

Planning and Zoning Workshop

Village of Loch Lloyd
Board of Trustees and Planning and Zoning Commission

Wednesday, May 31, 2023





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“In a case where planning commissions and zoning boards must regularly confront constitutional claims of this sort, it is a genuine misfortune to have the Court's treatment of the subject be a virtual Tower of Babel, from which no definitive principles can be clearly drawn.”

- United States Supreme Court (dissent) in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981)

If the Supreme Court is baffled, what hope do we have?

Stay in your seats!

- It is not *all* a “Tower of Babel.”
- Fortunately, the regular day-to-day practice of planning and zoning, *is* guided by well-settled principles of practice.
- That is our focus...



Disclaimer

The information presented in this workshop is presented primarily for educational purposes. It should not be interpreted as legal advice nor used as a substitute for a legal opinion from retained and qualified legal counsel.

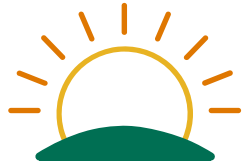
Agenda



Board of Trustees + Planning and Zoning Commission



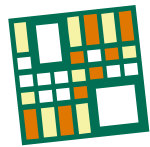
Meetings + Meeting Tips



Missouri Sunshine Law Basics



Conflict of Interest



Zoning Actions



Comprehensive Planning + Relationship to Zoning



Land Use Master Plan Update and Rezoning Process



Board of Trustees + Planning and Zoning Commission

Planning and Zoning Commission (PZC) membership

- ❑ Unified Development Ordinance (UDO) of Village of Loch Lloyd
 - Enacted pursuant to Chapter 89, Revised Statutes of Missouri
- ❑ Nine members (minimum 7 per state statutes)
 - Appointed by Chair of Board of Trustees (BoT)
 - Approved by entire BoT
 - Includes BoT Chair, one other Trustee, and seven Loch Lloyd citizens
- ❑ PZC Chair and Secretary selected from among citizen members.
- ❑ Two-year terms.*
- ❑ May be removed “with or without cause.”*



Primary duties of PZC and BoT Outlined in UDO and RSMo

- PZC reviews proposed zoning amendments and makes recommendations to BoT. BoT makes final decision.
 - Text Amendments (that apply to all properties affected by the amendment).
 - Map Amendments (rezoning specific parcels).
- PZC reviews requested conditional use permits and makes recommendations to BoT. BoT makes final decision.
 - Adhere to criteria in UDO Sec. 5.1(C)



Primary duties of PZC and BoT Outlined in UDO and RSMo

- PZC reviews requested home occupation permits and makes recommendations to BoT. BoT makes final decision.
 - Adhere to regulations in UDO Secs. 5.2(B)(C)(D)
 - Adhere to 89.500 RSMo limiting zoning controls over home-based work (adopted in 2022) – ***still subject to ongoing legislative debate***



Duties of PZC and BoT (cont.)

- ❑ PZC reviews **preliminary plats** and makes recommendations to BoT. BoT makes final decision.
 - Submission of preliminary plat is optional (but highly recommended).
- ❑ PZC reviews and approves **final plats**. BoT accepts public improvements and RoW.
- ❑ Both can request staff research.
- ❑ Conduct meetings in open, fair and impartial manner.
- ❑ Operate as if someone is listening at all times (see previous bullet).
- ❑ Operate from the perspective of the best interests of the *public*, not self-interest or interests of one individual.





Meetings + Meeting Tips

Meetings



PZC Meetings

- ❑ Quorum required to conduct business of the PZC.
- ❑ Quorum is a majority of the members of the PZC (5 of 9).
- ❑ Decisions on all issues brought before the PZC require a majority vote of the quorum (no less than 3).
- ❑ PZC may adopt rules of procedure (such as Robert's Rules of Order).
- ❑ PZC must avoid improper *ex parte* communications (later).
- ❑ PZC must comply with Missouri's Sunshine Law – Chapter 610, RSMo (also later).



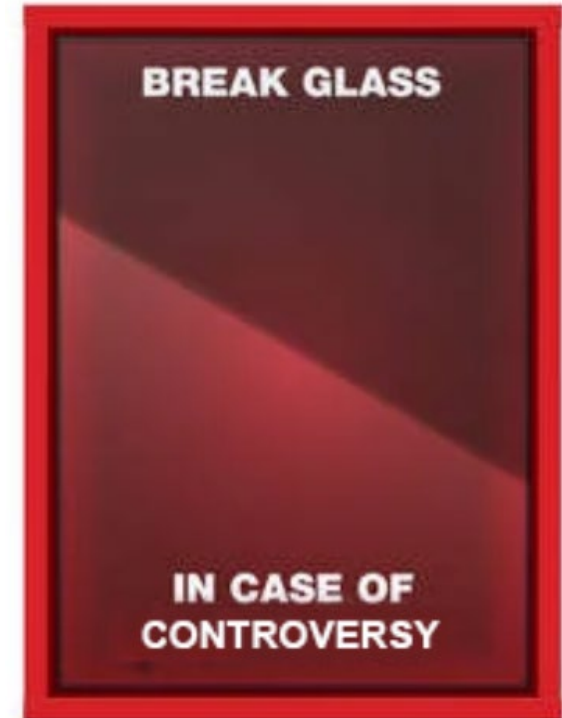
BoT Meetings

- ❑ Quorum required to conduct business of the BoT.
- ❑ Quorum is a majority of the members of the BoT (3 of 5).
- ❑ Decisions on all issues brought before the BoT require a majority vote of the members (no less than 3).
- ❑ BoT may adopt rules of procedure (such as Robert's Rules of Order).
- ❑ BoT operates as legislative body, conducts meetings in the manner of a legislative body (later).
- ❑ BoT must comply with Missouri's Sunshine Law – Chapter 610, RSMo (also later).



