

7. The Comprehensive Plan, Zoning Regulations, Subdivision Regulations, and Procedure Manual are administered by the Stone County Planning and Zoning Department ("Department"), operated under the direction of Joy Wilson, the Stone County Planning and Zoning Administrator ("Administrator").
8. The County did not and has not adopted building regulations or a building code other than setback lines.
9. From 1999 to the present, MPI, Forest Lake, and Stonebridge have applied for and received approval of preliminary and final plats for residential subdivisions and condominium projects from Defendant Stone County Planning and Zoning Board ("Board").
10. From 1999 to the present, MPI, Forest Lake, and Stonebridge have applied for and received several building and special use permits from the Defendant ("Department"), Conditioned upon payment of fees.
11. The Department collects fees for residential building permits pursuant to the order of the Commission. As stated previously the Commission has not adopted a building code. The building permit fee is \$0.10 per square foot of the foundation or \$3.00 per \$1,000.00 of cost of the proposed building, whichever is less, not to exceed \$250.00 with a penalty of 100% if construction is started before the permit is issued.
12. The Board collects a fee of \$30.00 per lot upon presentation of an application for preliminary plat approval, pursuant to an order of the Commission, "The preliminary plat shall not be accepted for filing until the filing fee has been paid by the developer." Subdivision Regulations, ART. 6, Sec. 2A(1). "An application (for preliminary plat approval) shall not be processed until it has been fully completed, the appropriate fee paid, and all requested information submitted." Procedures Manual, ART. 11.
13. Since approximately December 2005, Defendants have charged a \$30.00 per unit special use permit fee. Applicants for special use permits are also responsible for the postage costs of all notices required in connection with the special use permit application.
14. From 1999 to the present, MPI, Forest Lake, and Stonebridge have paid fees in the sum of \$64,121.82 to the Board and Department for building permit fees, preliminary plat fees, and special use permit fees.
15. Plaintiffs sued for declaratory judgment and requested a refund of fees paid to Defendants. Plaintiffs claim that the County's preliminary plat approval process violates Missouri law maintaining the approval process takes more than 30 days. Plaintiffs also allege the County's building permit fees, special use permit fees, and plat filing fees violate Missouri law and constitute an improper tax on the ground that the fees charged and collected bear no reasonable relation to the services performed by the County. Defendants filed a counterclaim seeking a declaration that Plaintiffs owe building permit fees, special use permit fees, and subdivision plat filing fees withheld by Plaintiffs during this suit pursuant to an agreement between Plaintiffs and Defendants.
16. Plaintiffs called Luke O'Geary, President of MPI Construction, an affiliate of Plaintiffs, to testify concerning his knowledge of the Stonebridge Village development in Stone County. He testified that when MPI is preparing to construct on a platted subdivision lot in Stone County, he submits a site plan to MIP's Lisa Allen which identifies the setback lines and location of the house on the lot. He then knows it is safe to proceed with construction when the lot is permitted. He has never observed a Stone County representative measure a lot or verifies setback lines on a particular lot. There have also been times when MPI representatives obtained permits from the Stone County Planning

DEC 30 2008
Stone County
GALENA, MISSOURI

and Zoning Office. The process is the same with respect to condominium construction. He also testified that he had seen instances where the construction is permitted before the lot is staked. O'Geary testified, that, if he were required to do the job that Stone County does, he would use a job superintendent paid \$20.00 per hour. Taking into consideration the distance between Galena and Stonebridge Village, he believes it would take one hour to an hour and a half to perform the services that may be required.

17. Lisa Allen of Plaintiff MPI testified that she is responsible for providing plats and requesting building permits from the Department on MPI's behalf. She confirmed that MPI is the largest residential developer in Stone County. Lisa Allen testified with regard to Exhibit F, which was admitted to evidence, that MPI has paid \$64,121.82 to the Department for building permit fees, subdivision plat filing fees, and special use permit fees.
18. Allen testified that, during the pendency of the lawsuit, MPI and Stone County agreed that MPI would not pay certain fees to the Department while this case was pending. During the pendency of the lawsuit, Joy Wilson, Administrator, provided to MPI's counsel the list of fees allegedly owed. (Plaintiff's Exhibit 1) Allen testified that she reviewed, Exhibit 1 and compared it to Defendant's accounting records. Her calculation showed the actual amount owed, if the Stone County Planning and Zoning ordinances are upheld and the fees are not further reduced, is a total of \$14,025.75.
19. During the discovery in the case, Defendants were to provide records concerning yearly income and expenses from 2000 to present. Defendants provided Plaintiffs' Exhibits C, D, E, E1, and E2 prior to the trial of this matter. Exhibit C is a handwritten document which identifies "Revenue and Expend" for the years 2000 through 2006. The Revenues and Expenditures for 2000 through 2006 are different from those Revenues and Expenditures identified on Plaintiffs' Exhibit 1. When Plaintiffs offered exhibit E1, Defendants' counsel announced to the court that E1 was inaccurate and offered Defendants' Exhibit 4 in its place. After cross examination of Joy Wilson, Julie Chambers, Amy Larsen, and Diane Argo, it was clear that the new Defendants' Exhibit 4 was also incorrect and inaccurate. All witnesses offered by Defendants admitted that Defendants' Exhibit 4 could not be relied upon as proof of the expenses of the Department.
20. Joy Wilson testified that special use permit fees have changed since she began working at the Department. When the Department initially began collecting such fees, the fee was only \$50.00 with the permit application. This fee increased dramatically in approximately 2005, to a fee of \$30.00 per unit, paid in conjunction with the permit application. Bill Mcullah, County Counselor, confirmed on the record that there was no order from the County Commission authorizing a fee of \$30.00 per unit condominium development as a special use permit fee. MPI has paid at least \$7,250.92 in special use permit fees based on the \$30.00 per unit charge (Plaintiff's Exhibit F).

