

Governance

1.0 Existing Conditions – Opportunities

A. Form of Government.

The City of Branson is a 4th class city. Fourth Class cities are regulated by Chapter 79, RSMo. Accordingly, the bulk of powers granted to the City of Branson are found in that chapter. In addition, countless examples of specific authorizations to municipalities within certain population and other descriptive classes exist that grant additional authority. As a non-charter governmental entity, Branson is subject to statute and only has the powers granted to it by the legislature. Moreover, courts generally follow a strict rule of construction when determining the powers of municipalities. This nationally recognized rule of law is known as "Dillion's Rule." Dillion's Rule generally holds that a municipality can exercise those powers (1) expressly granted by statute; (2) necessarily or fairly implied and incident to the powers expressly granted; and (3) those essential to the objectives and purposes of the corporation – not something convenient but indispensable. Where there is any doubt with respect to the existence of a power, that question is resolved against the municipal corporation and the power is denied.

That being said, Branson, as a 4th class city, is not without authority to act. Additional grants of power are found in Title 7, RSMo, "County Townships and Political Subdivision Government," and in Title 7, "Cities, Towns and Villages." In addition, Chapter 105 addresses public officers and employees, Chapter 122 addresses municipal elections, Chapter 321 addresses fire protection districts, and Chapter 479 deals with municipal courts and traffic courts. The Branson powers found in these sources are comprehensive and do provide the City of Branson with authority to address most every issue it might encounter.

An alternative, which the City has considered, is to become a charter city. Article VI of Section 19 of the Missouri Constitution sets forth the procedure for framing and adopting a charter for any city of over 5,000 inhabitants. A substantial advantage of being a charter city is that the governing body is vested with almost unfettered authority to innovatively approach issues their community is encountering in ways that effectively address the distinct aspects of that issue.

As stated, a charter city has substantial power to govern as it sees fit. The only real limitations on the authority of a charter city are that the exercise of power may not be in conflict with its charter, the Missouri Constitution or an existing state statute. Section 19(a) states: "Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the State of Missouri has authority to confer upon any city,"

Although the advantages of being a charter city are significant, the process to become one is not insignificant. The process is initiated by the governing body submitting an ordinance asking "Shall a commission be chosen to frame a charter?" The ordinance must be effective for 60 days prior to the next general election before it can be voted upon. Accompanying the question of framing a charter, on the same ballot, should appear the names of the electors of the city who are candidates for membership on a charter commission. The candidates for membership on the commission are nominated by petition signed by a minimum of two

percent (2%) of the qualified electors voting at the city election. The petition must be filed with the election official thirty (30) days prior to the election. If the community votes in favor of forming a Charter, the 13 candidates receiving the highest number of votes constitute the commission. The commission is then vested with the responsibility of framing the charter. That charter is then submitted to the voters no later than thirty (30) days after completion of the charter nor more than one (1) year from the date of the election of the commission. Once the charter is approved by the voters, it can become the charter of the City of Branson.

B. Development on the Urban Fringe.

The City of Branson, not unlike other cities, is constantly grappling with development in the unincorporated areas of the counties adjacent to Branson's corporate limits. Oftentimes, this development is not commensurate with the standards required for development within the City's corporate limits. This is true with respect to both the development itself and to the infrastructure constructed to support that development. The City has been partially effective in addressing these concerns in instances where the developer of the property also needs to connect to the City's central sewage system to provide waste water collection, transportation and treatment of waste water and sewage for that development. In such instances, the City has entered into a sewer service connection and annexation agreements governing the provision of such services to that development. Among other things, these agreements obligate the land owner to convey facilities covered by the agreement to the City free and clear of all liens, be responsible for maintenance of sewer lines, design and construct the improvements in accordance with Branson's public improvement specifications, pay the City's hook-up fee, and finally, to construct all structures on the subject property in conformance with the latest version of the International Building Code, as well as other city code provisions, including its landscaping ordinance and its zoning, subdivision, storm drainage and land disturbance requirements.

Although this approach is effective in ensuring development needing sewer services, which later is annexed into the city, conforms to city standards. But, because it is limited to that circumstance, and therefore does not completely address the concerns.

Chapter 89 RSMo at §§ 89.144 and 89.145 do authorize 3rd class cities with a population of more than 25,000 and charter cities to exercise zoning, planning, subdivision and building code powers in an area of up to two (2) miles from the corporate limits of the city. However, as discussed in Section A above, this grant of power is limited to only those types of cities and does not include Branson, which is a city of the 4th class with a population of 7,500 people. In addition, this authority granted to charter cities is granted only to charter cities with a population of more than 35,000 inhabitants. In both instances, ordinances exercising those powers must be approved by a majority of the county commission in which the city is located.

