

## MARION COUNTY PLANNING AND ZONING WORKSHOP

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## Planning & Zoning Laws

Planning and Zoning governing statutes: K.S.A. 12-741 et seq

Several other statutes with impact, including:

Chapter 19, Article 29:	Counties
Chapter 3, Article 7:	Airport Zoning
Chapter 2, Article 32:	"Right-to-Farm"
Chapter 12, Article 5:	Annexation

## Enabling Clause

The enabling clause in K.S.A. 12-741 giving clear indication of home rule intent (1991)

*"This act is enabling legislation for the enactment of planning and zoning laws and regulations ... and is not intended to prevent the enactment or enforcement of additional laws and regulations on the same subject which are not in conflict with the provisions of this act."*

## Planning Commission

K.S.A. 12-744: Outlines provisions for creation of Planning Commission.

- Provides minimum number of Commission members
- Length of terms set by Governing Body
- Provides for Joint Planning Commissions through Interlocal Agreements

## Planning Commission

K.S.A. 12-745: Provides organizational requirements for Planning Commission.

- Requires Bylaws
- Bylaws fix meeting time
- Bylaws identify officers and their duties
- Bylaws set rules for conduct of business
- Bylaws establish hearing procedures
- Bylaws establish record keeping duties

## Planning Commission

### Organizational Requirements

Bylaws should address:

- Officer Responsibilities
- Meeting Dates
- Special Meeting Notice Procedures
- Clarify Voting Procedures
- Chairperson Vote?
- Tie Votes?
- Conflicts of Interest - Code of Ethics

## What is Zoning?

K.S.A. 12-742(10) "Zoning" means:

*The regulation or restriction of the location and uses of buildings and uses of land.*

## Zoning Regulations

K.S.A. 12-753 to K.S.A. 12-757:

- Authorizes adoption of Zoning Regulations
- Establishes procedures and jurisdiction
- Provides for initial adoption procedures, rezonings, conditional and special uses, downzoning procedures, protest procedures, flood plain zoning, and numerous other provisions
- Zoning Regulations may include, but not be limited to, provisions relating to planned unit developments (PUDs), transfer of development rights, historic preservation, control of aesthetics, issuance of special use or conditional use permits and overlay zones

## Notification Requirements

K.S.A. 12-743. Provides notification requirements for certain actions under this act.

- Adoption of Comprehensive Plan
- Adoption of Zoning Regulations
- Adoption of Subdivision Regulations
- Establishment of Building Setback Lines

## Zoning & Land Use in Kansas

Local Land Use Regulations:

- Power vested in state
- Statutes authorize regulation by cities and counties
- Is NOT a taking of property rights
- Applies to land use, NOT to people
- Must be reasonable and serve a public purpose

## Zoning & Land Use in Kansas

Local Land Use Regulations:

- Optional, not mandatory
- Land used for agricultural purposes exempt
- Applies to changes in the use of land
- Establishes local minimum standards

## Zoning & Land Use in Kansas

- Local regulations should be based on a Plan
- Avoid ambiguity and vagueness in local regulations
- Regulations give direction on "how" to develop
- Plan gives direction on "where" development is appropriate

## Purpose of Zoning Regulations

- Main purpose is to implement Comprehensive Plan
- Promote the health, safety, morals, comfort and general welfare of all the citizens
- Conserve and protect property and building values
- Secure most appropriate use of land
- Secure adequate provision of public improvements throughout the County

## Purpose of Zoning Regulations

- Regulate and restrict within the districts the erection, construction, reconstruction, alterations, repair, location, relocation, maintenance or use of buildings, dwellings, structures, lots or land
- Regulate and restrict the height, number of stories, size of buildings, dwellings and structures, percentage of lots that may be occupied, size of yards, courts, and other open spaces, density of population, location and use of buildings, dwellings, structures and land for trade, industry, residences and other purposes or uses

## Purpose of Zoning Regulations

- Preserve features of historical significance, natural resources and agricultural land
- Establish a Board of Zoning Appeals and define its powers and duties
- Provide for amendments, permits, enforcement and penalties

## Zoning Amendments

- Who may petition or apply
- Procedures for consideration of request for amendments, revisions or changes
- Posting of sign
- Traffic or other studies
- Factors to be considered
- Limitations on reapplication for amendments

## Procedures and Process

"HEAR YE! HEAR YE!"



