

Planning, Zoning, and Board of Adjustment



LAUBER MUNICIPAL LAW, LLC

2018 MMAA City Attorney 101
July 21, 2018 ~ Osage Beach, Missouri

Serving those who serve the public

Zoning

Lauber Municipal Law, LLC

- ▣ Background information on planning and zoning.
- ▣ Planning & Zoning Commission: Review of Commission Roles and Procedures.
- ▣ The Board of Adjustment: Review of Board Authorization, Powers and Judicial Review.

Background Information- Nuisance

Lauber Municipal Law, LLC



- “In the beginning...
... there was Nuisance”
- ▣ The basic theme of nuisance is that you are free to enjoy the use of your property up to the point that your use infringes on the right of someone else to use their property.
 - ▣ Problem: You had to wait until someone actually moved in and began to ruin your quiet enjoyment before you could do anything about it.

Background Information- Planning & Zoning

Lauber Municipal Law, LLC

- As the effects of the industrial revolution began to compound, cities began to think about stopping problems BEFORE they started.
- An “enabling act,” usually passed at the state level, provides the basic framework and powers necessary to do this.



Background Information- Planning & Zoning

Lauber Municipal Law, LLC



- New York City had first Planning Enabling Act in 1916.
- By 1928 there were two “model acts” created by the federal government. Both were adopted by every state in the union within one year of their creation.
 - Standard City Planning Enabling Act (SPEA)
 - Standard Zoning Enabling Act (SZA)
- Missouri’s is found in Chapter 89 of the statutes books.

Planning

Lauber Municipal Law, LLC



- Planning is a city’s general policy to guide development of land uses within a defined area of the city
- Comprehensive plans are designed for the general purpose of guiding and accomplishing a coordinated development within the planning area
- Plans help cities stop “leap-frog” development and unnecessary separation of developments that strain infrastructure and resources
- Plans are more flexible and not as strictly enforced as zoning regulations
- Can have one or more than one plan in place in a city
- May not be required by law, but best practice to adopt a plan to stay in conformance with the overall zoning enabling act

Zoning

Lauber Municipal Law, LLC

- Ⓢ Zoning is the use of local police power to regulate the use of land.
- Ⓢ Zoning ordinances are an enforcement tool that aid in implementation of the comprehensive plan.
- Ⓢ Zoning allows property owners the comfort to feel at ease that going to court is not their only protection from the adverse effect of a neighbor's use of land. They will be able to rely on the code enforcement powers of the local government.
- Ⓢ *Village of Euclid v. Ambler Realty Co.*
 - Ⓢ In 1926 the Supreme Court recognized that zoning generally is a valid exercise of local government authority.



Planning & Zoning Authority: Summary of Sources

Lauber Municipal Law, LLC

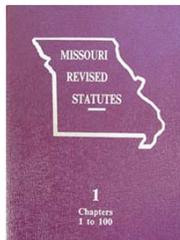
- Ⓢ **Police Power**- zoning is valid because it benefits the public health, safety and welfare.
- Ⓢ **State Zoning Enabling Act**- Chapter 89 Missouri Revised Statutes
- Ⓢ **City Planning & Zoning Ordinances**- Sometimes stand-alone provisions, but usually a component of a city's code of ordinances



Missouri Revised Statutes Chapter 89- Planning Provisions

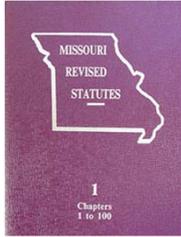
Lauber Municipal Law, LLC

- Ⓢ § 89.310
 - Ⓢ Grants all cities the power to make a comprehensive plan for the physical development of the city
- Ⓢ § 89.340
 - Ⓢ Sets forth the contents of a plan
 - Recommendations for the physical development and uses of land
 - General location, character, and extent of public utilities and public streets and other public places
 - Plan for the regulation of height, area, bulk, location and use of structures and of population density
- Ⓢ § 89.360
 - Ⓢ Requirements for Approval/Amendment to the Plan
 - Must hold a public hearing
 - Requires 15 day published notice
 - Majority vote of full Commission
 - Approval must be by resolution
 - Plan and resolution must be recorded and made available in County Recorder's office



Missouri Revised Statutes Chapter 89- Zoning Provisions

Lauber Municipal Law, LLC



- Ⓜ § 89.020
 - Ⓜ Grants all cities the power to zone.
- Ⓜ § 89.040
 - Ⓜ Sets forth the purpose of zoning.
 - Regulations to conform to the comprehensive plan.
 - Provide for safety, adequate light and air, avoid concentration of population and overcrowding, preserve features of historical significance, etc.
 - Regulations to be made with character of district, suitability of uses, conservation of property values and appropriate use of land.

