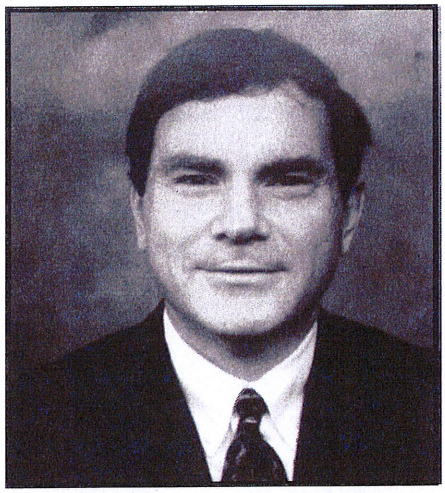
Municipal Land Planning Law In Missouri

This article offers an examination of the comprehensive plan and development limitations contained in the Missouri municipal planning statutes, as well as an introduction to a new national initiative to modernize planning laws.

I. Introduction

Municipal land planning is one area of the law that has become the subject of growing conflict and litigation in Missouri. Increasingly, as zoning decisions of municipalities are contested, the provisions of the land plan[2] become the focus of the debate. However, beyond the arguments about the proper adoption of the land plan and its legal impact in zoning disputes is a lack of understanding of the purpose and development limitations of municipal land planning law in Missouri.



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II. Legislative Background

Many attorneys are familiar with the enabling legislation empowering municipalities to zone and re-zone property within its jurisdiction contained in §§ 89.010-89.140, RSMo 1994 and Supp. 1999. These zoning powers are granted to the legislative body of a municipality and are exercised by the enactment of ordinances. Such ordinances have the effect of law and restrict the use of affected real properties.

Less known is the enabling legislation empowering municipalities to plan the development and uses of property in its jurisdiction, which is contained in §§ 89.300-89.490, RSMo Cum. Supp. 1999. These statutes govern the preparation, adoption, amendment and use of land plans for all Missouri municipalities that appoint a planning commission. These statutes also grant such municipalities power to coordinate development of the municipality, including public improvement approval, subdivision regulation, plat approval and approval of streets and related improvements. Planning, as envisioned in these statutes, is a much more comprehensive concept than zoning, covering all facets of the municipality's development.

The planning enabling statutes and the zoning enabling statutes apply to all cities in this state, including charter cities.[3] If a city fails to comply with the enabling statutes, the ordinance passed or the action taken in excess of such authority or without full statutory compliance is deemed to be invalidly enacted and cannot be enforced.[4] This grant of legislative power to municipalities is subject to the limitations imposed by the statutes, and a city may not broaden that power by the content of its own ordinances on the subject.[5]

The State of Missouri patterned its planning enabling statutes after the Standard

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[2] Sometimes called a city plan, master plan, comprehensive plan or land use plan.

[3] *City of Springfield v. Goff*, 918 S.W.2d 786 (Mo. banc 1996). The *Goff* case specifically addressed only the zoning enabling statutes. The issue of the application of enabling legislation to home rule charter cities is itself worthy of a separate law journal article. The *Goff* case stands for the proposition that comprehensive and detailed enabling statutes constitute a limitation on the exercise of power by home rule charter cities. *Cf. Alumax Foils, Inc. v. City of St. Louis*, 939 S.W.2d 907 (Mo. banc 1997) (the City Sales Tax Act, §§ 94.500 - 94.570, RSMo 1994, which authorizes cities to impose sales taxes in a prescribed manner, held to provide a limitation on the power of home rule charter cities) and *State ex inf. Hannah v. City of St. Charles*, 676 S.W.2d 508, 513 (Mo. banc 1984) (home rule cities cannot exercise power in a manner inconsistent with § 71.015, RSMo Cum. Supp. 1983, of the Sawyers Act establishing procedures for annexation by cities). Based upon the *Goff* case holding, the necessary and intended interrelationship of the zoning and planning enabling statutes enacted in Missouri, the titling of the Missouri planning enabling statutes that state at the beginning in capital letters "Planning - All Municipalities," as well as the scope of § 89.310, RSMo 1994, the limitations of Art. 6, § 19(a) of the Missouri Constitution, and the fact that the official footnotes of the model acts (upon which the Missouri statutes were patterned) anticipated application to home rule charter cities, it is the author's position that the Missouri planning enabling statutes apply to all municipalities in Missouri, including home rule charter cities. For a discussion of practical and policy reasons why home rule governments should be required to rely upon the enabling statutes instead of their home rule constitution for zoning and planning powers, *see* Daniel R. Mandelker & David G. Heeter, Enabling Legislation for Planning, Plan Implementation and Urban Renewal in the State of Missouri 153-156 (1967), a report to the Missouri Planning Association committee on legislation. *See also* Missouri Local Government at the Crossroads: Report of the Governor's Advisory Council on Local Government 5 (1968) (constitutional charter cities cannot "establish their own procedures and limitations" where "the statute in question" is "so comprehensive and detailed as to indicate a clear intent that it should operate as both authorization and limitation," and statutes "applicable to 'all cities, towns and villages' . . . would probably satisfy requirement" of limitation or denial of powers under proposed home rule amendment). Without the limitations of the Missouri planning and zoning enabling statutes, home rule charter cities could make up their own laws for planning and zoning procedures, leading to lack of uniformity, more uncertainty, little or no accountability and unfair results for residential and commercial property owners who currently have notice and hearing protections and zoning protest rights under existing law. *See* note 28 *infra* for a discussion of a recent case involving a home rule charter city that exemplifies the latter concerns.