Practical advice on Handling Public Hearings

## Rezoning

### Public Hearing Procedures

#### Zoning Amendments

- K.S.A. 12-757(a - g): Controlling statutes
  - Text Amendments - Legislative
  - Rezoning - Quasi-Judicial
  - Conditional Uses - Quasi-Judicial
  - Special Uses - Quasi-Judicial

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### Quasi-Judicial set by Courts

- *Golden v. City of Overland Park* (224 Kan. 591 (1978))
- *Combined Investment Co. v. Bd. Of Butler County Commissioners* (1980)
- *Taco Bell v. City of Mission* (234 Kan. 879 (1984))
- *McPherson Landfill, Inc. v. Bd. Of Shawnee County Commissioners* (2002)

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### *Golden v. City of Overland Park*

- Adoption of zoning regulations or a comprehensive plan is legislative; "[w]hen, however, the focus shifts from the entire city [county] to one specific tract of land for which a zoning change is urged, the function becomes more quasi-judicial than legislative"
- Zoning bodies should specify the factors they considered in making their decisions – not a simple yes/no vote

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### *Golden v. City of Overland Park*

- The Golden Factors are not mandatory, but rather are, as the court indicated, merely suggested – *Landau v. City Council of Overland Park* (1989)
- The Golden Factors were not explicitly included in the statutes, instead K.S.A. 12-757(a) require cities and counties to include in their zoning regulations "the matters to be considered when approving or disapproving a rezoning request"

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### *Combined Investment Co. v. Bd. Of Butler County Commissioners* (1980)

- The local zoning authority, and not the court, has the right to prescribe, change or refuse to change, zoning
- The District Court's power is limited to determining (a) the lawfulness of the action taken, and (b) the reasonableness of such action
- There is a presumption that the zoning authority acted reasonably

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### *Combined Investment Co. v. Bd. Of Butler County Commissioners* (1980)

- The landowner has the burden of proving unreasonableness by a preponderance of the evidence
- The court may not substitute its judgement for that of the administrative body, and should not declare the action unreasonable unless clearly compelled to do so by the evidence

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### *Combined Investment Co. v. Bd. Of Butler County Commissioners* (1980)

- Whether action is reasonable or not is a question of law, to be determined upon the basis of the facts which were presented to the zoning authority
- An appellate court must make the same review of the zoning authority's action as did the district court



## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

*Combined Investment Co. v. Bd. Of Butler County Commissioners* (1980)

- Action is unreasonable when it is so arbitrary that it can be said it was taken without regard to the benefit or harm involved to the community at large, including all interested parties, and was so wide of the mark that its unreasonableness lies outside the realm of fair debate

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

*Taco Bell v. City of Mission* (234 Kan. 879 (1984))

- The reviewing court will look to see if a Governing Body has used the thorough, issue-oriented analysis required by the Supreme Court of Kansas in its *Golden* decision
- When considering the "public health, safety and welfare" in zoning decisions it must be remembered the public is the community at large, not just the neighbors, although their wishes are also to be considered

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

*McPherson Landfill, Inc. v. Bd. Of Shawnee County Commissioners* (2002)

- Proceedings must be fair, open and impartial
- Prejudgment – failure to keep an open mind or consider all the evidence
- Ex-parte communications – ability of the opponents to respond to matters discussed

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### Application with Staff

- Application complete
- Substance of request
- Clear legal description
- Appropriate documents (site plan)
- Ownership List (certified?)

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### Legal Notices

- Publication in Official Paper
  - Date, Time and Place of Hearing
- Written notice to Owners
  - "Real Property Interest"
- Posting of Sign (if applicable)

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### The Public Hearing

- Chair Confirm Jurisdiction
  - Proper Legal Notices
  - Proper Legal Description
  - Proper Timing of Notices
  - Declare Jurisdiction

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### The Public Hearing

- Assure Qualifications of Commission
  - Conflicts of Interest
  - Ex-parte Contacts
  - Disqualification
  - Quorum to Proceed

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### The Public Hearing

- Staff Overview of Application
- Applicant Present Case
- Public Comments (pro and con)
- Applicant Rebuttal
- Close Public Hearing

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### The Public Hearing

- Commission Deliberates
- Executive Session (option)
- Motion and Second
- Discussion on Motion
- VOTE!!