Missouri Revised Statutes Chapter 89- Commission Provisions

Lauber Municipal Law, LLC



- Ⓜ Creation of the Commission
 - Ⓜ §89.070, RSMo requires the City to appoint a zoning commission if it wishes to exercise zoning powers
 - Ⓜ §89.320, RSMo sets forth the membership of the planning commission
 - Ⓜ §89.330, RSMo addresses commission officers and rules and regulations

P&Z Commission Composition

Lauber Municipal Law, LLC

- Ⓜ Board is comprised of 7-15 members
 - Ⓜ Mayor, if Mayor chooses
 - Ⓜ Board of Aldermen member, if BOA chooses
 - Ⓜ 5-15 citizens appointed by the Mayor and approved by BOA
- Ⓜ Four-year, staggered terms



Missouri Revised Statutes

Chapter 89- P&Z Commission Powers

Lauber Municipal Law, LLC



- ⓐ Prepare comprehensive plan- 89.350
- ⓑ Adopt comprehensive plan by resolution- 89.360
 - Ⓧ Using surveys of existing conditions and probable future growth
 - Ⓨ As a whole or in parts over time
- ⓒ Recommend zoning regulations and boundaries of the various original zoning districts- 89.070
- ⓓ Make preliminary report, hold public hearing, present final report to board of aldermen

Missouri Revised Statutes

Chapter 89- P&Z Commission powers continued

Lauber Municipal Law, LLC

- ⓐ Recommendations regarding subdivision regulations- 89.410
 - Coordinated development of the city
 - Coordination of streets within subdivisions and with existing streets
 - Open spaces for recreation, light, air, and public uses
 - Distribution of population and traffic
 - Requirements for the posting of bonds to ensure infrastructure is constructed
 - Requirements regarding the construction standards for streets and installation of utility facilities
- ⓑ Plat Approval- 89.420
 - Plats are subject to the rules of Chapter 445, RSMo
 - Must approve plats within 60 days of application or deemed approved



Missouri Revised Statutes

Chapter 89- P&Z Commission powers continued

Lauber Municipal Law, LLC



- ⓐ Approval of infrastructure improvements- 89.380
 - Once a plan has been approved, no street or other public facilities may be constructed until it has first been approved by the commission
 - If commission votes no, Board of Aldermen can only override with a 2/3 vote
 - Acceptance, widening, removal, extension, relocation, vacation, abandonment, change of use, acquisition of land for, sale or lease of any street or other public facility must also be approved first by the commission
- ⓑ Recommendations relating to the plan and development of the city- 89.370
 - May make reports to various public officials and agencies
 - May also recommend programs for public improvements and the financing of those improvements to legislative or executive members of their city
- ⓒ Recommendations on plats where major street plans exist- 89.400
 - Plats may not be filed with or recorded at the County until the commission submits a report and recommendation to the Board of Aldermen and the Board approves it

P&Z Commission- Plan Approval

Lauber Municipal Law, LLC

- Comprehensive Plan Approval/Amendment- 89.360
 - Must hold a public hearing
 - Requires 15 days notice published in a newspaper
 - Requires a majority vote of the full Commission
 - Approval must be by resolution
 - Plan and resolution must be recorded and made available in County Recorder's office



P&Z Commission- Zoning Regulations Recommendation

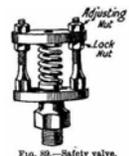
Lauber Municipal Law, LLC

- Zoning regulations must be in accordance with a comprehensive plan
- Commission makes preliminary report
- Must hold a public hearing
- Commission files final report to recommend boundaries of the districts and regulations



Constitutional Limitations

Lauber Municipal Law, LLC



- If an ordinance goes "too far" it will be declared void as a taking of property without just compensation. 5th Amend. U.S. Const.
- As a result, the Enabling Act provides for the Board of Adjustment to act as a safety valve to provide for relief when the application of an ordinance would be unreasonable on a particular property.

Missouri Revised Statutes Chapter 89

Lauber Municipal Law, LLC



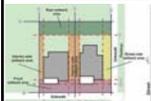
- Ⓜ § 89.080
 - Ⓜ Requires governing body to appoint the Board of Adjustment.
 - Ⓜ Board of Adjustment may determine and vary the application of zoning regulations in harmony with the general purpose and intent as described in § 89.040.

