

PLANNING COMMISSION
GLADSTONE, MISSOURI
City Hall Council Chambers

Monday
June 4, 2012
7:30 pm

Item 1 on the Agenda: Roll Call.

Present: Ms. Alexander
Mr. Harman
Mr. Markenson
Mr. Ringhausen
Mr. Steffens
Mr. Ward
Mr. Velasquez
Mr. Yarber
Chairman Turnage

Absent: Ms. Smith
Mr. Whitton

Council & Staff Present:

Randall Thompson, City Counselor
Chris Helmer, Planning Specialist
Becky Jarrett, Administrative Assistant

Item 2 on the Agenda: Pledge of Allegiance.

Chairman Turnage led the group in reciting the Pledge of Allegiance.

Item 3 on the Agenda: Approval of the May 7, 2012 minutes.

MOTION: By Mr. Ward, second by Mr. Yarber to approve the May 7, 2012 minutes as presented. The motion carried.

Item 4 on the Agenda: Communications from the Audience.

None.

Item 5 on the Agenda: PRESENTATION: By Counselor Randall Thompson. (see attached PowerPoint)

Item 6 on the Agenda: Communication from the City Council and City Staff

Mr. Helmer said that Mr. Wingerson was taking some time off this week.

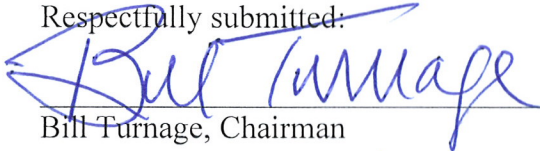
Item 7 on the Agenda: Communication from the City Council and City Staff


None.

Item 8 on the Agenda: Adjournment

Chairman Turnage adjourned the meeting at 9:09 pm.

Respectfully submitted:


Bill Turnage, Chairman

Approved as submitted 


Becky Jarrett, Recording Secretary

Approved as corrected

**No Government we have yet created
in this land matters quite so much to
the individual, in a personal and
immediate way, as local municipal
government.**

-Lyndon B. Johnson

Planning and Zoning Orientation

City of Gladstone

Planning and Zoning Commission
Board of Zoning Adjustment

April 18, 2011

Presented by: Randall Thompson, City Counselor

Types of Cities

- **Statutory Cities**
 - Cities which derive their power from the specific authority given to a class of cities by the state legislature in state law
- **Charter Cities**
 - Cities which derive their power from a special charter written and adopted by the citizens of the municipality

Gladstone - Third Class City

- **City Manager Form**
- **Five Member Council**
 - Elected at Large
 - Mayor Selected by Council
- **By Statute, Power divided among Council and City Manager**



Official Acts for Making Decisions

- **Ordinance**
 - **Content**
 - Subject Within Authorized Scope of Powers
 - Public Purpose Required
 - Must Conform to State Law
 - Must Be Clear and Concise
 - **Enactment**
 - Publication (Public Hearing - 15 days)
 - Introduction in Form of Bill
 - Read Twice
 - Majority of Council Votes (2/3 Exception)
 - Votes Recorded

Authority



- **Acts of Municipal Officials Beyond the Scope of Their Authority Do Not Bind a City**
- **Governing Body of Municipality Can Only Act at an Official Meeting**

Meetings Sunshine Law

1. Am I part of a "public governmental body"?
2. Is a quorum of the public governmental body present?
3. Is "public business" being discussed?
4. Was the "public meeting" properly noticed?
5. Is the "public business" a proper topic for closed session?



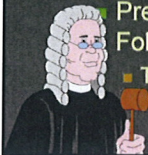
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The governing body of the City of Friends consists of four aldermen and a mayor. One of the aldermen and the mayor are brothers who have been meeting with the same group of people for coffee at the Friend's Diner every Saturday morning for the last 20 years. The group typically discusses the weather, the status of their crops, their families and concerns about the growth of Friends. Mr. Popularity, who occasionally joins the group for coffee, decides to run for alderman of Friends and is elected.

