Planning and Zoning Workshop
(5 Hours Continuing Education)
Wednesday, April 17, 2019
Arkansas Municipal League Headquarters
North Little Rock, AR

9:00 a.m. – 9:05 a.m.  Welcome and Opening Remarks
Mayor Joe Smith, League President
North Little Rock
Whitnee V. Bullerwell, Deputy Director
Arkansas Municipal League

9:05 a.m. – 9:30 a.m.  Recent Legislative Updates
Mark R. Hayes, Executive Director
Arkansas Municipal League

9:30 a.m. – 10:15 a.m.  Your Municipality’s Authority to Plan
Lanny Richmond, Code and Legal Counsel
Arkansas Municipal League

10:15 a.m. – 10:30 a.m.  Break

10:30 a.m. – 11:30 a.m.  Planning Commission 101
Jim von Tungeln, Staff Planning Consultant
Arkansas Municipal League

11:30 a.m. – Noon  Practical Uses of GIS Information Related to Planning and Zoning
Shelby D. Johnson – State Geographic Information Officer
Arkansas GIS office

12:00 p.m. – 1:00 p.m.  Lunch

1:00 p.m. – 1:45 p.m.  Comprehensive Planning 101
James Walden, Director of Planning and Development
City of Conway

1:45 p.m. – 2:00 p.m.  Break

2:00 p.m. – 2:30 p.m.  “Small-scale Planning: Neighborhoods and Small Towns”
James Walden, Director of Planning and Development
City of Conway
Jim von Tungeln, Staff Planning Consultant
Arkansas Municipal League
2:30 p.m. – 3:00 p.m.  
**New Trends in Planning**  
James Walden, Director of Planning and Development  
City of Conway

3:00 p.m. – 3:30 p.m.  
**Question & Answer Session**

3:30 p.m.  
**Concluding Remarks**  
Mark R. Hayes, Executive Director  
Arkansas Municipal League
Planning and Zoning
Workshop: Legislative Update

Mark R. Hayes
Executive Director
April, 2019
The good, the bad and the ugly…

- [http://www.arkleg.state.ar.us/assembly/2019/2019R/Pages/Home.aspx](http://www.arkleg.state.ar.us/assembly/2019/2019R/Pages/Home.aspx)
- Good: Internet Sales Tax and Street Money
- Bad: Monuments.
- Ugly: Lobbyists…Attacks on Home Rule and Local Control
Acts of Interest: Planning and Zoning

• Act 195 (SB 98)
• Debit/Credit Card Use Permitted
• Building Permits Etc.
Acts of Interest: Planning and Zoning

- Act 219 (HB 1250)
- Requires Annexation Ordinances to Read Three Times
- No Waiver
- No Emergency Prior to Three Readings
Acts of Interest: Planning and Zoning

- Act 446 (SB 170): “Restrictions” on Residential Building Design Regulations
- 13 Exceptions:
  - Historic Districts
  - Regs Created by Private Covenants/Contracts
  - Fire and Safety Codes
  - Flood Program Requirements
  - Manufactured Homes State Law
  - Central Business Improvement District, Overlays, Majority of Property Owners Petition…
Acts of Interest: Planning and Zoning

- Act 468 (HB 1561)
- Autonomous Vehicles
- Highway Department: Rules and Regs
- Lots of Safety Protocols
Acts of Interest: Planning and Zoning

• Act 470 (HB 1493)
• Rehabilitation Income Tax Credit
• To Qualify for the Credit: Expenses Lowered From $25k to $5k
• Development Possibilities (Non-Income Producing Properties)
Acts of Interest: Planning and Zoning

- Act 855 (HB 1800)
- Rehabilitation Income Tax Credits…The Big One
Acts of Interest: Planning and Zoning

- Act 574 (HB 1624)
- Best Non-Monetary Bill of the Session
- Allows Cities of the Second Class and Incorporated Towns to Issue Building Permits
- Applicable to 384 Cities and Towns
Acts of Interest: Planning and Zoning

- Act 681 (HB 1852)
- Microbrewery-Restaurant Private Club
- Developmental Tool
- Plan Now
- Go to ABC for a Permit
- Council Must Okay
Acts of Interest: Planning and Zoning

- Act 797 (HB 1874)
- “Small Cells”
- More Local Authority Than FCC Order
- Retains Local Control Over Most Aesthetics
- Provides Fee Structure
- Creates Application Structure
Acts of Interest: Planning and Zoning

- Act 798 (HB 1885)
- Be Careful
- Tie to One of the 8 Currently Allowed Items
Acts of Interest: Planning and Zoning

• Act 812 (SB 492)
• Entertainment Districts Authorized
• See Micro-Brewery Law
Acts of Interest: Planning and Zoning

- Act 838 (HB 1554)
- Old “Act 779” Law
- Two Adjoining Cities
- Residents Changing Cities for Services
- Services to Be Provided 180 Days to 90
Acts of Interest: Planning and Zoning

- Act 932 (SB 548)
- Incorporation Requirements
- 4k to 1500 People Required
Thanks!

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PLANNING POWERS AND LAND-USE’S LEGAL LIMITS

LANNY RICHMOND
CODE AND LEGAL COUNSEL
ARML
PLANNING AND ZONING

STATUTES

- A.C.A. § 14-56-200s (General powers over building regulations)
- A.C.A. § 14-56-300s (Zoning Regs)
- A.C.A. § 14-56-400s (Municipal Planning, generally)
Municipal corporations shall have the power to:

1. Regulate the erection, construction, reconstruction, alteration, and repair of buildings;
2. Make regulations for the purpose of guarding against accidents by fire;
3. Require the use of fireproof or fire-resistant materials in the erection, construction, reconstruction, alteration, or repairs of buildings; and
4. Provide for the removal of any buildings, or additions thereto, erected contrary to this prohibition.

