

City of Beavercreek's Role in Planning and Development

Over the past several years, there have been numerous online and in-person discussions on the nature and limitations of land use through planning and zoning. Many online comments and discussion threads suggest and/or highly encourage the city to stop development of vacant property, stating that continuing development is causing “more green space [to be] lost” and the city should “stop approving new home[s].”

What is zoning?

As a point of discussion, it is important to clearly define **zoning**. Zoning is the legal method (the power of which is derived by the Constitution of Ohio giving municipalities home rule) in which the city divides land into zones or districts. Each district has a particular set of regulations for new development or redevelopment, as outlined in the city's Zoning Code, in order to regulate development standards and promote health, safety and welfareⁱ. The city's Zoning Code specifies a variety of permitted (by right) and conditional uses of land, and clearly defines basic development standards, including but not limited to: the minimum size and dimensions of lots; principle and accessory structure setbacks; and maximum building heights and regulations of accessory uses.ⁱⁱ These guidelines are set in order to guide city growth and development.

Can the city stop development?

Zoning is not intended, **nor able** to stop development. Zoning in general has constitutional limitations. The U.S. Supreme Court has stated, “The governmental power to interfere by zoning regulations with the general rights of the land owner by restricting the character of his use, is not unlimited, and, other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare.”ⁱⁱⁱ The Court further clarifies “if you have identified a public good of critical importance (*in the case of the City of Beavercreek it would be to “stop development”*), which substantially deprives a landowner of the value of property—pay for it, as required by the Fifth Amendment.”^{iv}

In other words, if the city were to declare a private property as “undevelopable” without just cause, it would be considered a regulatory taking and city tax dollars would be on the hook to provide just compensation, i.e. The city, using taxpayer dollars, would, at a minimum, have to buy the land to stop development and could be liable for lost revenue.

Stopping development because of perceived impacts on existing infrastructure, including roadways and water/sewer systems would have to be proven with a city paid infrastructure study^v. Impact on schools cannot be considered in development applications. The “loss of green space” and “too much development” is not a just cause, but would be a “public good of critical importance”, in which again, the city would have to, at a minimum, buy the land from the landowner with taxpayer dollars.

While the city does have zoning laws in place to help guide development in an orderly fashion, those laws cannot stop development.

For additional questions, contact the city's planning and development department by calling (937) 427-5512 or emailing planning@beavercreekohio.gov.

ⁱ Beavercreek Zoning Code [§ 158.002 INTENT AND PURPOSE.](#)

ⁱⁱ Beavercreek Zoning Code [§ 158.015 DISTRICTS.](#)

ⁱⁱⁱ ***Pennsylvania Coal Co. v. Mahon***, 260 U.S. 393 (1922)

^{iv} ***Lucas v. South Carolina Coastal Council***, 505 U.S. 1003 (1992)

^v *Kinney v. Bd. Of Zoning Appeals*, 2021-Ohio-4217, found that turning down a project based on traffic impact was unsupported by the preponderance of substantial, reliable, and probative evidence because their evidence was not from a professional trained in evaluating the impact of traffic.