Can Mr. Popularity still join the group for coffee at the Diner?
If an angry resident stops at the table to talk to the Mayor about a new subdivision being considered by the Council, what are the options to avoid an open meetings law violation?

Meetings Rules of Order

- Purpose
 - Preserve the Rights of All to Fully Participate in the Proceedings
 - Assist in Orderly Discussion
 - Provide an opportunity for public debate
- Presiding Officer Responsible for Following the Rules of Order
 - Typically Conducted in Accordance With ROBERT'S RULES OF ORDER



Meetings Public Hearing

- Due Process
- Procedure
 - Staff Report Presented
 - Applicant
 - Those in Favor of Application
 - Those Opposed to Application
 - Applicant Given Opportunity to Respond
- Once Hearing is Closed, No Further Evidence Admitted Into Record

Meetings Ex Parte Contacts

- Private Discussion With Only One of the Interested Parties
- Keep Open Mind
- Disclose on Record During Public Hearing if Information Gained During Ex Parte Contact is Used for Basis of Decision

Meetings Voting & Minutes

- Minutes
 - Verbatim Minutes Not Required
 - State Law Requires Vote of Each Member to be Recorded
- Voting
 - Quorum Necessary to Conduct Business
 - Abstentions
 - Public Duty to Vote
 - Member May Not Vote if Conflict of Interest

Meetings Conflict of Interest

- Generally, Official is Prohibited From Participating **Directly** or **Indirectly** in an Action That Would Result in a Financial Gain to Self, Spouse or Dependent Children
- Requirement: Official Must Affirmatively Report Conflict
- Penalty



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Harpo has been appointed to the Board of Zoning Adjustment in the Village of Marx. Harpo's brother Groucho added a room onto the side of his house without a permit and has been told by the City that he must get a variance and comply with all city code requirements or tear down the room. Groucho unhappily files an application with the BZA for a variance.

Can Harpo vote?

What should Harpo do?

What if this was a site plan revision being reviewed by the Planning Commission and Harpo served on the Planning Commission?

Two Types of Decisions

- Legislative
 - When City **MAKES** the Rules
 - Presumed to be Correct
 - Judicial Review for Arbitrary & Unreasonable
- Administrative
 - When City **APPLIES** the Rules
 - No Presumption of Validity
 - Judicial Review on the Record Made of the Proceedings
 - Upheld Only if Supported by Competent and Substantial Evidence Included in the Record

Planning Commission Structure

- Not more than 15 nor less than 5
- Appointed by Mayor and approved by Council
- 4 year term
- Chair selected annually by members
- May be removed by council for cause

Planning Commission Comprehensive Plan

- Guides the physical development of the City
 - Street layout
 - Public Space
 - Utility Location
 - Provide overall development plan
- Sole responsibility of the Planning Commission
- Adoption
 - Public Hearing Required
 - 15 days notice
 - Majority vote of Full Membership
 - Recorded with County Recorder of Deeds

Planning Commission Rezoning & Site Plans

- Whether proposed classification is compatible with surrounding land uses and comprehensive plan
- Property owner NOT entitled to "highest and best" use
- "Planned" Districts
- Legislative Act
 - No action unless property owner is denied reasonable use of property

Planning Commission Plats & Subdivisions

- Plats
 - Preliminary
 - Final
- Subdivision Regulations
 - Public Hearing



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The City of Growth has a major street that runs through the east side of the City along which the majority of the adjacent property was originally zoned for commercial development. Growth currently has a profitable Giant-Mart located in the center of the City. Giant-Mart wants to construct a new building on the east side of town on property that is currently zoned for retail business. There is a new housing development consisting of single family homes which surrounds the proposed new location of the Giant-Mart store. The developer of the single family homes told several purchasers of homes within the development that the property on which the Giant-Mart wants to locate would be a park. The neighbors oppose the new store, and hundreds of residents show up at the council meeting saying that they don't want Giant-Mart to build a new store. In addition, the members of the council don't want Giant-Mart to move from its current location because it will create a vacant retail space downtown.