Ark. Code Ann. § 14-56-201 (West)
BUILDING STATUTES

• Powers for Cities of the First Class

  • (A) Regulate the building of houses;
  • (B) Provide that no house or structure shall be erected within the city limits except upon a permit to be issued by such officer as the city council shall designate; and
  • (C) Provide that no permit shall be issued for the building of any house or structure deemed to be unsafe, unsanitary, obnoxious, or detrimental to the public welfare.
  • (b) However, the authority to appoint and remove department heads, including the building official, shall be governed by § 14-42-110 regardless of the classification of the city or town.

Ark. Code Ann. § 14-56-202 (West)
BUILDING STATUTES

• All municipalities:
• “may order the removal or razing of, or remove or raze, buildings or houses that in the opinion of the city council or town council have become dilapidated, unsightly, unsafe, unsanitary, obnoxious, or detrimental to the public welfare and shall provide by ordinance the manner of removing and making these removals.”

Ark. Code Ann. § 14-56-203 (West)
A.C.A. § 14-56-203 - NOTES

• In *Springfield v. City of Little Rock*, 226 Ark. 462, 464, 290 S.W.2d 620 (1956), which involved a challenge to the city's razing of various buildings, the Arkansas Supreme Court made clear that a city has not only the power but the duty to abate such nuisances:

• On the record presented we hold that the City has not only acted clearly within its police power, but that it was its duty, in the circumstances, to so act, in the interest of the public health and safety of its inhabitants.

• “Generally there is a duty upon duly constituted municipal authorities to exercise the police power where there is a public need for it, but it is within their sound discretion to determine both the need and the measure to meet it.¹ Courts will not interfere except for abuse of their discretion, and violation of their duty subjects them only to political consequences and not civil liability,”
A.C.A. § 14-56-203 - NOTES

• “[I]n my opinion, as a preliminary issue, A.C.A. § 14-56-203 (Repl. 1998) does not authorize a city to demolish public nuisance buildings by means of intentional burning.”

• See, e.g., A.C.A. § 14-54-904(b) (granting a lien on the real property to cover costs and expenses if a city elects to remove, repair, or raze a structure pursuant to A.C.A. § 14-56-203);
ZONING LAWS
ZONING

• (a) Cities of the first and second class are authorized to establish zones limiting the character of buildings that may be erected therein.

• (b) Zones may be of three (3) classes:
  • (1) Portions of the city where manufacturing establishments may be erected or conducted;
  • (2) Portions of the city where business other than manufacturing may be carried on; and
  • (3) Portions of the city set apart for residences.

• A.C.A. 14-56-301
ZONING – (BUILDING HEIGHTS)

• “The city council of a city shall have power to pass ordinances limiting the height of buildings in the zones created by it, so that the beauty of monumental buildings may not be impaired by the contrast.” Ark. Code Ann. § 14-56-303 (West).
  • This law has remained unchanged since 1925.
ZONING – EXCEPTIONS

- (a)(1) When the city council shall have laid off zones, it shall not be lawful for anyone to construct or carry on within a given zone any business not authorized by the ordinance of the city establishing it, unless with special permission granted by the council of the city, or by a commission which it may create for the purpose of determining whether an exception shall be made, in the particular instance.

- (2) Exceptions shall be made only for good cause.

- (b) In case of abuse, the adjacent property owners shall have the right to appeal to the courts of chancery to protect their property from depreciation by reason of the setting up of exceptional business within the zone.

- Ark. Code Ann. § 14-56-305 (West)
A.C.A. § 14-56-306
USE IN ADJACENT AND CONTIGUOUS CITIES

• (a) If municipalities become adjacent and contiguous to one another through annexation or other procedures, then lands or properties within the boundary area of each municipality shall be zoned only for land uses which are compatible with the zoned land uses of the adjoining lands or properties, even if the adjoining lands or properties are located outside the corporate limits or are located within the corporate limits of another municipality.

• (b) Adjoining lands within the boundary area shall remain zoned with a compatible land use until the governing body of each municipality which is adjacent and contiguous to the boundary area adopts a resolution agreeing to a change in the zoning of the lands or properties that adjoin one another and stating that the rezoning to a land use which is not compatible will not adversely impact the adjoined land or property.

Ark. Code Ann. § 14-56-306 (West)
A.C.A. § 14-56-306
USE IN ADJACENT AND CONTIGUOUS CITIES

- Cities have sued each other over this.

- The City of Springdale annexed property that had previously been part of Bethel Heights and then passed an amendment to change the zoning from agricultural to industrial use. Because several adjacent properties in Bethel Heights were zoned residential, Bethel Heights claimed that the Springdale rezoning violated the state's compatibility requirement. The court disagreed, however, and found that it was enough to state a prima facie case of compatibility that one of the adjacent contiguous properties in Bethel Heights was zoned for industrial use.
MUNICIPAL PLANNING
• “Cities of the first and second class and incorporated towns shall have the power to adopt and enforce plans for the coordinated, adjusted, and harmonious development of the municipality and its environs.” Ark. Code Ann. § 14-56-402 (West).

