



MISSOURI MUNICIPAL LEAGUE
2009 ANNUAL CONFERENCE
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PLANNING & ZONING FUNDAMENTALS

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"BASIC TRAINING"

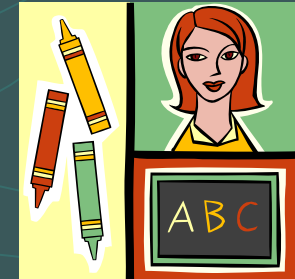
Orientation



Overview

P & Z FUNDAMENTALS

- ▶ Basic Terms
- ▶ Authority & Limitations
- ▶ Applications & Actors
 - ▶ Governing Body
 - ▶ Planning & Zoning Comm'n.
 - ▶ Board of Adjustment
- ▶ Tools & Procedures



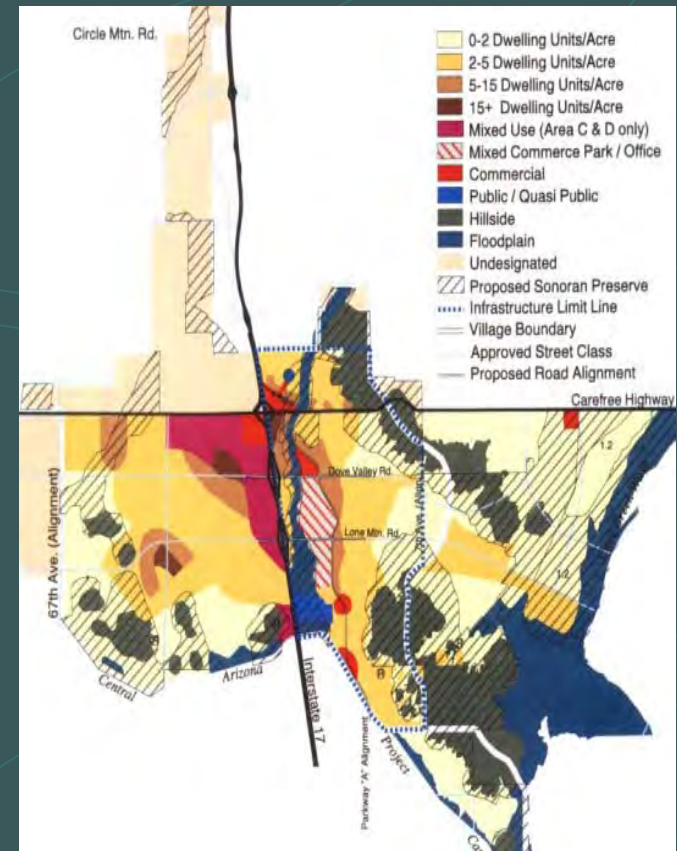
OBJECTIVES



- ▶ Comfort and Familiarity
- ▶ Context
- ▶ Case Law Cautions
- ▶ "Good" Decisions

WORKING DEFINITIONS

Planning: a process of rational decision-making about future development. It is a policy guide to development & land use.



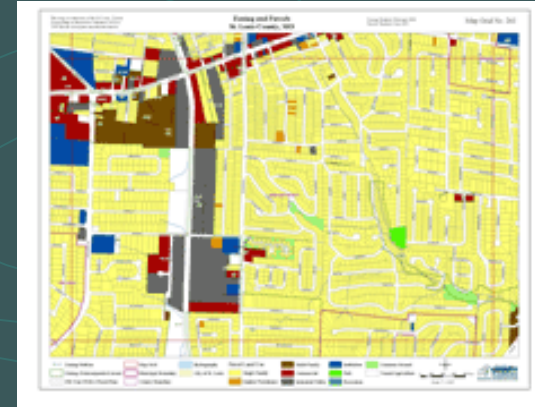
WORKING DEFINITIONS

Zoning: local law controlling use, bulk, & density limitations & standards for land use & development within each "zone."



WORKING DEFINITIONS

Comprehensive Plan:
documents the process
of data collection and
analyses that informs
land use policies to
guide development.



