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**PUBLIC PARTICIPATION
as part of the
CLARK COUNTY
NONCONFORMING ZONE CHANGE PROCESS**

By

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Professional Paper

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INTRODUCTION

If you have ever bought a new home here in the Las Vegas Valley, you understand how frustrating it is when the vacant corner lot next to your home, which was promised as a residential subdivision or park, becomes a neighborhood convenience store. While it may seem like the change takes place overnight, there is an actual land use process that takes place transforming that vacant lot. This was the case for the property owners who live near Windmill Lane and Durango Drive. They believed that the property was deed restricted and could only be used as a cemetery. Through the non-conforming zone change (NZC) process, twenty-seven acres were designated commercial development with a portion of it being used as a convenience store with gasoline pumps and a car wash.

Approximately one year ago, the property owner for this parcel located within the Town of Enterprise, submitted an NZC application to the Clark County Comprehensive Planning Department. The application was to change the zoning classification from Rural Residential (R-E) and Local Business (C-1) to C-1 and Office Professional (C-P). The application was non-conforming because it did not follow the Enterprise Land Use Plan for up to General Commercial and up to Office Professional. This property was also deed restricted which meant that in order for the zoning to be changed, it must conform to the Land Use Plan. Due to the deed restriction, the owner chose to put the application on hold until the Land Use Plan was changed, which conveniently, was in the process of being updated. Through the process, the owner was able to work with the Enterprise Town Board, the Planning Commission and the Board of County Commissioners to change the land use designation for this parcel thereby placing the application in conformance with the Land Use Plan. The applicant then requested that the application

go forward as conforming and it was approved for the convenience store with gasoline pumps and car wash. Through research, it is my intent to show that through a new NZC process, which includes land use plan update changes, public participation is a valuable component of the land use plan process transforming vacant lots in the Valley.

Planning departments typically process a variety of land use applications such as zone changes (to change the zoning classifications in order to allow different uses), design reviews (review of architectural and site design), special use permits (allow a certain use subject to conditions in a particular zoning district), and waivers of development standards (to deviate from set requirements of development standards). All of these can be contentious, but it is the NZC requests that typically generate the most controversy. They are usually the most controversial type of application because the development being proposed is not in conformance with the land use plan.

Within Clark County, “a land use plan is a blueprint for an area designating how it should grow” (Bermudez, 2005). Tables one through four below indicate the existing land use allocation (zoned/developed land) and the planned land use allocation (how the land should be zoned/developed) for Enterprise under both the 1998 and 2004 land use plans. These tables illustrate the dramatic growth within the Enterprise area. In 1998 there were only 28,700 acres of land allocated for development; however, in 2004 when the plan was amended 39,384 acres were already developed (see Tables 1 through 4).

Table 1 (1998)

ENTERPRISE EXISTING LAND USE ALLOCATION			
Land Use Categories combined for Comparisons	Land Use Categories as outlined in Enterprise Plan	Approximate Acres	Percent
Single Family	Rural Neighborhood Preservation Area	958	16%
	Single Family Commercial	1347	23%
Multi-Family	Multiple Family	100	2%
Industrial	Business Park Industrial	376	7%
Commercial	Commercial	358	6%
Public Facility	Public Facility	261	4%
Vacant/Rights-of-Way	Rights-of-Way	2489	42%
Totals		5889	100 percent

(Table copied from Clark County Enterprise Land Use Plan dated December 16, 1998)

Table 2 (2004)

ENTERPRISE EXISTING LAND USE ALLOCATION		
Land Use Category	Approximate Acres	Percent
Single Family	4294	10.9%
Multi-Family	324	0.8%
Industrial	262	0.7%
Commercial	787	2.0%
Public Facility	656	1.7%
Vacant/Rights-of-Way	33061	83.9%
Totals	39384	100 percent

(Table copied from the Clark County Enterprise Land Use Plan dated December 8, 2004)

Existing Land Use Allocation = zoned/developed land.

Planned Land Use Allocation = how the land should be zoned/developed.

Table 3 (1998)

ENTERPRISE PLANNED LAND USE ALLOCATION			
Land Use Categories combined for Comparisons	Land Use Categories as outlined in Enterprise Plan	Approximate Acres	Percent
Single Family	Rural Neighborhood Preservation Area	7035	25%
	Single Family Residential	8310	28%
Multi-Family	Multiple Family	2870	10%
Industrial	Business Park Industrial	4165	14%
Commercial	Commercial	2296	8%
	Gateway	1950	8%
Public Facility	Parks & Schools	1500	5%
Vacant/Rights-of-Way	Open Land	574	2%
Totals		28700	100 percent

Table 4 (2004)

ENTERPRISE PLANNED LAND USE ALLOCATION		
Land Use Categories combined for Comparisons	Land Use Categories as outlined in Enterprise Plan	Percent
Single Family	Rural Estates	0.10%
	Rural Neighborhood Preservation	16.30%
	Suburban Residential	7.20%
Multi-Family	Urban Residential	0.30%
	Multi-Family Residential	1.00%
Industrial	Business Park/Industrial	8.20%
Commercial	Office Professional	1.30%
	Commercial General	0.80%
	Neighborhood Commercial	0.50%
	Regional Commercial	0.90%
	Regional Center	2.30%
	Employment Center	3.40%
	Suburban Center	1.00%
Public Facilities	Office Center	1.00%
	Public Facilities	6.10%
Vacant/Rights-of-Way	Public Land Management	16.20%
	Right-of-Way	1.80%
	Open Space	11.10%
Combined Single Family, Multi-Family, Commercial	Open Land	0.60%
	Major Development Projects	19.70%
	Major Development/Rural Estates	0.20%
Total		100 percent

(Table copied from the Clark County Enterprise Land Use Plan dated December 8, 2004)

Existing Land Use Allocation = zoned/developed land.

Planned Land Use Allocation = how the land should be zoned/developed.

The public complains that the land use plan process along with the NZC process is political especially when faced with controversial applications. They often feel that the changes being made are for the goals of the developers who fund the campaigns of the County Commissioners. In the case of the potential cemetery site which is now approved for a convenience store with gas pumps, the process portrayed itself as a political process to those objecting to the change. There were other land use applications which leave residents feeling the same way. In a news article Rake quotes Mary Cooke, a protester, of a Wal-Mart store at the corner of Russell Road and Eastern Avenue, as saying of a Board decision “I think we need an investigation; I still think it’s murky” (Las Vegas Sun, Rake 2004). She further stated “they were playing against a stacked deck,” (Las Vegas Sun, Rake 2004) implying that they did not have a chance of the store being denied because of political ties to the Board. Jeff German, a local political commentator, states in his news column regarding discussions that take place during zoning meetings and in this case referring to discussions for a use permit extension for a neighborhood casino, “these debates always put one or more elected officials on the hot seat, making them choose between their constituents or the politically connected casino company” (Las Vegas Sun, German 2004).

