
Subject: BZA Hearing -- February 22, 2018

From: Robert Handley (rhandley@sbcglobal.net)

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Date: Thursday, February 15, 2018 11:38 AM

Mr. Cartwright, Ms. Yendes, and Mr. Head,

In the interest of finishing next week's BZA hearing within a reasonable time, there are really only three issues that are important to us.

We understood Mr. Binger to indicate it has been decided by others that it would not be "politically viable" to sue the County to abate the berm. If we misheard, please excuse the error, but if we recall correctly, it would be helpful to know who made the decision. If it was at the direction of City Council, it is obviously not appealable and there is nothing more to be done. But if Mr. Binger is acting at the direction of someone at the Staff level, it may be within the Board's jurisdiction and he needs to be forthright about who it is.

Secondly, responding to questions regarding Muni Court prosecutions and why no charges have been filed since the one-time-fine, Mr. Cartwright stated it's a matter of prosecutorial discretion. Undoubtedly true, but it begs the question whether prosecution has ever been requested. If so and the prosecutor refused to file, someone needs to confirm that's what happened.

Lastly, if any the code enforcement Division has established policies that guide its decisions, it would be helpful for them to explain how this case fits the policy -- especially regarding enforcement of ongoing violations. If one-time fines are the norm, what's the rationale?

Thank you for your consideration.

Relevant materials for the hearing will be provided under separate cover.

UDO Sec 1.090 – That “no person may use, occupy or sell any land except in accordance with the provisions of this chapter (UDO)”.

UDO Sec. 1.160 Penalty for Violations and Civil Remedies

- 6.160(C) Fines up to \$500/day for repeat violations. Each day of a continuing violation can be charged as separate offences.
- 6.160(E). City attorney is authorized to take any appropriate action “to correct or abate the violation.”

UDO Sec 1.190 – Applicable to Public Facilities “Public Property is subject to the provisions and procedures of (the UDO) with regard to police power regulations regulating health, safety and welfare.”

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Site photo of the berm and docks.

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Development Services

- C. Effective period. The resolution shall establish the period of time within which processing of development applications shall be delayed or discontinued. The period of time set shall not exceed one (1) year from the date of adoption of the resolution; provided that, in no event shall the period set extend beyond the date upon which the Governing Body makes a final decision in its consideration of the Chapter text amendment or planning policy that it has directed City staff to prepare. If the Governing Body determines that a good faith effort is being made to prepare and make a final decision on the Chapter text amendment or planning policy, but that no final decision has been made, it may extend the period of time set in the initial resolution for an additional period, not to exceed one (1) year.
- D. Purpose. This section is designed to preserve the status quo while consideration is given to a Chapter text amendment or planning policy, and to prevent the establishment of a new nonconforming situation that will undermine the effect of the Chapter text amendment before it is adopted.

Section 1.080. Relationship to private restrictions

The provisions of this Chapter are not intended to affect any deed restriction, covenant, easement or any other private agreement relating to, or restricting, the use of land. Where the provisions of this Chapter are more restriction than any private restriction, the requirements of this Chapter shall control. Where the provisions of any private restriction are more restrictive than the provisions of this Chapter, the private restrictions shall control, if properly enforced by a person having the legal right to enforce the restrictions. Private restrictions shall not be enforced by the City.

Section 1.090. Prohibitions

- A. No building or structure shall be erected, constructed, reconstructed, moved or altered, nor shall any building, structure or land be used for any purpose except in accordance with the provision of this Chapter and other relevant provisions of the City Code.
- B. No person may use, occupy, or sell any land or building or authorize or permit the use, occupancy, or sale of land or buildings except in accordance with all of the applicable provisions of this UDO.
- C. The density and yard requirements of this Chapter are the minimum regulation for each and every building or structure constructed after the effective date of this Chapter and for any building or structure hereafter constructed or structurally altered. No land required for yards or other open spaces around an existing building or any building hereafter erected or structurally altered shall be considered a yard or lot area for more than one building.
- D. For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

Section 1.100. Adequate public facilities and services

In order to prevent the premature development of land which might pose a threat to the health, safety or general welfare of the community at large, or the occupants of land in the particular area of the City, it shall be the policy of the City that no application for special use permit, preliminary or final development plan or preliminary or final plat shall be approved unless public facilities and services, which are adequate to serve the development, are either:

1. Presently available, or
2. Are to be provided as a condition of approval of the application, or

- F. Nonconforming situations. All nonconforming situations and uses shall be governed by Article 15 of this Chapter.

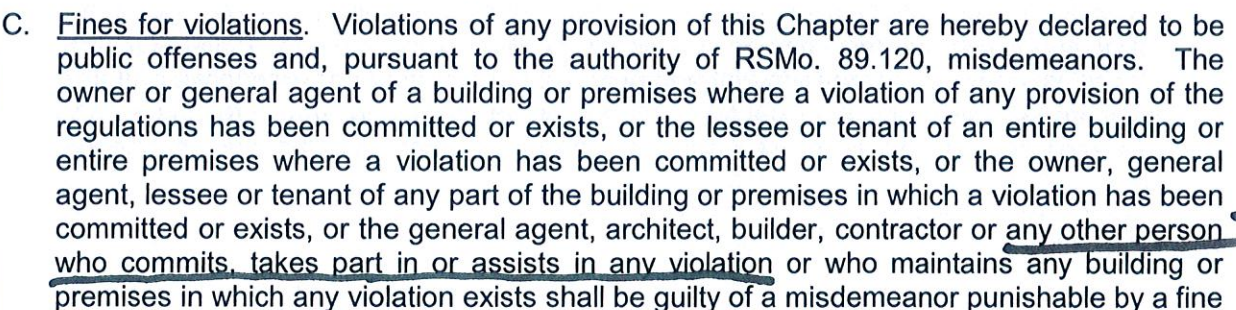
Section 1.140. Violations of prior regulations

All violations under the previously existing regulations that exist within the City as of the effective date of this Chapter, shall continue to be violations and shall not be considered to be legal, nonconforming situations under this Chapter. The City shall have the authority to secure remedies for violations of those regulations to the same extent that it may secure similar remedies for violations of this Chapter pursuant to Section 1.160.