Meetings Tips, Generally

- ❑ Chair can limit length of comments before beginning (3-5 minutes each).
- ❑ Those wishing to speak must come forward (can't speak from the cheap seats).
- ❑ Speaker must direct comments/questions to chair (not applicant, staff, or other audience members).
- ❑ No applause or heckling should be tolerated.
- ❑ Limit discussion to case at hand (and ask that they be *relevant* to case at hand).
- ❑ PZC and BoT may request more information and hold item over to subsequent meeting to allow for information to be provided.



Meetings Tips

- ❑ Board and commission members should refrain from discussing merits of case before motion is made (you haven't heard all sides yet).
 - This includes engaging in conversation with applicant or audience members. You can ask questions (with permission of chair) but avoid back-and-forth beyond the question.
- ❑ Chair should not make motions
 - "I will entertain a motion..."
- ❑ Person who seconds a motion may speak against it.
 - "I second" means "let's discuss it," not "I agree."
- ❑ Provide "Rules of Decorum" for participants prior to start of meeting (handout).



PZC - Avoid Ex Parte Communications...

...which are communications between PZC member(s) and interested parties outside of the public hearing.

- ❑ They are trouble because they create the appearance of being influenced without hearing the “other side”.
- ❑ The communication itself does not automatically void any decision; rather, the question is whether the communication has led the PZC member to prejudge the case (irrevocable bias – a due process problem).



Missouri Caselaw

- ❑ There is a presumption in favor of the honesty and impartiality of administrative decision makers.
 - *Fitzgerald v. City of Maryland Heights*, 796 S.W.2d 52 (Mo. App. 1990)
- ❑ Familiarity with the adjudicative facts of a particular case, even to the point of having reached a tentative conclusion prior to the hearing, does not necessarily disqualify an administrative decision-maker, in the absence of a showing that the decision-maker is not capable of judging a particular controversy fairly on the basis of its own circumstances.
 - *Wagner v. Jackson County BZA*, 857 S.W.2d 285 (Mo. App. 1993).



Ex Parte tips (or “how to get out of the grocery aisle”)

- ❑ Limit the communications as much as possible.
- ❑ Do not offer your comments or thoughts.
- ❑ Make it clear you will be deciding the case on what you hear at the hearing (invite them to come to the hearing to offer their perspective).

...and “how to make it right”

- ❑ At the hearing, disclose the details and nature of the communications for the record.
- ❑ State that the communication did not bias you toward a particular outcome (if that is, in fact, true).





Missouri Sunshine Law Basics

Missouri Sunshine Law (Chapter 610, RSMo)

All **public governmental bodies** shall give **notice** of every **public meeting**, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered.

The act is to be “liberally construed” in favor of open government.



Missouri Sunshine Law (Chapter 610, RSMo)

Public governmental bodies = YOU!



Missouri Sunshine Law (Chapter 610, RSMo)

□ **Notice** at a minimum includes

- posting in a prominent place accessible to the public at the office of the governmental body.
- at least twenty-four hours, exclusive of weekends and holidays when the facility is closed, prior to the commencement of the meeting
- Providing copies to news media that have requested receipt of the notices.
- Specific statutes may require more.

89.050 RSMo requires 15 days notice for adoption, amendment of zoning ordinance by BoT.

89.360 RSMo requires 15 days notice for adoption, amendment of comprehensive plan by PZC.

- UDO Sec. 3.2 requires more, provides more details.

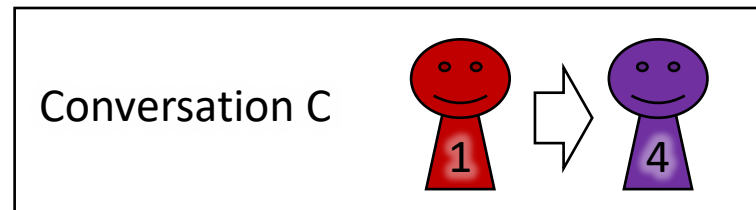
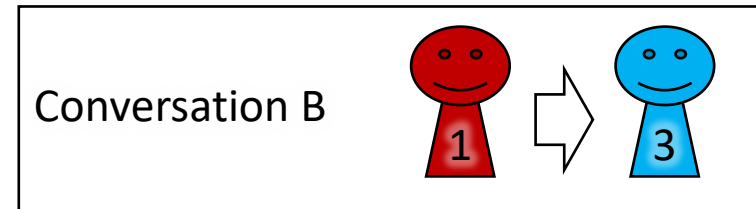
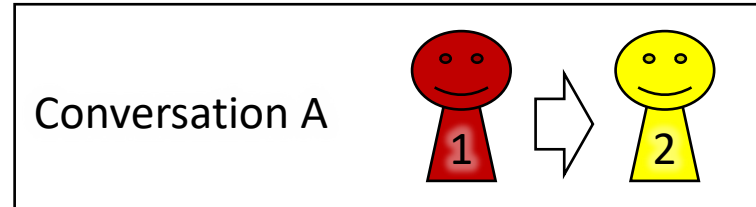
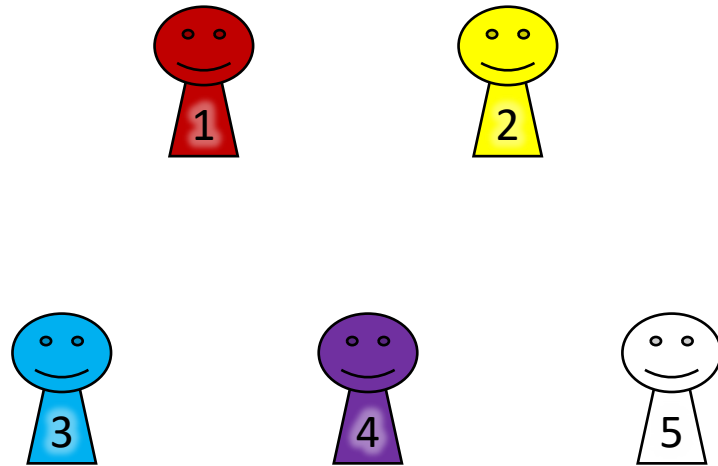