While the process may be political in nature, it is not necessarily a process that is governed by the Commission. The Comprehensive Planning Department plays a major role in ensuring that the Land Use Plans and the non-conforming process follow the law as defined by the Nevada Revised Statutes (NRS) 278 (Planning and Zoning) and the Clark County Unified Development Code (Title 30). In an effort to achieve a more effective planning and development review process, the Clark County Comprehensive Planning Department, in February of 2003, proposed ordinance #2865 which was

adopted in order to reinforce the importance of land use planning. This ordinance significantly changed the way NZC's were processed by attempting to "achieve a more effective and predictable planning and development review process" (Clark County Implementation Plan, 2003). This process relies heavily upon public participation. Through research, it is my intent to show that this new NZC process goes beyond the political realm and encourages public participation which in the end makes a difference in the decisions made by the Board of County Commissioners (BCC).

THE NON-CONFORMING ZONE CHANGE PROCESS

In addition to the adoption of Ordinance 2865 (an ordinance to reinforce the importance of land use planning, Ordinance 2889) was also adopted revising and clarifying previously adopted regulations. This Ordinance includes the approved Implementation Plan regarding new regulations and procedures for submitting NZC applications. Prior to the adoption of this ordinance, an NZC application could be filed during any filing deadline. A filing deadline is a set timeframe for accepting applications in a two week cycle. Each cycle is set up so that an application appears before the BCC eight to ten weeks later. Processing an NZC was much like all other land use applications (conforming zone changes, special use permits, waivers of development standards, and design reviews). The application would be considered by the Town Advisory Board or Citizens Advisory Council (TAB/CAC), then by the Planning Commissioners (PC), and then the BCC would consider it for final action (Clark County Implementation Plan, 2003). The recommendations of the TAB/CAC and the PC are intended to provide vital feedback to the BCC when considering their decision. However, through time, the process for reviewing NZC applications took on a negative perception to the public because applications were consistently approved regardless of

the land use designation (Clark County Implementation Plan, 2003). As stated by County staff in the Executive Summary of the NZC Implementation Plan, “nonconforming zone change applications were frequently held by the Board to allow negotiations between neighboring property owners and the developer of a proposed project; however, this practice did little to alleviate the negative public perception that land use plans were of little value and ultimately a waste of time if they could be circumvented with a nonconforming zone change application” (Clark County Implementation Plan, 2003). For example, from July 1, 2002 through June 30, 2003, there were an alarming 228 NZC applications of those 184 were approved. All went against the land use plan. Of the remainder nine were denied while the others were withdrawn.

Implementation of the new NZC application process began in June of 2003. The process laid out by staff in the Clark County Implementation Plan concerning New Regulations & Procedures for Non-conforming Zone Boundary Amendments & Land Use Plans, Revised 08/05/03 was intended to achieve the following: “1) implementation of a predetermined land use plan update schedule; 2) consideration of NZC’s on a quarterly basis based upon the geographic area covered by the land use plan; 3) a required pre-submittal conference with County staff; 4) required neighborhood meeting prior to submitting a formal application; 5) more detailed information for technical studies and reports; 6) notification radius increased to 1,500 feet from the boundaries of the proposal up from the previous requirement of 750 feet; 7) revised criteria for proposed buffer reductions; and 8) two-thirds (2/3) majority vote of the voting members of the BCC” (Clark County Implementation Plan, 2003).

The new process is considerably different then the process prior to February of 2003, (see Table 5 below) because it calls for more public participation and puts the

burden back on the applicant to submit an application that works for the community as a whole. In addition to the listed differences in Table 5 and as outlined in Ordinances #2865 and #2889, the new process solicits more public participation through the neighborhood meetings and increased notification radius. As further outlined in Ordinance #2889 staff established a quarterly Batching and Implementation Schedule (Appendix A) by land use planning area, which means NZC's can only be submitted when their areas are scheduled. This allows County staff to consider the impact of all NZC applications for a given area at the same time. In addition to the batching schedule, a land use plan update schedule for major updates was recommended (Appendix B page 8). Once a land use plan has been updated and adopted, NZC applications within that area can not be accepted for two years unless initiated by the Board member in whose district the request is located. If that Board member has a conflict of interest, then the BCC as a whole must approve the submittal of the request.

Table 5

	Old NZC Process	New NZC Process
Pre-Submittal	NA	Required
Pre-Submittal Conference	NA	Required
Neighborhood Meeting	NA	Required
Final Application Submittal	During any filing deadline	During specific batching schedule defined by geographic area.
Town Board/Citizens Advisory Council Meeting	Required	Required
Planning Commission Meeting	Required	Required
Board of County Commission Meeting	Required	Required

Another major difference noted in table 5 is the addition of a pre-submittal conference. This conference allows for County staff from various departments (Fire, Parks and Community Development, Development Services, Public Works, etc.) and outside agencies such as the Clark County School District to get together and discuss with the applicant the impacts the NZC will have on the community. This meeting helps determine what steps, if any, need to be taken to work out any issues between citizens, staff, and the applicant. It also provides vital information to the applicant to consider prior to submitting the formal application.

Yet another change was the requirement to have the neighborhood meetings. These meetings are scheduled by the applicant to discuss the proposed NZC. This allows neighbors to meet with the applicant and discuss the impact to their neighborhood prior to the actual submittal of the application.

As previously stated, there were 228 applications submitted under the old NZC process from July 1, 2002 through June 30, 2003. From July 1, 2003 through June 30, 2004, the number of requests dropped to 198 NZC applications submitted which followed the new process. Under the new process, some applicants chose not to go any further than the pre-submittal meeting while some dropped out at various other stages. Those that remained went through each step of the new process including the neighborhood meeting, the TAB/CAC meeting, the PC meeting and the BCC meeting. “The intent of this process was to give credibility back to the land use plans, while also instilling public confidence in the decision-making process” (Clark County Implementation Plan, 2003). Through extensive research of those 198 applications and looking at the TAB/CAC results and comparing them to BCC’s final decision, I hope to show that the BCC has

noticeably decreased the amount of NZC applications approved because of the input provided during the participation of the public.