A legal argument could be made that by the virtue of the constitutional grant of authority to charter cities, a charter city may be able to exercise this peripheral land development approval powers (if approved by the county commissioners), so long as that exercise is not in conflict with either one of these statutes authorizing peripheral controls to specified classes of cities. At least in the abstract, ordinances could be crafted to grant this power, while still avoiding conflict with §§ 89.144 and 89.145. That approach, however, is fraught with legal difficulties and would likely engender litigation.

Another and certainly more legally supportable method of addressing concerns about substandard development occurring in adjacent areas of the county could be effectively utilized for this end. Article XI, Section 16 of the Missouri Constitution specifically authorizes political subdivisions of the state to cooperate with other political subdivisions of the state for planning and development or for a common service. It might be worth investigating whether the City and the counties in which it is located could agree upon an interlocal agreement that provides some authority for the City to have input into development approvals that occur within unincorporated areas of the county within a certain distance from the City's current corporate boundaries. In effect, an urban service area could be agreed upon, maybe the two (2) miles from the

corporate boundary utilized in the Missouri statutes, within which the exercise of joint planning, zoning, subdivision and building code decisions could occur. It is even possible that through an interlocal agreement, joint planning commissions could be established to ensure that the public purpose and objectives of both the city and county are addressed when development is proposed and considered.

One other way to address the worst concerns about substandard development on Branson's fringe could be the judicious use of the nuisance abatement power granted by Section 67.398 RSMo, in the most egregious situations.

The above are just a couple of examples of funding techniques that can be used as a part of a comprehensive financing strategy to fairly distribute the cost of public improvements necessary to ensure the health and vitality of the City of Branson over the life of the comprehensive plan.

C. Economic Incentives and Financing Strategies.

1. General. The state of Missouri offers a very comprehensive array of economic development tools that can be used by cities within the state to accomplish a wide variety of comprehensive plan implementation objectives. The City has utilized a number of these techniques in the past with varying degrees of success and public acceptance. As the policies of the comprehensive plan update begin to take shape, a review of the wide-ranging economic development tools available, pursuant to the grant of statutory authority, should be carefully evaluated to ascertain opportunities to pair these tools with the objectives and recommendations outlined in the comprehensive plan to help achieve those recommendations. As an example, it is apparent that the health of the individual neighborhoods within Branson is an important concern. Certain neighborhoods are stable and remain vital, while others are less stable and are experiencing a general decline in their vitality. The neighborhood improvement district technique authorized at § 67.453 et. seq., RSMo, is an example of a tool that could be effectively utilized to address neighborhood concerns. This technique authorizes the imposition of special assessments to fund virtually any neighborhood public infrastructure. This technique does require that two-thirds of the property owners within the designated district approve its creation.

2. Financing Strategies. One important objective of most communities is to develop a strategy to ensure that the cost of providing and maintaining public infrastructure is fairly shared between the existing citizens and new development. Existing development should be expected to maintain the existing public infrastructure, as well as pay for upgrades necessary to maintain an acceptable level of facility service. At the same time, new development should be expected to pay the cost of providing infrastructure necessary to support that new development. To achieve this objective of fair distribution of public infrastructure facility costs, it is necessary to employ a wide variety of the tools available pursuant to Missouri statute.

As discussed in Section A above, the City of Branson is limited in its ability to use some of the more innovative financing strategies by its need to rely upon authority granted to it by a specific statutes for those purposes. Accordingly, a careful analysis of the authority granted to the City to determine when and where those authorized techniques may be employed to address comprehensive plan objectives will be key. In addition, it would be valuable from a legal analysis to determine whether some of these more innovative approaches could be supported by the existing statutory authority. For example, cities in the Kansas City Metropolitan area have created a system of excise taxes on new development, in the form of a business license tax on contractors, which is similar to an impact fee, but is freed from some of the constitutional constraints that accompany imposition of impact fees. Another financing strategy used by cities nationally is a storm water utility. This utility concept is used to defray the cost of storm water management within the community. A storm water utility is the mechanism by which a user fee is charged against property owners, generally based upon the amount of impervious surface.

One concern that has been frequently expressed in our interviews with stakeholders is the over-abundance of shows being offered in Branson. There appears to be an important focus on addressing this concern. One approach that seems to be being discussed is to identify ways to ensure that companies that put on shows in Branson are companies that will become a permanent part of and meaningful contributor to the entertainment industry in Branson. Some discussion has centered around establishing an innovative way of utilizing tourism tax to address this concern. Another approach might be through regulation imposed on show operators pursuant to the City's issuance of a business license. These are strategies that will required a fair amount of legal and policy analysis to ascertain how to structure the approaches legally, and operationally, as well as to carefully analyze all the ramifications of the different strategies.