


Zoning and Land Use Law
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 Brian J. Malone



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Overview/Topics to Cover


- Authority for cities to zone
- Role of Planning & Zoning Commission
- Comprehensive plans
- Enactment of zoning ordinances
- Conditional/Special use permits
- Limitations on zoning power
- Board of Adjustment & Architectural Review Board



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Authority to Zone

- The power to zone stems from Article IV, Section 37 of the Missouri Constitution....”
 - *The Lamar Co., LLC v. City of Columbia*, 512 S.W.3d 774, 784 (Mo. App. W.D. 2016)
- “Missouri’s Zoning Enabling Act, sections 89.010 through 89.140, is the **sole source of power and measure of authority for a city**, town, or village in zoning matters.”
- Same for charter cities as third, fourth class cities, towns, villages
 - Charters may have special restrictions/limitations



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Authority to Zone

- Cities can zone for purpose of “promoting health, safety, morals or the general welfare of the community...”
 - 89.020, RSMo
- 89.030, RSMo – Cities may:
 - “divide the municipality into districts of such number, shape, and area...”
 - “regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures, or land...”
- “All such regulations **shall be uniform** for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.”



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Purposes

- 89.040, RSMo – Regulations shall be in accordance with comprehensive plan and ...
 - designed to lessen congestion in the streets;
 - to secure safety from fire, panic and other dangers;
 - to promote health and the general welfare;
 - to provide adequate light and air;
 - to prevent the overcrowding of land;
 - to avoid undue concentration of population;
 - to preserve features of historical significance;
 - to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.



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Purposes

- 89.040, RSMo – “Such regulations shall be made with reasonable consideration, among other things ...
 - to the character of the district;
 - the district’s peculiar suitability for particular uses;
 - conserving the values of buildings; and
 - encouraging the most appropriate use of land throughout such municipality.”



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Zones Include

- Commercial
- Residential
- Industrial
- Agricultural
- Planned Developments - provides flexibility from traditional district regulations, gives city more discretion



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Planning and Zoning Commission

- Sometimes called City Plan Commission or Zoning Commission
- Must have a commission if City engages in zoning
 - 89.070, RSMo
- Commission "recommend the boundaries of the various original districts and appropriate regulations to be enforced therein."
- Makes preliminary report on zoning ordinances
 - Holds public hearing to establish and modify districts and regulations
 - Board of Aldermen / City Council can't hold its hearings until P&Z has reviewed and made recommendations regarding establishment of districts
- Some cities require that if P&Z disapproves of a change, then a 2/3 majority of Board of Aldermen / City Council is required to approve the change. Most cities use simple majority
- Between 7-15 members, mayor or councilmember can be member. Set by ordinance
 - 89.320, RSMo



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Comprehensive Plans

- Zoning Ordinances are to be "in accordance with a comprehensive plan,"
 - 89.040, RSMo
- For "the general purpose of guiding and accomplishing a coordinated development of the municipality which will, in accordance with existing and future needs, best promote the general welfare, as well as efficiency and economy in the process of development."
 - 89.350, RSMo
- "A comprehensive plan **guides the development and use of land** within the city and **does not control land use**. The comprehensive plan is **not a zoning document** and cannot be used as such. Instead, the comprehensive plan is intended to be updated and changed as conditions and policies warrant."
 - Smith v. City of St. Louis, 395 S.W.3d 20, 28 (Mo. banc 2013)



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Comprehensive Plans – 89.340, RSMo

- Plan shows commission’s recommendations for the physical development and uses of land,
- May include, among other things,
 - **general location, character and extent of streets and other public ways, grounds, places and spaces;**
 - the general location and extent of **public utilities and terminals**, whether publicly or privately owned;
 - the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment or change of use of any of the foregoing; and
 - the general character, extent and layout of the replanning of blighted districts and slum areas.



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Comprehensive Plans – 89.380, RSMo

- Upon adoption, “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 in the municipality until the location, extent and character thereof has been submitted to and approved by the planning commission.”
 - If P&Z disapproves under this section, 2/3 majority of board of aldermen required to approve
 - For other governmental entities, such as schools, libraries, **that entity’s board** can override with 2/3 majority of its own governing body



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Comprehensive Plans

- May also provide for “regulation of the height, area, bulk, location and use of private, nonprofit and public structures and premises, and of population density.”
 - 89.340, RSMo
- Adopted by resolution of Planning and Zoning Commission, recorded with county recorder of deeds, kept on file by City Clerk.
 - 89.360, RSMo