NEW NON-CONFORMING ZONE CHANGE PROCESS

As outlined in Ordinances #2865 and #2889 and the Clark County Implementation Plan, the NZC process begins with a pre-submittal meeting. The applicant submits the request to County staff at least 10 days prior to the set pre-submittal meeting (see Batching and Implementation Schedule – Appendix A). During the pre-submittal meeting, for example, the Clark County School District may attend to provide information on the impact that a new housing development may have on the surrounding schools. If the agency does not attend, then written comments would be accepted (Clark County Implementation Plan, 2003). After the pre-submittal meeting, staff prepares a letter for the applicant addressing all of the topics discussed or issues of concern including those from each organization represented.

As further outlined in the Clark County Implementation Plan and Ordinance and #2889, prior to the formal submittal and after the pre-submittal meeting, the applicant must have a neighborhood meeting with surrounding neighbors. A notice must be sent out by the applicant ten days prior to the neighborhood meeting (Appendix C). If relevant, the applicant is to schedule the meeting with any other proposals in the area so that the overall impact of all applications being submitted during that batching cycle can be addressed at one meeting. This is to prevent the residents of the area from attending multiple meetings on various nights (Clark County Implementation Plan, 2003). At the neighborhood meeting, the applicant should be prepared to discuss the current and proposed zoning(s), the proposed use(s) which are permitted within the requested district(s), the current land use plan designation(s), proposed buffering, and impacts to

the existing infrastructure (Clark County Implementation Plan, 2003). The applicant should display the site plan, landscape plan, floor plan and elevation plan. In addition, the applicant should provide the scheduled TAB/CAC, PC and BCC meeting dates.

The applicant then may schedule an appointment to submit the formal application. Included in the application package is a summary of the neighborhood meeting discussion, a list of participants attending the meeting, a list of concerns expressed by the meeting attendees, and any unresolved issues (Clark County Implementation Plan, 2003).

The application is written up by County staff and a draft of the staff report is provided to a TAB/CAC. The TAB/CAC hears the application during their meeting and makes a recommendation. County staff receives their recommendation and provides the information to the Planning Commissioners during the PC meeting. At the PC meeting, the commissioners make a recommendation to the BCC which reflects the comments from the TAB/CAC and the PC. Four weeks after the PC meeting, the application then goes to the BCC who consider all the information and make a final decision. It is important to note that members of the public are afforded the opportunity to provide testimony on the legitimacy of the proposal at each of the meetings. In regards to the NZC applications, there is a lot of time put into the process since it is a minimum of 16 weeks from the time of the pre-submittal conference to the final hearing by the BCC.

THE ROLE OF THE BOARD OF COUNTY COMMISSIONERS

There are seven commission districts each represented by one County Commissioner. Commissioners are elected by constituents in their districts. NRS 244 defines the role, purpose and qualifications of the BCC. Each member serves a four year term (staggered) and must live in their respective district. Title 30 of the Clark County Code is the zoning code which is adopted under NRS 278 (Planning and Zoning). Title

30 has been adopted to implement the Comprehensive Plan for Clark County. It is intended to promote the health, safety and welfare of Clark County residents. It governs and regulates development and land use planning. In Chapter 30.04.040 the role of the BCC is defined as being able to “approve, conditionally approve, or deny land use applications, major project applications and subdivisions as specified” (Clark County Unified Development Code, 2004). It further defines their role as the body to hear appeals of decisions made by the PC and for the Chair to be able to sign land use applications including zone changes approved for property owned by Clark County.

The BCC plays the defining role in the NZC process. The Board determines the final outcome of the application during one of their two monthly meetings. Taking into consideration the information provided by the applicant, the recommendations of the TAB/CAC and PC, and the testimony from the public the BCC makes a final decision on an NZC application. Their decision impacts the livelihood of everyone living in the area and ultimately, the County as a whole. If their decision varies considerably from the planned land use, their decision could be detrimental to the land use plan. It is staff’s job to provide unbiased facts and details to the BCC to assist them in making their decision.

THE ROLE OF THE PLANNING COMMISSION

The purpose of the Planning Commissioner is defined under NRS 278. There are seven Commissioners who are appointed by the BCC to serve four year terms. Their term should run the length of the BCC member who nominated them. The County PC holds four public meetings a month and two briefings a month. The primary role of the PC as defined by Title 30.04.040 is to “approve, conditionally approve, or deny land use applications and subdivisions, and make recommendations for approval or denial to the

BCC as specified” (Clark County Unified Development Code, 2004). With respect to the NZC process, the PC provides a recommendation to the BCC for final action.

It is extremely important for the PC to provide an informed, well thought-out recommendation to the BCC since they must take into consideration all the facts including staff and the TAB/CAC’s recommendations.

It is not unusual for an NZC application to take at least an hour to be heard at each step in the process. This is due in part to the applicant providing all the information and facts at each meeting, but also because the citizens are providing their concerns, opinions, and desires. Some of these discussions can become emotional and it is up to the PC to try to find a compromise between the citizens concerns and the applicant’s proposal.

THE ROLE OF THE TOWN BOARD/CITIZENS ADVISORY COUNCIL

NRS 269 provides for the establishment of Town Advisory Boards and Citizen Advisory Councils (TAB/CAC’s) and defines their duties and responsibilities. It states that their purpose is to act as an advisory and liaison with the governing bodies. A TAB is an unincorporated town which is created to generate area specific taxes to provide for additional urban services. A CAC differs because they are created by the BCC to provide input from specific community areas. There are 19 various TAB/CAC’s in the County which are required to hold meetings at least once a month. NRS.269 further states that the members are appointed by the BCC and must be residents of the area they represent. Their role is further outlined in Title 30.04.040 as “receiving community input and providing advice and recommendations to the entity responsible for approving any land use and subdivision applications” (Clark County Unified Development Code, 2004).

TAB/CAC’s are an intricate part of the County land use planning process. They play a vital part of the NZC process by providing recommendations to the PC and BCC.

In essence, they have the best knowledge of their neighborhoods and how they would like to see their area develop.

While the role of the TAB/CAC is defined by both NRS and Title 30 to act as a liaison and provide advice, their role within the NZC process is truly more encompassing. These Boards and Councils not only provide opinions of zoning actions within their area, but also act as liaison between the neighbors and the County staff during the NZC process. The information that is disseminated becomes part of the official zoning record. The problems and concerns with the NZC application that arises from these meetings are part of the record and are forwarded by County staff to the PC and the BCC. TAB/CAC members may also attend the NZC neighborhood meetings. Members attend the neighborhood meetings to hear the details presented by the applicant first hand prior to the TAB/CAC meetings.

