

COUNTY COURT: In counties of first class it requires one public hearing before any amendment to regulations or zoning order can become effective.



November 5, 1954

Honorable Hilary A. Bush
County Counselor
Jackson County
Kansas City, Missouri

Attention: Mr. Louis Wagner, Assistant County Counsel

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads in part:

" * * * Please advise which of the afore-said sections apply to the following:

"(1) Amendment of the Zoning Order, which if adopted would affect each township in the county.

"(2) Re-zoning - a change of one use of property to another.

"Much of the confusion has been brought about by Section 64.140 since it provides that any amendment of the Zoning Order shall not be adopted until public hearing be held, while on the other hand Section 64.110 provides that a public hearing be held in each township affected by the proposed amendment.

"We shall appreciate your opinion and clarification of these sections as to procedure of hearings on the change in the regulations and changes in the zoning in the unincorporated area."

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Section 64.040, Revised Statutes of Missouri, 1949, provides the county planning commission shall have the power to adopt a master plan with power to amend or extend said plan or portion thereof. However, before either can be done they have to hold at least one public hearing, notice of which shall be published in one newspaper having general circulation in the county, and notice of such hearing shall be published fifteen days in advance in at least four conspicuous places in each township.

The other two sections to be construed are Sections 64.110 and 64.140, Revised Statutes of Missouri, which read:

"64.110. Further regulation of districts --hearing--order (class one counties). -- The county court shall provide for the manner in which such regulations, restrictions and boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed within the unincorporated territory. In order to avail itself of the powers conferred by sections 64.010 to 64.160, the county court shall request the county planning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. If there be no county planning commission the county court shall appoint a county zoning commission whose personnel, length of terms and organization shall be same as provided in sections 64.010 to 64.040 for a county planning commission. Such commission shall make a preliminary report and a proposed zoning order and shall hold public hearings thereon and shall afford persons interested an opportunity to be heard. A hearing shall be held in each township affected by the terms of such proposed order, public notice of which hearing shall be given in the same manner as provided for the hearing in section 64.040. Such notice shall state the time and place of the hearing and the place where copies of the proposed report and order will be accessible for examination by interested parties. Such hearings may be adjourned from time to time. Within ninety days after the final adjournment of such hearings the commission shall make a report and submit a proposed order to the county

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court. The county court may enact the order with or without change or may refer it back to the commission for further consideration. In case a written protest against the proposed zoning of any land lying within one and one-half miles of the limits of any municipality having a zoning ordinance is received from the city council or board of trustees thereof, the county court shall not enact the proposed zoning of such land except by a record vote and after a statement of the reasons for such action shall be spread upon its minutes. In the preparation of its report and proposed zoning order the commission may incur such expenditures as shall be authorized by the county court.

"64,140. Amendment of regulations--protests. --The regulations imposed and the districts created under authority of sections 64,010 to 64,160 may be amended from time to time by the county court by order after the order establishing the same has gone into effect, but no such amendment shall be made without a hearing before the county planning commission; or if there be no county planning commission, such hearing shall be held by the county zoning commission. Such hearing shall be held in any one place in the county designated by the planning or zoning commission regardless of the location of the land affected by such amendment or amendments. Public notice of such hearing shall be given by at least one publication in one newspaper published in said county at least fifteen days before the date of said hearing. In case of written protest against any proposed amendment, signed and acknowledged by the owners of twenty per cent of the frontage within one thousand feet to the right or left of the frontage proposed to be changed, or by the owners of twenty per cent of the frontage directly opposite, or directly in the rear of the frontage proposed to be altered, or in cases where the land affected lies within one and one-half miles of the limits of municipality, by the city council or zoning board of any such municipality, filed with the county clerk, such amendment may not be passed except by the favorable vote of all members of the county court."

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At first blush the latter two sections are somewhat ambiguous as to the requirement relative to the number of public hearings to be held in amending or changing regulations and zoning orders. Section 64.110, supra, provides for original determination as to regulations, restrictions and boundaries of districts and further provides where such districts are created hearings shall be held in each township to be effected by the order of the county planning commission or county zoning commission as the case may be. While said provision further provides that from time to time said regulations, restrictions and boundaries may be amended, supplemented or changed within unincorporated territory, we believe that it primarily deals with the original creation of such districts and setting up the organization. To the contrary, Section 64.140 deals specifically with amendment and the procedure to be followed in adopting such amendments. It only requires one public hearing.

In construing conflicting statutes relating to the same subject matter, the rule is that they must be construed so as to give effect to both, if possible. State ex rel. R. Newton McDowell, Inc., v. Smith, 67 S.W. 2d 50, 334 Mo. 653; Re: Free v. Board of Trustees of Firemen's Retirement System of City of St. Louis, 257 S.W. 2d 685, 363 Mo. 1131; Fleming v. Moore Bros. Realty Company, 251 S.W. 2d 8. Another well-established rule of statutory construction which unquestionably is applicable in construing the foregoing statutes is that where one statute applies specifically to a particular subject, clearly including a matter in question, and another, general and such that, if standing alone, would include the same matter, the former must be taken as an exception, if not the repeal of the latter; and especially is this true where the special statute was enacted subsequent thereto. Gilkeson v. Missouri Pacific Railway Company, 121 S.W. 138, 222 Mo. 173; Bauer v. Rutter, 256 S.W. 2d 294, 1.c. 296.

Applying the foregoing rules of construction, since Sections 64.110 and 64.140 do relate to the same subject matter the former dealing principally with the original creation of said district and the latter specifically relating to amendments to regulations imposed and districts created under said chapter, we believe that the provisions of the latter section apply to any amendments to such regulations and zoning order.

CONCLUSION

Therefore, it is the opinion of this department that any

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amendment or change of regulation or zoning order in a county of the first class may not become effective until one hearing has been held in the place designated in the county by the planning or zoning commission as the case may be and as provided in Section 64.140, Revised Statutes of Missouri, 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

ARH:vlw