

Memorandum

Department of Planning

To: Planning and Public Works Committee
From: Justin Wyse, Director of Planning **JW**
Date: May 06, 2021
RE: Review of Ordinance 1430



Summary

As part of the discussion associated with Power of Review on 18122 Chesterfield Airport Road, the Planning and Public Works Committee requested a recommendation from the Planning Commission regarding whether City of Chesterfield Ordinance 1430, which establishes a “M-3” Planned Industrial District within the western portion of the Chesterfield Valley, is consistent with the Comprehensive Plan.

The Planning Commission, after a thorough review of the records on March 8th and March 22nd, 2021 unanimously passed a recommendation that City of Ordinance 1430 is not consistent with the Comprehensive Plan.

Potential Actions

There are several approaches that the City Council may pursue in order to address the inconsistency of planned district ordinances, many which stem from districts established prior to incorporation of the City of Chesterfield. The table on the next page summarizes the options.

The first question that must be addressed is if the City wants to proactively create a strategy to bring the regulations (zoning districts) in line with the recently approved Comprehensive Plan. The option to continue reviewing requests only when requested from a property owner or owner under contract is shown in yellow (project by project review).

If the City elects to proactively review zoning requirements for consistency with the plan, there are four steps that can be taken. These steps were established following the recommendation that Ordinance 1430 was not consistent with the Comprehensive Plan. While this process was specific to the area covered by Ordinance 1430, Staff is of the opinion that this is not an anomaly, but rather the widespread use of planned districts has created a highly complex regulatory system that creates frustration, lack of understanding, and lack of clear expectations, and lack of a consistent regulations.

	Action	Geographic Area	Potential Outcomes
1	Provide no action to align current zoning with updated Comprehensive Plan	None	<ul style="list-style-type: none"> • Older rules and regulations of the property will remain inconsistent with Comprehensive Plan • Increases the likelihood of additional properties having separate rules and regulations
2A	Update zoning district boundaries to align with the current Comprehensive Plan	Area of Ordinance 1430	<ul style="list-style-type: none"> • Update a specific area bound by one planned district ordinance in which regulation does not reflect the intent of the current Comprehensive Plan • The conventional Industrial zoning district may be re-examined or updated to align with Industrial land use designation of the Comprehensive Plan
2B		Industrial Land Use Designation	<ul style="list-style-type: none"> • Update entire Industrial Land Use designation to align with Comprehensive Plan which is largely made up of Ordinance 1430 • Industrial zoning district may be re-examined or updated to align with Industrial land use designation of the Comprehensive Plan
2C		Entire Chesterfield Valley	<ul style="list-style-type: none"> • Update the entire Chesterfield Valley to align with the four land use designations that exist in the Valley (Industrial, Regional Commercial, Conservation, Parks and Recreation) • Increase the consistency of rules and regulation throughout the Chesterfield Valley • Clarity for residents and business • Would put more emphasis on updating the Unified Development Code to align with the Comprehensive Plan vs site specific regulation of individual properties
2.D		Entire City of Chesterfield	<ul style="list-style-type: none"> • Would incur all the same outcomes as the entire Chesterfield Valley but would be implemented throughout the whole city. The length of time to achieve would be much greater potentially reviewing every zoning district in conjunction to the associate land use designation

While four options are presented to start the process of aligning our zoning regulations with the Comprehensive Plan, Staff is of the opinion that any of these efforts should be undertaken with the ultimate goal of reviewing all of our districts, procedures, and general requirements to ensure that they are appropriately tailored so that the outcome is in accordance with the Plan.

In reviewing the options to proactively address the City's regulatory framework (options in green), Staff would also note that this should include a thorough review of other regulations. For instance, the City has successfully used the planned district approach to secure cross access and the City should consider reviewing our Unified Development to strengthen the language for cross access instead of depending on the need to obtain an amendment to the zoning.

History

Discussions regarding the efficacy of the City's development and use regulations has been occurring for years. Notably, the City hired a consultant in the mid 1990's to review the City's Zoning and Subdivision Ordinances and worked with the City to develop a new code. Below are several quotes from this effort.