LITERATURE REVIEW

Public participation is an important part of the planning process not just for Clark County but for every city and state. Citizen input ensures that their concerns and issues are heard and, hopefully, addressed. Who better to provide the information than the citizen who lives in the community? In a presentation I once heard that “a citizen participates because of the desire to reside in a liveable community” (unknown 2004). In my opinion that holds true because comfort and safety are important for a liveable community. While comfort and safety are important there are several theories behind why a citizen gets involved with participating in Government activities. Some theories help to define citizens’ thoughts and actions and purpose for participating, while other theories define why it is important to incorporate citizens in the process.

Heather Campbell and Robert Marshall in the article *Public Involvement and Planning* provides a framework for five rationales as to why people are motivated to participate. They cite A. Thornley's 1977 *Theoretical Perspectives on Planning Participation* and G. Stoker's theory from his 1997 *Local Political Participation as a basis for their article*. The five rationales used within the public participation planning process are as follows: 1) instrumental participation; 2) communitarian participation; 3) politics of the consumer; 4) politics of presence; and 5) deliberative democracy. The framework they present with the various rationales is to show whether the motivation for the participation is "being promoted essentially out of concern for the individual or for the well-being of the community as a whole" (Campbell & Marshall, 2000).

"Instrumental participation" focuses on the right of the individual to be able to pursue their own self-interests (Campbell & Marshall, 2000). Campbell and Marshall state that if a person (usually an educated or self-interested person) feels that their vested interest is being protected then they will look to participate in activities. It is important for local governments to ensure individuals representing this view are heard because not only are these individuals participating in local activities, but they are also protecting what is important to them (a freedom). It is not until the comfort is felt that one will even step out to participate (Campbell and Marshall, 2000). While "instrumental participation" focuses on safeguarding a person's self interest and given right "communitarian participation" says that to be able to be a part of the community one must participate.

"Communitarian participation" focuses on the community and the duties and rights to becoming a collective well-being (Campbell and Marshall, 2000). Participation is not optional as a Communitarian. It is a civic duty of the individual to become a part

of the community (Campbell and Marshall, 2000). Here the theory is based not on one individual but equally between citizens. Regardless how the person feels they must come in numbers to express the group interest. While these two theories are extremes from each other, the next three are “variations on the original theme” (Campbell & Marshall, 2000). They evolved because of the narrowness of each of these theories.

“Politics of the consumer” builds on Public Choice theory emphasizing the freedom of choice through the collective will of the public to make consumer preferences (Campbell & Marshall, 2003). When someone buys something they are articulating their preference of the people. By moving into a particular area or buying a special brand or style they are influencing the market and assisting the seller by identifying what consumers want. As with land use, a person moves to a certain developed/undeveloped area (rural residential versus high density residential) based on their desires. Unfortunately, those people living in the rural areas are being pushed out by the housing demand.

“Politics of the presence” is the representation by the people who share in the experiences (Campbell and Marshall, 2003). These people are the ones who are out there, researching, getting their nails dirty and understanding all the issues, they are living in the experience. It is their hard work that gets them seen and they should also be heard because they know what to represent because they are familiar with the details and the area. Many of the TAB/CAC have established their presence within the community through their chairs and members. M.J. Harvey and Mike Dias, for example, are strong political presence within the community for representing the desires of the community with relation to land use planning in Clark County.

These TAB/CAC representatives are strong advocates for “Deliberative democracy perspective”. They promote open dialogue and encourage shared solutions through uncovering new information and understandings rather than promoting self-interest (Campbell and Marshall, 2003). The TAB/CAC’s are typically out their pursuing their interests because they are working for a shared cause. They want everyone to come out winning and will do what it takes to see that happen.

These theories demonstrate that it is important to understand the nature of the interest that will be served. Is the interest solely for the individual, or the community as a whole? These beliefs behind why citizens are involved came from theories dating back to the seventeenth century. Philosophers such as Thomas Hobbes, John Locke, and James Bryce wrote on this issue as described by Michael Fagence. He explains the philosophers of the seventeenth century in his book Citizen Participation in Planning.

Michael Fagence states that Thomas Hobbes believed that there should be one decision-maker otherwise there would not be “attainment and maintenance of social order” (Fagence, 1977). Times have changed considerably since Hobbes’ theory as one sovereign ruler could not exist within our modern democratic society. Our current society is made up of elected boards voting on decisions as a majority. To imagine one ruler instead of a majority vote is almost fearful because the political ramifications would be astonishing. While Hobbes believed in one decision maker to keep order among the social class, so did Locke. He however did not ascertain the notion of involving public participation in his theories. “Locke may be assessed to be non-committal as he is as sympathetic to democratic as to monarchical or aristocratic governmental systems” (Fagence, 1977). He favored equity of power between the executive, legislative and judiciary branches of power and therefore never committed to one system or another

(Fagence, 1977). Bryce on the other hand, believes that some participation is important. Fagence quotes Bryce in his book by saying that there should be active participation in small self-governing groups. Bryce believed that it was important to have participation and decision making within groups without having the authority looking over their shoulders.

Bryce had more of a modern view to allow participation in self-governing groups. Bryce allowed for small group discussion much like the neighborhood meetings within the NZC process. These TAB/CAC groups come together to discuss the details and impacts associated with the land use applications for their area. If our society followed the theories outlined by Hobbes or Locke's, it would be difficult for staff, citizens, and applicants to resolve issues. Hobbes promotion of one sovereign ruler or group making all the decisions without accepting information would definitely undermine the Clark County NZC process in general, and the entire democratic process as a whole. Locke's beliefs, while possessing a very different view point, would also cause some problems because politicians in general may not always share the same views of the people that they represent. Thus, by allowing government to make a decision without citizen participation would cause similar problems as Hobbes' theory.

While public participation is heavily regarded by some theorists, others debate the rationale behind the significance of the participation by the public. Are the citizens speaking for their own interests or for the betterment of the community when participating in the Clark County land use planning process for NZC's? The new NZC process is set up to allow citizen participation early in the application process. During the multiple meetings for NZCs, but especially during the neighborhood meeting and the TAB/CAC meetings, there are lengthy discussions between the property owners and the

citizens. By the time the application gets to the BCC there has been significant amount of time for a collaborative effort. At the BCC consideration is made to determine if the citizen input is based solely for themselves or for the community at large. When considering their vote, it is my opinion that the BCC must also take into consideration what is best for the community. The BCC/PC review facts that are presented to them. Moreover, they are to “seek to expand practical democratic deliberations rather than to restrict them, to encourage diverse citizens’ voices rather than to stifle them, to direct resources to basic needs rather than to narrow private gain” (Forester, 1999). Forester defines the planning process as more than just reviewing the facts presented but as an expansion of the democratic process through listening to the voice of the citizen.

