

TOL PCDC Training Session

10.28.24

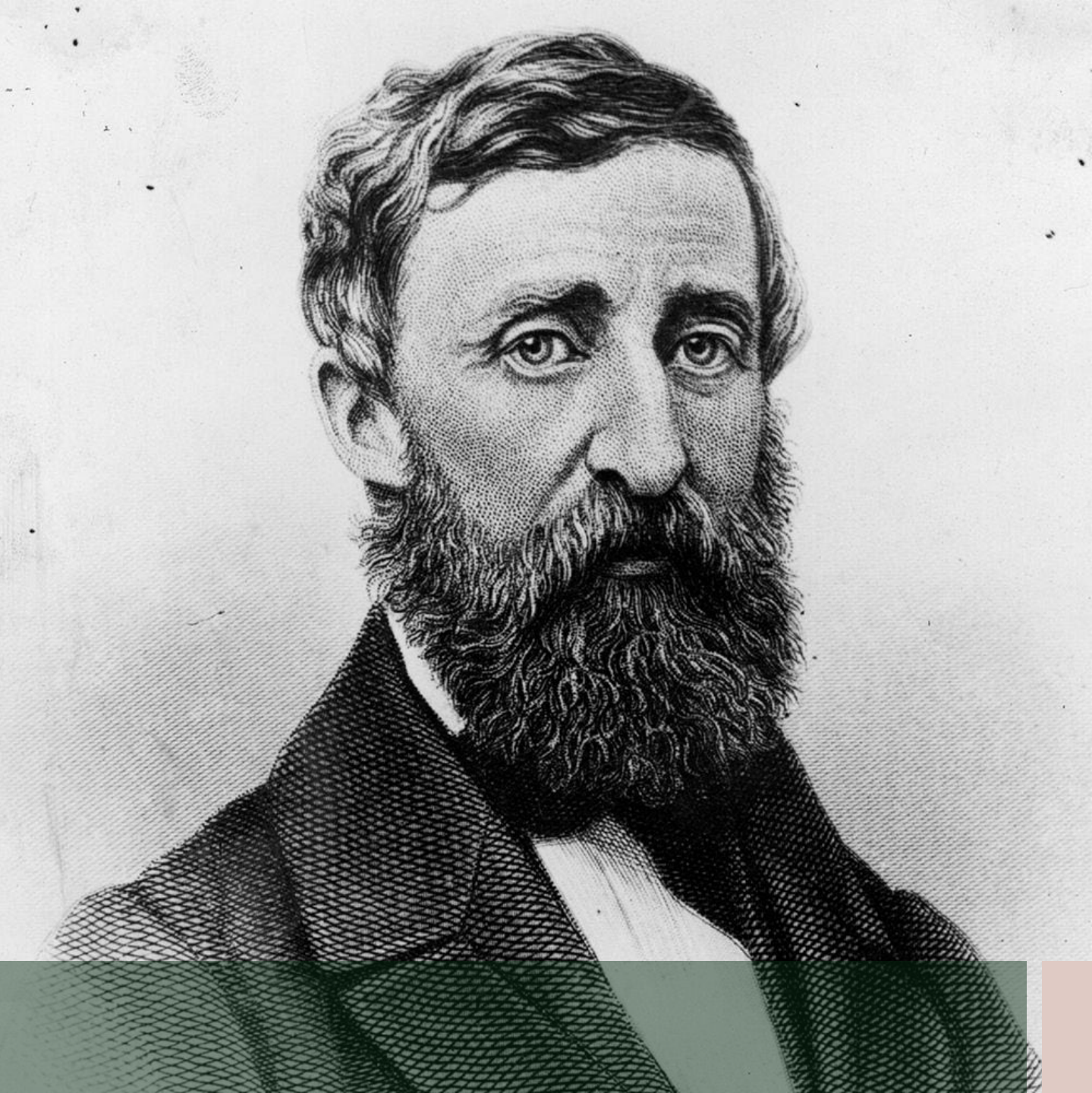
Prepared for: Town of Lyons PCDC

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*"If you have built
castles in the air,
your work need not
be lost; that is where
they should be. Now
put the foundations
under them."*

-- Henry David
Thoreau (1817-62)



What Is Planning And Why Should You Have A Community Plan?

Community Planning is a basic function and power of local government in Colorado (Both Statutory and Home Rule).

The state of Colorado does not have a statewide land use plan. This means that Comprehensive plans and land use regulations such as zoning, subdivision, and building codes, are for the most part, locally designated and regulated. In some planning realms, the state does regulate what municipalities must do.

Planning commissions (The PCDC) and local elected officials (The BOT) prepare plans to primarily preserve the public health, safety and welfare of the communities they represent. Effective planning ensures the orderly development of land within the planning jurisdiction.



Duties of the PCDC

Sec. 2-8-160. - Planning and Community Development Commission.

- A. Commission established. There is hereby established a Planning and Community Development Commission that shall act as an advisory committee to the Board of Trustees and exercise the powers granted by this Code and granted pursuant to Article 23 of Title 31, C.R.S.
- B. Members. The Planning and Community Development Commission shall have no more than seven (7) voting members who shall live in the Town for at least one (1) year prior to serving on the Commission.
- C. Responsibilities. The responsibilities of the Planning and Community Development Commission shall be as follows:
 - 1. Advise, recommend and assist the Board of Trustees and the Town administrative officers in matters relating to planning the physical growth of the Town.
 - 2. Review recommendations of staff regarding proposals submitted to the Town for annexation, subdivision or other land development.
 - 3. Develop, revise, and adopt the Comprehensive Plan (a document intended to satisfy the requirements of Section 31-23-201 et seq., C.R.S. requiring Statutory Towns to produce a Land Use Master Plan) and other broad based planning documents in accordance with the Colorado Revised Statutes, the Lyons Municipal Code, and based upon direction from the Lyons Board of Trustees



Duties of the PCDC Cont.

4. Identify and recommend professional guidance for development of the Comprehensive Plan and other planning documents consistent with the availability of funding and with the approval of the Board of Trustees.
5. Hear, decide and recommend to the Board of Trustees all matters pertaining to zoning, interpretation of zoning codes and the zoning map.
6. Adopt or recommend adoption of subdivision, zoning, platting, planned unit development (PUD), or other similar land development regulations as required by the Lyons Municipal Code after satisfying all applicable notice, due process, and hearing requirements for legislative actions or quasi-judicial actions as required by the Colorado Revised Statutes and as directed by Town policy, the Lyons Municipal Code, and the Board of Trustees.
7. Perform any other function or action that, in the opinion of the Planning and Community Development Commission, is relevant to its role in advising the Board of Trustees on matters related to annexation, subdivision and land development.



Top 10 Traits for being an Effective PCDC Member

- Do Their Homework
- Good Listener
- See the Big Picture
- Consensus Builder
- Strong Communicator
- Thirst for Knowledge
- Visionary
- Decision Maker
- Sense of Commitment
- Understand that Government is Different from the Private Sector



“The Ten Commandments of Community Leadership”

Maury Forman

1. Thou shalt **create a vision for the future**
2. Thou shalt **develop a strategic plan**
3. Thou shalt **build a sustainable economy for the next generation**
4. Thou shalt **seek public/private partnerships**
5. Thou shalt **invest in education and training**
6. Thou shalt **promote respect**
7. Thou shalt **demonstrate a high standard of ethical behavior**
8. Thou shalt **value history, art and culture**
9. Thou shalt **prepare for a global environment**
10. Thou shalt **develop future leaders**



Planning's Base Functions (Municipalities plan to...