[4] *State ex rel Holiday Park, Inc. v. City of Columbia*, 479 S.W.2d 422, 424 (Mo. 1972); *Casey's General Stores v. City of Louisiana*, 734 S.W.2d 890, 895 (Mo. App. E.D. 1987).

[5] *Goff*, 918 S.W.2d 786 at 789; *McCarty v. City of Kansas City*, 671 S.W.2d 790, 793 (Mo. App. W.D. 1984).

City Planning Enabling Act (the "SCPEA").[6] The language of the Missouri planning enabling statutes follows the corresponding sections of the SCPEA very closely. The SCPEA was published by the U.S. Department of Commerce a few years after its publication of the Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations (the "SZEA").[7] These acts were intended as companion model acts that most of the states in this country adopted as the basis of municipal planning and zoning authority. The SCPEA was prepared complete with official footnotes that provide a great deal of background and explanatory information.

Under the SCPEA scheme, the principal function of the planning commission was to prepare and adopt a land plan for the physical development of the municipality. The land plan, in turn, had three primary functions as set forth under the SCPEA: (1) to be used as a guide in making zoning recommendations and decisions; (2) to coordinate location and construction of public improvements; and (3) to coordinate design of subdivisions and construction of streets and related improvements.

III. Authority to Adopt Municipal Land Plans

Authority for municipalities to appoint a planning commission is found at § 89.310, RSMo 1994. This authority to appoint a planning commission is permissive. The appointment of a planning commission is generally necessary when the municipality needs to coordinate development, consider re-zoning requests, and create zoning districts beyond the ones originally established when the municipality was first formed. Upon appointment, the planning commission possesses the power and duties set forth in the balance of the Missouri planning enabling statutes. Once a municipality appoints a planning commission, the requirements of the Missouri planning enabling statutes must be followed (including adoption of a separate land plan document). Pursuant to § 89.390, RSMo 1994, the planning commission shall also have and perform all of the functions of the zoning commission found in the Missouri zoning enabling statutes.

Sections 89.320 and 89.330, RSMo 1994 and Supp. 1999, set forth provisions for membership, terms of office, membership rules, recordkeeping, and other internal procedures of planning commissions. However, § 89.330.2, RSMo 1994, following recommendations in the SCPEA footnotes, grants flexibility in these areas to charter cities and to municipalities with zoning or planning commissions existing prior to adoption of the Missouri planning enabling statutes in 1963. Similar flexibility is granted to municipalities with boards of adjustment existing prior to the adoption of the Missouri planning enabling statutes for purposes of exercising adjustment powers regarding building lines granted in § 89.480, RSMo 1994.

Section 89.340, RSMo 1994 requires the planning commission of a municipality to make and adopt a land plan to show the planning commission's recommendation for the physical development and uses of land in the municipality. This is a recognition that, once a planning commission is appointed, a land plan is critical and necessary to consider re-zoning requests and to coordinate development in the municipality. The authorization for the planning commission, rather than the city council, to be the body that adopts land plans was purposeful.[8] Despite this clear mandate, many municipalities improperly have their city councils adopt land plans.

Official footnote 35 of the SCPEA clearly provides that the power to deal with the whole field of land planning rests with the planning commission. The drafters of the SCPEA believed that a planning commission could function best if it was independent of political influence and not affected by the uncertain tenure of elected officials.[9] Official footnote 44, explaining the meaning of "adoption," states: "[T]he plan should not be required to be submitted to or approved by [city] council," and "[t]o pass upon the plan itself . . . is not within the appropriate functions of [city] council." Since the SCPEA did not envision that a land plan would be anything more than an advisory document, it made no provision for its approval by the legislature.[10] The SCPEA reflects an inherent concern with preventing short-term political considerations from interfering with long-term community planning. By placing planning responsibilities in the hands of an appointed planning commission, the purpose was to remove this function from legislative whim or pressure.[11]

Further protection from political interference was provided under the SCPEA by only allowing removal of planning commission members for cause stated in writing and after a public hearing, which Missouri followed in § 89.320, RSMo Supp. 1999. More recently, this rationale and purpose was revisited in *The Real Story Behind the Standard Planning and Zoning Acts of 1920's*, where it was clearly stated in analysis of the SCPEA that "[o]nly the nonpartisan appointed lay planning commission had the authority to develop and adopt the master plan and employ a planning staff."[12]

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[6] Robert H. Freilich, *Missouri Law of Land Use Controls: with National Perspectives*, 42 UMKC L. Rev 4, 15 (1973). Provisions and Documents § 53.01A (Rel. 25-1/89, Pub. 845).

