouri - Presumption favors the legislative determination. Reviewing courts will defer to any decision that is reasonable or where the issue is "fairly debatable."** *J.R. Green v. City of Bridgeton*, 825 S.W.2d 684 (Mo. App. 1992).
 - ❖ **Zoning reasonableness reviewed based on *existing* zoning **NOT** proposed zoning.** *National Super Markets, Inc. v. Bellefontaine Neighbors*, 825 S.W.2d 24, 26 (Mo. App. E.D. 1992) (“It is not the province of the court to determine the proper zoning but only if the present zoning is reasonable.”)

Zoning Amendment Protests

23.

➤ Protests require 2/3 vote of governing body

❖ **§89.060 (Cities):** Owners of 30% or more, either of the areas of the land in such proposed change or within 185 feet distant from the boundaries of the district proposed to be changed.

❖ **Ch. 64 (Counties):** Owners of 30% of the frontage within 1000 feet to the right or left of the frontage proposed to be changed, or by the owners of 30% percent of the frontage directly opposite, or directly in the rear of the frontage proposed to be altered.

Variations

Board of Adjustment

24.

➤ § 89.090 RSMo:

❖ Appeals (of administrative zoning decisions)

- Interpretations of law
- Variations – hardship and practical difficulties
- Other matters referred to the Board

❖ Must apply the “spirit of the ordinance”

- Use variance must be supported by “*unnecessary hardship*”
- Area variance may be supported by “*practical difficulties*”

❖ 4 votes of 5 required

❖ Appeal to Circuit Court

25.

SUBDIVISIONS

Subdivision – Plat v. Deed

26.

- **Subdivision defined: the division of real property into two or more lots**
- **Subdivision may occur by recording of:**
 - ❖ **Deed (metes and bounds or other legal description)**
 - ❖ **Recorded Plat (and deeds referencing numbered plat lots)**
- **City/County Subdivision ordinance determines when plat is required (e.g. divisions leaving 20 acres or less)**

Subdivision Regulations

27.

- **§89.410.1 RSMo.**
 - ❖ **Planning Commission shall recommend Regulations**
 - ❖ **Council adopts by ordinance**
 - ❖ **"Duly advertised" public hearing required to be held "by the council." §89.410.7 RSMo.**

NOTE: hearing not required for each plat

Subdivision Plat Approvals

28.

- **2 Sources of Authority and duties:**
 - ❖ §89.300 et seq. (subdivision and planning)
 - ❖ §445.030 (historical plat act)
- **Procedures (§89.420-440):**
 - ❖ **Commission to complete review within 60 days of submission.**
 - ❖ **Approval *does not* constitute public acceptance of ROW or property.**
 - ❖ **City Council approval/endorsement required for plat recording (and must be by ordinance §445.030).**
- **Sale or Contracting prior to approval and recording of lots – UNLAWFUL** (§§89.450, 445.070)

Subdivision Regulations

29.

- **No Action Against City for Approval of Plat –**
 - ❖ **Sovereign immunity bars negligent approval claim.**
 - ❖ **No inverse condemnation because City approval did not "cause" the harm; City is not "unpaid expert" or "insurer" for developer of plat.**

State ex rel. City of Blue Springs v. Nixon, 250 S.W.2d 355 (Mo. 2008)
(Suit by lot owner against City for approval of plat with inadequate drainage).

Subdivision Regulations

30.

- **BUT - Action was Upheld Against City for Denial of Plat**
- ***Furlong Companies v. City of Kansas City*, 189 S.W. 3d 157 (Mo. 2006):**
 - ❖ **Plat must be approved if ordinance requirements met**
 - ❖ **Damages awarded under 42 USC §1983 for "truly irrational" denial of plat:**
 - **Ignored advice of Staff and City Attorney**
 - **No reasons for denial/no opportunity to correct**
 - **8 month delay before denial (196 of 197 approved in 1 week); only denial in 10 years**

Subdivision Regulations

Escrows

31.

➤ Escrow Procedures:

- ❖ 89.410 – detailed escrow procedures
- ❖ See presentation, “*Subdivision and Public Improvement Guarantees: Recent Developments, Statutory Mandates and Practical Measures to Reduce Risk,*” at:
<http://www.municipalfirm.com/Training.htm>

Constitutional & Statutory Limitations on Local Authority 32.

See Mo Bar Chapter for details on the following limitations:

- Takings
 - ❖ Impact Fees
 - ❖ Land Dedications
- Free Speech
- Free Exercise/ RLUIPA
- Intergovernmental Conflicts
- Telecommunications Towers
- Utilities

Takings - Categories

4 types of Takings (*Lingle v. Chevron* (2005)):

33.

1. **Physical Occupation** Cases - *Loretto v. Teleprompter Manhattan CATV* (U.S. 1982) (strict liability)
2. **Total Regulatory Takings** Cases - *Lucas v. SC Coastal Council* (U.S. 1992) (does regulation deny "all economically viable use")
3. **Partial Regulatory Taking** - *Penn Central v. NYC* (U.S. 1978) (balancing test: (1) economic impact (2) investment-backed expectations, and (3) character of the government action).
4. **Dedications and Exactions** - *Nollan v. Cal. Coastal Comm'n* (U.S. 1987) and *Dolan v. City of Tigard* (U.S. 1994) ("essential nexus" and "roughly proportional")

34.

ANNEXATION

Voluntary Annexation

35.

- ▶ **All Cities** §71.012 RSMo.
 - ❖ “Contiguous and Compact”
 - ❖ Procedural Requirements:
 - Verified Petition by All Fee Owners
 - Public Hearing 14-60 Days After Receipt (*7 days notice*)
 - Reasonable and Necessary/Ability to Extend Services
 - ❖ Waiting Period/Effective Date
- ▶ **Cities in Certain Counties** §71.014 RSMo.
 - ❖ No Public Hearing, No Waiting Period

Involuntary Annexation

§ 71.015 RSMo.

36.

▶ In Municipalities except St. Louis/Jackson Ctys.

- ❖ Contiguous = 15% Common Boundary
- ❖ “Declaration” Ordinance and Findings
- ❖ Public Hearing/Notice
- ❖ Plan of Intent
- ❖ Dual Majority Election
- ❖ Declaratory Judgment (Before or After?)

▶ In Jackson County §§ 71.870-71.920 RSMo.

- ❖ No 15% Boundary, Public Hearing, Plan of Intent, or D.J.
- ❖ Notice to Election Authority

Annexation Issues

37.

- ▶ **D.J. Challenges/Sufficiency of Annexation**
 - ❖ Contiguousness
 - ❖ Reasonableness and Necessity
 - ❖ Ability to Furnish Services Timely
- ▶ **Time for Providing Services/Deannexation**
- ▶ **Annexation Contests**
 - ❖ Priority: Doctrine of Prior Jurisdiction
 - ❖ “First Valid Step” – Good until abandoned
- ▶ **Detachment/Consolidation**
- ▶ **Pre-annexation Agreements**

38.

QUESTIONS &
ANSWERS

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