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Comprehensive Plans

- Comprehensive Plan can be the zoning ordinances themselves
 - “This court holds a comprehensive plan may be validly enacted in an ordinance itself without existing in some form separate from the ordinance.”
 - “Furthermore, ‘the general rule has become ... that, absent specific requirements in enabling legislation, the comprehensive plan need not have a separate physical existence apart for the zoning ordinances, and it need not be in writing, but its design may be found in the scheme apparent in the zoning regulations themselves.’”
 - *State ex rel. Chiavola v. Vill. of Oakwood*, 886 S.W.2d 74, 80 (Mo. App. W.D. 1994)



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Enactment of Zoning Ordinances

- Must be a public hearing, in which citizens, persons of interest have opportunity to be heard
- 15 days’ notice of time and place of hearing published in newspaper
 - 89.050, RSMo
- Notice/public hearing applies to new zoning ordinances
 - 89.060, RSMo
- If 30% of owners within 185’ of property/district to be changed submit signatures opposing change, 2/3 of Board of Aldermen / City Council is required for measure to go into effect



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Enactment of Zoning Ordinances

- P&Z reviews first to **establish** district regulations, must hold public hearing
 - 89.070, RSMo
- Board of Aldermen / City Council then conducts public hearing
- P&Z review NOT required by statute to **amend** previously established district regulations
 - *Murrell v. Wolff*, 408 S.W.2d 842, 848 (Mo. 1966)
 - Ordinance may still require review by P&Z



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Enactment – Recap

- To establish boundaries of original districts and regulations therein, do public hearing at P&Z and before Board of Aldermen / Council, with published notice
 - 89.070, RSMo
- To amend/modify zoning regulations/boundaries, only need to do a public hearing before Board of Aldermen / Council
 - 89.050, 89.060, RSMo
- However, ordinances may require public hearing and/or review by both P&Z and Board of Aldermen / Council, regardless



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Enactment of Zoning Ordinances

- Failure to follow 89.050, 89.060 can invalidate zoning ordinance
 - “Enactment of a zoning ordinance or the amendment of an existing ordinance must, therefore, strictly comply with the statutorily prescribed notice and hearing requirements of 89.050 and 89.060 RSMo. Where the procedural requirements of the Enabling Act are not strictly complied with, the ordinance passed is invalid and cannot be enforced.”
 - City of Louisiana v. Branham, 969 S.W.2d 332, 336 (Mo. App. E.D. 1998)



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Enactment of Zoning Ordinances

- Failure to follow ordinances can also invalidate ordinance
 - “Since the city had failed to comply with the notice and hearing requirements applicable to amending its zoning ordinances, the ordinance was invalid.”
 - EW Disposal S., LLC v. Sr. Louis County, 168 S.W.3d 607, 615 (Mo. App. E.D. 2005)
 - Many city ordinances require more notice than statutes require. If you don’t follow procedures strictly, ordinance could be invalid



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Enactment of Zoning Ordinances

- Not all ordinances in zoning code are “zoning ordinances”
 - “Zoning ordinances also have been described as **dividing land into zones** and regulating **both the nature of land usage and the physical dimensions of uses**, such as **height restrictions, setbacks and minimum area** requirements. But the mere fact that an ordinance affects where certain structures may be placed does not necessarily make it a zoning ordinance.”
 - E.W. Disposal S., 168 S.W.3d at 612



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Enactment of Zoning Ordinances

- Court looks at “primary purpose” of ordinance to determine if it’s a zoning ordinance
 - If purpose of ordinance “is primarily to regulate for health concerns rather than to provide for uniform development of real estate, then the ordinance will not be held to be a zoning ordinance, but rather an ordinance related to health and welfare.”
 - E.W. Disposal S., 168 S.W.3d at 613



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Enactment of Zoning Ordinances

- Court looks at three factors to determine primary purpose of ordinance:
 - Is purpose expressly stated?;
 - Is ordinance in fact directed to regulation of public health and safety? Or instead toward “uniform development of real estate”?; and
 - Does the ordinance have the effect of amending zoning rules by disallowing a previously permitted land use?
 - E.W. Disposal S., 168 S.W.3d at 613



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Enactment of Zoning Ordinances

- Ordinances regulating landscaping/off-street parking/utility poles, etc. may not be zoning ordinances if they apply citywide instead of by zone
- Zoning is “legislative function.”
 - Court may reverse a legislative action ‘only if arbitrary and unreasonable, meaning that the decision is not fairly debatable. Fairview Enterprises, Inc. v. City of Kansas City, 62 S.W.3d 71, 76 (Mo. App. W.D. 2001)
 - Person challenging ordinance bears burden to demonstrate ordinance is unreasonable.
 - Court will look at matters outside record presented to legislative body.
 - City doesn’t have to make “highest and best” use of property, just “reasonable” use. Lenette Realty & Inv. Co. v. City of Chesterfield, 35 S.W.3d 399, 406 (Mo. App. E.D. 2000).