Understanding the big picture associated with this process brings us back to the theories presented previously and the question “is the interest solely for the individual, or the community as a whole?” Forester discusses three models to help answer these questions. He shows how important it is for the BCC/PC to focus on not only dialogue, but action as well.

Forester first presents the Deweyan model, which is to do something based on an initial strategy, then to become surprised at the consequences of the action, and then redefine the strategy to get a result. By using the information that was generated from the action and forming a new hypothesis, a cycle is formed until a desired impact is reached. The Deweyan model is somewhat represented in the Land Use Plan update process. For example, the process usually starts with a plan or strategy as to what staff feel should be updated based on past land use approvals and denials and the current impact of each designated area. As they go through the update process, they find out about different parcels of land that does not fit with their desired plan. Through discussions with the

owners, neighbors and TAB/CAC representatives their strategy is refined. The second model is the Freirean model which focuses “on the ways we learn in dialogue by probing our political possibilities of speaking and acting together” (Forester, 1999). This model is also representative of the current land use process for NZC applications. It is through the dialogue generated at each of the meetings that brings the community together. The third model, a transformative theory of social learning, addresses how a person changes from the negotiations and dialogues that take place during the meetings. Much is learned about people by what they are saying; even more is learned from the way they act, how they talk, from their style and how they present themselves. These actions help to identify if someone may be reliable or trustworthy and if they value what they are discussing (Forester, 1999).

The transformative theory works on the belief that by watching how “others act, participants learn not only something about who these others are, whether they are arrogant or not, trustworthy or not, reliable or not, but about how they recognize, appreciate and honor (or dishonor) value in the world we share with them” (Forester, 1999). This model relates directly with the staff, citizens, and applicants who participate with the Clark County NZC applications. Staff prepares the applications and makes a recommendation based on the goals and policies of the land use plans. When staff present their views in a meeting, they do so in a fashion that allows them to exhibit confidence because they have facts to back-up their recommendations. If staff recommends denial or stringent conditions of approval, the applicant may become defensive and promote an air of disgust. The same usually happens with a citizen. If staff makes a recommendation that is found to be objectionable, the citizen may become emotional.

Having staff, citizens and the applicant attend the series of meetings as part of the NZC process, allows for a transformation from initial reactions of defensiveness and emotions to potentially well rounded agreeable solutions. By including public participation during these meetings, all parties involved are able to transform their thoughts, actions and ideas to what is really wanted and needed. There are times when citizens, staff or applicants say one thing, but the meaning is translated differently by the other party. Through the meetings and critical discussions, the spoken word, and the unspoken word prove to provide a resolution that every party could live with (Forester, 1999). It might not be exactly what each party wanted, but by working together and negotiating through the issues each party is able to settle for a workable solution.

Clark County does not only solicit public participation through the land use planning process. Other County Departments actively pursue involvement of the citizen. A recent project, the Clark County Growth Task Force, is a “17-member task force, comprised of citizens from all walks of life” (Popp, 2005). This task force was set up as an initiative by the BCC “to study growth matters in-depth and engage the community in open and frank discussions about growth and how to sustain our quality of life” (Popp, 2005). For the past year the panel has met once a month to discuss the issues surrounding growth in our Valley. They have as a collective group worked diligently to prepare strategies that will be recommended to the BCC in the very near future. Popp stated that this group came together not as a divided front but as a collaborative group to discuss issues that are plaguing our Valley. These issues are tough, sensitive and extremely meaningful to our Valley’s future. Although the issues are tough, through honest discussions and an understanding that all desires and recommendations were discussed

and negotiated, solid goals and strategies were formed. “With diverse opinions, the Task Force for all purposes functioned as a single body with one voice” (Popp, 2005).

Another County Department that relies heavily on public input through public participation is Air Quality and Environmental Management. In addition to their biweekly meetings where public participation is welcomed, they have within the past year revised their Air Quality Regulation Section 49. Through public workshops and comments received in writing, staff were able to come up with revised language to modify this regulation. Kain, a Compliance Officer with the Department of Air Quality and Environmental Management (DAQEM) stated that input received from the public is valuable because they provide an end-user perspective (Kain, 2005). DAQEM staff typically verify compliance with regulations but do not have that “real-world experience to evaluate the practicality of the change,” (Kain, 2005) where as the citizen does.

Clark County is not the only local entity that relies on Public Participation in decision making. The City of Las Vegas is dependent on the involvement as well. One such example is their proposal for an expansion of the City Redevelopment Plan boundaries. Through several community meetings explaining the plan for expansion, the Redevelopment Agency was able to ascertain the opinion of the proposed expansion prior to amending the General Plan (Arent, 2005). These discussions were held specifically to get feedback from property owners in the proposed expansion area. By having these comment sessions prior to amending the General Plan, City staff were able to consider the “desire of property owners in the Historic Westside property to not include their properties within the Redevelopment Area” (Arent, 2005). The process was effective because now when staff represents the recommendation before the board, the recommendation is a true indication of what the community as a whole would like.

The rationales and theories help to define the reasons citizens participate in the planning process. They demonstrate that it is important to understand the reasons behind why people get involved. Through dialogue of interested parties, there is a clearer picture of the end result in the decision making process. A citizen participates because they want to live and be a part of a community that holds their interest, which gives them life, and provides them with a sense of belonging; this is clearly shown through the interviews of Popp, Kain and Arent. While the theories demonstrate that it is important to understand the nature of the interest that will be served, the public involvement outlined above shows that citizens will come together for the common good.

METHODOLOGY

When looking at the NZC applications submitted between July 1, 2002 through June 30, 2003 and from July 1, 2003 through June 30, 2004 it is clear that individuals living within Clark County are interested in the process. They go to TAB/CAC meetings and other Board meetings and they speak out either in opposition or support for the projects in their areas. However, in looking at past recommendations set forth by the TAB/CAC and comparing them to the decisions of the BCC it is not clear if there is one particular interest being served. In the case at Windmill Avenue and Durango Drive, for example, it was the interest of the applicant that was served. Clearly, those that spoke out in opposition did not feel that their voice was being heard.

In an effort to ensure that the NZC planning process is a collaborative effort between the residential neighbors and the applicant, the Clark County Comprehensive Planning staff along with the BCC implemented an NZC process to reduce the number of NZC applications being submitted and approved (Clark County Implementation Plan, 2003). Through researching applications from July 1, 2002 through June 30, 2003 and

from July 1, 2003 through June 30, 2004 it will be shown that under the new process there has been improvement on behalf of the BCC to include public interest into their decision making process to determine the best course of action for the community as a whole.