[7] The Missouri zoning enabling statutes found at § 89.010 - 89.140, RSMo 1994 and Supp. 1999, were patterned after the SZEA, *see State ex rel. Wahlmann v. Reim*, 445 S.W.2d 336, 337 (Mo. banc 1969); *State ex rel. Chiavola v. Village of Oakwood*, 886 S.W.2d 74, 79 (Mo. App. W.D. 1994); and Freilich, note 6 at 25.

[8] Section 89.300, RSMo 1994, even includes a definition of "Council" (defined as "the chief legislative body of [a] municipality" for purposes of §§ 89.300 - 89.480, RSMo 1994), but obviously and purposefully excludes Council from the grant of power to prepare, adopt and amend land plans in §§ 89.340 - 89.360, RSMo 1994.

[9] Ruth Knack et al., *The Real Story Behind the Standard Planning and Zoning Acts of the 1920's*, Land Use L., Feb. 1996, at 9.

[10] Beverly J. Pooley, Planning and Zoning in the United States 14 (1961).

[11] Daniel R. Mandelker, Land Use Law § 3.08 (4th ed. 1997). Professor Mandelker notes that the SCPEA made the planning commission adopt the plan to avoid, in part, the possibility that a hostile council may overturn a plan adopted by an earlier council.

[12] Knack, note 9 at 9.

IV. Legal Significance of Municipal Land Plans

Sections 89.340 and 89.350, RSMo 1994, characterize land plans as guides and recommendations. The plain meaning of the words *guide* and *recommendation* are totally contrary to interpreting the plan as law. Conceptually, the purpose of the land plan is to be a guide to development rather than an instrument to control land use.[13] The adoption of a land plan by the planning commission has no binding legal effect in the SCPEA scheme adopted by Missouri.[14] As a guide to development, a land plan is not required to be strictly followed or applied by the legislative body in making re-zoning decisions. Moreover, § 89.360, RSMo 1994, expressly provides that a plan is to be adopted by, and contain therein, a "resolution" of the planning commission. A resolution is a mere expression of opinion concerning some matter of administration and is not law.[15] Since the planning commission is an administrative body exercising only administrative functions, this makes sense.

A land plan is not itself a zoning document and cannot be used as such.[16] It is the task of the city council, as the legislative body empowered to zone and rezone property under §§ 89.010-89.140, RSMo 1994, to apply the broad planning policies to specific property in enacting zoning regulations.[17] These planning policies originate from the land plan and the recommendations of the planning commission, and are applied to specific parcels of property on a case-by-case basis as re-zoning applications are made.[18]

Of course, re-zoning is a legislative act under existing law in Missouri.[19] As a legislative act, a city council has legislative discretion to consider the general welfare, affect on adjoining properties, public benefit versus private detriment, and other matters necessary and relevant to re-zoning decisions. If land plans were adopted by ordinance as a law, this legislative discretion would arguably not exist, protest rights of adjoining property owners under § 89.060, RSMo 1994 would be meaningless, and re-zonings would then become administrative acts made in accordance with legislatively adopted land plans. Such a procedure by a municipality could constitute a surrender of its legislative discretion, which is generally not permissible.[20] If the legislative body of a municipality is allowed to adopt a land plan, two conclusions logically follow: either (1) the need for recommendations by the planning commission becomes moot because the legislative body is creating a new planning document for its own guidance; or (2) the legislative adoption creates a legal instrument that binds the legislative body's further action and preemptively disregards those of the planning commission. In both scenarios, the planning procedure contemplated and expressly provided by Missouri planning enabling statutes is circumvented by a wholly political process.

Part of the confusion regarding land plans and their legal significance arises from the lack of law in this state and a wide array of law in other states. While the SCPEA still dominates state legislation for planning,[21] several states have made changes, including a few states that have amended the language of the SCPEA to require legislative approval or approval by both the planning commission and the legislative body. However, states amending their statutes to require legislative approval or to give the land plan more legal effect generally have detailed procedures for preparation and content of the land plans, with extensive notice and public participation requirements. Other states that adopted the SCPEA have given more or less legal effect to a land plan by developing case law. The Urban Lawyer, following an earlier study, periodically reviews state case law in its fall editions and attempts to provide some framework for the various state schemes by lumping state law on planning into three categories: (1) the unitary approach, which considers the zoning map or ordinance as the comprehensive plan; (2) the planning factor approach, which treats a land plan as an important but not dispositive factor in re-zoning decisions; and (3) the planning mandate approach, which requires substantial compliance with land plans in re-zoning decisions. However, there are significant variations among some of the

[13] *State ex rel. Westside Development v. Weatherby Lake*, 935 S.W.2d 634, 640 (Mo. App. W.D. 1996); *State ex rel. Schaefer v. Cleveland*, 847 S.W.2d 867, 871 (Mo. App. E.D. 1992); and Michael T. White, Missouri Land Use Law and Practice §§ 2.02 and 2.18 (1997).