SOURCES OF AUTHORITY

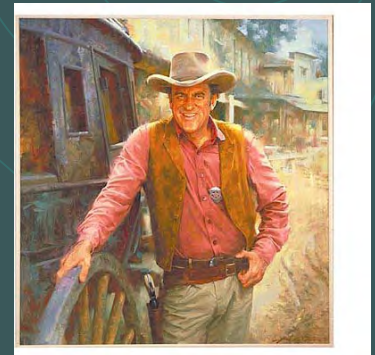
▶ Enabling Statutes



▶ Case Law Decisions

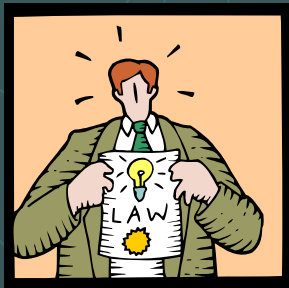


▶ Dillon's Rule



CHAPTER 89 RSMO.

Basic Decisional Limitations




▶ *Adoption & enforcement of local planning and zoning **must conform** to state enabling legislation.*




▶ ***Failure** to conform to enabling legislation requirements (including procedural) is **fatal**.*

APPLYING LAND USE REGULATIONS

- 
- ▶ Procedures, standards and judicial review depend on **type/classification of actions:**
 - Legislative: Adoption & Amendment of Regulations (including zoning map/text)
 - Administrative: Special Permits; Site Plan Review
 - Quasi-Judicial: Variances; "Errors"

LEGISLATIVE ACTIONS

- 
- ▶ Afforded great (but not unlimited) deference:
 - ▶ Zoning and subdivision regulations may only be adopted if they have substantial relationship to **public** health, safety & welfare.
 - ▶ Zoning must be reasonable as applied to particular property, determined by weighing **public** benefit against private detriment.

ADMINISTRATIVE ACTIONS

- 
- ▶ Applies to Board of Aldermen/City Council as well as Planning & Zoning Commission.

State ex rel. Westside Dev. Co., Inc. v Weatherby Lake


- ▶ Discretion limited by provisions of applicable regulation:
 - To grant administrative approval (site plan/C.U.P), decision-makers must find that standards of regulation are satisfied.
 - Decision to grant or deny must be based upon facts contained in the record.

"ARBITRARY & CAPRICIOUS" STANDARD

- ▶ Decisions **must** be supported by *competent and substantial evidence in the record*
- ▶ If the record does not contain sufficient evidence to show the decision was:
 - Made on the basis of substantial facts to support the decision
 - Was reasonably or rationally related to a legitimate government purpose
- ▶ Decision **will be overturned** as arbitrary and capricious




QUASI-JUDICIAL ACTIONS

- 
- ▶ **Variations:** relief from strict/literal application of Zoning Ordinance.
 - ❑ **"Area:"** relief from setback or other size/dimensional requirements.
 - ❑ **"Use:"** relief from permitted use restrictions.
 - ▶ **Variations:** Board of Adjustment, after hearing, must find "practical difficulties" (Area) or "unnecessary hardship" (Use) to grant relief.

"PRACTICAL DIFFICULTIES/ UNNECESSARY HARDSHIP"

- ▶ Economic hardship alone will **not** support a grant of variance. *Conner v. Herd*
- ▶ Hardships cannot be created by owners themselves, or be based on conditions where owners had knowledge at the time of purchase. *State ex rel Robenau v. Beckmeier*
- ▶ Hardship condition must relate to the property and **not** some personal condition of owner. *Brown v. Beuc*

MINISTERIAL ACTIONS

- 
- ▶ **Discretion limited:** "execution of a specific duty" upon specified facts:
 - ▶ Plat approval is ministerial
 - ▶ **Must** be approved if ordinance requirements met
 - ▶ Performance of duty may be compelled in **mandamus**.
 - ▶ Where refusal is "**truly irrational**," damages may be now be awarded under 42 USC §1983.

Furlong Companies, Inc. v. City of Kansas City

FURLONG "TRULY IRRATIONAL" STANDARD

- ▶ More than "arbitrary and capricious."
- ▶ "When government acts with intentional disregard of its own valid law, knowing that its actions deprive individuals of their property rights, such action is 'truly irrational.'"
 - ▶ Ignored advice of Staff and City Attorney
 - ▶ No reasons for denial/no opportunity to correct
 - ▶ Extensive delays (196 of 197 approved in 1 week)

FURLONG "TRULY IRRATIONAL" STANDARD

- ▶ "Good faith" and "best intentions" provide no defense.
- ▶ Conversely, "**bad faith**" may invite damages against Board/Commission members individually.
 - Decision "so corrupted by personal motives..." (*e.g.*, punishing a political opponent)
Brady v. Town of Colchester, quoted in Gunter v. City of St. James, et al.
- ▶ Other Applications Beyond Ministerial Acts?