For the above listed time frames I reviewed all the NZC applications submitted and researched the recommendation of the Town Board and compared them to the decision of the BCC. The 2002-2003 applications are NZC's taken in under the old NZC process and the 2003-2004 applications are NZC's taken in under the new NZC process. By comparing the numbers from the 2002-2003 year to those of the 2003-2004 year I hope to show an increase in the number of applications where the BCC decision matches the TAB/CAC recommendation. It is my belief that this new process has removed some of the "political indiscretions" that were once a part of the process putting more credence into the public participation process and allowing the community as a whole be served.

QUESTION

Has public participation during the TAB/CAC meetings, within the new NZC process, impacted the final decision of the BCC when voting on an NZC application?

HYPOTHESIS

Through researching NZC applications from July 1, 2002 through June 30, 2003 and from July 1, 2003 through June 30, 2004, it will be shown that under the new NZC process the TAB/CAC recommendations do impact the decision of the BCC. As the literature review shows, it is important to distinguish who provides the most unbiased information. If it is the citizen, then their voice, if relevant to the situation, should be counted. They are the ones who will typically be most affected by the project. The intent of County staff is to give credibility back to the land use plans as expressed in the Clark

County Implementation Plan. I believe research will show that this has happened and that citizens, staff and applicants have come to realize the vital role the citizen plays within the NZC planning process.

FINDINGS

Under the old NZC process, it was typical for an applicant to submit an NZC application and have it approved within eight weeks regardless of the TAB/CAC recommendation. Residents affected by the proposal walked away believing that the land use process was against them and that this process was just another political process wasting their tax dollars. Clark County Planning staff along with the BCC also started to question if the Land Use Plans and the zoning process were losing their value because of the number of NZC applications being submitted and approved (Clark County Implementation Plan, 2003). Through careful consideration, the BCC and staff developed a new process to try to give credibility back to the Land Use Plans and the NZC process. This was done through Ordinance #2865 and #2889.

Under the old NZC process, during July 1, 2002 through June 30, 2003 there were 228 applications submitted. Of those 228 applications submitted, 184 applications were approved. These 184 approvals are not only NZC approvals but are also, in essence, amendments to the land use plan. Therefore, the established land use plans for Clark County were changed 184 times in one year. Of those 228 applications nine were denied by the BCC and 35 applications were withdrawn. The applications that were withdrawn were done so by the applicant prior to going before the BCC.

Under the new NZC process, during July 1, 2003 through June 30, 2004 there were 130 applications which were formally submitted. That is 98 applications less than the previous year. Of those 130 applications submitted 106 applications were approved

by the BCC, 4 were denied by the BCC, and 16 applications were withdrawn. The applications that were withdrawn were done so by the applicant prior to going before the BCC. In one year the number of NZC approvals decreased from 184 to 106 (see Table 6 below).

Table 6

NZC Submitted Application Comparisons					
	Pre-Submittal	Submitted	Approved	Denied	Withdrawn/Held
July 1, 2002 – June 30, 2003	NA	228	184	9	35/0
July 1, 2003 – June 30 2004	197	130	106	4	16/4

From July 1, 2003 through June 30, 2004 the submission of NZC applications went down 57%. The approval rate of the submitted applications remained the same at about 82%, applications that were denied also remained the same at about 3%, and applications withdrawn/held remained the same at 15% (see Charts 1-2 below). Looking at the figures one might not see the dramatic effect of the new process without taking in the pre-submittal figures.

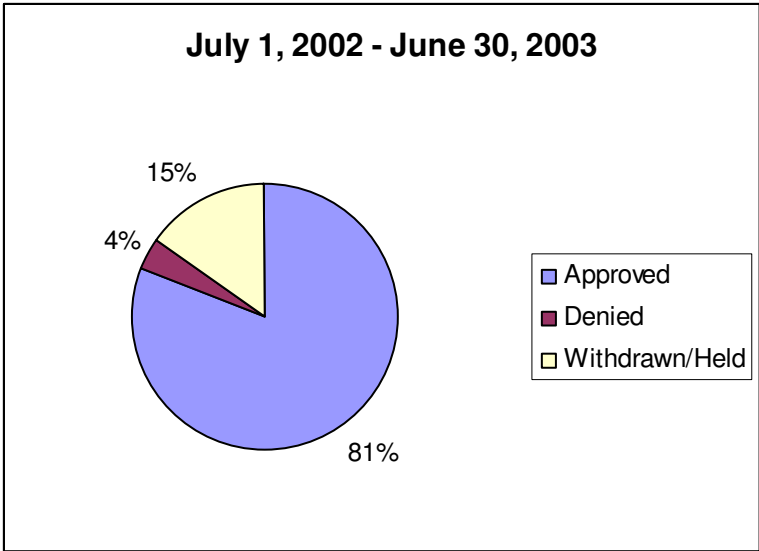


Chart 1

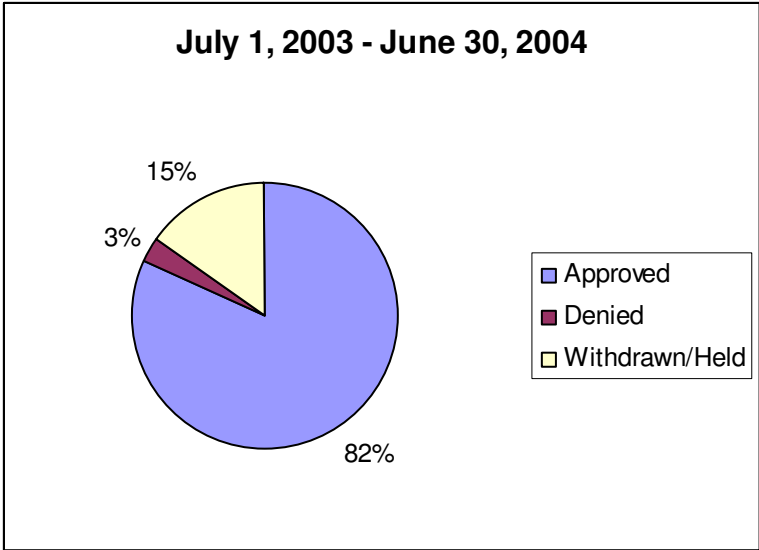


Chart 2

There were 197 NZC applications submitted under the new NZC process and only 66% went on to submit the formal application. That is a 57% reduction in the amount of applications that were submitted from the previous year. Further looking at the numbers of those applications that were not formally submitted, shows that 14 applicants submitted a conforming ZC instead, 10 resubmitted NZCs that were approved, and 8 others resubmitted NZCs that are still within the process. The reasons an applicant may not have submitted a final application is because during the pre-submittal the applicant may have found too much resistance, that it would be too much work to submit, that it was a speculative application, that the TAB/CAC was in opposition, or that they could submit a conforming ZC instead.

