



April Meeting Synopsis

At the April League meeting the membership heard a presentation from St. Louis Cardinals President Mark Lamping about the team's proposal for a new baseball stadium and "ballpark village" development. Mr. Lamping indicated that he hopes that the Legislature and area citizens will view this proposal as an economic development opportunity for downtown, the region and the State. Many competing cities are funding new stadiums, freeing up team money to be used for players' salaries. The Cardinals will have difficulty meeting salary demands and end up losing players if they must pay for a stadium when other teams do not. The team would not be competitive if it cannot pay today's salaries and the product would suffer, probably resulting in lower attendance.

He noted that the new stadium would have only slightly fewer seats than Busch Stadium. It would also offer a greater number of higher priced seats mainly purchased by the business community. However, it will also have an increased number of average priced seats for the general public. All seats would have greatly improved sight lines, as the stadium would be solely for baseball, and not a multi-purpose facility like the current Busch Stadium.

Lamping said that McCormack Baron has agreed to be the lead developer of the Ballpark Village. It is envisioned to include high rise residential, office, commercial and restaurant space, a new Cardinals museum, and possibly an aquarium. The goal is to make the area a year-round attraction and to help continue the revitalization of that part of downtown.

Following the program, the membership elected new officers and board members for the next year. They are:

President--Mayor Virginia Bira of Vinita Park
Vice President--Mayor Gerry Welch of Webster Groves
Finance Chairman--Mayor Bill Bergfeld of Warson Woods
Board Member (2 year term):

Mayor Betty Humphrey of Richmond Heights
Mayor Annette Mandel of Creve Coeur
Mayor Skip Mange of Town & Country
Councilman Tom Wolf of Ferguson

Board Member (1 year term):
Mayor T.R. Carr of Hazelwood

Board Members with one year remaining are:
Mayor Bert Gates of Shrewsbury (Immediate Past President)
Councilman Ben Allen of Black Jack
Alderman John Schuster of Glendale

President Bert Gates presented a Proclamation to Mayor to retiring St. John Mayor Gus Degardin, who is the League's Immediate Past President. It recognized Mayor Degardin's leadership and contributions both to the League and the City of St. John. President Gates also thanked retiring

Chesterfield Mayor and League Board Member Nancy Greenwood for her work.

We appreciate the warm welcome from President Bert Gates and the officials and employees of the City of Shrewsbury, who hosted a "Taste of Shrewsbury" for the membership.

League Receives Solid Waste Grants to Promote Increased Municipal Residential Recycling

The League office has been awarded solid waste grants from both the St. Louis-Jefferson Solid Waste District and the County Solid Waste Office. These funds will be utilized to work with cities in the County to increase the rate of recycling and help increase the life of local landfills.

League staff member Kevin Bookout has been hired to coordinate this program. He will be working with our members to develop an accurate survey of current municipal recycling practices and then to develop strategies that cities can use to increase recycling for residents and/or businesses. This may involve the use of outside industry consultants, as well as staff.

Over the next several months he will be meeting with municipal officials in areas where recycling is low and work with those cities on efforts to reduce the amount of materials going to landfills. This may include educational programs for residents or working with haulers to implement a more effective mode of collection. Cities may also be encouraged to develop local recycling or compost centers to help reduce solid waste.

We hope that our members will participate in this effort and that citizens will see the benefits of increased recycling and, most importantly the extension of the life of our dwindling landfills and lower trash fees over the long run.

Telephone Taxes

The Post-Dispatch recently reported that as much as 40% of commercial phone service is now purchased from companies other than Southwestern Bell. A small percentage of residential customers have also switched companies. Many cities have reported to the League that gross receipts from telephone service have decreased. City finance officers should be sure that all companies pay their fair share of taxes.

To accomplish this, some cities are beginning to ask all businesses to list their phone provider on their annual business license application. Others have sent staff door-to-door to businesses to seek the names of companies offering phone service in the city. Reports of underpaid taxes by the phone company are surfacing as a result of the research.

Reminder . . .

The next League membership meeting will be held on September 20, which is the third Thursday, to avoid a conflict with the Jewish holiday of Yom Kippur.

Legislative Wrap Up

The following bills of local municipal interest passed in the legislative session that ended on May 18. The League office has copies of all bills that passed.