Missouri Revised Statutes Chapter 89

Lauber Municipal Law, LLC

- Ⓜ § 89.090 Board of Adjustment Powers
 - Ⓜ To hear and decide appeals where enforcement of the zoning and planning statutes or local ordinances are alleged to be in error.
 - Can reverse or affirm wholly or in part the order of an enforcement officer
 - Ⓜ To hear and decide any matters as required by local ordinance
 - Ⓜ When an appeal is brought before the Board, to vary the application of the ordinance's requirements if there are any **practical difficulties** or **unnecessary hardships** that stand in the way of carrying out the strict letter of the ordinance.
 - When making variances, the spirit of the ordinance shall be observed, public safety and welfare shall be secured and substantial justice shall be done

Area Variances



- Ⓜ These variances allow for a deviation from restrictions related to a permitted use
- Ⓜ Based on "practical difficulties"
- Ⓜ Problem must be unusual or peculiar to the property involved or different from problems suffered throughout the zone or neighborhood
- Ⓜ Condition can't be personal to the owners
- Ⓜ Practical difficulties can be, but do not have to be, due to physical characteristics of the property
- Ⓜ Applicant must show that as a practical matter the property cannot be used for a permitted use without coming into conflict with ordinance requirements

Use Variances

- Ⓞ These variances allow a use of property that is otherwise prohibited by the zoning regulations.
- Ⓞ Based on “unnecessary hardship”
- Ⓞ Slightly more stringent standard than “practical difficulty”
- Ⓞ Relief must be necessary because of the unique character of the property
- Ⓞ Land in question cannot yield reasonable return if used only for the purpose allowed in the zoning district.
- Ⓞ Owner’s plight is due to unique circumstances and not to general neighborhood conditions
- Ⓞ Problem shouldn’t be “self-created”
- Ⓞ Grant of variance will not alter essential character of locality



Discretion Authorized by State Statute

- Ⓞ Remember RSMo §89.090
- Ⓞ The Board of Adjustment has the power to grant a variance **only when**:
 - Either a practical difficulty or an unnecessary hardship stands in the way of carrying out the strict letter of the ordinance.
 - The variance relates to the construction or alteration of buildings or to the use of land.
 - The spirit of the ordinance is observed
 - Public safety and welfare is secured
 - Substantial justice is done

Discretion in Zoning Decisions

Lauber Municipal Law, LLC



- Ⓞ Zoning decisions generally fall into two categories:
 - Ⓞ **Legislative**
 - Defined by the police power (remember Euclid)
 - Done by elected officials
 - Examples: Aldermen enact or amend zoning, rezone an area, or set the standards for exercising discretion
 - Ⓞ **Quasi-judicial**
 - Defined by State statutes and/or local ordinances
 - Key point is that the officials **only have the power outlined in the statute**
 - Done by officials appointed to perform a statutory function
 - Example: Board of Adjustment makes a decision regarding how the application of a legislative decision has affected an individual

Missouri Revised Statutes Chapter 89

Lauber Municipal Law, LLC



§ 89.110 Judicial Review of Decisions

- Ⓜ Any person aggrieved by a decision of the Board of Adjustment may, within 30 days, petition for a writ of certiorari for court review of the decision.
 - Board of Adjustment will need to submit certified or sworn copies of the papers acted upon.
 - This return (record) shall concisely set forth other facts pertinent to the decision and material to show grounds of the decision being reviewed.
 - The Board of Adjustment will not be responsible for court costs of an appeal unless it acted with gross negligence, bad faith or with malice in making the decision being reviewed.



Lasting Effect of Variances

Lauber Municipal Law, LLC



- Ⓜ Variances run with the land and are not personal to the owner
 - Ⓜ In other words, each variance, once created, will last as long as the particular zoning regulation applies to the subject property



LAUBER MUNICIPAL LAW, LLC

Planning, Zoning, and
Board of Adjustment

Contact Information:

Joe Lauber
Lauber Municipal Law, LLC
250 NE Tudor Road
Lee's Summit, Missouri 64086
(816) 525-7881
jlauber@laubermunicipal.com



Scan with your smart phone QR reader

Serving those who serve the public



LAUBER MUNICIPAL LAW, LLC
Serving those who serve the public

About the Firm

Lauber Municipal Law, LLC, was established for the purpose of serving local governmental entities of all types and sizes. Each of our attorneys have dedicated their practice to the representation of municipal clients. We can serve your community as its general counsel (City Attorney) or as special counsel for technical issues like economic development incentive approvals, annexation, elections, impeachments, and appellate work.

Our goal through Lauber Municipal Law, LLC, is to meld our previous experience together to provide a high-quality, "big firm" work product, while providing the flexibility, personal responsiveness, and cost effectiveness of a small firm. We completely understand public entities' needs to obtain the most effective representation possible while considering the fact that these services are compensated from a budget made up of public funds. As the motto for Lauber Municipal Law, LLC, states: We are proud to serve those who serve others. Our sincere desire is to make that job easier and less stressful for the elected officials and administrative staffs of these entities.

The choice of a lawyer is an important decision and should not be based solely on advertisements. This disclosure is required by rule of the Missouri Supreme Court.