TOOLS OF THE TRADE

THE COMPREHENSIVE PLAN

- ▶ Content
- ▶ Adoption and Amendment
- ▶ Why adopt a Comprehensive Plan?

A Community's Vision



**City of Wentzville
Comprehensive Plan**

Mission Statement:
*The City of Wentzville
is a community of neighbors
working together to build
a better future.*

www.wentzvillemo.org

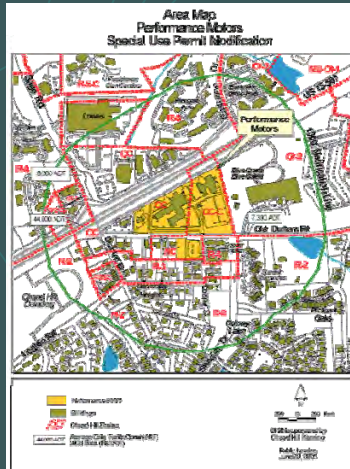
Wentzville
EST. 1822
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THE COMPREHENSIVE PLAN

Content



CHAPTER 6: COMPREHENSIVE/LAND USE PLAN

GOALS, OBJECTIVES, AND ACTION STEPS OF COMPREHENSIVE PLAN

This chapter illustrates Wentzville's goals, objectives, and action steps in carrying out the implementation of the Comprehensive Plan. These goals, objectives, and action steps address issues discussed in earlier chapters, and reflect many issues derived from the Comprehensive Plan Review Committee (including the Planning and Zoning Commission) study sessions held from March of 2005 to March of 2006, and including input gathered from Open House Public Meetings held on May 24th, 2005 and again on March 13th, 2006.

The City of Wentzville's long-term growth and quality of life shall be guided by the implementation of these goals, objectives, and action steps. The principles within this Chapter guide the City of Wentzville to preserve and enhance the Village Center and to maintain and expand the economic vitality of the City while maintaining a strong sense of community spirit, through the management of natural resources, community involvement, and proactive infrastructure planning.

Incorporated by reference to this Chapter of the Plan is the Land Use Plan Map. The site-specific map, which simply identifies, within broad ranges, the land uses deemed suitable for a given location related to transportation, utility access, and adjacent existing and planned land uses. The fulfillment or implementation of these goals and objectives is dependent upon continuing education, behavioral modifications, intergovernmental coordination, creation and implementation of new policies and regulations, implementation upon review and approval of new projects, creation of funding mechanisms, and taking action. (Map No. 15)

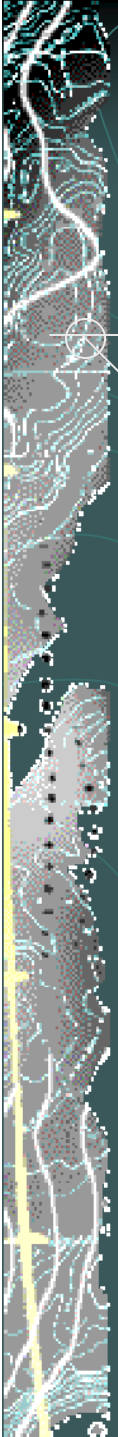
► "...a city plan for the physical development of the community..."

► "...with accompanying maps, plats, charts, descriptive materials..."

► "...shall show the Commission's recommendations for physical development and use of land..."

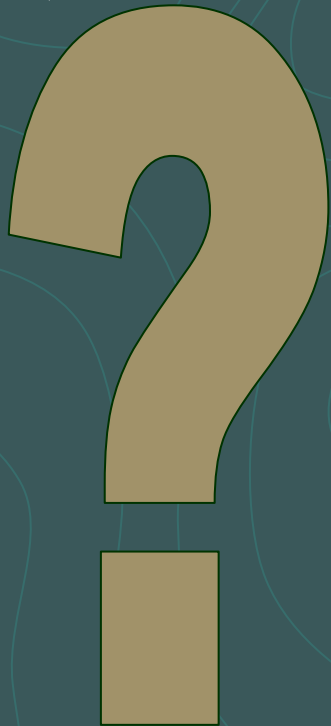
THE COMPREHENSIVE PLAN

Adoption

- 
- ▶ Public hearing (15 days' published notice).
 - ▶ P & Z Commission resolution:
 - ❑ "shall refer expressly to maps, descriptive matter intended to form the whole or part of the plan"
 - ▶ By majority vote of full P&Z Commission.
 - ▶ Action recorded on plan by signature of P&Z Commission Secretary.
 - ▶ Certified to governing body and municipal clerk.
 - ▶ Copies filed in offices of:
 - ❑ Planning and Zoning Commission
 - ❑ County Recorder of Deeds
 - ❑ Municipal Clerk

THE COMPREHENSIVE PLAN

Why Have One?