SB 369 - Right-of-Way Management (Steelman) - As reported by the MML, the bill contains 20 pages of vague, ambiguous wording that will take the courts years to resolve. Apparently, the bill grandfathers many existing ordinances (enacted prior to May 1, 2001) on ROW rentals and street degradation fees and may allow grandfathered entities to enact some new ordinances. All ROW management ordinances must conform with the new law, and new ROW management fees must be based on actual costs of the managing the ROW. The bill does not affect traditional business gross receipts taxes, but does prohibit: 1) new franchises for telcom companies; 2) degradation fees, forcing industry-caused damage to roads onto the backs of taxpayers; 3) fees on ROW users, such as wireless antennae companies; 4) franchise fee renewals on electric companies (franchise fees on electric are different than gross receipts); and 5) performance bonds and insurance for companies with more than \$25 million in net assets, making it difficult to require proper repairs or to collect damages. The utilities lobbied the bill as a consumer protection bill. They failed to point out that most customers of new telcos are businesses not residential customers and new road repair costs fall on taxpayers. The bill, including a short outline, is available from the League office. It was e-mailed to city administrators on May 25.

According to the website of the State Ethics Commission, five phone companies employed 70 lobbyists this past session, with their association employing at least 7 more. 77 lobbyists are hard to overcome.

The Missouri Municipal League has arranged a meeting with Governor Holden to correct the allegations made by the telcom industry and to seek a veto of the bill, with the understanding that all parties will increase their efforts to create a more realistic state law and thereby avoid excessive litigation.

SB 256 - Water and Sewer Grants (Caskey) - Authorizes \$40 million in state bond funds for local sewer, water and stormwater projects. This would mean \$1 million for grants and \$1 million for loans to St. Louis County cities for stormwater projects coordinated through MSD.

HB 491 - Third Class Cities (George) - 1) Allows 3rd class cities in St. Louis County to fill vacancies on the council by appointment, rather than special election. This matches the law for the rest of the state. 2) The bill also allows a 3rd class city that contracts for police and/or tax collection services to eliminate the elected positions of marshal and/or collector.

HB 133 - Contiguous Property Redevelopment Fund (Gambaro) - The fund is created in the Department of Economic Development and will be used for grants in St. Louis, St. Louis County and Kansas City for acquiring and redeveloping contiguous properties within the area. The Department is to give priority to those projects proposing the assembly of a greater number of acres than other projects and those projects for which a private interest in the usage of the property exists, once redevelopment of the property is completed. Various experts claim that assembled property will attract developers; fragmented parcels are a barrier.

HB 202 - Transportation Development Districts (Rizzo) - Transportation Development Districts may levy sales tax of up to 1 cent (up from ½ cent).

HJR 11 - St. Louis City Charter Amendments (Gambaro) - Allows voters statewide to consider whether the City of St. Louis should be able to amend its charter as it relates to "county-type" offices. It will be submitted in 2002. If approved the City could then set up a charter commission to consider specific changes, which would be considered by City voters. Court decisions have prevented such local control in the City, unless the constitution is amended.

BILLS THAT DID NOT PASS INCLUDE:

- Sales Tax Exemptions for Food and "Back to School" Sales Tax Holidays (Opposed)
- Changes to the Sunshine Law (Opposed)
- Police Officer Disciplinary Procedures (Opposed)
- Fire District Sales Tax Authority (Opposed)
- Changes to Tax Increment Financing Laws (Opposed)
- St. Louis Regional Taxicab Commission (No position)
- St. Louis County Emergency Communications District (Supported)
- Funding for a baseball stadium (No position)
- Changes to billboard spacing laws (Opposed)
- Property tax freeze for elderly homeowners (Opposed)
- Changes to concealed weapons laws (Opposed)
- Monitoring of dangerous intersections by camera (Supported)
- Transportation funding (supported) with large sales tax increase (Opposed)
- Limited municipal retainage on construction projects to 5% (Opposed)
- Public employee collective bargaining (Opposed)

Seminar on Sustainable Communities to be Held

The University of Missouri -- St. Louis Public Policy Research Center will be holding a one day seminar entitled "Measuring St. Louis: Indicators for Sustainable Communities." It is scheduled for Thursday, June 28, 9 a.m. to 4 p.m., at the UM -- St. Louis Millennium Student Center. The cost is \$25.