CONCLUSIONS OF LAW

Existing Use Zoning Procedure

21. The adoption by the County of an "Existing-Use Procedure effective March 1, 1995 did not establish zoning districts for Stone County but instead made all existing uses permitted and grandfathered into Stone County's new zoning scheme. Section 64.860 RSMO provides in part as follows:

".....In order to avail itself of the zoning powers conferred by sections 64.845 to 64.880 the County Commission shall request the county planning commission to recommend the boundaries of the various original districts and appropriate

DEC 8 0 2008

Stone County, Missouri
GALENA, MISSOURI

regulations to be enforced therein....."

22. 64.855 RSMO provides as follows: "For any or all of the purposes of section 64.850, the unincorporated territory may be divided into districts of such number, shape and area as may be deemed best suited to carry out the purposes of sections 64.845 to 64.880 and shall be shown upon the county commission's zoning plan; and within the districts, the erection, construction, reconstruction, alteration, repair, relocation or maintenance of buildings or structures and use of land and lots may be regulated and restricted.
23. The Court declares void and invalid Defendants' "Existing Use Zoning Procedure" for failure to establish zoning districts. No zoning powers shall be exercised by Defendants until such time as Defendants comply with sections 64.540 and 64.860 RSMO by adopting a zoning scheme with original zoning districts for various classes and uses, as mandated by section 64.855. RSMO.
24. The County's Subdivision Regulations and the Zoning Regulations, as adopted in the County's Zoning Regulations, Article 8, does include a procedure by which the Planning and Zoning Board would hold public hearings on zoning changes for final action by the Stone County Commission, which complies with section 64.875 RSMO. However, in practice, Article 8 is not used and the change of use or rezoning procedure is triggered by the process of plat submission and consideration by only the Board. The actual process combines the plat approval process (an administrative or planning process) with the approval of changes in land use (a zoning process, which is legislative and required by Missouri law to be exercised by elected officials upon the recommendation of the zoning board). The distinctions between administrative or planning process and legislative or zoning process are well set out in the case of Furlong Companies v. City of Kansas City, 189 SW3d 157 (Sup. Ct. 2006).
25. The plat approval process is an administrative process under which an authorized official determines whether a proposed plat meets the subdivision regulations; as such, plat review is a ministerial function, subject to appeal to the county board of adjustment under section 64.870.1 RSMO (non-contested cases) and also susceptible to mandamus and review under the Administrative procedures Act, Chapter 536 RSMO (contested cases) Furlong Companies v. City of Kansas City, 189 SW3d 157 at 164-166 (Sup. Ct. 2006).
26. Changes of use, or rezoning, is a legislative function, to be performed by elected officials after the zoning board has made a recommendation, as provided in section 64.865 RSMO, and the applicable standard for review is whether the decision is arbitrary or unreasonable, with review sought via petition for certiorari as provided in section 64.875.2 RSMO or petition for declaratory judgment in circuit court. In Bowman v. Greene County Commission, 732 SW2d 233, at 226 (Mo. App. SD 1987), the Court states as follows: "It is the opinion of this court that the determination of a zoning classification is in the nature of a legislative function properly left in the hands of locally elected officials, subject only to the limited judicial review mentioned above.
27. To the extent that the approval process for changes of land use are accomplished through the plat approval process, rather than the process established in Article 8 of the County Zoning Regulations, with the final decisions to be made by the Stone County Commission, the process for zoning regulation amendments, or rezoning, is inconsistent with the Zoning Regulations as adopted and section 64.875 RSMO, because the legislative body of Stone County, the County Commission, does not take part in the process.

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Plat Approval Process

The undisputed evidence at trial was that Stone County's plat approval process for single-family residential subdivisions exceeds 30 days. Section 64.830 RSMO states: "If the planning commission does not report upon the plat within thirty days, it may then be deemed approved by the County planning commission and the commission shall certify the fact upon the plat."

