

Missouri Supreme Court Expands Municipalities' Authority to Deny Conditional Use Permits

In the Dirt: A Real Estate Legal Update

By Lisa Johnson and Elizabeth Lum on February 15, 2023

Municipalities adopt zoning ordinances in order to regulate the use of land within their boundaries and to provide for future growth without over-taxing their infrastructure and other resources.

A municipal zoning code typically contains a list of uses which are permitted in each zoning district with no permission from the governing body required. The zoning code also contains a list of uses which are conditional in each zoning district, which means that a particular use is not allowed by right in a particular zoning district, but may be allowed if the property owner satisfies certain conditions listed in the zoning code.

Traditionally, the granting of a conditional use permit (or special use permit) has been an administrative function of the governing body of the municipality, meaning that the governing body has very little discretion. If the criteria in the zoning code were satisfied, the conditional use permit was required to be granted.

The Missouri Supreme Court's decision in *BG Olive & Graeser, LLC and Forsyth Investments, LLC v. City of Creve Coeur* rejects the idea that the governing body has little or no discretion to grant or deny a conditional use permit. Relying on one phrase in the City of Creve Coeur's zoning code, that the City "reserve[ed] full authority to deny any request for a conditional use" the Court in *BG Olive* held that the city retained full authority to reject a conditional use permit for any reason.

The effect of the Court's opinion in *BG Olive* essentially changes the nature of the conditional use permit process from an administrative procedure, in which the municipality has very little discretion, to a legislative procedure, in which the city has great discretion, and the property developer will not only be required to satisfy the criteria enumerated in the zoning code, but also overcome opposition from residents, city officials or others who object to the proposed use.

** The full text of 405.1070.A.2 of the City of Creve Coeur's Zoning Code reads: "The City reserves full authority to deny any request for a conditional use, to impose conditions on the use or to revoke approval at any time, upon a finding that the permitted conditional use will or has become unsuitable and incompatible in its location as a result of any nuisance or activity generated by the use." The Motion for Rehearing filed by the appellants points out that the limiting language in this section was omitted by the Court in its opinion.*

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