- To protect the public and preserve quality of life
- To develop a community vision and achieve goals
- To protect private property rights
- To encourage/continue economic development
- To facilitate decision-making on land use

Why these functions matter?

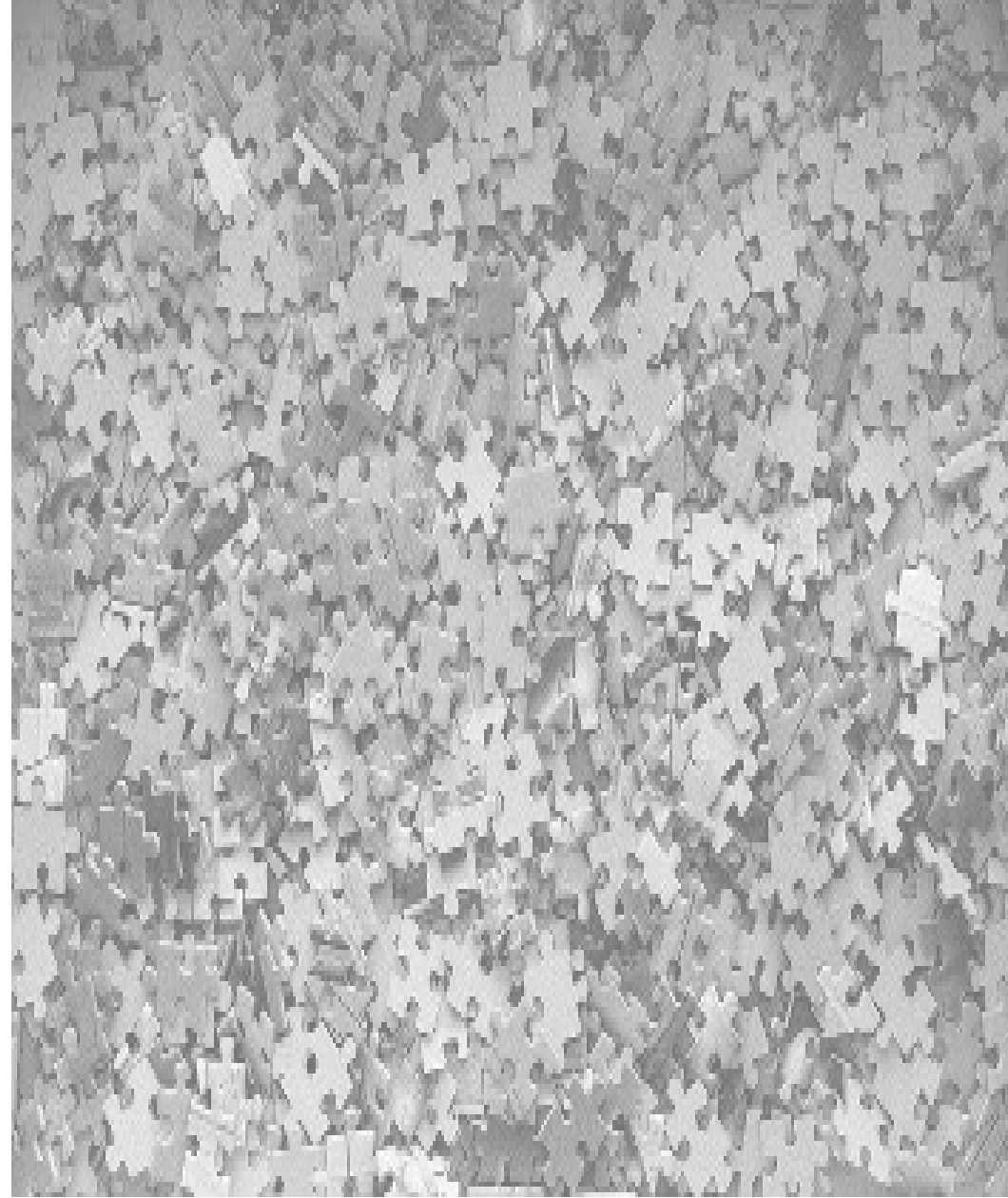
Finding balance in these base functions is difficult but achievable. Decisions must be made to seek an equilibrium to preserve the public health, safety, and welfare of the community.



The PCDC's Guiding Documents

While there are several planning initiatives and plans that the Town has adopted over time, the two key guiding documents that the PCDC must consider when making decisions are as follows:

- **Lyons Thrive**
- **The Town of Lyons Municipal Code**



Legislative Authority

The Town of Lyons is authorized to develop a Comprehensive Plan in accordance with Sections 31-23-206 through 209 of the Colorado Revised Statutes (C.R.S.) which refer to the development, modification, and approval procedures for such a plan.

Municipalities in Colorado are required to prepare and adopt a Three-mile Plan prior to annexing property into their territorial boundaries per C.R.S. 31-12-105 et. seq. The Three-mile Plan is a long-range plan that outlines where municipalities intend to annex property and describes how they will ensure the adequate provision of services within the newly annexed territory and the remainder of the existing municipality. This Comprehensive Plan includes Lyons' Three-mile Plan.