28. As such, Stone County's plat approval process does not adhere to Section 64.830 RSMO. The Court finds that Stone County is required to approve or disapprove a plat with 30 days after submission by an applicant under Section 64.830 RSMO. If not, the plat shall be deemed approved under that section.
29. The Court finds that the County's Subdivision Regulations set forth a procedure that provides much more than 30 days for plat approval.

Building Permit Fees, Special Use Permit Fees, and Plat Filing Fees

30. Section 64.810 RSMO provides that fees must be established by order of the County Commission and must be reasonably related to the services provided. Lodge of the Ozarks, Inc. v. City of Branson, 796 SW2d 646 (Mo. App. 1990). Based on the testimony of Joy Wilson and Bill McCullah, the Court finds that the special use permit fee has been collected without county commission approval of the fee, as required by Section 64.810 RSMO. Plaintiffs are entitled to a credit from Defendants in the amount of \$7250.00 for all special use permit fees paid. The Court declares that Defendants may not charge or collect a special use permit fee until such time as the fee has been established by order of the county commission.
30. As for the building permit fees and plat filing fees, as challengers of the fees, Plaintiffs bore the burden of proving unreasonableness of the fees. It is well settled in Missouri that the amount of the fee may not exceed the cost of issuing the permit and of inspecting and regulating the permitted activity.
31. The County's evidence was conflicting and unbelievably inaccurate with regard to receipts and expenditures regarding the operation of the planning and zoning process. The Court finds that the evidence submitted by Plaintiffs failed to prove the unreasonableness of the fees charged. Unfortunately for Plaintiffs, Plaintiffs were forced to rely upon conflicting computations of receipts and expenditures furnished by Defendants but from all of Plaintiffs evidence, the Court is unable to make a determination of whether Defendants' charges were reasonable or unreasonable.

Defendant's Counter-claim

32. Defendants counterclaimed for \$24,250.00 in fees withheld by Plaintiffs during the pendency of this action.
33. Plaintiffs' witness Lisa Allen who testified that she reviewed Plaintiffs' Exhibit 1 and Defendant's Exhibit 5 and calculated the actual amount owed by Plaintiffs to Defendants as \$14,025.75.
33. However, in light of the Court's holding as to Count ONE of Plaintiff's Petition regarding the invalidity of the County Zoning Ordinance, Defendant's Counter-claim is denied.

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DEC 30 2008

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IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED, AND DECREED that Judgment be and is hereby entered in favor of Plaintiffs and against Defendants on Counts, ONE, TWO, THREE, and FOUR as follows:

That Defendants' "Exhibiting Use Zoning Procedure is hereby declared invalid and unlawful under sections 64.855 and 64.860 RSMO for failure to establish original zoning districts and Defendants are hereby prohibited from requiring or issuing permits under the "Existing-Use Zoning Procedure" until such time as Defendants establish original zoning districts;

That to the extent that the current process for plat approval is also approval of changes of land use (except for exempt uses), the process is contrary to section 64.875 RSMO and Article 8 of the Zoning Regulations without the involvement of the Stone County Commission;

That subjecting the plat approval process for single-family residential subdivisions with public water and sewer systems to anything but a 30 day administrative approval process is contrary to section 64.830 RSMO and Article 2 section 4 of the County Subdivision Regulations;

That Defendants' plat approval process is declared invalid and contrary to Missouri statutes as in excess of the 30 day approval process permitted by Missouri statute, and that any plat not approved or disapproved with 30 days after submission by an applicant shall be deemed approved in a accordance with Section 64.830 RSMO;

That Defendants' special use permit fee is declared invalid and void as not approved by order of the Stone County Commission and Plaintiffs are entitled to a credit from Defendants in the amount of all special use permit fees paid;

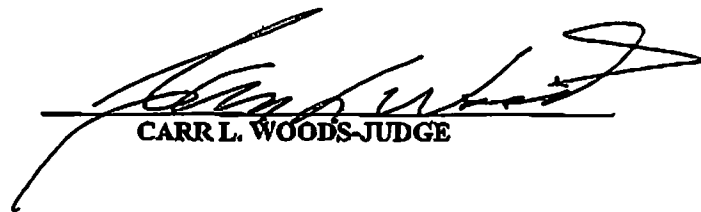
That the Court enters judgment in favor of Defendants and against Plaintiffs as to Count FIVE of Plaintiff's Petition;

That the Plaintiffs are entitled to credit from Defendants against future fees in the total sum of \$64,121.82 for all building permit fees, special use permit fees, and subdivision plat filing fees improperly charged and collected by Defendants.

That the Court enters judgment in favor of Plaintiffs and against Defendants as to Defendants' Counter-claim;

That the Cost of this action are taxed to the Defendants.

SO ORDERED ON THIS ~~25~~ DAY OF DECEMBER, 2008.


CARR L. WOODS-JUDGE

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