[14] Freilich, note 6 at 18 and 25. However, the impact of the land plan is felt through legally effective documents such as the zoning ordinance and through the planning statutes limiting development that become operative after its adoption. *See* discussion *infra* part V.

[15] *Julian v. Mayor, Councilmen and Citizens*, 391 S.W.2d 864, 867 (Mo. 1965).

[16] *Cleveland*, 847 S.W.2d 867 at 871. The difference between *planning* and *zoning* under the SCPEA scheme was succinctly stated in *Pop Realty Corporation v. Springfield Board of Adjustment*, 176 N.J. Super. 441 (1980). In that case, the court stated, "the master plan represents at a given time the best judgment of the planning agency as to the proper course of action to be followed. In this stage the plan for community development remains flexible and is not binding, either on government or individual. A master plan is not a straitjacket delimiting the discretion of the legislative body, but only a guide for the city, ..." *Id.* at 690.

[17] *Cleveland*, 847 S.W.2d 867 at 871.

[18] While not specifically required in the statutes, many municipalities by their own ordinances pursuant to authority in § 89.050, RSMo 1994, require all re-zoning applications to be referred to the planning commission for a recommendation to assist them in their decision on a particular re-zoning application. The planning commission can then review the application in light of the land plan and provide the city council a positive or negative recommendation. A negative recommendation generally requires a super majority vote of the city council to pass the re-zoning application under most ordinances, similar to that required under § 89.060, RSMo 1994, in the event of an official protest by adjoining property owners. *See generally,* Peter W. Salsich, Jr. & Timothy J. Tryniecki, Land Use Regulation, A Legal Analysis & practical Application of Land Use Law 32, 34 and 202 - 203 (1998) and White, note 13 at § 3.24.

[19] *Heidrich v. City of Lee's Summit*, 916 S.W.2d 242, 248 (Mo. App. W.D. 1995); *Hoffman v. City of Town and Country*, 831 S.W.2d 223, 224 (Mo. App. E.D. 1992).

[20] *Pearson v. City of Washington*, 439 S.W.2d 756, 760 (Mo. 1969); *Stewart v. City of Springfield*, 165 S.W.2d 626, 629 (Mo. banc 1942); *Lodge of the Ozarks v. City of Branson*, 796 S.W.2d 646, 650 (Mo. App. S.D. 1990). Such legislative action could also arguably constitute a taking.

[21] *See* Mandelker, note 11 at § 3.05. According to the American Planning Association, Growing Smart Legislative Guidebook, Phase I and II Interim Edition (1998), 24 states, including Missouri, have made few or no changes from the SCPEA, eight states have made moderate changes, seven states have made significant changes and 11 states have totally revised their planning laws so they no longer track the SCPEA. *Id.* at p. 7-276 and Table 7.5.

states in each category.

Other confusion arises from the language contained in § 89.040, RSMo 1994, which provides that the zoning regulations "shall be made in accordance with a comprehensive plan." Arguments have arisen claiming that this language mandates approval of re-zoning applications that comply with the zoning or use contemplated in the municipality's land plan. However, under the SCPEA scheme, this should not be the correct interpretation of this language; such interpretation would be contrary to all of the concepts discussed above in this article. Rather, this language should mean that zoning should be done in a comprehensive manner and not in a piecemeal, irrational manner.[22] Otherwise, all re-zonings would have to pay slavish servitude to land plans without any exercise of legislative discretion. The comprehensive plan referred to in this zoning statute is not identical to the land plan of the planning statutes.[23]

This is not to say a land plan is unnecessary for re-zoning decisions. In fact, not only is it statutorily required of municipalities with planning commissions, but it is essential for sizeable municipalities to properly consider any re-zoning request. A land plan should be one yard stick, albeit a substantial one, by which the comprehensiveness of a requested re-zoning is evaluated. While strict compliance should not be required, a municipality should have legitimate reasons for not following a truly comprehensive and properly adopted land plan (such as mistake, changed circumstances, unforeseen conditions, impact of existing deviations from the land plan, etc.) to avoid a claim of being arbitrary.