Missouri Sunshine Law (Chapter 610, RSMo)

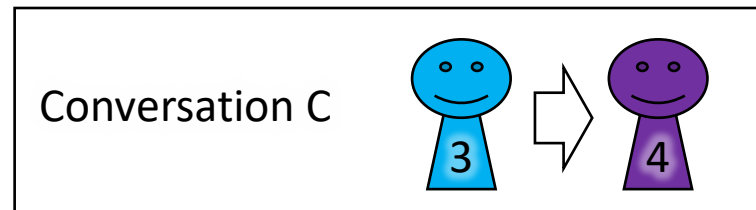
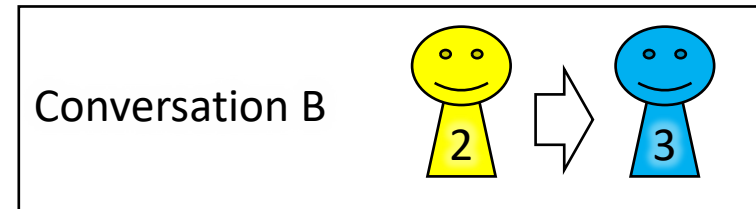
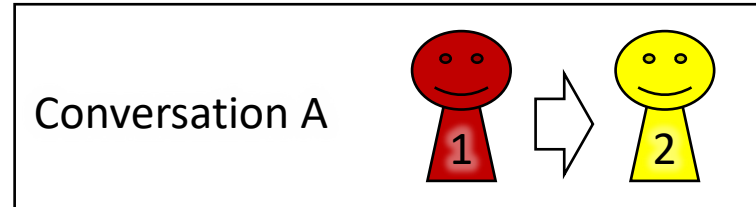
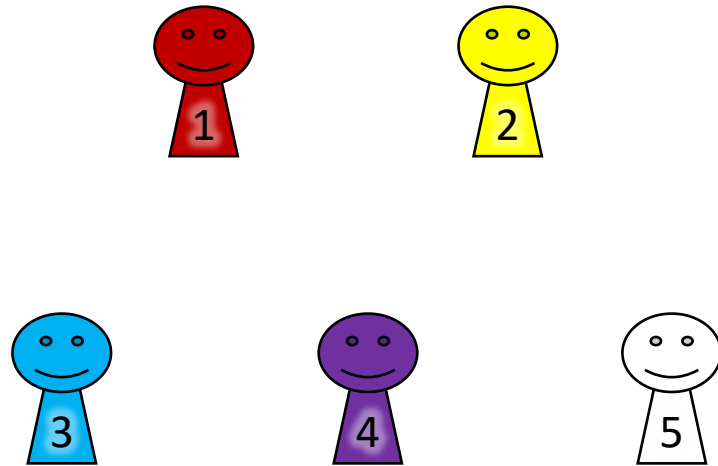
- ❑ **Public meeting** - any meeting of a public governmental body at which any public business is discussed, decided, or public policy formulated, whether such meeting is conducted in person or by means of communication equipment, including, but not limited to, conference call, video conference, internet chat, or internet message board.
- ❑ Includes a public vote of all or a majority of the members of a public governmental body, by electronic communication or any other means, conducted in lieu of holding a public meeting with the members of the public governmental body gathered at one location.



Walking Quorum



Serial Meeting



Missouri Sunshine Law (Chapter 610, RSMo)

- **Does not include** informal gatherings of members for ministerial or social purposes when there is no intent to avoid the purposes of the Sunshine Law.



Missouri Sunshine Law (Chapter 610, RSMo)

- ❑ Must allow recording but may establish rules to minimize disruption.
- ❑ Minutes must include the date, time, place, members present, members absent, and a record of any votes taken.
- ❑ Statute lists 25 grounds for conducting a closed meeting (rare).
- ❑ Emails that go to majority of body (including sender) must also be sent to “either the member's public office computer or the custodian of records”



Missouri Sunshine Law (Chapter 610, RSMo)

- ❑ The devil is in the details....
- ❑ Talk to your attorney!





Conflict of Interest

Conflict of Interest – RED FLAGS



Familial relationship with the applicant or landowner.



Financial relationship with the applicant or landowner.



Financial interest in the outcome.

**CONFLICT
OF
INTEREST**



Conflict of Interest – RED FLAGS

TALK TO YOUR ATTORNEY!





