

Planning and Zoning



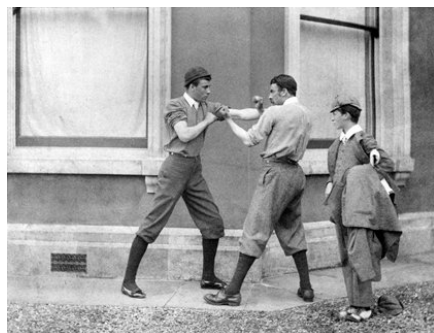
LAUBER MUNICIPAL LAW

Serving those who serve the public

City of Willard, Missouri
Planning & Zoning Commission

The Dawn of Planning and Zoning = Nuisance

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“Without government life would be poor, nasty, brutish, and short.”
Thomas Hobbes 1651

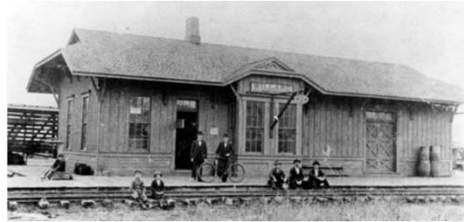
“In the beginning...

... there was Nuisance”

- Ⓜ The basic theme of nuisance is that you are free 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.

The Dawn of Planning and Zoning- Planning & Zoning Enabling Acts

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- 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 Planning Enabling Act (SPEA)
 - Standard Zoning Enabling Act (SZEAA)
- Missouri’s is found in Chapter 89 of the statute books.

Planning

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- **Planning** is the process of creating a **Vision** of how you want your city to develop
- This **Vision** becomes the Comprehensive Plan
- Serves as a guide to future development and redevelopment
- It’s a general policy, not legally binding



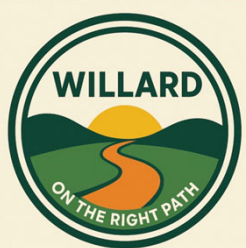
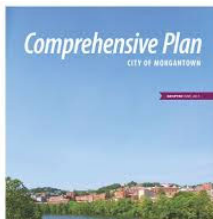
Planning – Creating the Plan

- Establish Goals and Objectives -What do we want this plan to show?
- Basic Research - Population Studies, Current land uses, Economic Studies
- Prepare the Plan: Land Uses, Community Facilities, and Open Areas

Comprehensive Plan



Planning – Adopting the Plan



- Requires Public Hearing on Plan
 - 15 Day published notice
- Requires majority of full planning commission to approve
- After approval certified copies sent to Council, City Clerk, and County Recorder (§ 89.360)
- Council may also wish to adopt the Comprehensive Plan by Resolution

Planning Commission

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- Ⓛ Membership
 - Ⓛ 7 -15 Members
 - Ⓛ One may be the Mayor (optional)
 - Ⓛ One may be a council person (optional)
 - Ⓛ Council or Mayor may also be non-voting liaison
- Ⓛ Four-year staggered terms
- Ⓛ Elect their own chairman and secretary

Zoning

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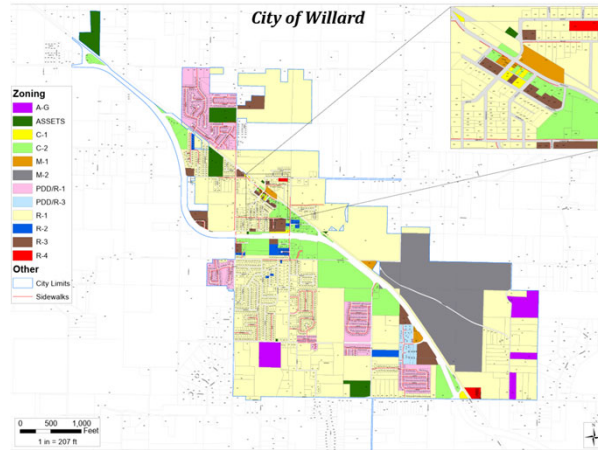
- Ⓛ Zoning is the local laws that determine how land can be used
 - Ⓛ Activities that can take place on the property
 - Ⓛ Height and mass of buildings
 - Ⓛ Density of buildings
 - Ⓛ Appearance
- Ⓛ All Cities in Missouri may establish zoning, but only in compliance with Chapter 89 RSMo.
- Ⓛ Zoning frequently divides city into areas with specific types of uses for each area:
 - Ⓛ This is done by the **Zoning Map**
 - Ⓛ Typical Zones
 - Single Family
 - Apartments (Multiple Family)
 - Commercial
 - Industrial
 - Agricultural



As Secretary of Commerce, Herbert Hoover initiated the drafting of the Model Zoning Code

Zoning

- Ⓛ Zoning Map – Depicts the various zones
- Ⓛ Zoning Code – Rules and regulations of each zone and overall



Zoning Commission

- Ⓛ Zoning Commission is a body that recommends zoning amendments to the Council (Text amendments and Map Amendments)
- Ⓛ Must have Zoning Commission if you want to do zoning
- Ⓛ Can be combined with Planning Commission (usually is)
- Ⓛ Thus, you have the **Planning & Zoning Commission**