• This authority to “adopt and enforce plans” plainly applies to the “municipality and its environs,” suggesting that such plans may include areas outside the city or town. This would appear to be confirmed by the “territorial jurisdiction” addressed in A.C.A. § 14-56-413, supra.
PLANNING STATUTES

• (a) The plans of the municipality shall be prepared in order to promote, in accordance with present and future needs, the safety, morals, order, convenience, prosperity, and general welfare of the citizens.

• (b) The plans may provide, among other things, for:
  • (1) Efficiency and economy in the process of development;
  • (2) The appropriate and best use of land;
  • (3) Convenience of traffic and circulation of people and goods;
  • (4) Safety from fire and other dangers;
  • (5) Adequate light and air in the use and occupancy of buildings;
  • (6) Healthful and convenient distribution of population;
  • (7) Good civic design and arrangement;
  • (8) Adequate public utilities and facilities; and
  • (9) Wise and efficient expenditure of funds.
QUICK NOTES ON PLANNING COMMISSIONS

- § 14–56–404. Planning commission created
- § 14–56–405. Appointment of members
- § 14–56–407. Regular meetings
- § 14–56–408. Internal rules and regulations
- § 14–56–409. Compensation (Attendance based)
POWERS AND DUTIES OF P.C. - A.C.A. § 14-56-412

- (a) Generally. The planning commission shall have the duty … of long-term coordinated municipal planning.
- (b) Comprehensive Studies.
- (c) Planning Area Map.
- (d) Plans of Area.
  - (1) A master street plan;
  - (2) A land use plan; and
  - (3) A community facilities plan.
- (e) Implementation of Plans.
POWERS AND DUTIES OF P.C. - A.C.A. § 14-56-412

• (f)(1) Referral to Planning Commission. After adoption and filing as provided of a plan, no public way, ground, or open space; public building or structure; publicly or privately owned public utility line or terminal or transportation line or terminal; or public development or redevelopment or renewal project shall be acquired, constructed, or authorized unless such a project, proposal, or development has been submitted to the commission for review, recommendation, and approval as to its conformity with the plan.

• (2) The commission’s disapproval of a proposal submitted to it may be overruled only by a recorded vote of two-thirds (2/3) of the full membership of the submitting or authorizing body.

• (3) Failure of the commission to act within sixty (60) days of the submission of the proposal shall be deemed approval unless further time is allowed by the submitting public board, commission, or body.
• (g) Referral to Bodies Responsible for Land Acquisition. After adoption and filing as provided of a community facilities plan or a master street plan, no parcel of land indicated by the plan which lies within the bounds of a proposed public use facility or mapped street shall be privately developed until the public board, commission, or body having jurisdiction or financial responsibility for the reserved area shall have refused to execute a written option or to file suit for condemnation to acquire the area. This refusal shall be given by the public board, commission, or body within one (1) year of the date the action is requested by the property owner. This procedure may be enforced for the specified one (1) year period by the refusal to issue building permits or by other methods. However, it may be enforced only in cases where regulations governing the development and subdivision of land do not apply.
(h) Public Improvement Program. The commission may prepare, annually, a program for an appropriate period, recommending a coordinated program of capital expenditures for public improvements. …

(i) Recommendations and Reports. The commission may make recommendations and reports …

(j) Surveys. The commission may enter upon land to make examinations and surveys …

(k) Funds and Personnel.
(a)(1)(A) The territorial jurisdiction of the governing body of a municipality for the purpose of this subchapter shall not exceed the limits stated under this subsection.

(B) If the territorial limits of two (2) or more municipalities conflict, the limits of their respective territorial jurisdictions shall be a line equidistant between them, or as agreed on by the respective municipalities.
• (3) Cities having a population of eight thousand (8,000) persons or less:
  • (A) Shall have a jurisdictional area that does not exceed one (1) mile beyond the corporate limits; and
  • (B) Shall not exercise any zoning authority outside the corporate limits.

• (b)(1) The planning commission shall designate the area within the territorial jurisdiction for which it will prepare plans, ordinances, and regulations.

• (2) A description of the boundaries of the area shall be filed with the city clerk and with the county recorder.
ZONING ORDINANCE

- “Following adoption and filing of the land use plan, the commission may prepare for submission to the legislative body a recommended zoning ordinance for the entire area of the municipality.”

Ark. Code Ann. § 14-56-416 (West)
PENALTIES

• (a)(1) Violations of any provision of ordinances and regulations adopted to carry out the intent of plans shall be considered a misdemeanor.

• (2) Each day's violation shall be considered a separate offense.

• (b)(1) The legislative body may enjoin any individual or property owner who is in violation of a planning ordinance to prevent or correct the violation.

• (2) Any individual aggrieved by a violation of the ordinance may request an injunction against any individual or property owner in violation of the ordinance, or may mandamus any official to enforce the provisions of the ordinance.

Ark. Code Ann. § 14-56-421 (West)
LEGAL MANDATES
AND ETHICAL ISSUES
DUE PROCESS AND LAND USE

• Two sources of Due Process protection in the U.S. Constitution:
  • 14th Amendment (applicable to states/cities); and
  • 5th Amendment (applicable only to federal actors)

• Two Types:
  • Substantive Due Process
  • Procedural Due Process
SUBSTANTIVE DUE PROCESS

- Land use regulation (including planning and zoning) must promote the public health, welfare, by a rational basis.
- Unless regulation infringes on a fundamental right, rational-basis review applies.
• Rational basis review is the easiest for government to satisfy via regulation. As long as any conceivably rational reason exists for the regulation at issue, the law or regulation is upheld, even if the entity responsible for the regulation didn’t rely on that reason.