Of the 220 applications under the old process 99 (43%) were approved by both the TAB/CAC and BCC, 70 (31%) were recommended for denial by the TAB/CAC and approved by the BCC, 15 (7%) were approved that were not acted upon by a TAB/CAC, eight (4%) were denied by both the BCC and the TAB/CAC, one (0%) was recommended for approval by the TAB/CAC but denied by the BCC, and 35 (15%) were withdrawn. In comparison, under the new NZC process 50 (39%) of the 130 applications were approved by both the TAB/CAC and the BCC, 48 (37%) were recommended as denial by the TAB/CAC but approved by the BCC, 8 (6%) were approved with no TAB/CAC recommendation, 4 (3%) were denied by both the BCC and the TAB/CAC, and 20 (15%) were withdrawn and or held (see Table 7 and Charts 3 and 4 below).

Table 7

NZC Town Board Recommendation Comparisons						
	Approved by TAB/CAC and BCC	Denied by TAB/CAC and Approved by BCC	Approved by BCC with no TAB/CAC	Denied by TAB/CAC and BCC	Approved by TAB/CAC and Denied by BCC	Withdrawn/ Held
July 1, 2002 – June 30, 2003	99	70	15	8	1	35/0
July 1, 2003 – June 30 2004	50	48	8	4	0	16/4