Missouri Revised Statutes Chapter 89- Commission Provisions

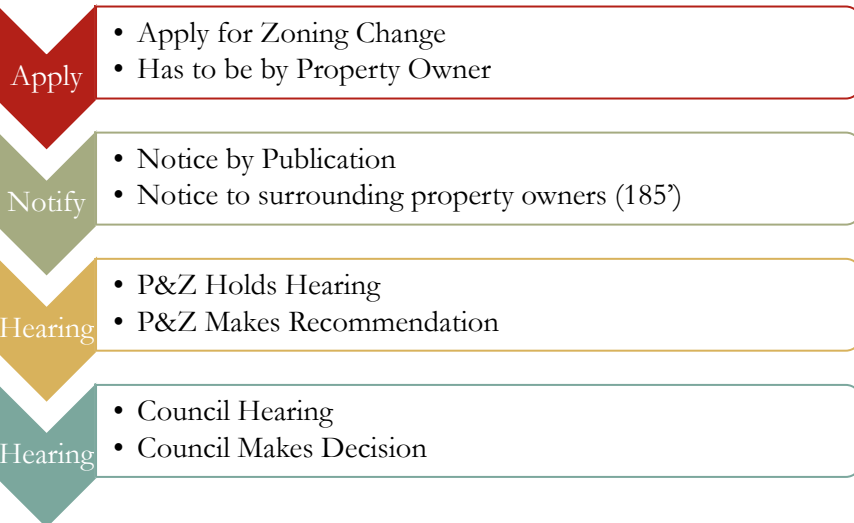
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- Creation of the Commission
 - §89.070, RSMo requires the City to appoint a zoning commission if it wishes to exercise zoning powers
 - §89.320, RSMo sets forth the membership of the planning (and zoning) commission
 - §89.330, RSMo addresses commission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

Process in a Nutshell

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How to Hold a Proper Meeting

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- Ⓜ Must post notice and proposed agenda 24 hours in advance
- Ⓜ Meeting location must be adequate for expected crowd
- Ⓜ Agenda may be changed
- Ⓜ Must send notice to media if they request
- Ⓜ Must take minutes

Open Meetings

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- Ⓜ Elected officials must be present or participating by video conference for roll call votes
- Ⓜ If meeting held by phone, must be access for public
- Ⓜ Public may *always record a meeting*
- Ⓜ Public doesn't have the right to speak at meeting
- Ⓜ If body goes into closed session, public must be given place to wait



Permitted Use vs Conditional Use

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- Ⓜ Permitted uses are those things that you can do without asking any further permission
- Ⓜ Conditional Uses Require P&Z and BOA Approval
 - Ⓜ Specific conditions must be met
 - Ⓜ Also called Special Use
 - Ⓜ Conditional Uses are *personal* to the owner, expire when sold



Subdivisions and Plats

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- Ⓜ Planning Commission also reviews proposed subdivision plats (§ 89.410)
 - Ⓜ City can establish requirements for subdivisions
 - 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***



Little or No Discretion in Platting Decisions

- Platting approval is the ministerial application of zoning requirements, uniformly, to all particular parcels within the zoned area
- When considering plat applications, the Planning Commission and Governing Body act in an administrative capacity and not in a legislative capacity.
- No arbitrary and subjective authority in whether to approve or deny a plat application – **only determine whether a plan meets the subdivision requirements**
- Furlong Companies, Inc. v. City of Kansas City, Missouri*



Constitutional Limitations



- 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.

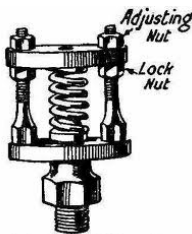


FIG. 89.—Safety valve.

Board of Adjustment

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- Ⓛ § 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.
 - Ⓛ Five members (3 alternates) with five year terms
 - Ⓛ Elect chairman annually

Missouri Revised Statutes Chapter 89

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- Ⓛ § 89.090 Board of Adjustment Powers
 - Ⓛ Hear and decide appeals of enforcement of the zoning and planning ordinances.
 - Ⓛ Other matters assigned (often building code appeals)
 - Ⓛ Grant “Variances”
 - Requires there ***be practical difficulties*** or ***unnecessary hardships*** to 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
 - Variances run with the land and are not personal to the owner

Missouri Revised Statutes

Chapter 89

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- Ⓜ § 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

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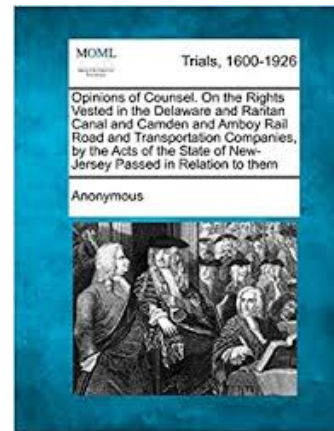


- Ⓜ In other words, each variance, once created, will last as long as the particular zoning regulation applies to the subject property

Vested Rights

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- ④ **Vested Rights:**
- ④ *e.g.*, non-conforming uses
(*Legal Non-Conforming*)
- ④ Vesting by exercise
- ④ Phased approvals,
extended rights
- ④ Protects against
forfeiture



Other Issues (Time Permitting)

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- ④ "Spot" zoning
- ④ "Contract" zoning
- ④ Exactions: *e.g.*, dedications/impact fees
 - "Essential nexus;" exaction to impact
 - Exaction "reasonably attributable" to development
- ④ Zoning and churches, schools – RLUIPA/§89.380 School Bd
- ④ Historic and Aesthetic Issues
- ④ Signs
- ④ Adult Uses



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About the Firm

Lauber Municipal Law was established for the purpose of serving local governmental entities of all types and sizes. 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 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 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.