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Enactment of Zoning Ordinances

- So long as purpose of ordinance is consistent with purposes of Chapter 89, it will likely be upheld.
 - “A decision is considered arbitrary and unreasonable if it bears no substantial relationship to the public health, safety, morals, or general welfare. If ‘the public welfare is not served by the zoning or if the public interest served by the zoning is greatly outweighed by the detriment to private interests, the zoning is arbitrary and unreasonable...” Fairview Enterprises, Inc., 62 S.W.3d at 76
 - Interest of a few neighboring properties is not “public interest,” must look at “community as a whole.” Sandborthe v. City of Olivette, 647 S.W.2d 198, 204 (Mo. App. E.D. 1983)
 - Can’t be based on something like restricting competition to existing entities



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City of Arnold v. Dickhaner, LLC

- Decision issued by Court of Appeals on July 26, 2022
 - ED 110103
 - May be subject to rehearing/modification
- City refused to rezone residential property to commercial. Owner sued to require City to rezone
- Dickhaner’s surveyor submitted affidavit that development of property for residential purposes was economically unfeasible
- Arnold’s engineer concluded zoning change “was not ‘shown to be in the best interests for the health, safety, and welfare of the citizens of the City of Arnold.’” Several neighbors objected



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City of Arnold v. Dickhaner, LLC

- Court of Appeals reversed trial court decision requiring City to rezone
- Challenging party “bears the burden” to prove existing zoning is unreasonable. Two step process:
 - Did challenger present sufficient evidence that present zoning is unreasonable?; and
 - If so, did the City’s evidence establish that reasonableness of its decision is “fairly debatable.” Any doubt resolved in City’s favor.
- Property owner must demonstrate that “private detriment outweighs public benefit.”
 - No private detriment in absence of effect on property value
 - City can rebut with evidence of public benefit to present zoning



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Conditional Uses / Special Uses

- Conditional uses must comply with certain criteria listed in ordinance to be allowed in a district
- If they meet criteria, permit must be granted.
 - *Campbell v. City of Columbia*, 824 S.W.2d 47, 49 (Mo. App. W.D. 1991)
- Decisions subject to judicial review. Reviewed as an administrative, as opposed to legislative, decision.
 - City has limited discretion
 - Cannot deny arbitrarily or capriciously
 - Decisions must be based on factors in ordinance



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Conditional Uses

- Holder of CUP “who acts in good faith reliance upon a CUP that has been granted to him, by making a substantial investment in erecting a building on the property, acquires a vested right in the continued permitted use of that property in a manner that complies with the conditions of the CUP.”
 - *Gray v. White*, 26 S.W.3d 806, 818 (Mo. App. E.D. 1999)
- In such cases, “vested right to such continued use of the property is transferable and ‘runs with the land.’”
- CUP remains in effect until terms violated. City has burden to prove basis for revocation.



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Enforcement of Zoning Ordinances

- Can be enforced by fine/jail in municipal court
 - For most cities, fine of \$10 - \$250 per day in violation, 10 days in jail for each day in violation
- City can bring equitable action to enjoin "unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use," to restrain, correct, or abate a violation of zoning ordinances, or to "prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.
 - 89.120, RSMo
- Gray v. White, 26 S.W.3d at 814



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Limitations on Zoning Power

- Contract Zoning – City agrees to rezone/not rezone by contract.
 - Probably invalid. "A city cannot surrender or contract away its governmental functions and [police] powers.' 'Police power is the exercise of the sovereign right of a government to promote order, safety, health, morals, and the general welfare of society, within constitutional limits.' 'The police power is an essential attribute of government without which constitutional guaranties of personal and property rights would be ineffective and meaningless.' 'The police power of [a] city cannot be bargained away by contract, but must at all times be available for use to meet such public needs as may arise.' 'If an existing contract should have the effect of interfering [with the proper exercise of the police power], it must necessarily give way to an appropriate exercise of the police power.' In other words, if a contract surrenders or contracts away governmental functions, then it exceeds the scope of a governmental entity's powers, and is void."
 - The Lamar Co., LLC v. City of Columbia, 512 S.W.3d at 784



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Limitations on Zoning Power

- Spot Zoning – Can be valid or invalid.
 - "Spot zoning' is a descriptive word used for '[w]hen a zoning [decision] or an amendment puts a small area in a zone different from that of the surrounding area.'" State ex rel. Gilley v. County Comm'n of Franklin County, 611 S.W.3d 569, 576 (Mo. App. E.D. 2020)
 - Spot zoning "may be invalid or valid. If it is an arbitrary and unreasonable devotion of the small area to a use inconsistent with the uses to which the rest of the district is restricted and made for the sole benefit of the private interests of the owner, it is invalid..." Treme v. St. Louis County, 609 S.W.2d 706, 713 (Mo. App. E.D. 1980) (internal citations omitted)
 - "The main question to ask is whether the rezoning was done for reasons other than the general welfare. If the rezoning is in harmony with the comprehensive zoning plan and is done for the public good – that is, to serve one or more of the purposes of [Chapter 89], and so bears a substantial relationship to the public health, safety, morals and general welfare, it is valid." Gilley, 611 S.W.3d at 576 (internal citations omitted)