Maureen Hart leads the conference which will examine sustainability issues at the local level. The conference will answer questions including: What is an indicator of sustainability? What are the characteristics of effective sustainability? What data sources are available for measuring sustainability?

Participants will receive a copy of What Do We Want Our Community to Be?, sustainable indicators developed by Sustainable St. Louis in cooperation with the Public Policy Research Center. For more information contact the University at 314-516-6590.

The League has had a growing interest in sustainability as taxes, most notably highway taxes, have increased dramatically while liabilities, such as congestion and deferred maintenance, have increased. The number of taxpayers has not increased much in 30 years, all of which are signs of growing inefficiencies.

County Water Lateral Repair Program to Begin

On July 1, St. Louis County will begin implementation of its water lateral repair program for most areas of the County (the exception being the area served by the Florissant Water Company which will operate its own program). In November 2000 voters passed a \$12 per year fee to fund this program which began collections on residential water bills on March 1, 2001.

While the direct repair program will begin July 1, the County Council is considering a reimbursement of 50% of repair costs will be available for homeowners who had to repair lines between March 1 and June 30, 2001. If approved by the Council, applications for this reimbursements will be accepted by the County from July 1 to August 15, 2001.

Some of the telltale signs of a water leak include: low water pressure, water present in the yard, street or curb, or an unexplained high water bill. The process is as follows:

- 1) the citizens should call Missouri American Water Company or their municipal water company.
- 2) the water company will visit the property and confirm a leak, notifying the property owner of the need for a repair.
- 3) the homeowner then applies to the County for repair coverage.
- 4) the County will request bids or quotes from participating licensed plumbers and award the job to the lowest responsible bidder.
- 5) payment will be made directly to the contractor after final inspection.

If the homeowner experiences an emergency situation, he should call a licensed plumber. The plumber will verify that an emergency exists and perform work to relieve the emergency. The homeowner should then apply to the County program on the first business day. The County will negotiate a fee directly with the plumber and, if additional work is needed, request quotes or bids for additional repairs. Some of the items that are not covered include:

- Payment for landscaping or ornamental structures;
- Payment for any repairs on the inside of the house;
- Payment for repairs as a result of freezing, earthquakes or other acts of God;
- Payment for water meter, or any facility owned by the water company;
- Payment for repairs covered under homeowners insurance.

Homeowners failing to pay the fee will not be eligible. The program is designed to patch or repair leaking water lines. Work will be limited to fixing the leak. Wholesale replacement will only be done to effect an economical repair. The program will not replace old or lead lines or pay for locating stop boxes, shut off, or other valves to support real estate transactions.

For more information, contact the County Public Works Department Water Service Line Repair Program at 314-615-8408 or access the County website at www.stlouisco.com.

Refusal to Rezone May Be Basis for Inverse Condemnation and Taking Claim

Chesterfield Village owned a 46 acre parcel that was zoned by the City of Chesterfield as non-urban, which required residential lots of three or more acres. The Village filed a rezoning request with the City, asking that the zoning be

to R-3, to permit 10,000 square foot lots. The City refused to rezone and Village filed suit for declaratory judgment, alleging that the refusal to rezone left the parcel economically infeasible to develop and deprived it of all economically beneficial use. The trial court granted the declaratory judgment, finding that the current zoning was arbitrary. The City then rezoned the parcel to be in compliance with the judgment. Thereafter, Village then filed a second suit against the City seeking damages for (1) a temporary regulatory taking without just compensation, (2) inverse condemnation, and (3) violations of the U.S. Constitution and Section 1983. The trial court dismissed the second suit, but the Court of Appeals reversed in Chesterfield Village v. City of Chesterfield, No.E.D. 78444 (Mo.App.E.D. 2001).