Local Land Use Controls

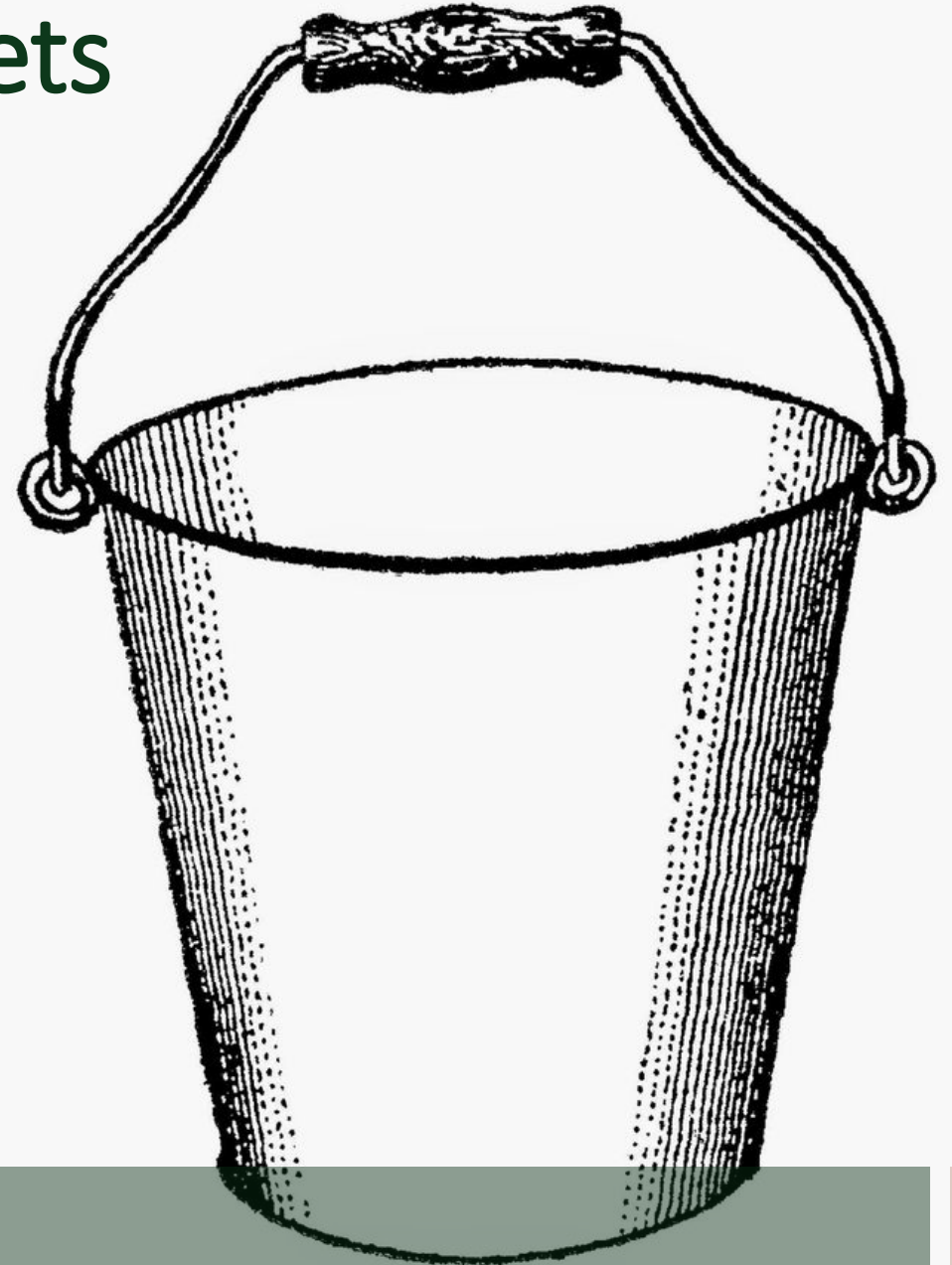
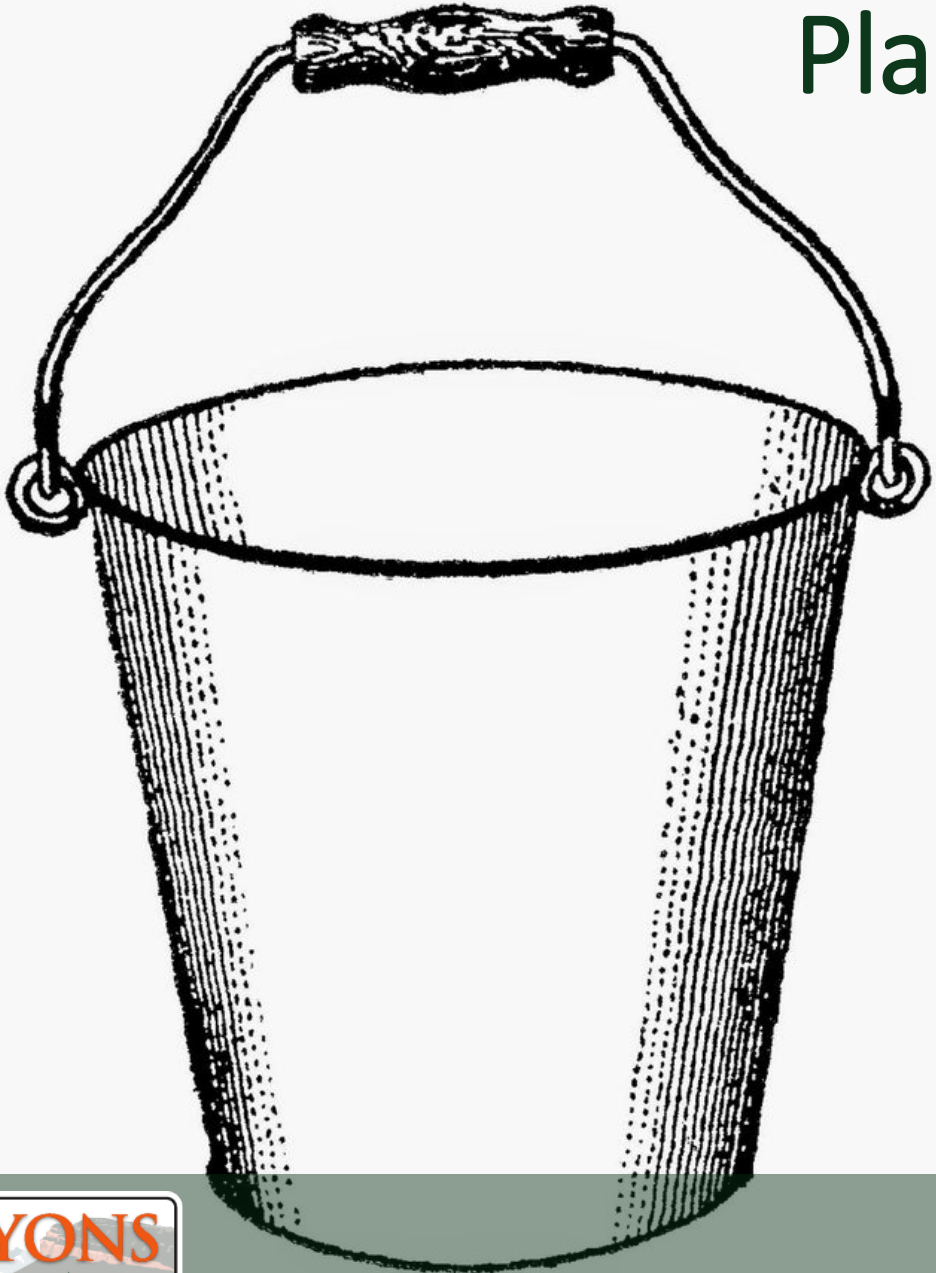
The Local Government Land Use Control Enabling Act grants counties and municipalities broad authority to plan for and regulate the use of land. Each local government is authorized to plan for and regulate the use of land within its respective jurisdiction by:

- Regulating development and activities in hazardous areas;
- Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;
- Preserving areas of historical and archaeological importance;
- Regulating the establishment of road and public lands administered by the federal government (including authority to regulate public right-of-way, but not on roads authorized for mining claim purposes or under specific permit or lease granted by the federal government);
- Regulating the location of activities and developments which may result in significant changes in population density;
- Providing for phased development of services and facilities;
- Regulating land use on the basis of the impact thereof on the community or surrounding areas;
- Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

(§ 29-20-101, et seq.)