V. Municipal Land Plan Content And Adoption Procedure

Beyond the confusion on the proper authority to adopt land plans and the legal significance of the plan is the question of what the land plan should contain. Section 89.340, RSMo 1994, only requires the land plan to show its recommendations for the physical development use of land through descriptive and explanatory materials, maps, charts and plats. Other planning elements listed in that section are optional, while under the SCPEA these additional elements were mandatory.[24] Official footnote 44 of the SCPEA provides that the land plan should be designed to cover a long period of years, much longer than the term of office of any single city council, and official footnote 66 implies that the major street plan component of the land plan should be prepared as part of the initial effort. The Missouri planning enabling statutes and the SCPEA are silent on further details. While several states have modified their planning legislation by adding more detailed elements, both required and optional, Missouri has not.

Under the SCPEA, a planning commission was allowed to include in the land plan, at its option, areas outside of the municipality. This language was not included in the corresponding Missouri statute, but a reference to studying future growth of the municipality was left in the Missouri planning enabling statutes dealing with land plan preparation.[25] It would seem study of adjoining areas to some degree would be a necessary element to any comprehensive study.

Section 89.350, RSMo 1994, provides that "the [planning] commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the municipality. The plan shall be made with the general purpose of guiding and accomplishing a coordinated development of the municipality which will, in accordance with existing and future needs, best promote the general welfare, as well as the efficiency and economy in the process of development." While this terminology appears to require a thorough effort, there is no guidance as to how this is to be done. Many municipalities hire professional planners to assist the planning commission in preparation of the land plan, and the engagement of such professionals by the planning commission is contemplated in § 89.330.1, RSMo 1994.

Most planning experts believe that citizen involvement in land plan preparation and development is essential to proper planning.[26] These experts also advocate various methods to effect citizen involvement, such as newsletters, public forums, opinion surveys, neighborhood meetings and mailing of summaries, all prior to final plan approval. The American Planning Association has even adopted an ethical code of conduct for planning and zoning commission members and professional land planners that includes several provisions to ensure citizen participation in land planning.[27] However, it is unclear to what degree the words *careful and comprehensive* mandate citizen involvement beyond the mere advance publication of a public hearing on the plan as required by § 89.360, RSMo 1994 (which can gener-

[22] Standard Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations § 3, n. 22; Mandelker, note 11 at § 3.13; Freilich, note 6 at 25 and White, note 13 at §§ 2.02 and 2.06.

[23] Freilich, note 6 at 19 and Pooley, note 10 at 18. *See also Chiavola*, 886 S.W.2d 74 at 82 and *Westside Development*, 995 S.W.2d 634 at 640 for cases where the municipality had no separate land plan documents but the court found the comprehensive plan in the zoning ordinance and official map, but note *Chiavola* is of very limited application and *Westside Development* ignored the statutory mandate of a municipality with a planning commission to adopt a separate land plan document conforming to § 89.340, RSMo 1994. *But see City of St. Charles v. DeVault Management*, 959 S.W.2d 815, 822 (Mo. App. E.D. 1997), where the court found the comprehensive plan to be only the physical land plan document for purposes of invalidating a redevelopment plan that did not conform to the city's comprehensive plan under § 99.810(2), RSMo Cum. Supp. 1999.

[24] *See generally*, § 89.340, RSMo 1994, and § 6 of the SCPEA. Under classic planning theory, a land plan would include the following characteristics: (1) it reflects future development goals and objectives; (2) it is long range, looking 10 to 20 years into the future; (3) it is general, stating policy and summarizing detailed studies and analysis; (4) it is visionary, providing creative solutions to present and future problems; (5) it is physical, dealing with tangible dimensions such as land, buildings, roads and utilities; (6) it is updatable on a regular basis; and (7) it is comprehensive, considering all of the physical elements and relationships between the community and the surrounding environment.

[25] *See generally*, §§ 89.340 and 89.350, RSMo 1994, and §§ 6 and 7 of the SCPEA.

[26] Frank S. So, The Practice of Local Government Planning 87, 116 and 507 - 508 (2d ed. 1988).

[27] AICP/APA Ethical Principles in Planning (as adopted May, 1992).

ally be satisfied by single publication in a legal newspaper that ordinary citizens do not read). This minimal notice requirement is totally inadequate and highly prejudicial to unsuspecting property owners, developers and area residents in today's environment.