First, the Court held that Missouri has long recognized a cause of action for a temporary taking. The U. S. Supreme Court has established that the just compensation clause of the U.S. Constitution requires the government to pay for temporary regulatory takings. There is no litmus test for determining when there has been a taking; the determination is made on a case-by-case basis. There are two situations where a property owner is entitled to compensation for a regulatory taking: (1) when a regulation causes actual physical invasion of property, and (2) when the regulation denies all economically beneficial or productive use of land. Here, the allegations in the suit state a cause of action for a temporary regulatory taking. Next, the court held that to recover for a claim of inverse condemnation, a plaintiff must show the government appropriated, without formally condemning, some valuable property right that the landowner has acquired by the legal and proper use of the land. Missouri courts recognize a cause of action for inverse condemnation where private property has been taken for public use. Here, the allegations of Village that the property was taken for public use through the denial of a zoning change without just compensation in that it was not economically feasible to develop the property stated a cause of action for inverse condemnation. (The court noted that the Village would need to elect which remedy it sought recovery under.)

Third, the Court discussed Village's claim under the 5th and 14th Amendments of the U.S. Constitution and the damages sought under 42 U.S.C., Section 1983. Section 1983 provides relief where (1) the defendant deprives the plaintiff of a right, privilege or immunity secured by the Constitution or laws of the United States and (2) defendant was acting under the color of state law at the time of the deprivation. Again, the allegations by Village that the City deprived it of its property right and deprived it of its right to just compensation while acting under color of state law were sufficient to state a cause of action under 42 U.S.C. Section 1983. Finally, the Court rejected the City's defense that Village's claim for damages was barred by res judicata, because the damages were not sought in the initial suit. At the time of the declaratory judgment, it was unknown when the City would rezone the parcel. The length of time before the rezoning occurred is a factor in determining damages, which was unknown and not an issue during the first litigation. Thus the second suit was not barred by res judicata. (Res judicata is defined as "a matter finally decided on its merits by a court and not subject to litigation again between the same parties).

The City is examining its legal options at this time, given the huge implications of this case.

This article was prepared by Dudley McCarter, City Attorney for Creve Coeur.

Principles for Reinventing Strip Malls

The Urban Land Institute and Bank of America have released a new report on strategies to reinvent suburban strip shopping centers across America. Developers and local government officials realize that while many Americans shop at strip centers, there has been limited research into how these centers are evolving, the forces that are buffeting them and the roles they will play in the new economy.

Last year, ULI conducted an intensive study of three strip centers in Washington, D.C. to find out the critical issues facing each center, methods to reinvent the center to ensure the long-term success, and establish development guidelines.

The ten principles that the report highlights are methods that any community looking to ensure long-term success for its retail centers can use. They are: ignite leadership and nurture partnership; anticipate evolution; know the market; prune back retail-zoned land; establish pulse nodes of development; tame the traffic; create the place; diversify the character; eradicate the ugliness; and put your money (and regulations) where your policy is.

Detailed information and recommendations are included in the report which is available from ULI online at www.uli.org/pub/Media/A_issues/A_SmL4_R35.pdf.

Congratulations To . . .

Mayor Mike O'Brien of Maryland Heights who was elected President of the Mayors of Large Cities and also, to Mayor Jim Murphy of Normandy who was elected President of the Mayors of Small Cities.

Park Grant Commissioners Appointed

In late March and early April, mayors in each of the seven County Council districts met to appoint members to the Municipal Park Grant Commission. This body was formed with the passage of Parks and Trails Sales Tax in November of 2000. A municipal administrator and a municipal park professional serving ex-officio will round out the nine member Commission. Appointed by the mayors are the following persons:

District 1 - Emma Weaver, former City Administrator of Northwoods

District 2 - (Vacant due to resignation)

District 3 - Nancy Greenwood, former Mayor of Chesterfield

District 4 - Clinton Vance a financial planner from Florissant

District 5 - Steve Woodard, former Kirkwood Council and Park Board member

District 6 - Trudy Hoey, former Alderwoman in Green Park

District 7 - Terry Byatt, former Alderwoman in Ballwin.

The Commission has been meeting to create bylaws and organizational structure and to select the city administrator and park professional and advisory board members, and consider legal counsel and financial management options. The League staff has been assisting the Commission. A nine-member advisory board will also be appointed which will be chaired by the park professional. They will assist cities and the commission with the submission and review of applications. The first grant round could be as soon as this fall. The Commission is expected to receive \$2.5--\$3 million annually. (State law was corrected this year to exempt food from the tax.)