• Substantive Due Process requires that legislation (or regulation, or actions taken on land use matters that come before planning commissions) be rationally related to achieving a legitimate governmental purpose. Again, this is “rational basis” review.
• If, however, a regulation infringes on a fundamental right, it must pass strict-scrutiny review: there is a compelling governmental interest and the regulation is narrowly tailored to achieve that interest. To be narrowly tailored, the regulation must be the least restrictive means of further the asserted governmental interest. Most laws cannot meet this test.
• Fundamental Right: *Moore v. City of East Cleveland* (U.S. S. Ct.): regulation only permitted “single families” from living in “single homes.” However, the regulation’s definition of family precluded the Plaintiff from living with her son and grandsons. The Supreme Court struck down the ordinance under strict scrutiny.

• For decades the Supreme Court conflated “substantive due process” analysis with “takings” analysis. It finally untangled that in *Lingle v. Chevron*. 
FOR DECADES THE SUPREME COURT CONFLATED “SUBSTANTIVE DUE PROCESS” ANALYSIS WITH “TAKINGS” ANALYSIS. IT FINALLY UNTANGLED THAT IN *LINGLE V. CHEVRON*.

- the “substantially advances” inquiry reveals nothing about the magnitude or character of the burden a particular regulation imposes upon private property rights or how any regulatory burden is distributed among property owners. Thus, this test does not help to identify those regulations whose effects are functionally comparable to government appropriation or invasion of private property.

- Rather, is there a proper justification taken by the government for the regulation in question? What amounts to a regulation of property?
  - Rules designed to permit the City to control orderly development of private property in furtherance of the public health and welfare.
  - Application of Regs
A protected property interest, which is a question of state law, is “‘a legitimate claim to entitlement’ ... as opposed to a mere subjective expectancy.” Batra v. Board of Regents, 79 F.3d 717, 720 (8th Cir.1996), quoting Board of Regents v. Roth, 408 U.S. 564, 577 (1972). A claim to entitlement arises, for these purposes, when a statute or regulation places substantial limits on the government's exercise of its licensing discretion. Thus, the holder of a land use permit has a property interest if a state law or regulation limits the issuing authority's discretion to restrict or revoke the permit by requiring that the permit issue upon compliance with terms and conditions prescribed by statute or ordinance.

So, if a planning commission permits a building to be built because a land owner has complied with all planning regulations, a protected property right exists. Thus, any attempt to alter that right must comply with due process.
In 1999 Snaza's father, Bernard, applied for a CUP from the city planning commission to operate an outdoor auto sales lot on a property at 1229 Payne Avenue in St. Paul, Minnesota. The property is zoned B3, a general business district. Under the city code a particular use of property within any business district will be either permitted, permitted only by obtaining a CUP, or prohibited. Code §§ 66.101, 66.421.

Outdoor auto sales, auto repair, or auto detailing activities are only permitted on B3 property if the owner obtains a conditional use permit. Code § 66.421. Approval of a conditional use permit application requires certain findings by the planning commission, including that the property conforms to all applicable land use regulations for the proposed use. § 61.501.
SNAZA V. CITY OF ST. PAUL (8TH CIR.)

- The commission has discretion to modify those requirements in circumstances which would "unreasonably limit or prevent otherwise lawful use [of the property] ... and would result in exceptional undue hardship to the [property] owner ...; provided, that such modification will not impair the intent and purpose of such special condition and is consistent with health, morals and general welfare of the community and is consistent with reasonable enjoyment of the adjacent property." Code § 61.502.
The land use regulations for an outdoor auto sales lot require among other things that the lot size be at least 15,000 square feet and that any driveway be set back at least 60 feet from an intersection. Code § 65.706. Snaza's property does not meet those requirements since it is only 9,460 square feet and one driveway is 20 feet from an intersection.

Nevertheless, Snaza’s father was given 2 conditional use permits pursuant to the PC’s discretion.

Snaza’s father died, she inherited the business and applied for another CUP.
The city zoning committee held a public hearing on her application, at which the community council for the surrounding neighborhood characterized the property as a nuisance and opposed approval of the permit. The zoning committee also heard complaints that there were more cars on the lot than were allowed under the 2002 permit, that there was a tow truck business operating illegally on the site, and that the back alley was littered with glass from wrecked cars which were also protruding into the alley. The zoning committee recommended that the planning commission deny the permit application.
• So this time, the PC refused to exercise its discretion in relaxing the lot size requirements, etc . . ., and found that the circumstances justifying relaxing those requirements weren’t met.

• Before, they did relax the requirements and granted the CUP; now, for the same property the PC required strict adherence to the requirements and denied the CUP. Fair? Constitutional?
SNAZA V. CITY OF ST. PAUL (8TH CIR.)

- A permit applicant may have a legitimate claim to entitlement (a property interested protected by Due Process) if the government's discretion is constrained by a regulation or ordinance requiring issuance of a permit when prescribed terms and conditions have been met.
- She argued the denial of the permit was truly irrational and, thus, lacking a rational basis.
The court never reached that issue because it found: the property does not meet the minimum lot size and driveway setback requirements in the zoning regulations, Code § 65.706. Accordingly, the district court did not err in concluding that Snaza did not have a legitimate claim of entitlement to a conditional use permit, i.e., no protected property interest by Sub. D. P.