- ▶ Zoning and land use regulations must be adopted "*in accordance with a comprehensive plan.*" §89.040 RSMo.
- ▶ Consistent guide for development vs. ad-hoc "quickie" decisions.
- ▶ Opportunity to take stock of community preferences and set directions accordingly.

THE COMPREHENSIVE PLAN

Case Law

- ▶ Local adherence to, consistency with adopted comprehensive plan is a factor in zoning reasonableness.

J.R. Green Properties v. City of Bridgeton



THE ZONING ORDINANCE

- 
- ▶ Components
 - ▶ Initial Adoption
 - ▶ Amendments

ARTICLE I. SHORT TITLE, PURPOSE, AND LEGAL CLAUSES

SECTION 405.010: TITLE

This Chapter shall be known and may be cited hereinafter as the "Zoning Code of the City of Wentzville". (Ord. No. 1076 §§1-2, 7-26-90; Ord. No. 1805 §1, 11-28-01)

SECTION 405.015: PURPOSE

As established in Chapter 89 of the Missouri Revised Statutes (1986), the purpose of this Chapter is to regulate and control the zoning of land and consequent use of said land within the City of Wentzville in order to promote public safety, health and general welfare of the citizens. These regulations are intended to be in general accordance with the Comprehensive Plan specifically designed to:

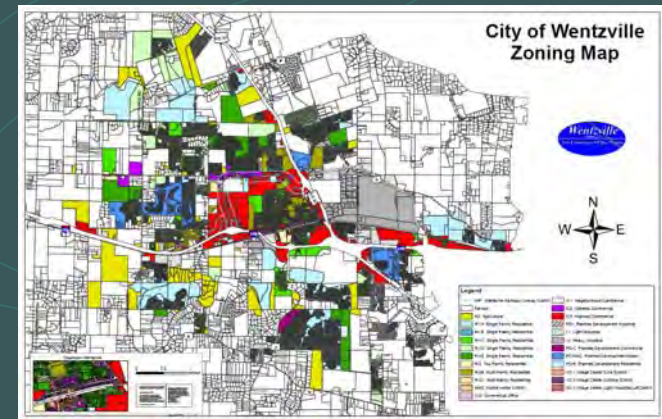
1. Protect the character and stability of residential, recreation, commercial, industrial and open space areas within the City of Wentzville and promote their orderly and beneficial development;
2. Provide privacy and convenience of access to property;
3. Regulate the intensity of land use and establish open areas surrounding buildings and structures necessary to provide adequate light and ventilation and to protect public safety and health;
4. Regulate and limit the height of buildings and structures;
5. Lessen and avoid congestion on public streets by providing off-street parking and loading; and regulate access to public right-of-way.
6. Regulate and limit the density of population based on the City's ability to provide for water, sewerage, Police, parks and other essential public services;
7. Divide the City into zoning districts and establish, by reference to a map, the boundaries of said districts;
8. Fix reasonable standards to which land, buildings, structures and their uses must conform;
9. Prohibit uses, buildings or structures which are incompatible with the character of development or uses, buildings or structures permitted within specified zoning districts;
10. Prevent illegal additions or alterations of existing buildings or structures;

THE ZONING ORDINANCE

Consists of:

Zoning Map:

- Depicts location and boundary of each "zone."



Zoning Text:

- Establishes number and type of zones and details regulations for each.
- Provides rules for interpretation.
- Provides for administrative procedures, including relief provisions (requires Board of Adjustment).

THE ZONING ORDINANCE

Initial Adoption

➤ P&Z Commission public hearing and report required for **original** zoning:

- "In order to avail itself of the powers conferred by sections 89.010 to 89.140, such legislative body shall appoint a commission, to be known as "**The Zoning Commission**," to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a **preliminary report** and **hold public hearings** thereon *before* submitting its **final report** and such legislative body shall not hold its public hearings or take action until it has received the final report of such commission." §89.070 RSMo.