Section 105.452 RSMo (Financial – Quid Pro Quo)

- ❑ Take anything of value, for you or your family, to do something (or not do something) as a condition of performance of an official act.
- ❑ Use or disclose confidential information obtained in your official capacity in a way that will benefit you financially
- ❑ Coercing or extorting from another anything of actual pecuniary value.
- ❑ Make decisions which will affect you or your family financially in a way that is substantially different from how the general public will be affected.
 - (generally, allows for voting on area-wide or community-wide rezoning)





Section 105.452 RSMo (Familial)

- ❑ No person serving in a judicial or quasi-judicial capacity shall participate in such capacity in any proceeding in which the person knows that a party is any of the following: the person or the person's great-grandparent, grandparent, parent, stepparent, guardian, foster parent, spouse, former spouse, child, stepchild, foster child, ward, niece, nephew, brother, sister, uncle, aunt, or cousin.



In case of conflict of interest...

- ❑ Must disclose circumstance and nature of conflict on the record prior to the start of the hearing on the matter in question.
- ❑ Must decline to vote on matter.
- ❑ Best practice is to leave the table where the board/commission is sitting (better to leave room altogether).

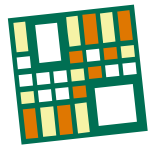


Conflict of Interest

Once again...

- ❑ The devil is in the details....
- ❑ If you have any questions about whether you are in a potential conflict of interest situation talk to the Village attorney!





Zoning Actions

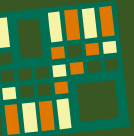
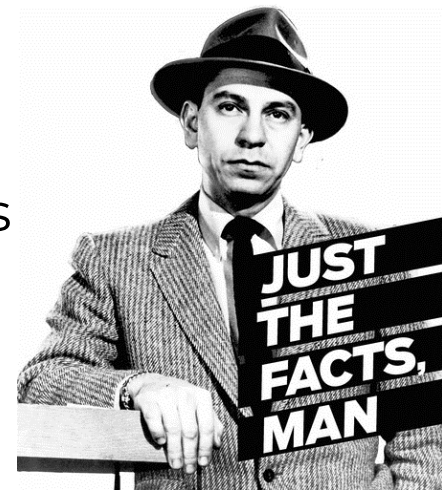
Legislative vs. Administrative decisions

Legislative = Policy *development* functions

- ❑ Setting the future course of the community through plans and policies
- ❑ Establishes the law through adoption and amendment of ordinances.
- ❑ Consider a wide range of views and opinions
 - *Ex parte communications* not a concern. Listening to constituents

Administrative = Policy *application* functions

- ❑ Implementing previously adopted policies, plans, ordinances.
- ❑ Generally involves a discretely identifiable number of individuals and/or parcels.
- ❑ Best practice: Focused on presentations of facts, not views or opinions. Think *court-like*!



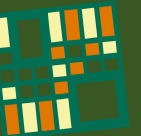
Examples

Legislative

- ❑ Adopt comprehensive plan and plan changes.
- ❑ Adopt and amend zoning ordinance (text or map).
- ❑ Adopt large-scale changes to zoning map, in response to new/amended plan.

Administrative

- ❑ Conditional use permits
- ❑ Home occupations
- ❑ Preliminary and final plats
- ❑ Site plans for PRDs per Section 4.6, UDO**



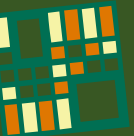
Why does it matter?

Legislative

- More latitude in how meeting is run.
 - Listening to opinions. Not necessarily run like a court proceeding.
 - “Ex parte communications” are “listening to constituents”
- Decisions are presumed valid by the court.
 - Court will overturn decision only if “arbitrary and unreasonable”

Administrative

- Identifiable property rights are at stake.
- Again, think court-like in how meeting is conducted.
- Criteria for approval/denial are generally set forth in ordinance.
- Court will overturn decisions not supported by “competent and substantial evidence.”



Zoning Amendments

- **Are legislative (text or map)**

- Section 3.9, UDO

- PZC recommendation, BoT decision.

- Factors to consider include

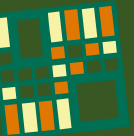
- ***Consistency with the comprehensive plan***

- Benefits to the public vs private interests only.

- Community need for land in proposed zoning classification.

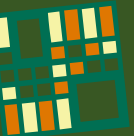
- Existing conditions and surrounding land uses.

- Presence of, or the ability to be adequately served by public infrastructure (roads, sewer, water, stormwater, police, fire, etc.).



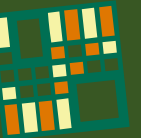
Cannot deny based on these factors**

- ❑ Lack of a comprehensive plan.
- ❑ Regulation of competition.
- ❑ Prevention of competition.
- ❑ Solely based upon generation of traffic...however traffic can be a consideration.
- ❑ Adequate provision of schools
- ❑ Tax Revenues (appropriate for BoT to consider...not P&Z).



Conditional use permits

- ❑ **Are administrative decisions**
- ❑ Section 5.1, UDO
- ❑ PZC recommendation, BoT decision.
- ❑ Five criteria to consider – Section 5.1(C), UDO.

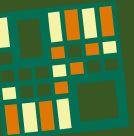


Criteria for approving CUPs (paraphrased) (Section 5.1(C), UDO)

- ❑ Consistent with comprehensive plan
- ❑ Consistent with purpose and intent of UDO
- ❑ Not materially detrimental to public health, safety, convenience and welfare; does not materially damage or prejudice nearby properties.
- ❑ Compatible with character and integrity of the area; includes improvements to mitigate adverse impacts.
- ❑ Does not generate hazardous pedestrian and vehicular traffic.

- ❑ **If proposal cannot meet all five, even by imposing conditions, PZC must deny.**

- ❑ **May revoke a CUP if permit terms are violated.**



Home occupations

□ **Are administrative decisions**

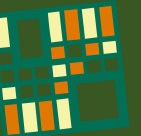
□ Section 5.2, UDO

□ PZC recommendation, BoT decision.