“The possession of a protected life, liberty or property interest is a condition precedent to the government’s obligation to provide due process of law, and where no such interest exists, there can be no due process violation.” McDonald v. City of Saint Paul, 679 F.3d 698, 704 (8th Cir. 2012)
The 14th Amendment also protects property via the Due Process clause with what is known as procedural due process.

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (emphasis added) (internal quotation marks omitted); Hroch v. City of Omaha, 4 F.3d 693, 696 (8th Cir. 1993). A procedural due process claim focuses not on the merits of a deprivation, but on whether the government circumscribed the deprivation with constitutionally adequate procedures. Parrish v. Mallinger, 133 F.3d 612, 615 (8th Cir. 1998).
You must give Notice and an Opportunity to be Heard at a meaningful time and in a meaningful manner before depriving a landowner of a property right, i.e., a legitimate claim of entitlement.

In a case involving a sexually oriented business where the city and the business had agreed that the business could exist as a pre-existing non-conforming use, the court there found: The Court agrees with C. Line that it was entitled to notice and a hearing before Defendants revoked its license/nonconforming use pursuant to the Consent Decree. Indeed, Defendants' own Municipal Code provides that only certain bases support revocation or suspension of an existing license, and that an aggrieved license-holder must be provided with notice and an opportunity to contest the revocation or suspension.
EQUAL PROTECTION CLAIMS

• “In general, the Equal Protection Clause requires that state actors treat similarly situated people alike.” McDonald v. City of Saint Paul, 679 F.3d 698, 705 (8th Cir. 2012) (citations omitted). As a threshold matter, Plaintiffs must establish that some government action caused them to be treated differently from others similarly situated. Parette v. Virden, 173 F. App’x 534, 537 (8th Cir. 2006).
If Plaintiffs prove (1), they must allege and prove an unlawful intent to discriminate against them for an invalid reason. *Batra v. Board of Regents of University of Nebraska*, 79 F.3d 717, 722 (8th Cir. 1996). “Unequal application of the regulations in question . . . does not violate equal protection unless ‘there is shown to be present in it an element of intentional or purposeful discrimination.’” *Cent. Airlines, Inc. v. United States*, 138 F.3d 333, 335 (8th Cir. 1998)
EQUAL PROTECTION AND COMMON SENSE

• So, you have to show you are a landowner before the PC seeking a similar remedy to someone else, and you were treated worse, i.e., you didn’t get what you wanted and the other land owner did. And, then you must show that the differential treatment was purposeful discrimination (but, consider the Fair Housing Act later, which allows you to show discriminatory effect (disparate impact), as opposed to discriminatory intent);
• As a practical matter: treat those similarly situated before you the same; apply your regulations fairly and equally; don’t do special favors because of who the landowner before you is; don’t create hardships against a landowner you don’t like; and remember, the FOIA allows any citizen to obtain your work records and any public statements you make can show your “intent.”
RECUALS/CONFLICTS OF INTEREST

• This should, frankly, be obvious. If you have a pecuniary interest in a matter that comes before the Planning Commission, you should recuse yourself.

• Analogously, the Arkansas Attorney General has opined in Opinion No. 2007-34, that it is improper for a Mayor to break a tie vote of the council when the direct pecuniary interest of the Mayor is affected by the outcome of the vote.
• What if you only indirectly benefit? Your neighbor is seeking rezoning his or her property to a zone you don’t care for. Should you recuse on the request? Does that prevent you from leaving your role as PC’ner and still voicing your concerns? First Amendment rights.
PERSONAL LIABILITY: IT’S POSSIBLE!


- To establish a claim under § 1983, plaintiffs must show that they have been deprived of a federally protected right, privilege or immunity as a result of action taken by persons acting under color of state law.

- Under “color of law:” you, acting in your capacity as a public official, are acting under color of law. And it doesn’t require that you’re at a PC meeting voting on something. Rather, if you’re making decisions that inevitably result in decisions at the PC, those actions could be considered to be under color of law as well.

- So, personal liability is possible if your action violates someone’s Constitutional rights like those rights we’ve been discussing.

- However, you can assert qualified immunity. What is it?
The Basics of Urban Planning In Arkansas

Presented By:
Jim von Tungeln, AICP
Legal Foundation

defined:

common knowledge

known by most

common law

England as dis
canon or eccle
England, based
statute law. 3
writs, as disti
Truth is: our cities weren’t always beloved
Urban Planning – Our Heritage
Urban Planning – Our Heritage

Village of Euclid, Ohio vs Ambler Realty Co.

▼ Cleveland ▼

▲ Euclid ▲
Urban Planning – Legal Basis

Act 186 of 1957

Arkansas Code Annotated 14-56-401-426
SECTION 2. Arkansas Code § 14-43-602 is amended to read as follows:

14-43-602. Authority generally.
Any city of the first class (a) A municipality is authorized to perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs including, but not limited to, the power to tax.

(b) The rule of decision known as Dillon's Rule is inapplicable to the municipal affairs of municipalities.
From Euclid: First – We Plan

Then – We regulate
The Comprehensive Plan

- Is not a legal document
- Is not a zoning ordinance
- Sets out municipal policy
- Is action oriented
- Is long range in nature
- Should guide planning decisions
- Provides a defense against litigation
The Planning Area

Is carved from the territorial jurisdiction and allows Planning and development control for all, zoning for some cities on navigable streams.
The Planning Area

Act 1053:

Reduces the Territorial Jurisdiction for Municipalities from the current five miles to:

- One Mile for cities up to 60,000
- Two miles for cities between 60,000 and 150,000
- Three miles for cities over 150,000

Allows zoning outside the city within the territorial jurisdiction for cities above 8,000 on navigable streams.