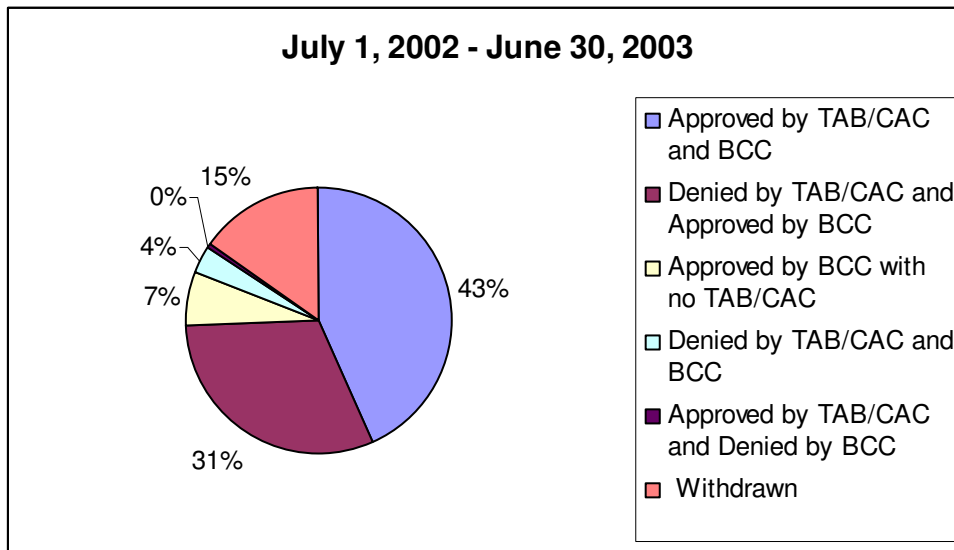


Chart 3

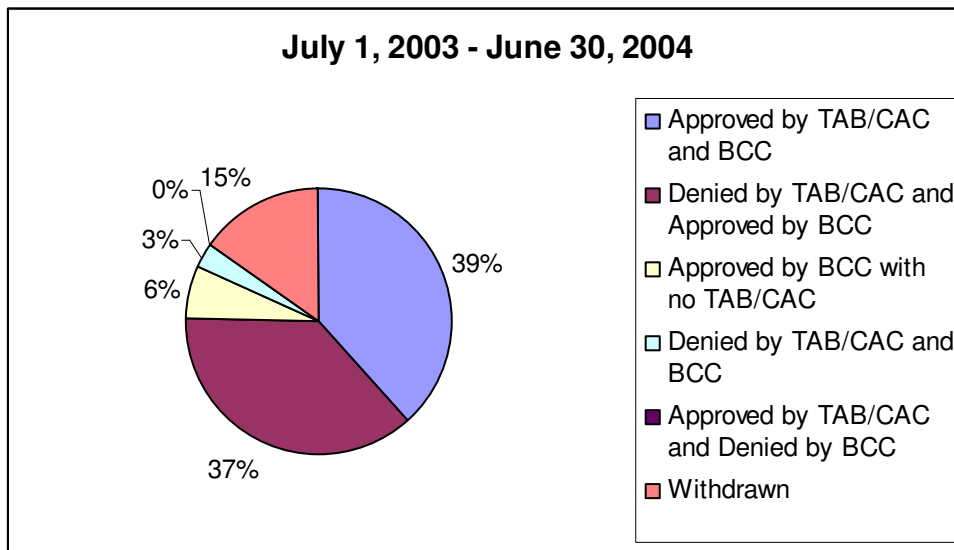


Chart 4

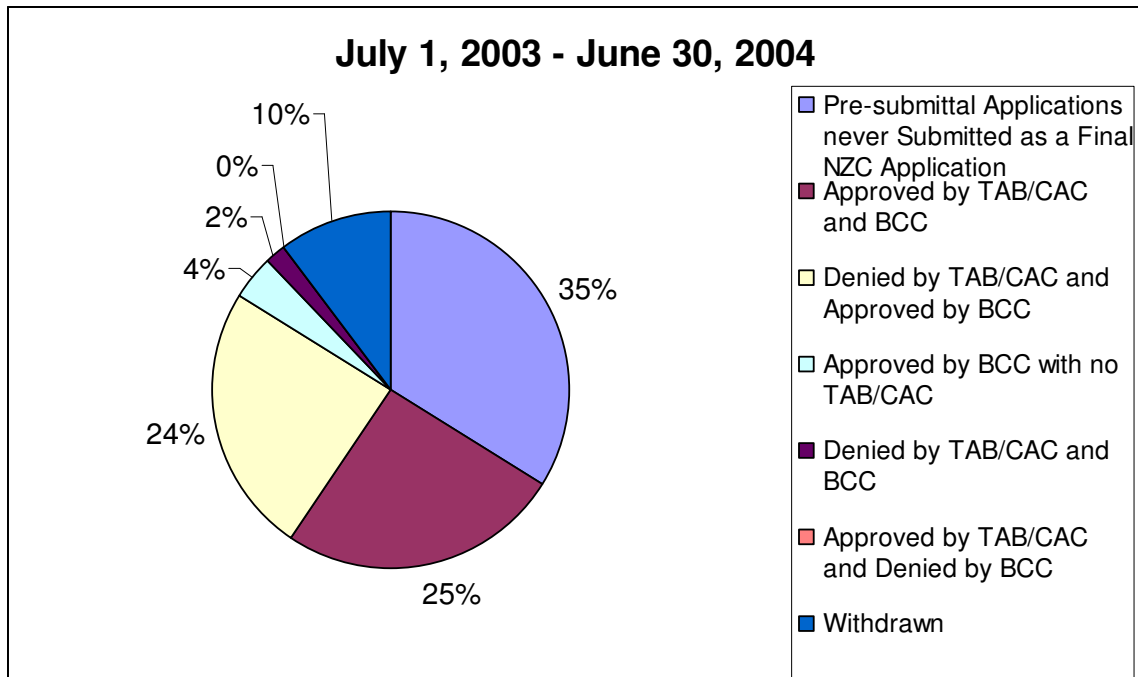


Chart 5

By looking at the above numbers in Table 7 the appearance is given that the new NZC application process has not improved the system. However, if we do the same comparison with the number of applications that were submitted during the pre-submittal we see the following: of the 197 applications submitted 50 (25%) of those applications were approved by both the TAB/CAC and the BCC, 48 (24%) of the 197 submitted applications were recommended as denial by the TAB/CAC but approved by the BCC and there were 8 (4%) applications that were approved with no TAB/CAC recommendation (see Chart 5 above). Appendix D further defines the breakdown of the NZC applications submitted during July 1, 2003 – June 30, 2004.

CONCLUSION

By looking at the numbers presented in the findings above (Charts 3 and 4) it does not directly appear that public participation during the TAB/CAC meeting has impacted the final decision of the BCC. Unless the numbers outlined in Chart 5 are considered. Although there has not been a decrease in the actual numbers, public participation during the TAB/CAC meetings, within the new NZC process, has impacted the final decision of the BCC through the following reasons: 1) there was a 57% reduction in the number of applications submitted from the previous year; 2) the new process allows for more interaction; and 3) there is a greater understanding of the process allowing for there to be agreed upon mutual agreements.

With the submittal constraints of the new process, an applicant has to submit their application by following the batching schedule. Once the application is submitted in the pre-submittal stage, the applicant must meet with staff and go through a neighborhood meeting prior to submitting the final application. When staff meets with applicants they discuss alternatives and encourage better planning practices during the pre-submittal meetings. For instance of the 67 applications that submitted a pre-submittal meeting but not a final application, 35 of those applicants never resubmitted on the original proposed property. Of the other 67 applications, 14 applicants submitted a conforming ZC instead, 10 resubmitted NZCs that were approved, and 8 others resubmitted NZCs that are still within the process. This shows that 47 applications were redirected under the new process, something that was never considered under the old process. These 47 applications never had to go before the TAB/CAC under the new NZC process helping to reduce the overall negative impact of rezoning.

Within the new NZC process there is more opportunity for the applicant to work with staff and the public to come up with a plan that will work for everyone. Often times, people perceive that new development is not best in their neighborhoods. The land owner, on the other hand, looks to the new development as their way of life. Rather than debate if the development should be there, these meetings have brought about the concepts of compromise and negotiation so that all involved feel like the development is acceptable. “The new process allows for more interaction between property owners and the applicant. Therefore, there is more room for compromise and negotiations and as a result the property owners are more willing to support the applicant” (Bermudez, 2005). My feeling is that through this process, even though the TAB/CAC is recommending denial they are doing so with some understanding that if the application is approved there will be conditions set forth that all parties are agreeable to.

Land Use Plan update schedule and plan were also included within the new NZC process. Enterprise Land Use Plan was one of the first to be addressed to go through the new update process. In a newspaper article Rake discusses the meetings that took place regarding the Enterprise update process prior to the BCC action. He quotes Sue Allen, president of the South West Action Network, as saying “the Commission by and large followed the recommendations of the town board and the citizens” (Las Vegas Sun, Rake 2004). She further states that “I would give them about an A-minus,” grading the board. “I don’t agree with the fact that they tried to put too many items in a single day. However, once I was up there, I could understand each of their decisions. I did not necessarily agree with each decision, but I understand the rationale” (Las Vegas Sun, Rake 2004). Participation within the new process has provided a greater understanding by all that participate leaving a public that is informed and with concession.

Because of these reasons, I strongly believe that public participation during the TAB/CAC meetings, within the new NZC process, has impacted the final decision of the BCC when they vote on an NZC application. In addition to the research provided, it is necessary to continue researching the impact of the new process for about five years to ensure the intent of the new NZC process is maintained. As Land Use Plans are updated NZC applications are not to be accepted for two years within the approved planning area. If the process works as anticipated the number of NZC applications submitted should continue to significantly decrease. Of those applications that are accepted, it would be interesting to note, how many were acted upon with the recommendation of the TAB/CAC. Another indication to research through time would be the time it takes to process a Planning Commission and or Board of County Commission meeting. With much of the debate and discussion taking place at the TAB/CAC and neighborhood meetings, I foresee Board meetings not taking as long because a lot of the disagreement will have been negotiated.

The overall deciding factor to indicate if the BCC does consider public participation comments when making a decision are the recommendations made during the TAB/CAC meetings. This was an issue for me, because I was hoping to show an alarming increase in the number of actions made by the BCC that followed the recommendation of the TAB/CAC. Through time, about five years, if the NZC process continues to be credible, I believe that the TAB/CAC will be more informed and provide recommendations that are thorough and conditions that the BCC will be able to incorporate in their actions. If that is the case, the action by the BCC will prove to include the recommendations of the TAB/CAC.

APPENDIXES

Appendix A – BATCHING AND IMPLEMENTATION SCHEDULE

Appendix B – LAND USE PLAN MAJOR UPDATE CYCLE

Appendix C – NOTICE OF NEIGHBORHOOD MEETING

Appendix D – NZC APPLICATION RESULTS Submitted July 1, 2003 – June 30, 2004

DEFINITIONS

BCC = Board of County Commission

CAC = Citizen Advisory Council

DAQEM = Department of Air Quality and Environmental Management

NZC = Non-Conforming Zone Change

PC = Planning Commission

TAB = Town Advisory Board

ZC = Zone Change

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