Some municipalities appoint citizen or advisory committees to assist the planning commission in preparation of their land plans. Despite the intent to keep the process free from short-term political influence, many city councils (instead of planning commissions) improperly appoint these committees, stack or chair them with city council members, or even require that the land plan be subject to final approval by the city council. Official footnote 44 of the SCPEA makes it clear that the single council member allowed on the planning commission (followed in § 89.320(2), RSMo 1999) gives the appropriate amount of influence. Moreover, astute developers in high growth municipalities are often able to influence the process so that the land plan recommends the type of development desired by the developer. This may sometimes lead to land plan recommendations for spot zoning or over-intensive uses inconsistent with the character of the area. Without adequate representation and involvement of citizens and neighborhood organizations, area developers and politicians, the land plan may not be a careful and comprehensive survey and study, and force the type of compromise and consensus building that should be reflected in the land plan ultimately approved. A land plan adopted with proper representation and involvement would stand a much greater chance of subsequent political support and reduce potential for litigation.[28]

Section 89.360, RSMo 1994, allows the planning commission to adopt the land plan as a whole or in part, while the whole city plan progresses. Official footnote 42 of the SCPEA provides that *part* means not only a territorial part, such as a geographical subdivision of a municipality, but also as to subject matter, such as the transportation elements or the recreational facilities part of the land plan. However, this footnote provides that any part should be nothing less than the whole of one subject matter and should expressly recognize it is being adopted and published in advance pending completion of the whole land plan. This is consistent with the obligation of the planning commission to ultimately adopt a land plan for the entire municipality as set forth in § 89.340, RSMo 1994.

Section 89.360, RSMo 1994, also contains mandatory procedures for the adoption of land plans, including requirements that: (1) the land plan be adopted by the planning commission in a single resolution after a public hearing with at least 15 days' advance notice of the same being provided to the public; and (2) the land plan be available for inspection at *both* the municipal clerk's office and with the county recorder of deeds office after adoption.[29] Any amendment or extension of the land plan is subject to the same procedural requirements. Beyond these specific legal requirements, it is generally advisable for a municipality to have a summary of the land plan, complete with a map of proposed land uses, available in the municipality for easy understanding by existing and prospective developers and residents.

VI. Other Important Municipal Planning Functions And Development Limitations

Also widely misunderstood are the other planning functions and development limitations provided for in §§ 89.300 - 89.490, RSMo 1994 and Supp. 1999. These functions and limitations are critically related to the land plan and provide the means to coordinate land development in the municipality after a land plan is adopted: approval of public improvements (§ 89.380, RSMo 1994); subdivision control, construction of streets and related improvements and plat approval (§§ 89.400-89.480, RSMo 1994 and Supp. 1999); and general powers of the planning commission (§ 89.370, RSMo 1994). The official footnotes to the SCPEA again provide explanations for the purpose and meaning of many of these statutes.

Public improvement approval is one of the most important concepts of the SCPEA, as stated in official footnote 46. It is recognized that while the land plan itself may not be a legal document, its adoption does have a legal impact in the SCPEA scheme.[30] One such effect is the limitation upon the authorization or construction of public improvements that Missouri adopted in § 89.380, RSMo 1994. That section requires, after the adoption of a land plan by a municipality, the submission of all public improvement projects to the planning commission (by municipal authorities and non-municipal authorities, as applicable, ac-

[28] Unfair or improper planning can lead to costly litigation. The author was recently involved in a major court case in an affluent municipality involving several hundred residents, the municipality and a developer where the legal effect of the land plan and the method of its adoption were the major points at issue. More than 40 depositions were taken during the pendency of the case, many lasting two or three days. Not one of the hundreds of residents in the area of the land plan was even aware of its preparation or adoption. The land plan in question was an update of a publicized land plan with an advisory committee of area residents adopted three years earlier, and the new land plan contained radical changes to the proposed uses of the developer's property. No attempt was made by the municipality to notify or involve area residents. The developer's property was a large tract of undeveloped land surrounded on three sides by fully developed single family residential uses. The city administrator and the professional land planner hired by the municipality testified that the developer was allowed undue influence on the process and was allowed to direct and control the land plan process, ensuring that the developer's project was expressly permitted. Appraisers hired by the residents testified that the proposed development would devalue their homes by an average of 11 percent. The land plan was also adopted by the city council as an ordinance, specifically and purposefully deleting all references to the plan being a guide, allowing the developer to claim that the municipality was bound to follow it as a law and had no discretion to deny their re-zoning application and site development plan, which complied with the land plan. The area residents claimed, among other things (including numerous failures to comply with the Missouri planning enabling statutes and an improper surrender of the municipality's legislative discretion), that their statutory protest rights under § 89.060, RSMo 1994, had been abrogated by this secret zoning, if the developer was correct in its contention. Caught between the claims of hundreds of its residents and the developer, the municipality, through the foresight of its newly elected mayor, settled the litigation by purchasing most of the property as a park just prior to trial.

[29] *See Chesterfield Dev. Corp. v. City of Chesterfield*, 963 F. 2d. 1102, 1103 (8th Cir. 1992), and *Casey's General Stores*, 734 S.W.2d 890 at 895, for the potential serious consequences of not following these mandatory procedures.