And: Removes the word “exclusive” from the authority of a municipality within the territorial jurisdiction
The Planning Process

- Develop a community vision
- Identify issues
- Set goals and policies
- Prepare plans
- Draft programs to implement plan
- Evaluate potential impacts
- Review and adopt plan
- Adopt methods to implement plan
- Administer programs
- Review and revise
Whom Do We Serve?

- Visitors to the City
- City Residents
- Potential Investors
- Business Owners
- Future Residents
- City Council
- City Departments
- Development Professionals
The Planning Commission: Three Roles
Standard of Review – One

Legislative
Standard of Review – Two

Administrative
Standard of Review – Three Judicial
Codes and Regulations
Act 1002 of 2015

Private Property Protection Act

AKA – AR Takings Act
Exemptions

(B) "Regulatory program" includes without limitation moratoriums on growth, aesthetic or scenic districts, environmental districts, overlay districts, green space ordinances, landscape ordinances, tree ordinances, land use planning programs, and zoning programs by a governmental unit when the regulatory program is not designed to carry out or protect the adopted plans of a governmental unit that are designed to protect the health, safety, or welfare of the citizens.

Law does NOT apply to:

(12) An action taken by a governmental unit: Under its police power to make laws and regulations for the benefit of its communities;

(15) An action by a municipality unless the regulatory program has effect in the territorial jurisdiction of the municipality, excluding annexation, and that enacts or enforces a regulatory program that does not impose identical requirements or restrictions in the entire territorial jurisdiction of the municipality.
Some New Issues
Tiny Houses

*What are they?

* > 400 sq. ft - SMALL
Tiny Houses

- What are they?
  - < 400 sq. ft – TINY
Tiny Houses

- What are they?
Tiny Houses

What are they not?
Tiny Houses

• What are they not?

• Manufactured Homes
Tiny Houses

Approaches to regulating them
- Fire Code
  - 220 sq. ft. - 2 people
  - add 100 sq. ft. for each additional person
- Accessory Dwelling Units
- Zoning – **NOT RECOMMENDED!!!**
Signs

Reed vs Town of Gilbert
Content Based Regulations Test
Does your sign code allow for “Real Estate Signs?”
Your sign code is very likely illegal.
No one really knows where this is headed!
Maintain a good relationship with your city attorney. She can save your bacon. Or “he,” whatever the case may be.
The Future? Who knows?

- Food Trucks/Uber – Type Businesses
- Airbnb
- Small Cell Towers
- Things like ... Driverless Vehicles
- Declining Retail Base/Reduced Revenue
- Your city and economic development
- It all adds up to: need for diligence and training, so ...
Congrats to you all!
Questions?
Arkansas Municipal League
State GIS Data to Support Your Planning and Zoning

ARKANSAS GIS OFFICE
Address Points
Average Daily Traffic
Traffic Count
Roads by Functional Class
Weight Restricted Routes
Telecommunication Towers
Water Utility Service Territory
Population
Tax Parcels by Value

Legend
Tax Parcels by Value
TOTAL VALUE
$0.00 - $43,700.00
$43,700.01 - $126,550.00
$126,550.01 - $328,800.00
$328,800.01 - $1,451,000.00
$1,451,000.01 - $5,503,500.00
12 Inch Resolution Imagery
Acquired in 2017

Every City, Every County
6 Inch Resolution Imagery
Acquired in 2017

50 Cities in Portions of 8 Counties

Before an entity undertakes an annexation, consolidation, or detachment proceeding under this chapter, the entity shall coordinate with the Arkansas Geographic Information Systems Office for preparation of legal descriptions and digital mapping for the relevant annexation, consolidation, and detachment areas.
Questions?

• Arkansas GIS Office
• shelby.johnson@arkansas.gov
• 501-682-2767
• gis.arkansas.gov
COMPREHENSIVE PLANNING 101

JAMES P. WALDEN, AICP
DIRECTOR OF PLANNING AND DEVELOPMENT
WHY PLAN?
Before we plan...
We should ask “Why should we?”

BUT WHY
WHY PLAN?

“You got to be careful if you don’t know where you’re going, because you might not get there.”

- Yogi Berra
WHY PLAN?

Money

Future

Hard Lessons
WHY PLAN?

STEP 01
PLAN

STEP 02
REGULATE
WHY PLAN?

A.C.A. § 14-56-401 to 14-56-422

(e) Implementation of Plans. In order to promote, regulate, and control development, and to protect the various elements of the plans, the commission, after adoption of appropriate plans as provided, may prepare and transmit to the legislative body such ordinances and regulations as are deemed necessary to carry out the intent of the plans, or of parts thereof.
WHAT IS A COMPREHENSIVE PLAN?
WHAT IS A COMPREHENSIVE PLAN?

Community Blueprint

- Future Land Use
- Master Street Plan
- Community Facilities
- Parks Plan
- Housing Plan
- Capital Improvements
- Economic Strategy
- Downtown
WHAT IS A COMPREHENSIVE PLAN?

- Is NOT a LEGAL document
- Is NOT a Zoning Code
- Sets out Policy
- Is Action Oriented
- Is Long Range in Nature
- Guides City Decisions
- Provides Defense Against Litigation
WHAT IS A COMPREHENSIVE PLAN?

What does it NOT do?

• Automatically make problems go away
• Make long-standing problems go away quickly
• Can’t be effective if not used
• Can’t be successful unless supported by Mayor and Council

YOU GET WHAT YOU WORK FOR
NOT WHAT YOU WISH FOR.
WHAT IS A COMPREHENSIVE PLAN?