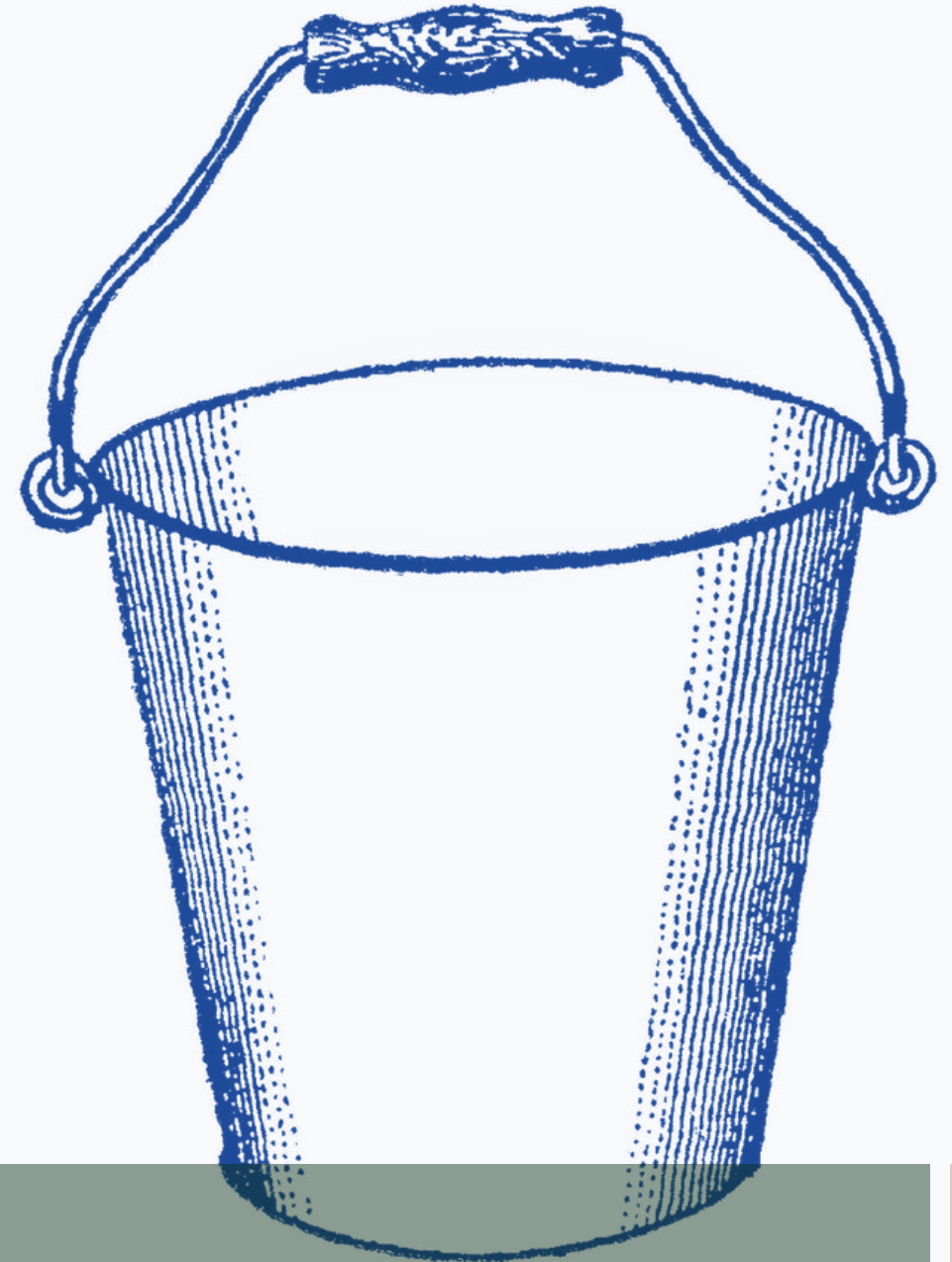
Planning Buckets



Master Plans (Comp Plan)

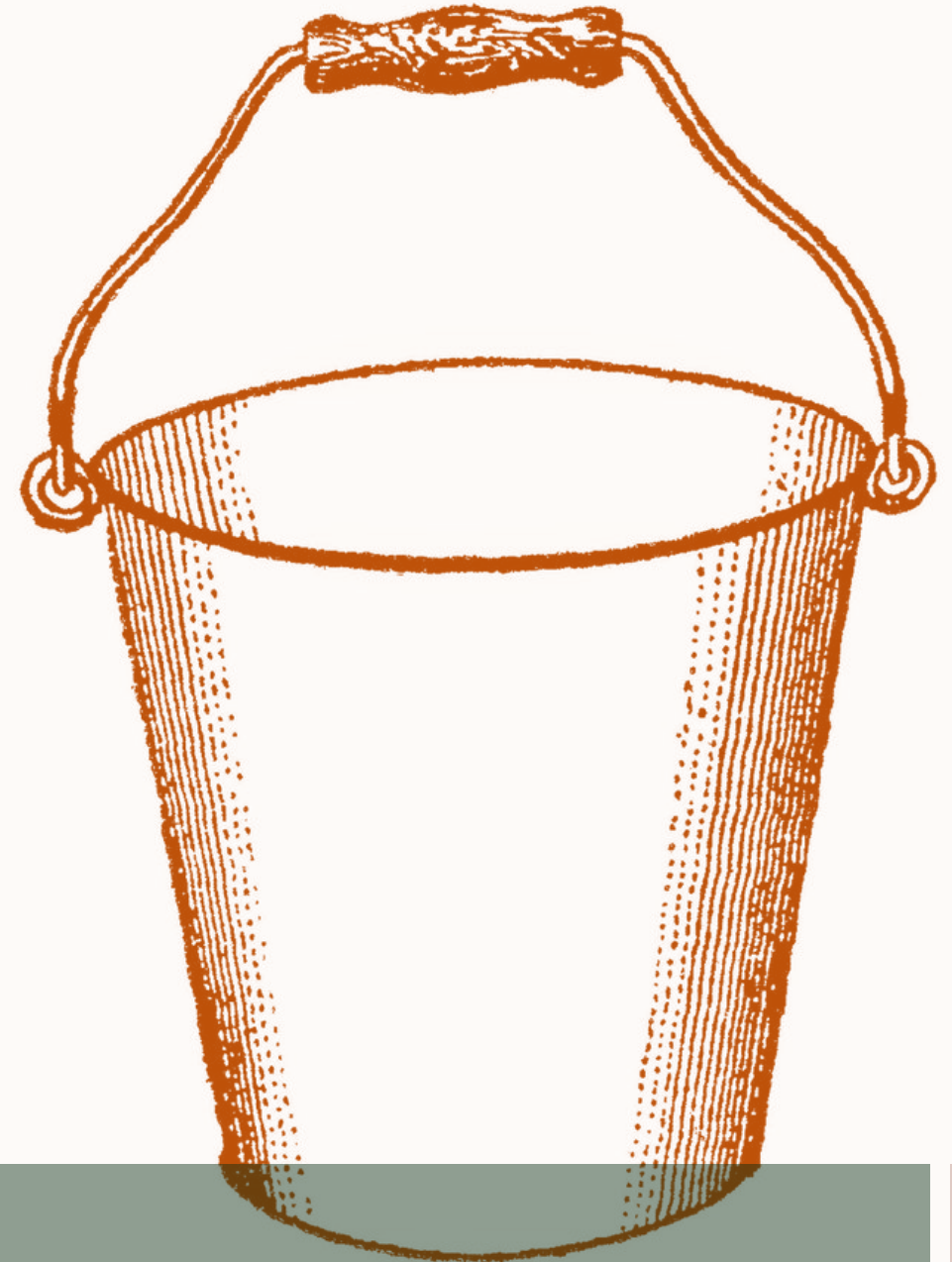
Municipalities are authorized to prepare a master plan (often referred to as a comprehensive plan). It is the responsibility of a county (§ 30-28-106) or municipal (§ 31-23-206) planning commission (rather than the governing body) to prepare and adopt a master plan for the physical development of their communities. Adopted master plans must include a recreation and tourism element.