[30] Kenneth H. Young, Anderson's American Law of Zoning § 23.15 (4th ed. 1997).

cording to official footnote 50 of the SCPEA) before such public improvements can be authorized or constructed.[31] The specifics of exactly what should be submitted are indirectly addressed in official footnote 36 of the SCPEA, which provides, "[I]t is not intended that the planning commission shall include in the master plan such exact details of location or engineering plans and specifications *as will come to be needed when the public improvement or building is to be actually constructed.*" (emphasis added). Further specifics are addressed in official footnote 46, which states, "[A]ll matters which involve location of public buildings, improvements, utilities, etc., should receive city planning consideration; that is, full consideration [by the planning commission] of their bearing upon the city plan." Official footnote 31 of the SCPEA indicates that the details of installation and construction are to be prepared by the city engineer and the public works department for general review by the planning commission. Any disapproval of a public improvement by the planning commission can be overruled by the city council (or the board or commission of the non-municipal authority requesting approval of the improvements) under § 89.380, RSMo 1994, but a two-thirds affirmative vote of the entire city council (or applicable board or commission) is required. To ensure that the public approval process would not be too lengthy, § 89.380, RSMo, following the SCPEA, provides that failure of the planning commission to act within 60 days shall be deemed an approval.

Official footnote 47 of the SCPEA explains the reason for having all public improvements submitted to the planning commission for review and approval prior to the authorization or construction of such improvements. Official footnote 47 states in pertinent part, "[I]f there is to be any effective city planning in its community, future public improvements must not be authorized or carried out until they have been submitted to the city planning commission and their relation to the city plan carefully studied and the public given a chance to discuss and weigh the proposal." Interestingly, Missouri deviated somewhat from the SCPEA by adding additional language that appears to cover all aspects of public improvement work in the second to last sentence of § 89.380, RSMo 1994.

Subdivision control is also an important element of the Missouri planning enabling statutes, and Missouri adopted § 89.410, RSMo Supp. 1999, from § 14 of the SCPEA to allow for the adoption of subdivision regulations. Subdivision regulations provide legal requirements and infrastructure design criteria for developers of property within the municipality. Mandatory dedications of property for public uses that are indicated on the land plan are specifically provided for in § 89.410, RSMo 1994. Official footnote 70 of the SCPEA explains that such uses are not limited to street coordination, but can include requiring adequate open spaces for traffic, utilities, access for fire protection, recreation, density control and other public benefits. Official footnote 62 of the SCPEA provides the rationale for having subdivision regulation as part of planning. This footnote states that the subdivider has the power to dislocate or destroy the land plan, and the community must exercise control over the location of streets and public open space when the control can be made effective; namely at the time of the platting of the land. Therefore, in the SCPEA scheme as incorporated in the Missouri planning enabling statutes, the authority to regulate is asserted when the subdivision plat is submitted for approval.

The Missouri planning enabling statutes set forth the procedures for plat approval in §§ 89.400 and 89.420-89.450, RSMo 1994. The ability of a municipality under these statutes to prohibit plat recordation until planning commission review and recommendation and city council approval is specifically operative *only* after the municipality's planning commission adopts a land plan that includes a major street plan filed in the county recorder's office. The major street plan requirement can be satisfied simply by the adoption of a main thoroughfare plan by the planning commission, according to official footnote 66 of the SCPEA. Penalties for recordation of plats in violation of the plat approval statutes, as well as for violation of any of the provisions of the Missouri planning enabling statutes, are found in § 89.490, RSMo 1994.

Additional development controls are included in § 89.460, RSMo 1994, which restricts the installation of utilities in streets and the acceptance and improvement of streets after adoption of a major street plan and subdivision regulations. If the street is already a public street prior to land plan adoption, or if the street is shown in a major street plan adopted by the planning commission or an approved plat, the prohibitions do not apply. Otherwise, the location, construction and acceptance of the street must be first submitted to the planning commission for approval. An override provision is included for the city council, similar to the one contained in § 89.380, RSMo 1994, if the planning commission disapproves the proposed street. Section 89.470, RSMo 1994, prohibits the issuance of building permits for buildings unless the street giving access to such building conforms to the requirements of § 89.460, RSMo 1994. With respect to major streets, § 89.480, RSMo 1994, authorizes the city council, upon recommendation of the planning commission, to establish building and set back regulations after the adoption of a major street plan. This section further requires the city council to establish methods to administer and enforce such regulations and authorizes the city council to empower a board of adjustment to vary or modify such regulations.

The SCPEA scheme identified subdivision control as a major component of comprehensive planning.[32] The technique of subdivision control enacted in the Missouri planning enabling statutes gives the municipality one of its most potent means to coordinate the demands for new devel-

[31] *See* 2 MO. LOCAL GOVERNMENT LAW, § 8.4 (MoBar 2d ed. 1990); SALSICH & TRYNIECKI, note 18 at 38 and n. 144; and Freilich, note 6 at 17 and n. 27.