Future Land Use Plan
• Dictates Intended Long Range Use (20-30 Years)
• Should Relate to Zoning
• Basis for Rezoning Decisions
• Should Relate to Utility/Infrastructure Capacity/Plans
WHAT IS A COMPREHENSIVE PLAN?

Master Street Plan

• Dictates Intended Long Range Streets (20-30 Years)

• Should Relate to Subdivision Regulations

• Provides Basis for Requiring Developer Street Construction

• Should Relate to Planned Land Use (Streets Supporting Land Use)
WHAT IS A COMPREHENSIVE PLAN?

Community Facilities Plan

• Parks
• Emergency Services
• Governmental Services
• Relates Growth to Needed Services to Support Growth
THE PLANNING PROCESS
PLANNING PROCESS

Plan to Plan
Community Engagement
Existing Conditions
Problem Identification
Strategy Development
Adoption
HARD WORK and Monitoring
PLANNING PROCESS

Plan to Plan

- Territorial Jurisdiction
  - 1 mile = up to 60K
  - 2 miles = 60K to 150K
  - 3 miles = Little Rock
  - Under 8K and not on Navigable Stream = No Tj Zoning

- Planning Area

- Utility Service Area
Community Engagement
• An Absolute MUST
• Community Buy-in
• Broader Political Support
• More Realistic Goals
• Meets Needs of Residents
• Lots of Novel Approaches
  • Charrettes, Drop-ins, Websites, Surveys, GIS Apps, Walk Audits, School Outreach
# PLANNING PROCESS

## Implementation Plan

<table>
<thead>
<tr>
<th>Plan Implementation Matrix</th>
<th>Responsible Party</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>City</td>
</tr>
<tr>
<td><strong>Plan Adoption and Transportation Planning</strong></td>
<td></td>
</tr>
<tr>
<td>1) Adopt the Master Street Plan.</td>
<td>✓</td>
</tr>
<tr>
<td>2) Encourage transportation design elements that encourage safety for all users.</td>
<td>✓</td>
</tr>
<tr>
<td>3) Provide consultation, advice, and assistance on planning transportation improvements in the city.</td>
<td></td>
</tr>
<tr>
<td><strong>Development Plan Review</strong></td>
<td></td>
</tr>
<tr>
<td>1) Utilize the Cabot Unified Development Code to carry out the plan.</td>
<td>✓</td>
</tr>
<tr>
<td>2) Regulate driveway access on city streets.</td>
<td>✓</td>
</tr>
<tr>
<td>3) Regulate driveway access on state highways.</td>
<td>✓</td>
</tr>
</tbody>
</table>
PLANNING PROCESS

Adoption, Hard Work, Monitoring
• Adoption isn’t the Finish Line
• Plan only as Good as Efforts to Implement it
• Plan needs to be Maintained
• Hard Work, Hard Work, Hard Work, and More Hard Work

The dream is free. The hustle is sold separately.
Tyrese Gibson
THANK YOU

JAMES.WALDEN@CITYOFCONWAY.ORG
501.450.6105
SMALL SCALE PLANNING FOR Community Success
WHAT WE WILL COVER

• **Good Planning**
  - What is Good Planning?

• **Community Success**
  - What does Community Success Look Like?
  - Performance Measures

• **Getting from Here to There**
  - Implementation
  - Plan Ownership

KEEP CALM WITH GOOD PLANNING
WE WILL SUCCEED
GOOD PLANNING

• What is Good Planning?
  • Engages the Community
  • Future Focused
  • Visionary (But Realistic)
  • Clear Vision
  • Outcome Focused
  • Fosters Community Health
    • Social, Physical, Economic, Environmental
  • Focuses on Community Problems (Uses the Right Tool)
GOOD PLANNING

- Social, Physical, Economic, Environmental
GOOD PLANNING

- Social, Physical, Economic, Environmental
GOOD PLANNING

• Visualization
GOOD PLANNING

- Visualization
GOOD PLANNING

- Visualization
GOOD PLANNING
GOOD PLANNING
GOOD PLANNING
What does Community Success Look Like?

- Its all Relative...
  - What base are you starting on?
- Realistic Goals
  - What are your assets? Challenges?
- What is your Community Capacity?
  - Built Environment Improvement
  - Human Capital?
  - Know Your Demographics...
## Performance Measures

<table>
<thead>
<tr>
<th>PERFORMANCE MEASURE</th>
<th>GOAL</th>
<th>PROGRESS INDICATOR</th>
<th>LONG-RANGE TARGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of Bryant school campuses connected by sidewalks/trails</td>
<td>Improve Connectivity</td>
<td>Annual % increase</td>
<td>100%</td>
</tr>
<tr>
<td>% of residences within a ½ mile to bike/pedestrian facilities, including bike lanes and trails</td>
<td>Improve Connectivity</td>
<td>Annual % increase</td>
<td>100%</td>
</tr>
<tr>
<td>Number of crashes involving bikes and pedestrians</td>
<td>Improve Safety</td>
<td>Annual decrease in number of crashes</td>
<td>50% reduction from 2016 levels</td>
</tr>
<tr>
<td>Number of fatal crashes involving bike and pedestrians</td>
<td>Improve Safety</td>
<td>Annual decrease in number of fatalities</td>
<td>0 deaths</td>
</tr>
<tr>
<td>Number of linear miles of street per square mile</td>
<td>Improve Connectivity</td>
<td>Annual increase in street network density</td>
<td>20 miles/sq. mi.</td>
</tr>
<tr>
<td>Miles of trails</td>
<td>Capital Improvements</td>
<td>Annual increase in number of miles</td>
<td>10.5 miles by 2030</td>
</tr>
<tr>
<td>Miles of sidewalks</td>
<td>Capital Improvements</td>
<td>Annual increase in number of miles</td>
<td>100 miles by 2030</td>
</tr>
<tr>
<td>Miles of bike lanes/bike routes</td>
<td>Capital Improvements</td>
<td>Annual increase in number of miles</td>
<td>18 miles by 2030</td>
</tr>
</tbody>
</table>
GOOD PLANNING TO COMMUNITY SUCCESS