Note: Master plans are meant to be advisory.



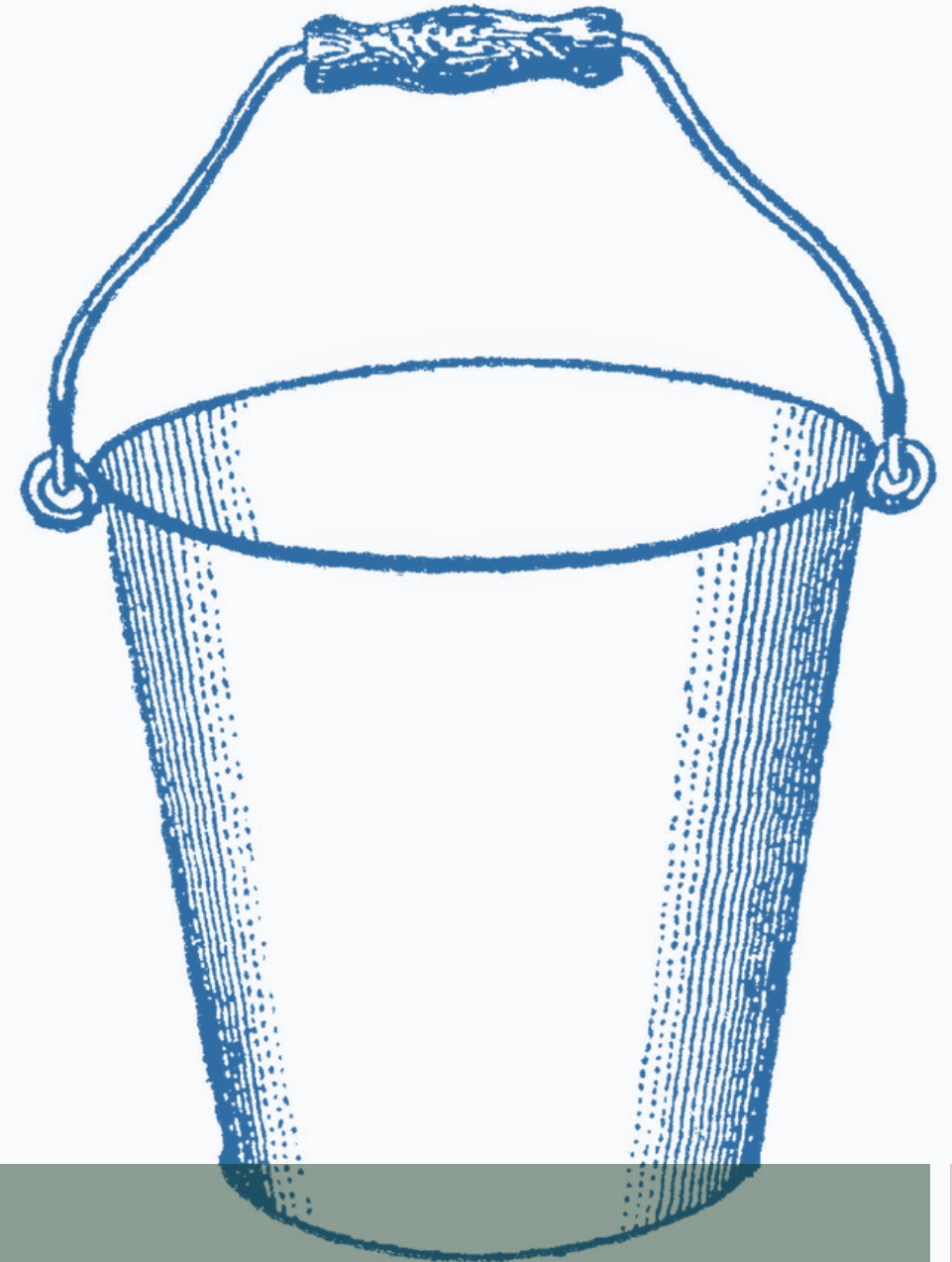
Zoning

Municipalities (§ 31-23-301) and counties (§ 30-28-111) have the power to regulate land use through zoning for the purpose of promoting the health, safety, morals, or general welfare. Various federal laws limit local zoning authority with respect to telecommunications devices, group homes, signs, religious institutions, and site accessibility to handicapped individuals.



