

REVIEW OF CITY COUNCIL DECISION TO GRANT A CONDITIONAL USE PERMIT IS LIMITED TO A DETERMINATION OF WHETHER THE DECISION IS SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE.

by David Davis

DeBold v. City of Ellisville, et al., No. ED99944 (Mo. App. E.D. August 29, 2013)

Wal-Mart applied for and was granted a conditional use permit for development of a store in the City of Ellisville on Sep. 5, 2012. The project was reviewed by numerous city officials and departments. It was determined that the project was consistent with the City's comprehensive plan and the standards of good planning.

DeBold filed an appeal of the decision with the City on Sept. 19, 2012. The appeal was considered by the City Council on Oct. 3, 2012, and denied. Thereafter, DeBold sought judicial review of the City Council's decision. On Feb. 26, 2013, the court entered its Order and Judgment affirming the decision of the City Council on the appeal. The court found that the City's decision to grant the conditional use permit was supported by competent and substantial evidence on the record.

When reviewing a city council's administrative decision to grant or deny a special use permit, the trial court must determine whether the city council's decision was supported by substantial and competent evidence on the record as a whole. RSMo § 89.110. DeBold incorrectly argued that the standard of review was established by Chapter 536. It is well established that Chapter 536 only applies when another more specific statute does not apply and RSMo § 89.110 is a more specific statute that applies to conditional use permits. *Deffenbaugh Industries, Inc. v. Potts*, 802 S.W.2d 520 (Mo. App. W.D. 1990). This section establishes a deferential standard of review. So long as the decision of the city council is supported

by competent and substantial evidence on the record as a whole, the trial court is bound by the city council's determination and cannot substitute its own judgment.

Furthermore, trial court's review pursuant to Chapter 89 is limited to the certified record of the city council proceedings. Therefore, the trial court did not err in denying DeBold's attempts to offer evidence other than the certified record. □

David Davis is an attorney, founding member of Davis Law, LLC and author of the Missouri Local Government Employment Law Handbook. He counsels and defends local government and businesses in the areas of employment law, commercial litigation, civil rights and general litigation. Contact him at 314-863-6868 or ddavis@davis-law-llc.com. Follow him on Twitter @DavisLawLLC.

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