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### The Public Hearing

- Provide Reasons for Motion
- Reasons based on FACTS presented at hearing
- No Plebiscite!!! - avoid "opinions"
- Assure written record

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### The Public Hearing

- Protest Petition Procedures
- Date of Governing Body consideration
- Move on to next agenda item

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

- Substance of record
- Findings of fact & conclusions of law not necessary
- The official record must be sufficient to show the Governing Body considered relevant factors in deciding whether to grant the rezoning petition, and the its decision was reasonable as a matter of law. *Davis v. City of Leavenworth* (247 Kan. 486 (1990))

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### Procedural Due Process

- Requires that governmental proceedings be conducted in an orderly, fundamentally fair, judicious and impartial manner.

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### Procedural Due Process with respect to Zoning Amendments

- Ensures your decisions are reached in a fundamentally fair manner, starting with proper notification and ending with a bone-fide written record of your decision.

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### Procedural Due Process

- Adequate Notice
- Unbiased Decision-maker
- Ex-parte Contacts
- Opportunity to be heard

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

#### Procedural Due Process

- Right to present Evidence
- Prompt Decision Making
- Record of the Proceedings
- Written Decision based on Record

## Rezoning

### Public Hearing Procedures (Quasi-Judicial)

- Follow procedures correctly and appeals to court will not be decided on "procedural mistakes", but on substance of decision by Governing Body, as it should be

## Public Hearing

### Public Hearing Decision

- Recommendation to Governing Body
- May be subject to Conditions
- Protest Petitions from Neighbors

## Governing Body Role

### Final Decision

- Governing Body acts on recommendation of Planning Commission
- May be subject to "ping pong" provisions
- May be subject to Conditions
- Protest Petitions means "super-majority" vote

## Governing Body Role

### Final Decision

- Governing Body decision may be appealed to District Court
- Legal battles take time and money
- No guarantee of win in court

## Conflicts of Interest Code of Ethics

### Planning Commission

#### Conflict of Interest:

- Private benefit from public participation
- Avoid even appearance of impropriety
- Private benefit may be direct or indirect
- Benefit to self or immediate relation
- Disclose and remove from participation
- Leave the room!
- Use representative for own position

## Conflicts of Interest Code of Ethics

### Planning Commission

#### Code of Ethics:

- Purpose of Service
- Do not seek or offer "favors"
- Disclose all interests BEFORE hearings
- Position of Trust
- PARTICIPATE

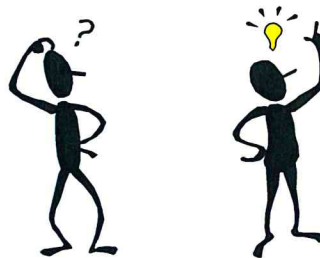
## Conflicts of Interest Code of Ethics

### Planning Commission

#### Code of Ethics:

- Avoid ex-parte contact when possible
- If it happens, disclose it
- Share information received
- Acknowledge level of influence, including if it has no impact

## Questions





## Comprehensive Plan

K.S.A. 12-747 and K.S.A. 12-748:

- City or County authorized to adopt Comprehensive Plan
- Establishes jurisdiction
- Provides content of Comprehensive Plan
- Public Hearing requirements
- Provides for annual review of Plan
- Addresses Capital Improvement consistency with Plan

## The Comprehensive Plan

- A document intended to articulate the vision of the future for a community by the people of the community
- In short - what the community wants to become

## Planning Commission Role



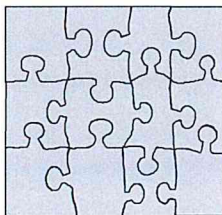
- Review Studies
- Evaluate Alternatives
- Prepare Plan
- Conduct Public Hearing
- Submit Recommendations

## Governing Body Role



- Evaluate Proposed Plan
- Submit Changes if needed
- Adopt Plan

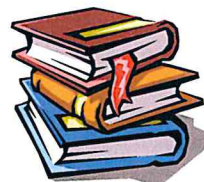
## Subdivision Regulations



### Purpose:

Local laws that establish rules for the division of property and the creation of new lots, blocks and/or streets.

## Subdivision Regulations



Statutes governing Subdivision Regulations:

- K.S.A. 12-749 thru K.S.A. 12-752

## Subdivision Regulations

K.S.A. 12-749 and K.S.A. 12-752.