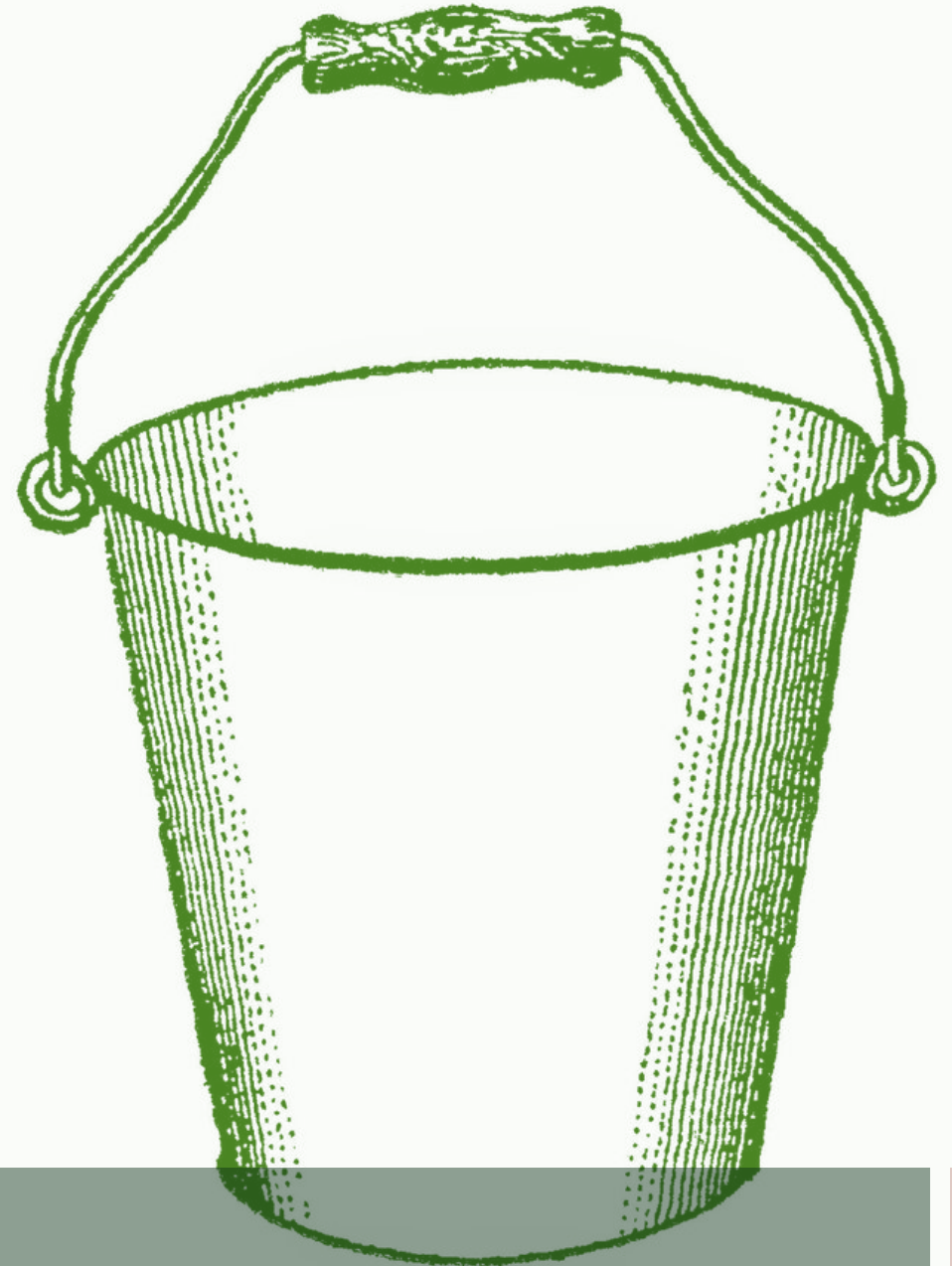
Subdivision

The adoption of subdivision regulations is authorized for cities and required for counties through detailed enabling legislation (§ 30-28-133 for counties and § 31-23-214 for municipalities). “Subdivision” or “subdivided land” is defined (§ 30-28-101(10) for counties, § 31-23-201(2) for municipalities) as any parcel of land that is to be divided into two or more parcels or is to be used for condominiums, apartments, or any other multiple dwelling units, unless specifically excluded in the same section. Specifically excluded from the definition of subdivision within counties is any division of land where all of the resulting parcels are larger than 35 acres, although other land use regulations may still address development on those parcels.



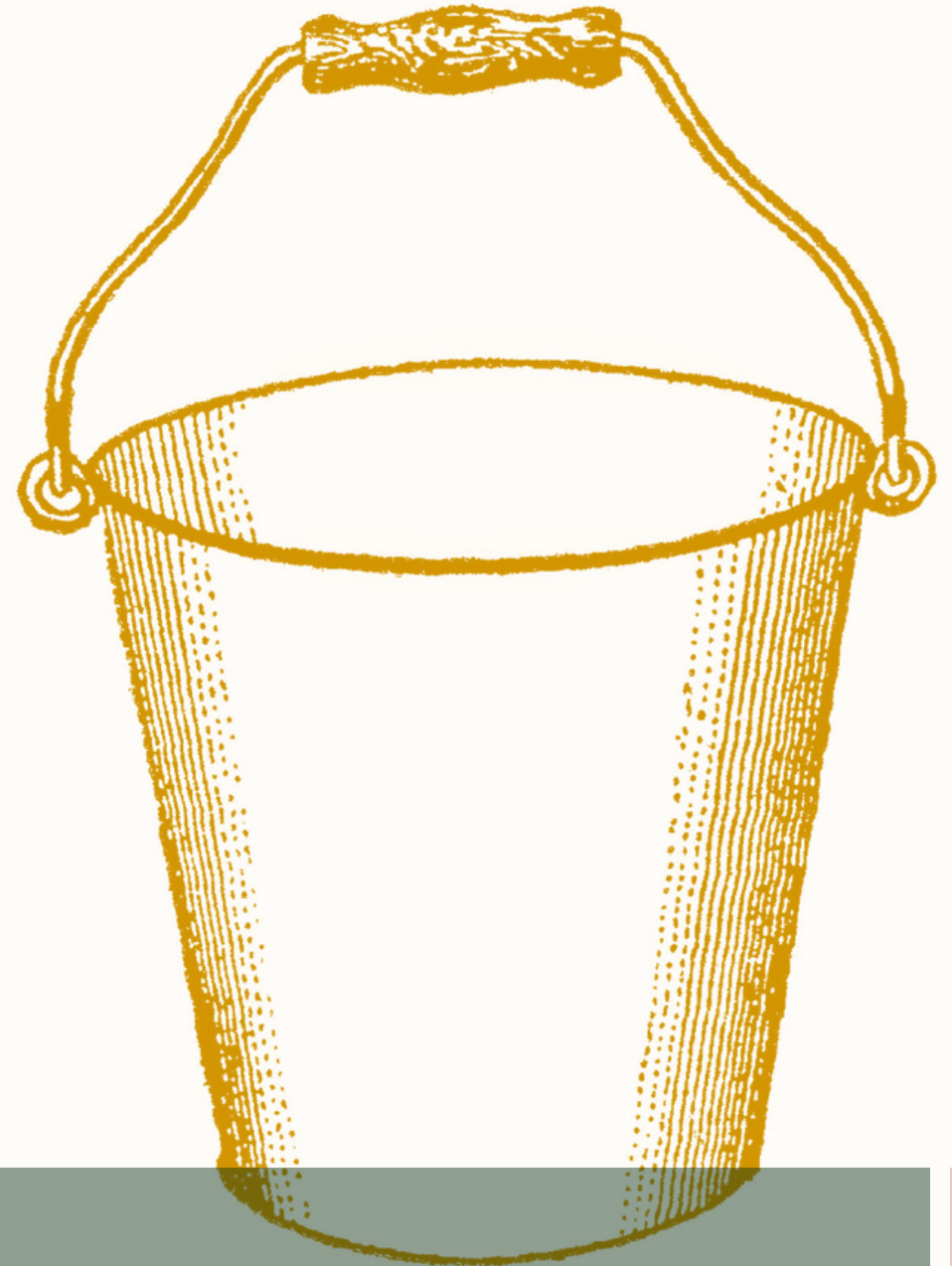
Planned Unit Developments

Municipalities are authorized to allow planned unit developments (PUDs), areas of land to be developed under a unified plan of development that does not correspond to the existing land use regulations. Local governments authorize PUDs through the adoption of a resolution or ordinance setting forth the general standards for PUDs. After this, they may adopt resolutions or ordinances approving specific PUDs that meet those standards. PUDs are required to be consistent with adopted master plans. (§ 24-67-101 et seq.)