[32] SALSICH & TRYNIECKI, note 18 at 302. Subdivision control under Title II to the SCPEA covers subdivision regulations, plat approval and construction of streets and related improvements.

opment with the demand for essential facilities. Full use of subdivision regulations also provides a means to put into operation the environmental and aesthetic considerations that are part of the American way of life.[33]

To complement its duties, certain general powers are granted to the planning commission in § 89.370, RSMo 1994, including the power to require all public officials to furnish the planning commission, within a reasonable time, all available information as it may require for its work. Official footnote 59 of the SCPEA explains that the planning commission will constantly need information and data in the possession of other municipal departments, and such departments should not be permitted to withhold such information. "Public officials," as explained in official footnote 58 of the SCPEA, includes not only those officials of the municipality but other officials of other public bodies in the municipality, such as school districts and state and county agencies and departments. The planning commission was also given the right in the statute to recommend to the city council programs for public improvements and financing of such improvements.[34] To make sure the planning commission can exercise all appropriate power to do its work, the last sentence of § 89.370, RSMo 1994, provides that the planning commission shall have the power necessary to perform its functions and to promote municipal planning.

VII. New Planning Law Initiative

In 1994, the American Planning Association launched "Growing Smart," a major initiative aimed at helping states modernize statutes affecting planning and the management of change. As part of the Growing Smart initiative, the American Planning Association published the *Growing Smart Legislative Guidebook,* Phase I and II Interim Edition, in 1998 containing model legislation and commentary together with a database of state legislative materials.[35] The model statutes of the *Growing Smart Legislature Guidebook* are intended to update and revise the SCPEA and the SZEA, which still largely provide the structure for planning and zoning in most states.

The Growing Smart initiative recognizes that land planning practice has gone through dramatic changes that differ from the format envisioned by SCPEA and the SZEA. As originally envisioned, the land plan was to be a master design for the physical development of the municipality. Modern planning now advocates values-driven planning, including a structured program of resident (residential and business) involvement designed to identify community values and build consensus; data inventory and analysis focused on identified issues; development of concepts for the future; and the translation of such concepts into specific strategies and implementation.

The American Planning Association has recognized six states — Maryland, New Jersey, Oregon, Rhode Island, Tennessee and Washington — as having taken major initiatives in reforming their planning legislation and working with local governments to ensure plan implementation. However, the American Planning Association warns that land use planning reform cannot succeed without the strong and active support of citizens and a state's political leadership. The American Planning Association concedes that there is no best way to modernize or reform land use laws in each and every state.

VIII. Conclusion

From a legal perspective, the importance of a land plan in this state needs to be carefully considered. Arguments are increasingly made that a land plan has greater legal significance in zoning decisions than intended by the SCPEA scheme adopted in this state. If any land plan in this state is to assume greater legal significance in zoning decisions, whether through case law or statutory revision, the Missouri statutory scheme for land plan adoption will need to be revised to provide greater procedural protection for those affected by land plan adoption and amendments of a land plan, as well as to provide in more detail what a land plan should include. The ramifications of not so revising the statutes under this scenario are, obviously, increased litigation over the land plan. Yet, giving the land plan greater legal significance could easily result in a shift of focus from zoning decisions to planning decisions, rendering re-zoning acts of the city council more administrative in nature than legislative.

There is also widespread ignorance, or disregard, by many municipalities of the other development limitations contained in the Missouri planning enabling statutes. If the system is to work as intended, greater understanding and compliance is necessary. As with land plan adoption, though, it may be time to re-evaluate the existing statutes, particularly in light of the Growing Smart initiative.

Land use planning is an exercise of authority to guide the physical, social and economic development of a community in order to fulfill common goals and to protect common values. Zoning decisions, as well as coordination of the development of a municipality, can and should be based upon proper planning. Proper planning, in turn, can protect existing city residents, promote desired development, and reduce conflict in making zoning and development decisions. It can also serve as a warning to prospective developers and residents and help insulate a municipality from adverse results in litigation.

[33] Robert H. Freilich & Peter S. Levi, *Model Regulations for the Control of Land Subdivision*, 36 Mo. L. Rev. 1, 3 (1971).

[34] Official footnote 55 of the SCPEA provides that this is one of the most important functions of the planning commission. The footnote to the SCPEA section followed by § 89.380, RSMo 1994, even suggests that the planning commission is the appropriate body to prepare a first draft of a capital improvement program for a municipality.

[35] Chapter 7 provides exhaustive materials regarding municipal planning. Included are materials addressing criticisms of the SCPEA, model legislation for land plan preparation, content, adoption and amendment, as well as recommendations for implementation. An innovative feature of the plan adoption procedure is an express requirement for public collaborative processes in plan-making that ensures that the plan preparation process engages the general public. The model legislation even provides for the appointment of neighborhood planning councils and independent neighborhood organizations to assist in the formation of plans. The model legislation also spells out in detail certain mandatory elements of land plans as well as a variety of optional elements.