□ Twelve performance standards must be met – Section 5.2(B), UDO.

□ Eleven types of home occupations specifically prohibited – Section 5.2(D), UDO.

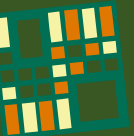
- But again must be mindful of 89.500 RSMo limiting zoning controls over home-based work (adopted in 2022) – *still in legislative flux*



Plats

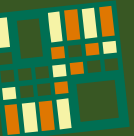
□ **Are administrative decisions**

- Preliminary plats, Section 3.6, UDO – optional but strongly encouraged.
 - Submit to zoning administrator, PZC review, BoT decision.
- Final Plats, Section 3.7, UDO - required.
 - Submit to zoning administrator, PZC review, BoT decision.
 - UDO inconsistent between 3.7(E) (PZC approval) and (F) (BoT approval).*
 - BoT to accept public improvements and RoW.



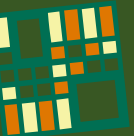
Plats

- The provision of adequate data concerning on and off-site land use, environmental conditions, utility requirements, traffic impact, and the adequacy of streets, stormwater management, parks, fire, police, emergency services, libraries, public sewer and water facilities is vital to ensure the continued health, safety and welfare of the Village's residents.
 - Section 3.5, UDO.
 - Suggest Village adopt findings of fact and criteria for plat approvals.



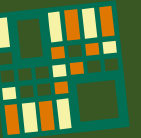
Plats

- ❑ The approval of a preliminary plat that meets the subdivision and zoning requirements is a ministerial act.
- ❑ The law does not permit administrative bodies to exercise an arbitrary and subjective authority over the granting or denying of subdivision plats.
- ❑ The only discretion which may be exercised in approving subdivision plats is the discretion to determine whether the plat meets the requirements outlined in the statutes and any applicable ordinances adopted pursuant to these statutes.
- ❑ Once determined that a preliminary plat meets the requirements in the statutes and any applicable ordinances, the municipality has no discretion to refuse to approve the proposed plat.
 - *Gunter v. City of St James*, 189 S.W.3D 667 (Mo. App. 2006)



Conditions (Section 3.4, UDO)

- ❑ On any development approval PZC, BoT may impose conditions that are “reasonably necessary to assure compliance with applicable general or specific standards stated in this [UDO].”
- ❑ Must be a nexus between the condition and the negative impacts of the proposal.





Comprehensive Planning + Relationship to Zoning

Comprehensive Plan Defined

❑ **A statement of policy...**

- not a *regulation*
- developed by the Planning and Zoning Commission
- guided by citizen input
- adopted by the City Council / Board of Trustees

❑ Guides physical development of the community

- Usually written with a 20+ horizon year
- Consider review/update every 5 to 10 years to respond to changing conditions

❑ Serves as the basis for land use decision-making

- Zoning and subdivision regulations and applications
- Public Facilities
- Infrastructure (roads, water and sewer)



Comprehensive Plan Components

What is typically included in a Comprehensive Plan?

- ❑ Mapping (existing conditions, **future land use master plan**, small area plans)
- ❑ Inventory of existing conditions
 - Natural resources / open space / conservation
 - Historical / cultural identification and protection
 - Housing
 - Economic development
 - Transportation and mobility
 - Services and facilities
- ❑ Goals, policies and action items

Comprehensive Plan Implementation

Implementation Measures Fall Into Three Broad Categories:

- 1 Development regulations that control the location, form and character of private projects.
- 2 Capital projects which are financed, designed, built and maintained by governments.
- 3 Programs that in some cases involve active government participation and in other cases simply mean endorsement or coordination of voluntary private efforts.

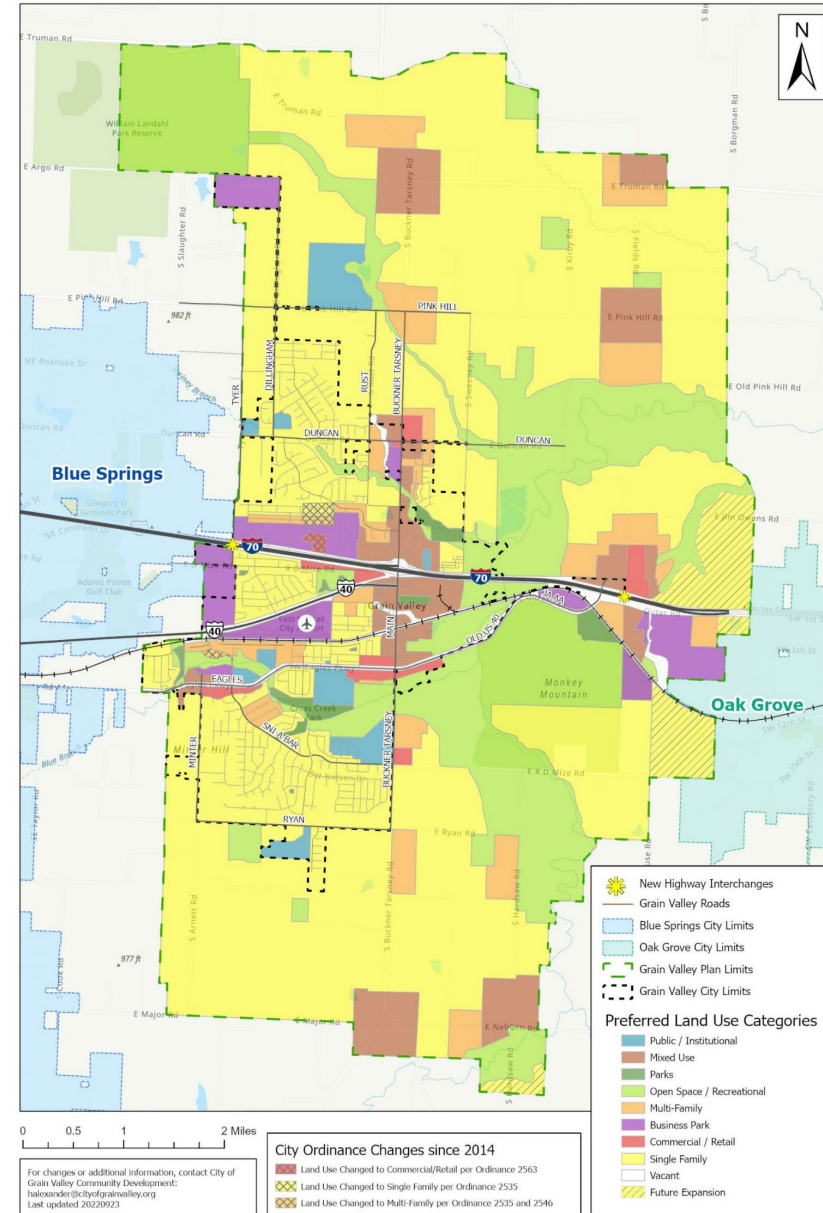
Effective implementation is the difference between having a good plan on paper and having a great community on the ground.