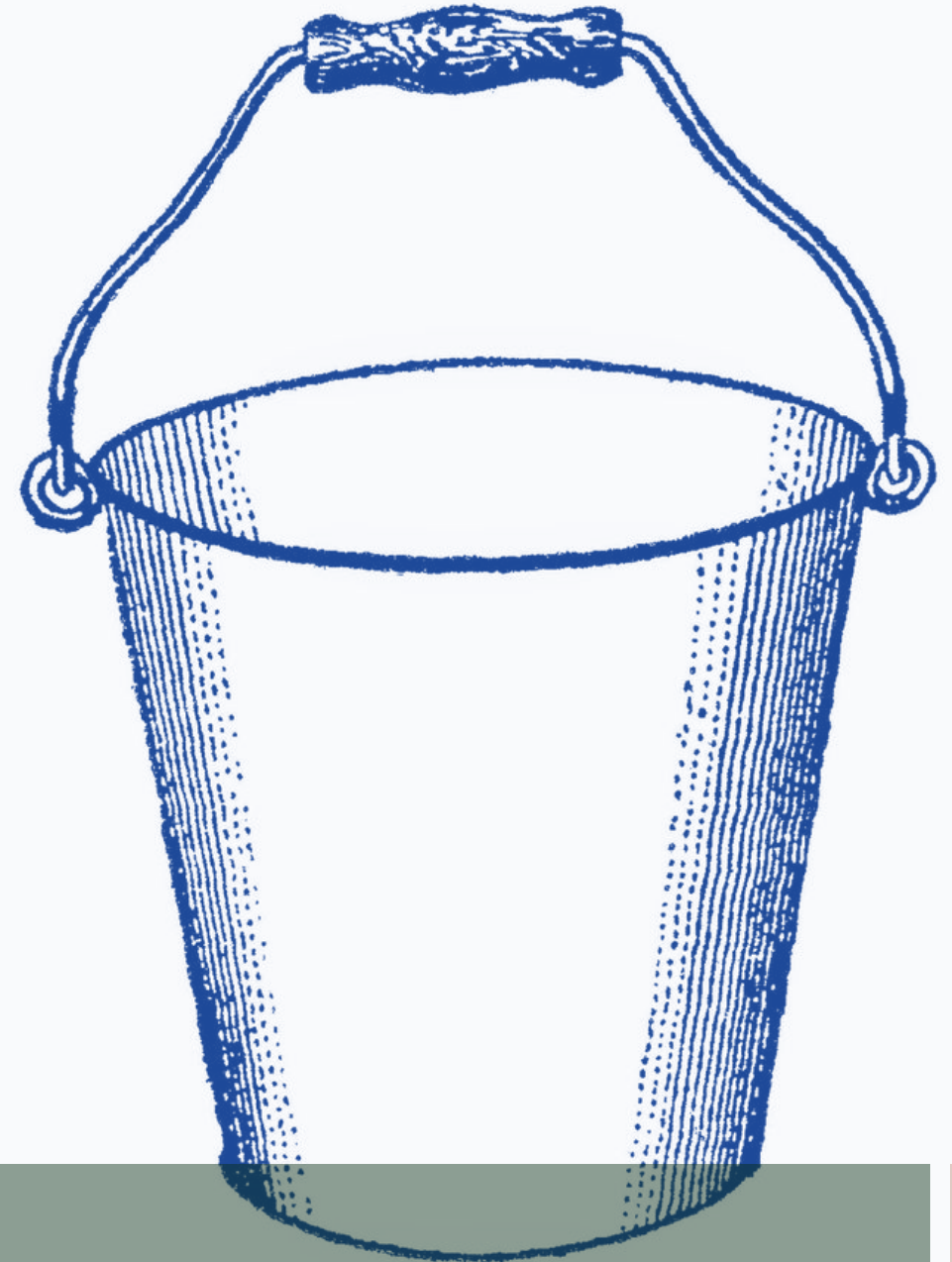
Annexation

The Municipal Annexation Act of 1965 gives municipalities the authority to annex new territory and sets eligibility, procedures, and limitations for annexation. The statute has been amended several times and constitutional amendments that affect certain key aspects of municipal annexation have been adopted. In the statutes, many criteria for annexations exist as well as certain limitations. (§ 31-12-101 et seq.)



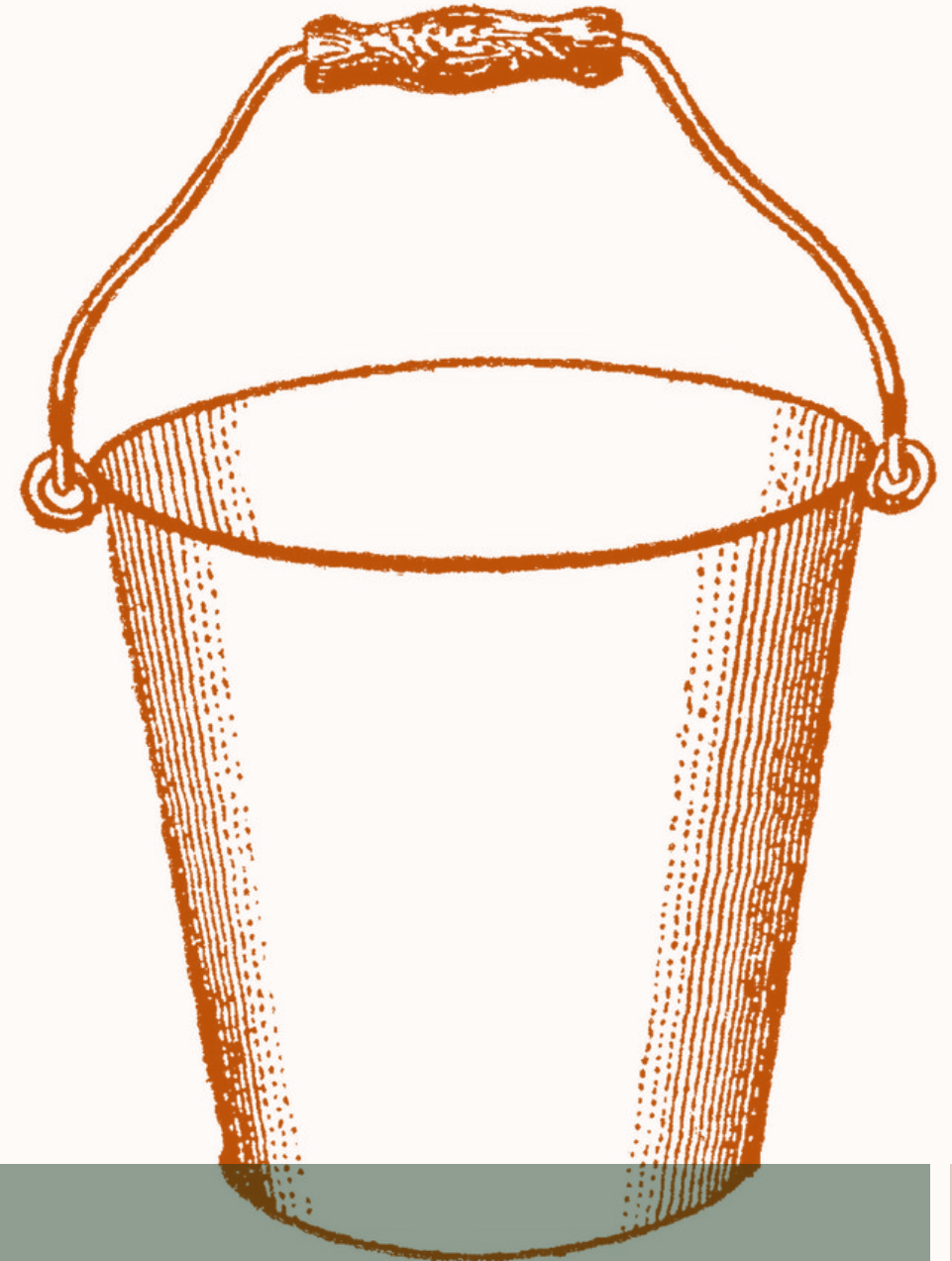
Three Mile Plans

No annexations may occur that would extend the municipal boundary more than three miles in any direction in a given year. Prior to any annexation within the three mile boundary, municipalities must have a plan for that area, commonly called a “three mile plan.” Three mile plans must propose land uses for the area and generally describe the location, character, extent of certain features, and utilities and infrastructure to be provided by the municipality. Three mile plans are required to be updated annually. Commonly, annexation policies and elements of a three mile plan are incorporated as a chapter of the municipal master plan. (§ 31-12-105)