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Limitations on Zoning Power

- Nonconforming uses
- Churches
 - Limited under state law. St. John's Evangelical Lutheran Church v. City of Ellisville, 122 S.W.3d 635, 639 (Mo. App. E.D. 2003)
 - Federal Religious Land Use Act
- Schools, Libraries, Governmental Bodies - Normandy Sch. Dist. v. City of Pasadena Hills, 70 S.W.3d 488, 494 (Mo. App. E.D. 2002)
 - Cities can still regulate construction, non-zoning ordinances. 79.450, RSMo
 - Engelage v. City of Warrenton, 378 S.W.3d 410, 418 (Mo. App. E.D. 2012)
- Takings Clause of Fifth Amendment - Knick v. Township of Scott, 139 S. Ct. 2162, (2019)
- Missouri - Inverse Condemnation, Mo. Const. Art. I, Sec. 26, 28.



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Knick v. Township of Scott

- Allows aggrieved person ability to go directly to federal court for Takings Clause claim, instead of exhausting state law review (by lawsuit for inverse condemnation).
- 139 S. Ct. 2162, 2187, (2019), J. Kagan, dissenting.
- "It will inevitably turn even well-meaning government officials into lawbreakers. And it will subvert important principles of judicial federalism. To begin with, today's decision means that government regulators will often have no way to avoid violating the Constitution. There are a 'nearly infinite variety of ways' for regulations to 'affect property interests.' And under modern takings law, there is 'no magic formula' to determine 'whether a given government interference with property is a taking.' For that reason, a government actor usually cannot know in advance whether implementing a regulatory program will effect a taking, much less of whose property. Until today, such an official could do his work without fear of wrongdoing, in any jurisdiction that had set up a reliable means for property owners to obtain compensation. Even if some regulatory action turned out to take someone's property, the official would not have violated the Constitution. But no longer. Now, when a government undertakes land-use regulation (and what government doesn't), the responsible employees will almost inescapably become constitutional malefactors. That is not a fair position in which to place persons carrying out their governmental duties."



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Board of Adjustment

- 5 members, appointed by Board of Aldermen / City Council. 89.080, 89.090, RSMo
 - Cities with zoning ordinances must have such a board
 - Purpose is to provide relief from "strict application" of zoning ordinances, and to hear appeals where city administrative officer made error in interpreting zoning ordinances
 - If there are "practical difficulties or unnecessary hardship" caused by zoning ordinances, the Board can "vary or modify" provisions of zoning ordinances to observe the "spirit of the ordinance," secure public welfare and safety, and do substantial justice."
 - Need 4 out of 5 votes to grant variance. Can place conditions on approval



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Board of Adjustment

- Decisions can be reviewed by circuit court
- Review of record before the Board, cannot include matters not before the Board
- Appeals must be taken within 30 days of decision
- Court reviews record, determines whether decision was illegal in whole or in part. 89.110, RSMo
- Any person "aggrieved" by decision can appeal. Could be applicant, neighbor, or the City or a board member. "Neighborhood association" under 32.105, RSMo can be aggrieved



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Board of Adjustment

- 2 types of variances - Use Variance (much higher standard), or Area Variance
 - Area Variance - "Practical difficulties" can justify area variance - conditions attributable to land not person.
 - To show practical difficulties, the applicant must demonstrate that he or she "seeks to use the property for a specific permitted use but cannot do so without conflicting with the zoning requirement as to which the applicant seeks a variance." " Antioch Cmty. Church v. Bd. of Zoning Adjustment of City of Kansas City, 543 S.W.3d 28, 37-38 (Mo. banc 2018)
 - Use Variance - must show "unnecessary hardship." Applicant "must show that they "cannot make any permitted use of the property absent a variance." Antioch, 543 S.W.3d at 38



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Architectural Review Board

- Not expressly provided for in Chapter 89, RSMo
- Courts have upheld such boards
 - State ex rel. Stovanoff v. Berkeley, 458 S.W.2d 305, 310 (Mo. 1970)
- Exercise of zoning power - important when it comes to entities outside scope of municipal zoning ordinances
- Generally, the Board reviews aesthetics of house prior to issuance of building permit
- Board determines if structure will be "unsightly, grotesque, or unsuitable" in appearance; whether it conforms to surrounding properties
- Best practice is to have clear guidelines for Board to consider



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Brian J. Malone
Lashly & Baer, P.C.
Attorney at Law
714 Locust Street
St. Louis, Missouri 63101
(314) 621.2939

bmalone@lashlybaer.com
www.lashlybaer.com