Two major problems with the regulations were discussed during our reconnaissance visits: community character and discretionary decision-making.¹

The notion of community character does not imply uniformity across the community. During the reconnaissance, at least four different character areas were found within Chesterfield's boundaries. Several more types may exist which were not observed. Community character is based on the notion that most land uses can be designed in such a manner that a variety of zoning districts that permit a range of uses can still provide uniform character. Such organization permits a sharper focus on transitions between character types that occur at zoning boundaries.²

The lack of substantive standards are a problem in Chesterfield. Citizens and developers, as well as some officials, expressed concern that decisions are not consistent. Any time standards are lacking, distrust is a likely outcome. In Chesterfield, situations have arisen in which the lack of standards has allowed a wide range of possible decisions, inviting doubt and suspicion. Adversarial hearings will result. In some cases, officials seem inclined to the 'I can't tell you what the standard is but I'll know if and when I see it' approach; the recent controversy about vegetative signs and awning signs is an example. This form of evaluation is not conducive to good planning.³

¹ "Land Use Development Ordinance Critique." Lane Kendig: September 14, 1994. Page 1.

² "Land Use Development Ordinance Critique." Lane Kendig: September 14, 1994. Page 2.

³ "Land Use Development Ordinance Critique." Lane Kendig: September 14, 1994. Page 11.

Because discretionary procedures are a form of negotiation, applicants, citizens, and officials all take conflicting positions. They do so not because they are acting in bad faith, but because the first rule of negotiation is to bargain from a position from which it is possible to settle on an acceptable outcome. The negotiation itself breeds further distrust. As a result, on each application each party seems to ‘draw a line in the sand.’ Losers, developer or citizens, seek to lay the blame on someone else.⁴

The effort above never resulted in adoption of a performance-based zoning ordinance recommended; however, it did dovetail into an effort that was adopted in 1997 with substantial changes in the code. This effort utilized several working groups that included City Officials, property owners, residents, staff, and consultants to review portions of the code. Some examples of the committees included neighborhood character, streets, commercial development and trees.

Many changes within the 1994 review of the development ordinances have been implemented incrementally over the years (e.g. reformatting from the prior Zoning Ordinance and Subdivision Ordinance into a Unified Development Code was accomplished in 2014). These efforts have increased the usability of the ordinance, but have also highlighted the amount of discretion throughout the code.

Additional Implications

The table on page 2 of this report provides potential outcomes associated with various options. In addition to the items listed there, there are several key points about the City’s reliance on discretionary reviews that should be highlighted:

- Reliance on writing an ordinance for a development at the time of development has shown to be effective; however, the administration of this process over the years results in a cumbersome, unclear, and fragmented regulatory approach. For instance, a small business owner looking to open a new space in the Chesterfield Valley will regularly call the Department of Planning and inquire as to where they should begin looking within the City for a new location for them. As the Valley is developed in nearly exclusive planned districts, we simply cannot provide this information. Rather, the business owner must find a location they are interested in, then ask if it is allowed in the location. The ultimate result is wasted time and energy and a difficult process to navigate.
- Once an ordinance is approved, the uses and standards are not modified. The biggest area of impact for this is in uses. The Code, since the City’s incorporation, has implemented these planned district ordinances based off the use classification system in place at the time. This results in not only administering hundreds of planned districts, but also understanding what codes were in place at the time, including codes that pre-date the incorporation of the City. This

⁴ “Issues Paper 2: Discretionary Approvals vs. Standards. Lane Kendig. October 7, 1994. Page 2

alone precludes appropriate planning for the future of the City in accordance with the Comprehensive Plan.

As an example, the City recently amended definitions and created several new uses pertaining to outdoor storage of various vehicles in commercial and industrial areas. While significant time and effort was placed into that review process, numerous parcels may have authority to outdoor storage of vehicles as they were zoned prior to the change in the code. This not only applies to active uses that would be classified as legal non-conforming uses, but the activity would be permitted even if they have never operated that type of business.

- The City could elect to take an incremental step in implementing this vision (options 2A-2C); however, we will not be able to address many of the character issues without reviewing and revising the entirety of the UDC. As an example, you could modify the regulations within the “LI” Light Industrial District (Article 3 of the Unified Development Code) but numerous standards including architecture and landscaping (Article 4) and procedures (Article 2) would not be included.

Recommendation

Based on the inconsistency of existing zoning districts with the vision of the Comprehensive Plan, staff would recommend that the Planning and Public Works Committee direct staff to create of process to review and modify the zoning within the Chesterfield Valley (option 2C) to reduce reliance on discretionary reviews and align the regulations of the UDC with the Comprehensive Plan.