Adequate Water Supply

Local governments are authorized to identify, designate, and regulate through guidelines and permitting procedures areas and activities of state interest within their jurisdiction. These are commonly known as “1041 powers” after the House Bill that created them. The statute establishes a system to identify types of projects with impacts beyond their immediate scope and establishes criteria for local governments to use in planning for and regulating such projects. The 1041 powers are intended to allow local governments to retain and increase their control over projects with statewide impacts. (§ 24-65.1-101, et seq.)



Using Lyons Thrive

- **A basis for regulatory actions:** Lyons Thrive serves as a foundation and guide for the provisions of the zoning regulations, subdivision regulations, the land use map, flood hazard regulations, annexation decisions and other decisions made under these regulations.
- **A basis for community programs and decision making:** Lyons Thrive is a guide and resource for the recommendations contained in a capital budget and program, for a community development program, and for direction and content of other local initiatives, such as water protection, recreation or open space land acquisition and housing.
- **A source for planning studies:** Lyons Thrive cannot address every issue in sufficient detail. Therefore, many plans will recommend further studies to develop courses of action on a specific need.
- **A standard for review at the County and State level:** Other regulatory processes identify the municipal plan as a standard for review of applications. Master plans are important to the development of regional plans or inter-municipal programs, i.e., a regional trail network or area transit program.
- **A source of information:** Lyons Thrive is a valuable source of information for local boards, commissions, organizations, citizens and business.
- **A long-term guide:** Lyons Thrive is a long-term guide by which to measure and evaluate public and private proposals that affect the physical, social and economic environment of the community.



PCDC Procedures

From time to time, the PCDC must hold a public hearing and act as a quasi-judicial body when making decisions and advising the BOT.





Quasi-judicial? Or Legislative?

In Colorado, quasi-judicial is a term used to describe the process by which local governing bodies make decisions on land use applications for specific properties or developments. In a quasi-judicial process, the governing body acts as a judge, applying the law to the facts presented at a public hearing to make an impartial decision.

Here are some examples of quasi-judicial land use decisions in Colorado:

- Rezoning
- subdivision approval
- special use reviews
- variances, concept plans
- development plans
- vacation requests
- street name changes

Note: Quasi-judicial processes differ from legislative processes, which involve the development and implementation of laws and policies that apply to the entire community.

Public Hearing Process

1. Town Attorney's Review of Process
2. Staff Report
3. Board Questions
4. Applicant Presentation
5. Board Questions
6. Open Public Hearing
7. Applicant Rebuttal (optional)
8. Close Public Hearing
9. Motion w/Second
10. Board Discussion
11. Decision/Vote

Note: The burden rests with the applicant to produce evidence sufficient to prove the request is justified.

Note: At no time should the public speak directly to the applicant or vice versa. All comments should be directed to the Commission.



Defensible Procedures

•Notice

Notice should be adequate and timely. It should be reasonably calculated to notify interested parties of a proposed action and give them an opportunity to present their objections. The average person must be able to understand the notice. It must allow sufficient time for interested parties to prepare. Also it must meet statutory and/or charter deadlines and posting requirements.

•Opportunity To Be Heard

All parties interested in a proposed action must have the opportunity to be heard and present evidence to support their position. Hearings must be open to the public.

•Full Disclosure

All parties must have full access to information, statements and evidence relied upon by decision-makers to make their decision. Ex parte communications should be avoided. Avoid acting on information received at the last minute.



Defensible Procedures Cont.

•Findings

Findings are the legal "footprints" that should be left in administrative proceedings to explain how the decision-maker progressed from the facts through established policies to the decision. The decision must be explicitly stated, as well as the underlying rationale.

•Unbiased Decisions

The decision maker should be clear of bias or prejudice. Conflicts of interest or apparent conflicts of interest must be identified. In some but not all cases, abstention is required.

•Timely Decisions

Decisions should be made within a reasonable period of time. The decision-maker must avoid having the process used as a delaying tactic.

•Complete Records

A full and clear record must be kept of the proceedings, including not just the deliberation of the decision-makers, but also all evidence which is offered and relied upon by the decision-makers.

•Clear Rules

Rules for the proceedings should be set out clearly in advance and followed.



Defensible Decisions

- Does The Regulation Advance A Legitimate Public Interest?**

Review old regulations to ensure they have the intent and effect of accomplishing results that are legitimate public policy objectives.

- Is The Regulation A Reasonable Way To Accomplish That Public Interest?**

There may be many ways to accomplish a certain objective, but one must balance public interest and private interest. The particular regulatory approach should be reasonable in light of this balancing.

- Can The Relationship Between The Regulation And Public Interest Be Documented?**

A regulatory body should be able to show how the particular zoning regulation advances the public interest. Typically, this is best accomplished by ensuring that zoning decisions are made in accordance with a land use plan. See discussion of findings below.

- Does The Regulation Allow A Reasonable Economic Use Of Property?**

Again, the public interest being served by the regulation must be balanced with the private interests such that there is some reasonable use of the property under the zoning regulation.

- Is The Regulation Fairly Applied?**

Generally speaking, similarly situated property should be regulated equally. If not, care should be taken to document legitimate reasons as to why this is not the case.



Ex parte communication

Ex parte communication is a written or oral communication made without the knowledge or consent of all parties involved in a case. The term comes from the Latin phrase *ex parte*, which means "on one side only".

When in doubt, be safe and do not communicate outside of a public hearing.



Conflict of Interest

[C.R.S. 24-18-109-(2)(b)] A local government official or employee shall not: "Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent.



Open Meetings Law

All meetings of a quorum or three or more members of a body, which ever is fewer, at which any public business is discussed or at which any formal action may be taken must be open to the public unless an exception applies. Section 24-6-402(2)(b). The Open Meetings Law defines a “meeting” as “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.” Section 24-6-402(1)(b).

Does not apply to chance meetings or social gatherings at which discussion of public business is not the central purpose. Section 24-6-402(2).

Does not apply to executive sessions held in compliance with the statute. Section 24-6-402(4).





Planning in the Grey

While operating in black and white is and should be a pursuit of staff and community leadership, community planning often can not solely occur within clear decision silos.

While there are clear decisions that can be made using adopted code standards (the LMC), sometimes, community planning decisions must seek to find balance in sometimes unclear and conflicting community planning initiatives. This is why having a clear understanding of the Comprehensive Plan (Lyons Thrive) is integral to successful PCDC deliberations and recommendations.

Simply put, sometimes community planning is grey and thoughtful determinations must be made to benefit the community in its entirety.

Questions