- **Plan Ownership**
  - *DON’T LET THE PLAN DIE!!!*
  - Need Someone to Take Over
  - Meet Regularly
  - Focus on Implementation
  - List of Projects
  - Review Plan Annually
  - Tell Stories of Success
GOOD PLANNING TO COMMUNITY SUCCESS

- **Implementation**
- Focus on Outcomes
- Always Think Implementation
GOOD PLANNING TO COMMUNITY SUCCESS

DOWNTOWN MASTER PLAN

REVISED: MARCH 8, 2013
GOOD PLANNING TO COMMUNITY SUCCESS
GOOD PLANNING TO COMMUNITY SUCCESS
GOOD PLANNING TO COMMUNITY SUCCESS
Glenwood Ave
GOOD PLANNING TO COMMUNITY SUCCESS
GOOD PLANNING TO COMMUNITY SUCCESS
Questions?

James P. Walden, AICP
Jim von Tungeln, AICP
NEW TRENDS AND FUTURISM: WHERE WE GO FROM HERE

James P. Walden, AICP
City of Conway
Planning and Development Director
Convergent Issues

Amazon + Automation + Driverless Vehicles = Change
LET'S TALK airbnb
Convergent Issues

Amazon + Automation + Driverless Vehicles = CHANGE
Retail Changes

• Shift to Online Shopping
Retail Changes

• Hard Time for Big Boxes
• Suburbs + Rural Hard Hit
  • Job Loss
• Rethinking of Retail
  • Experience Matters
  • Pop-up Big Box
  • Store as Showroom
  • Differentiating Factors
Retail Changes

- Tipping Point?
- Economic Impact and Wealth Extraction?
Automation

- Don’t Take my Job Bro!
- Manufacturing Robots
- Rise of the Algorithm
The future of employment

About half of today’s jobs will likely be done by computers in a decade or two. Automation has so far taken over mostly well-defined routine tasks, shifting jobs from middle-income manufacturing to lower-income service jobs. As computers get better at for example perception - think self-driving cars - those services jobs are likely next up to be replaced by machines. Frey and Osborne (2013) estimate the probability of each job becoming automated. Here are how their predictions apply to 2016 US employment statistics.

Black fields are jobs likely to be automated and white fields are jobs that are likely to remain.

Retail salesperson is the most common job today, but has a 90+% chance of becoming automated.

Instead, nurses and teachers might soon become the most common jobs.

These predictions are only the probability of each job becoming automated. Fewer managers will probably also be needed when there is fewer staff to manage.

It is mostly low-income jobs that risk being automated. Jobs that require social skills, creativity or higher education are less likely to.
### Automation can replace at least some work in almost all job sectors

<table>
<thead>
<tr>
<th>Industry</th>
<th>Automation potential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accommodation and food services</td>
<td>73%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>60%</td>
</tr>
<tr>
<td>Transportation and warehousing</td>
<td>60%</td>
</tr>
<tr>
<td>Agriculture</td>
<td>60%</td>
</tr>
<tr>
<td>Retail trade</td>
<td>57%</td>
</tr>
<tr>
<td>Mining</td>
<td>53%</td>
</tr>
<tr>
<td>Other services</td>
<td>51%</td>
</tr>
<tr>
<td>Construction</td>
<td>49%</td>
</tr>
<tr>
<td>Utilities</td>
<td>44%</td>
</tr>
<tr>
<td>Wholesale trade</td>
<td>44%</td>
</tr>
<tr>
<td>Finance and insurance</td>
<td>43%</td>
</tr>
<tr>
<td>Arts, entertainment, and recreation</td>
<td>41%</td>
</tr>
<tr>
<td>Real estate</td>
<td>40%</td>
</tr>
<tr>
<td>Administrative</td>
<td>39%</td>
</tr>
<tr>
<td>Health care and social assistances</td>
<td>36%</td>
</tr>
<tr>
<td>Information</td>
<td>36%</td>
</tr>
<tr>
<td>Professionals</td>
<td>35%</td>
</tr>
<tr>
<td>Management</td>
<td>35%</td>
</tr>
<tr>
<td>Educational services</td>
<td>27%</td>
</tr>
</tbody>
</table>

Data: US Bureau of Labor Statistics; McKinsey Global Institute analysis
Automation

• Rural Decline/Urban Ascendancy
  • Can rural areas compete?
• Economic Resiliency?
  • Can we adapt in-time?
• Stronger Class Divides?
• Future Jobs?
  • Are we smart enough?
Driverless Vehicles

- Not If, When...
- Not all Driverless is Equal
  - Automation vs. Autonomy
- Hacking and Failure
- Liability
- Ownership Changes
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Zero Deaths?</td>
<td>Game of Horns?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
QUESTIONS?