THE ZONING ORDINANCE

Amendments

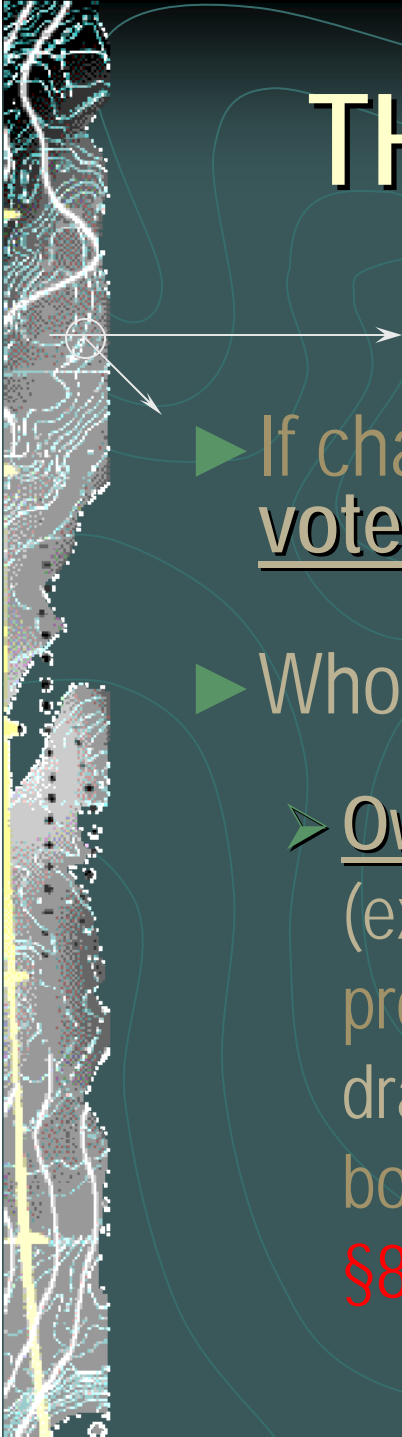


▶ P&Z Commission review not required for amendments (under State law):

- "The **legislative body** of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a **public hearing** in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least **fifteen days'** notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality." **§89.050 RSMo.**

THE ZONING ORDINANCE

Protests

- 
- ▶ If changes to zoning regulations are protested, 2/3 vote of governing body is required to approve
 - ▶ Who may protest?
 - Owners of **30% or more**, *either* of the areas of the land (exclusive of streets and alleys) included in such proposed change *or* within an area determined by lines drawn parallel to and 185 feet distant from the boundaries of the district proposed to be changed.
§89.060 RSMo.

HEARINGS



▶ Purposes:

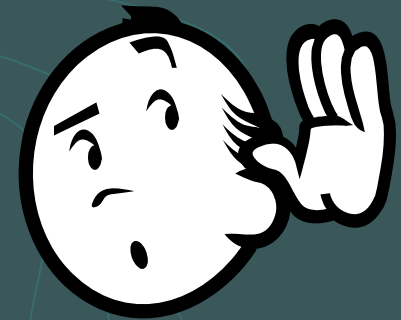
➤ To "hear" testimony on which to base decision

→ Quorum required

→ Hearing is "*listening*"

➤ To provide a record for review

▶ Procedures/Suggestions...



HEARINGS

Common Sense Rules:

1. Frame the issue
2. Discussion through the Chair
3. No personal references
4. Stick to the facts
5. Speak to the issue



Remember: You Are Making a Record!



PRECEDENT?



▶ **prec-e-dent** *n.*

- ▶ An act or instance that may be used as an example in dealing with subsequent similar issues
- ▶ A judicial decision that controls in subsequent similar cases
- ▶ Convention or custom arising from long practice

▶ Precedential effect arises only in **similar, relevant** facts/circumstances

- ▶ If it's unique, there is no precedential effect; *relevant facts are everything*

EXACTIONS & VESTED RIGHTS

▶ **Exactions:** *e.g.*, dedications/impact fees

- ▶ "Essential nexus" exaction → impact
- ▶ Exaction "reasonably attributable" to development

▶ **Vested Rights:** *e.g.*, non-conforming uses

- ▶ Vesting by exercise
- ▶ Phased approvals, extended rights
- ▶ Protects against forfeiture





OTHER ISSUES (TIME PERMITTING)

- ▶ "Contract" zoning
- ▶ "Spot" zoning
- ▶ Amortization
- ▶ Zoning and churches, schools
- ▶ Signs
- ▶ "Adult" Uses
- ▶ Utilities



QUESTIONS & ANSWERS



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