- Authorizes adoption of Subdivision Regulations.
- Establishes jurisdiction
- Mandates compliance for all land divisions by "seller"
- Mandates time restrictions for consideration of plat
- Mandates lot split provisions

## Subdivision Regulations

K.S.A. 12-749:

- Authorizes Regulations following adoption of Comprehensive Plan
- County - all or part of unincorporated area
- Cities - all of city, ETJ optional

## Subdivision Regulations

K.S.A. 12-750.

- If both city and county wish to provide Subdivision Regulations over same area outside city; mandates creation of a Joint Committee for Subdivision Regulations
- Establishes requirements of Committee membership, timeframe to act

## Subdivision Regulations

K.S.A. 12-752.

- Sets procedures for approval
- Role of Governing Body limited to acceptance or refusal of land dedication and setting fees for plat approval
- Issuance of building and zoning permits
- Filing of plats

## Subdivision Regulations

Subdivision Regulations may include provisions for:

- Efficient & orderly streets
- Reduction of vehicular congestion
- Reservation or dedication of open space
- Off-site and on-site public improvements
- Recreational facilities, including dedication of park lands
- Flood protection
- Building lines
- Compatibility of design
- Stormwater runoff
- Other services, facilities and improvements deemed appropriate

## Subdivision Regulations

Subdivision Regulations may include provisions for:

- Administrative changes to land elevations on plats
- Plat approval conditional upon conformance to Comp Plan
- Payment in lieu of dedication of land
- Governing body accept corporate surety bond, cashier's check, escrow account, letter of credit or other security in lieu of completion of work PRIOR to plat approval
- Such security to set amount and fix time to complete improvements
- Governing body empowered to enforce the bond
- i.e. Use developers agreements

## Subdivision Regulations

### Subdivision Regulations may include provisions for:

- Planning Commission hold hearing with proper notice
- Recommend based on affirmative vote of all members
- Governing Body acts on recommendation of Planning Commission
- Regulations not effective until publication of adopting ordinance or resolution

## Subdivision Regulations

### *Rodrock Enterprises, L. P. v. City of Olathe (2001):*

- Under the current law, approval of a plat is not a ministerial act and may not be compelled through mandamus
- No writ of mandamus for approval of plats due to considerable discretion of Planning Commission to approve or deny
- Mandamus is a proceeding to compel performance of a specified duty that is clearly defined, imposed by law, and does not involve the exercise of discretion

## Planning Commission Role



- Evaluate Plats
- Conduct Hearings
- Approve Plats
- Assure compliance with Regulations

## Planning Commission Role

### Approve Plats

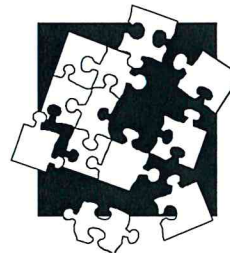
- First approval is of Preliminary Plat
- Final Plat submitted after approval of Preliminary Plat
- Final Plat (recordable document) MUST conform to approved Preliminary Plat

## Governing Body Role



- Act on Plats (Accept public dedications)
- Approve Development Agreements

## Petition to Vacate



### Purpose:

- To formally "undo" the creation of platted lots, blocks, streets, easements or other dedications on a plat.
- May "vacate" entire plat

## Board of Zoning Appeal



- Required Board
- May be Planning Commission
- Variances, Appeals and Special Exceptions
- If Regulations well done, rarely needs to meet

## Variances

**K.S.A. 12-759:** Variance from the requirements of the regulations, provided:

- (a) Unique conditions, not a "self-imposed" hardship
- (b) Not harm rights of surrounding properties
- (c) Strict application of rules unnecessary hardship
- (d) Not adverse to health, safety, welfare
- (e) Not violative of the spirit and intent of regulations

## Appeals

**K.S.A. 12-759:**

Appeal from an administrative decision where it is alleged an error has been made. May deny the appeal, or grant the appeal with or without additional conditions or requirements, including ordering the issuance of a permit.

## Exceptions

**K.S.A. 12-759:**

Exception to the provisions of the Zoning Regulations, but only when specifically authorized within the Regulations to do so. Special care must be taken in drafting the Regulations to be very clear what exceptions are allowable through the Board of Zoning Appeals.

## Questions