Relationship to Zoning

What is the role of the Future Land Use Map (Land Use Master Plan)?

- ❑ Guides decision making related to rezonings and development proposals as they are brought to the Planning Commission and Board of Trustees
- ❑ Designed to create ideal land use schemes for the future of the Village
- ❑ May require modifications over time to adapt to changes

PREFERRED LAND USE PLAN - April 2014
Including Ordinance Changes up to September 26, 2022

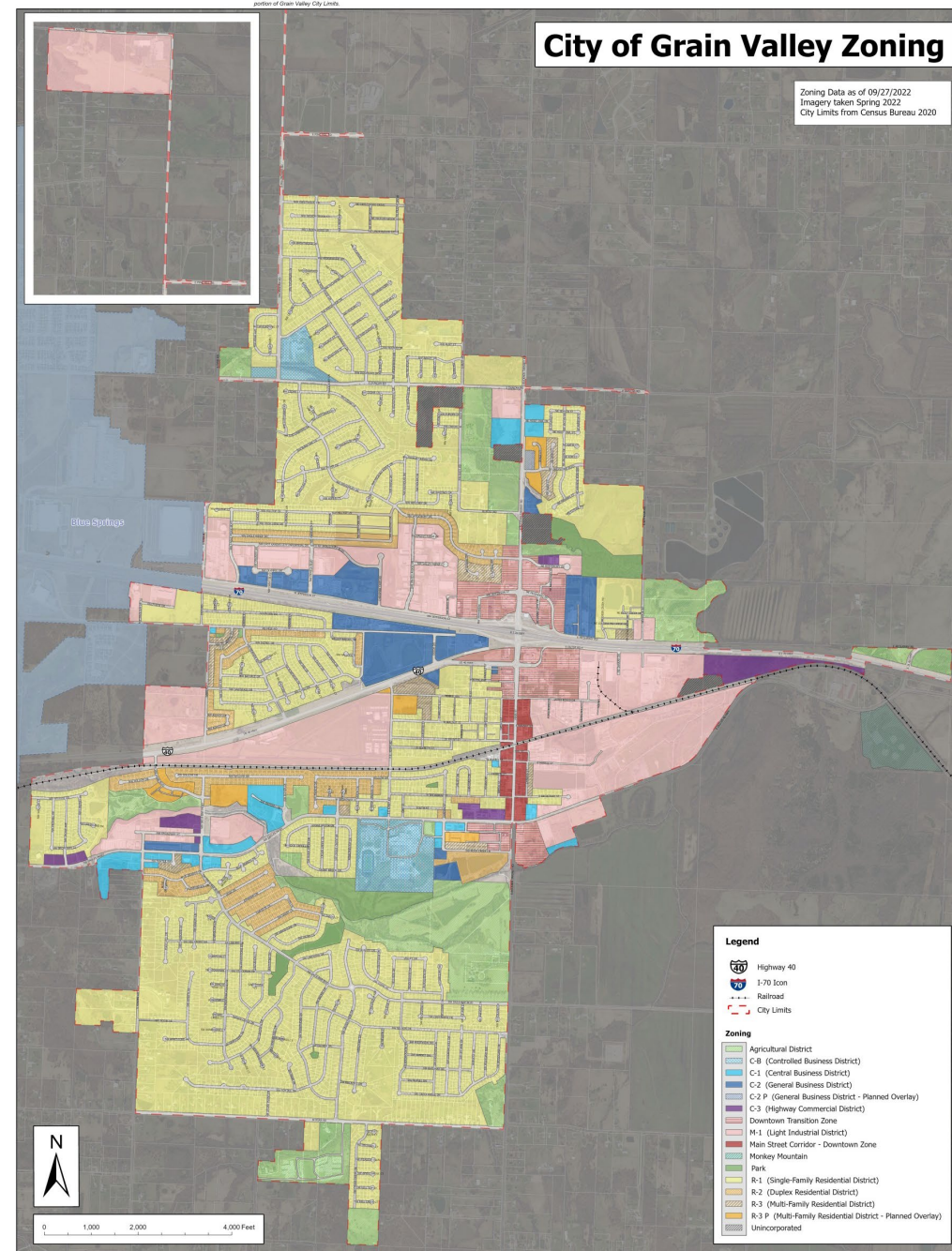


Example: Grain Valley, Missouri

Relationship to Zoning

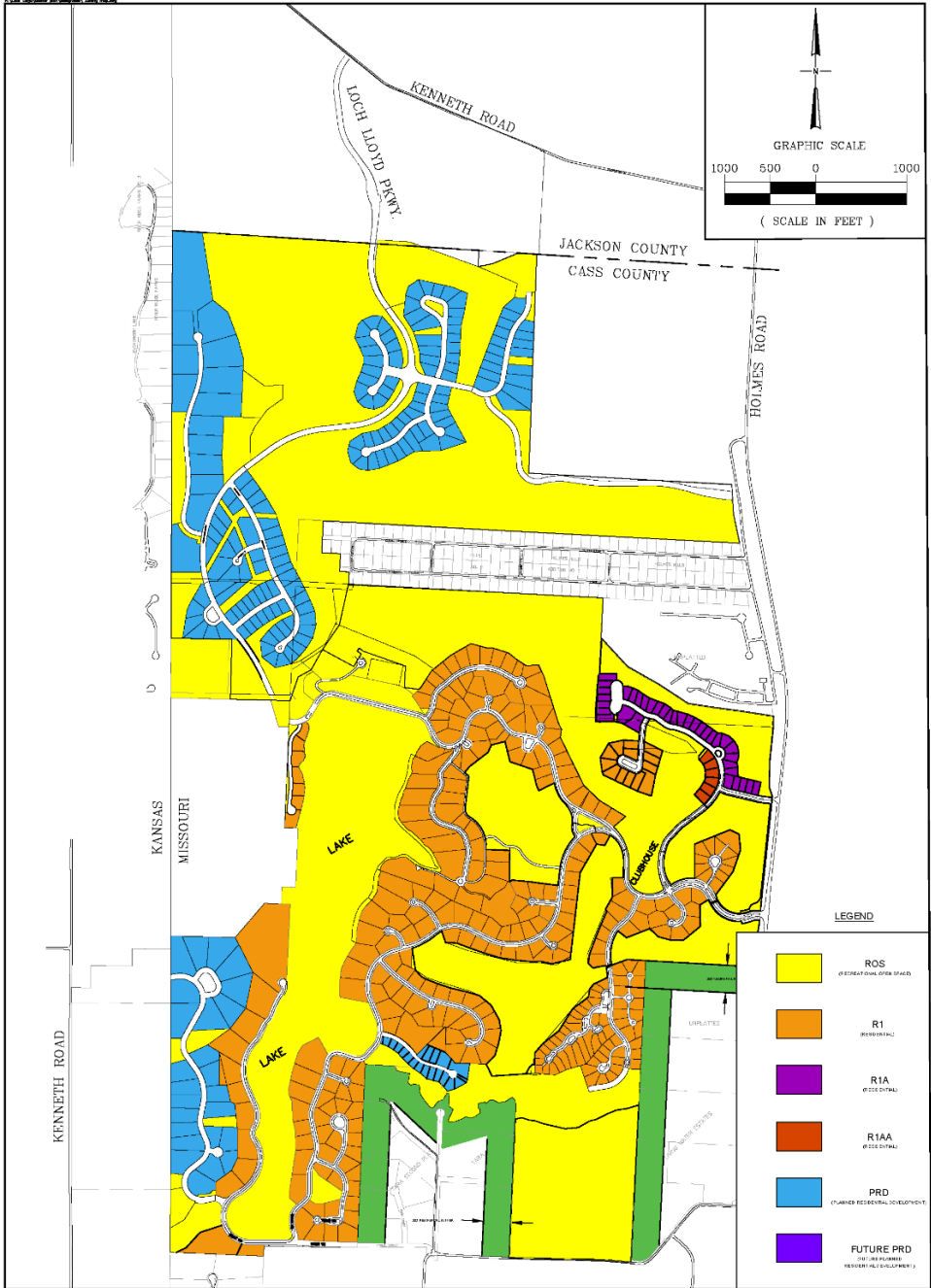
What is the role of the Zoning Map?

- ❑ Adopted as part of the Village's Unified Development Ordinance (zoning ordinance)
- ❑ Applies specific zoning designations and regulations within the Village



Example: Grain Valley, Missouri

Village of Loch Lloyd Zoning Map



Legend of Zoning Districts

-  **ROS**
(RECREATIONAL OPEN SPACE)
-  **R1**
(RESIDENTIAL)
-  **R1A**
(RESIDENTIAL)
-  **R1AA**
(RESIDENTIAL)
-  **PRD**
(PLANNED RESIDENTIAL DEVELOPMENT)
-  **FUTURE PRD**
(FUTURE PLANNED RESIDENTIAL DEVELOPMENT)

Planning VS. Zoning

The plan is a *policy statement*.

The zoning ordinance is *law*.

The plan directs *future* land use.

The ordinance regulates land use *today*.