Section 1.150. Violations

If any building or structure is erected, constructed, reconstructed, altered, converted, moved or maintained, or any building, structure, or land is used in violation of this Chapter or regulations made under its authority, a Code Enforcement Officer may institute any proper action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, conversion, moving, maintenance or use; to restrain, correct or abate the violation; to prevent the occupancy or use of the building, structure, or land; or to prevent any illegal act, conduct, business or use in and to the premises.

Section 1.160. Penalty for violations and civil remedies (Amend. #33)

- A. Civil citations. If the Code Enforcement Officer determines that a violation of this Chapter or regulations made under its authority has occurred, the Code Enforcement Officer may issue the violator a civil citation, which shall be proceeded upon in accordance with the provisions herein. The civil citation shall be issued to the violator by the Code Enforcement Officer upon a uniform municipal infraction form provided by the clerk of the municipal court, which shall include a notice or summons to answer the charges against him within the time specified on the form for hearing before the municipal court. Upon issuance of a civil citation, the Code Enforcement Officer shall provide a copy of the notice or summons to the clerk of the municipal court.
- B. Plea and fines. Any person issued a civil citation for a violation of this Chapter or regulations made under its authority, for which payment of a fine may be made to the municipal court, shall have the option of paying the fine in the sum and within the time specified in the civil citation upon entering a plea of guilty and upon waiving an appearance in court. It shall be the duty of the municipal court to accept payment of a fine. The payment of a fine to the municipal court shall be deemed an acknowledgment of conviction of the alleged offense and the court, upon accepting the prescribed fine, shall issue a receipt to the violator acknowledging payment. Any person issued a civil citation may, in the alternative, enter a plea of not guilty, and upon the entry of a plea of not guilty, shall be entitled to a trial as authorized by law.
- C. Fines for violations. Violations of any provision of this Chapter are hereby declared to be public offenses and, pursuant to the authority of RSMo. 89.120, misdemeanors. The owner or general agent of a building or premises where a violation of any provision of the regulations has been committed or exists, or the lessee or tenant of an entire building or entire premises where a violation has been committed or exists, or the owner, general agent, lessee or tenant of any part of the building or premises in which a violation has been committed or exists, or the general agent, architect, builder, contractor or any other person who commits, takes part in or assists in any violation or who maintains any building or premises in which any violation exists shall be guilty of a misdemeanor punishable by a fine
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of not less than ten dollars (\$10.00) and not more than two hundred fifty dollars (\$250.00) for each and every day that such violation continues, or by imprisonment for ten (10) days for each and every day the violation continues, or by both fine and imprisonment, in the discretion of the court. For the second and subsequent offenses involving the same violation at the same building or premises, the punishment shall be a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) for each and every day that the violation shall continue, or by imprisonment for ten (10) days for each and every day that the violation shall continue, or by both fine and imprisonment in the discretion of the court. (Amend. #33)

- D. Penalty after notice of violation. Any person who, having been served with an order to remove a violation, shall fail to comply with the order within ten (10) days after the service or shall continue to violate any provision of this Chapter in the same manner as stated in the order shall also be subject to a civil penalty of two hundred fifty dollars (\$250.00).
- E. Civil lawsuits. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Chapter and to abate nuisances maintained in violation thereof. In the event that any building or structure is or is proposed to be erected, constructed, altered, converted, moved or maintained in violation of this Chapter, or any building, structure or land is proposed to be used in violation of this Chapter, the City Attorney, or other appropriate authority of the City may, in addition to any other remedies, institute injunction, mandamus or any other appropriate actions or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, moving, maintenance or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises.

Section 1.170. Severability

It is the City's intention that the sections, subsections, paragraphs, sentences, clauses and phrases of this Chapter are severable, and if any section, subsection, paragraph, sentence, clause or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, the unconstitutionality or invalidity shall not affect any of the remaining sections, subsections, paragraphs, sentences, clauses or phrases of this Chapter since the same would have been enacted without the incorporation into this Chapter of the unconstitutional or invalid section, subsection, paragraph, sentence, clause or phrase. The Council hereby declares that it would have passed the ordinance that adopted this Chapter and each section, subsection, paragraph, sentence, clause and phrase hereof irrespective of the fact that any one or more section, subsection, paragraph, sentence, clause or phrase be declared unconstitutional. (Amend. #48)

Section 1.180. Fees

- A. Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, special use permits, subdivision plat approval, zoning amendments, variances and all other applications covered by this Chapter. The amount of the administrative fees charged shall be established by the City of Lee's Summit Schedule of Fees and Charges, as amended.
- B. Fees established in accordance with this Section shall be paid upon submission of a signed application or notice of appeal.

Section 1.190. Applicability to Public Facilities

- A. The zoning regulations contained in this Chapter are not applicable to the State of Missouri, its lawfully designated subdivisions or agencies, or property of the state or its subdivisions or agencies. Public property is subject to the provisions and procedures of this Chapter with regard to police power regulations regulating health, safety and welfare. Review of the location, extent and character of the proposed development of public property is permissible to the extent provided in Article 4 of this Chapter.
- B. The zoning regulations contained in this Chapter are applicable to the City and all of its agencies, except where otherwise indicated. From and after the date that the City has adopted a comprehensive plan of the municipality or any part thereof, no street or other public facility, 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 Commission.