When Giant-Mart comes to the City to get a building permit to construct the new building what should the council do?

Planning Commission Special Use Permit

- May Grant a Right to Use Property in a Manner Not Specifically Allowed Under City Code Provisions
 - Example – Home Based Business
- Review Whether the Use Will Injure Neighboring Property
- Allows Greater Flexibility and Control Over Development

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Mrs. Fields filed an application for a special use permit to operate a cookie baking business out of her home in Hershey, PA. Mrs. Fields testified that she would use her existing kitchen, that her kitchen would be inspected by the health department once a year, that she would receive deliveries from UPS two times a month and she would use the family minivan to make deliveries one time each day. No changes to the inside or outside of the house would be made and no customers would come to the house.

When those opposed to the use were given the opportunity to speak, one neighbor was concerned that Mrs. Fields wouldn't have enough time to take care of her landscaping if she baked cookies all day long. Another neighbor said Mrs. Fields cookies weren't that good and no one would buy them.

Based on the objections of the two neighbors, should the special use permit be denied?

What would be an appropriate reason to deny?

Should the Planning Commission conduct its own investigation into whether or not Mrs. Fields cookies are good?

BZA

- Quasi Judicial Board
 - Appointed
- Powers
 - Variances
 - Interpretation if allegation of error by administrative official in enforcement of zoning ordinance
 - Other Matters Referred to it by Ordinance
- Judicial Review
 - Appeals to Circuit Court Clay County
 - On the record
 - Standard: Arbitrary & Capricious

BZA Variances

- Granting permission to allow something not authorized under existing ordinances
- Granted only in exceptional cases
- "Area" Variance most common
 - Factors:
 - Condition unique to property in question
 - Variance will not adversely affect the rights of adjacent property owners
 - Unnecessary hardship to applicant exists
 - Variance will not adversely affect public health, safety or welfare
 - Variance will not conflict with the general spirit and intent of the ordinance from which the variance is sought

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Builder Bob had the first opportunity to purchase a lot in a brand new subdivision. Bob chose the smallest lot because it was the least expensive. Bob planned to build a huge house on the small lot – one that would stretch from one side of the lot to the other. In order to build a wrap around porch on the exterior of the house, Bob needed a variance from the BZA. Bob filed his application and testified that the lots on all sides of his lot were vacant and that no one would be prejudiced by granting his variance. No one else testified in support or opposition of the application.

Should the BZA grant the variance to allow the construction of Bob's porch to encroach into the side yard setback?
What is the hardship?

Types of Liability

- Criminal
- Civil



Criminal Liability Official Misconduct

- Bribing a Public Servant
- Public Servant
Acceding to Corruption
- Obstructing
Government Operations
- Official Misconduct
- Misuse of Official
Information



Civil Liability

- Not Liable for Acts Involving the
Negligent Exercise of Discretion
- Liable for Tortious Ministerial Act
- Liable for Ultra Vires Acts

Official Immunity

- Where Public Official Has Discretion
in Performing Governmental Act and
Acts in Good Faith
- Does **Not** Apply When Official
Performing Ministerial Duties
- Example - Issuance of Special Use
Permit

Personal Liability

When an Official Acts Outside the Course and Scope of the Official's Duties Causing Injury to a Person, the Official May be Liable for Actual and Punitive Damages



Punitive Damages

- A City is Immune From Punitive Damages Under Any Circumstances
- However, an Official May Be Liable for Punitive Damages When Actions Are Intentional, Malicious or With Willful and Conscious Disregard to the Rights of the Plaintiff.

Elements Usually Found in Personal Liability Cases

- Maliciousness,
- Conspiracy,
- Intentional Misrepresentation,
- Willful Disregard,
- False Representations,
- Confidential Relationship, or
- Bad Faith



Keys to Successful Decision Making



- Do not form an opinion too fast
- Listen, ask questions, and evaluate
- Disclose conflicts or ex parte contacts on the record
- Vote

Questions?