Land Use Master Plan Update and Rezoning Process

Process Overview

1st: Land Use Master Plan Update (review and update the master plan for the Village)

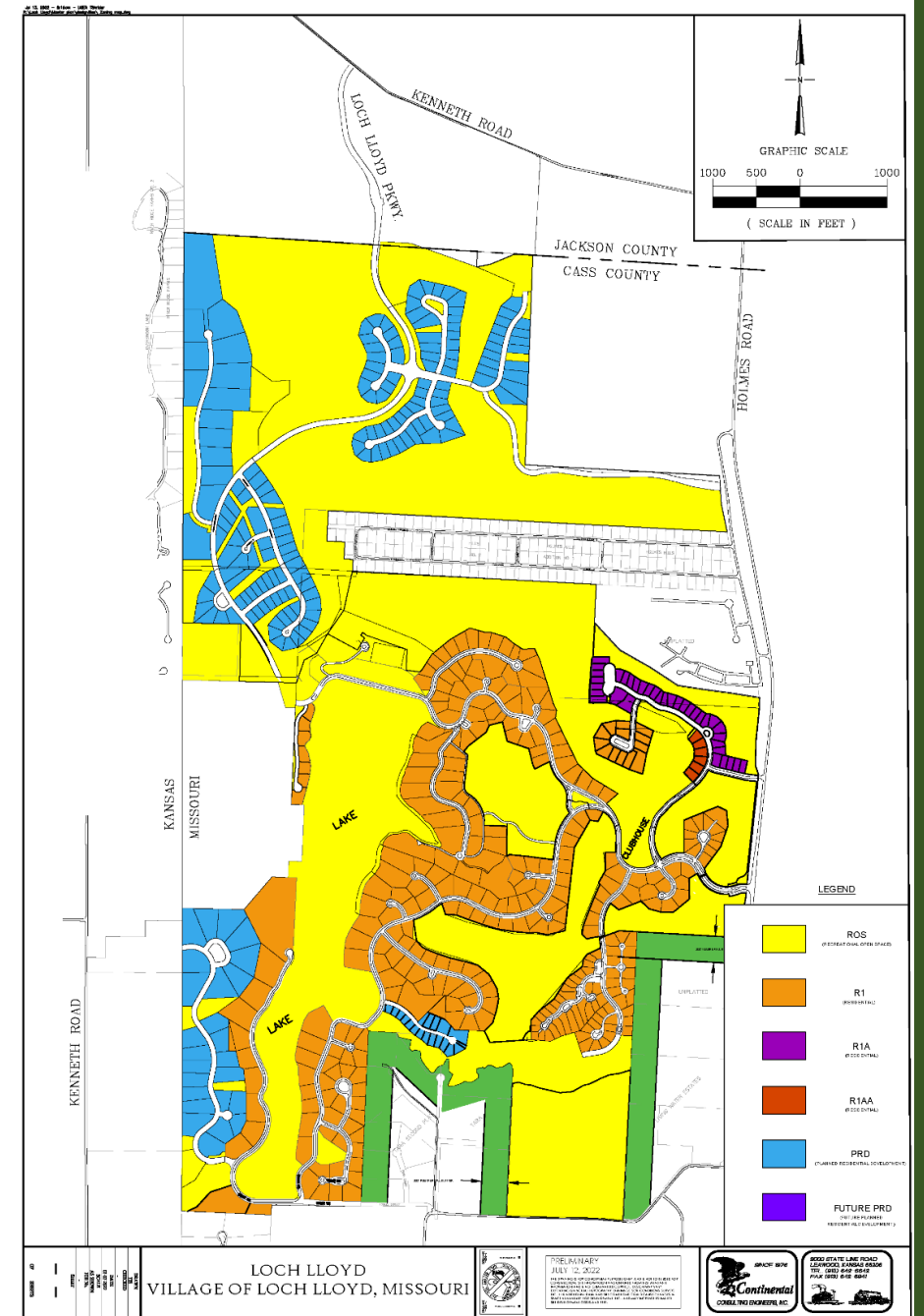
- Planning and Zoning Commission lead process (steering committee)
- Public meeting notices posted + information on Village website
- Public input workshop and then plan draft review public open house
- Planning and Zoning Commission public hearing
- Board of Trustees public hearing

2nd: Rezoning Request

- Application from Developer
- Public meeting notices mailed to owners of property within 185 feet of rezoning
- Planning and Zoning Commission public hearing
- Board of Trustees public hearing

Land Use Master Plan Elements

- ❑ Existing Land Use Plan (what is there today)
- ❑ Land use categories (similar to zoning districts)
 - Single family residential
 - Golf course/clubhouse
 - Open space
- ❑ Future Land Use Map (what could be in the future)



Possible Land Use Master Plan Schedule

LOCH LLOYD LAND USE MASTER PLAN UPDATE								
PROJECT SCHEDULE								
		July	Aug	Sept	Oct	Nov	Dec	
		2023	2023	2023	2023	2023	2023	
PHASE 1: PROJECT KICK-OFF + PUBLIC INPUT (2 MONTHS)								
1.1	Project Kick-Off with P&Z Commission (in-person)	●						
1.2	Online Engagement	■						
1.3	Stakeholder Interviews (1-day virtual)		●					
1.4	Public Visioning Workshop (in-person)		●					
1.5	Input Review with P&Z Commission (in-person)			●				
PHASE 2: DRAFT PLAN + EVALUATION (2 MONTHS)				■				
2.1	Draft Plan							
2.2	Draft Plan Review with P&Z Commission (in-person)			●				
2.3	Draft Plan Public Open House (in-person)				●			
PHASE 3: FINAL PLAN + ADOPTION (2 MONTHS)						■		
3.1	Final Draft Plan							
3.2	P&Z Commission Public Hearing (in-person)					●		
3.3	Village Board Public Hearing (in-person)						●	