Trust, Knowledge, and Legitimacy as Precursors to Building Resident Participation Capacity in Public Land-Use Decisions

DISSERTATION

Presented in Partial Fulfillment of the Requirements for the Degree Doctor of Philosophy in the Graduate School of The Ohio State University

By

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Abstract

The purpose of this research is to understand how neighborhood residents build a capacity, or conversely, are prevented from building a capacity to participate in city land-use decisions that have an effect on their neighborhoods. The specific focus is on the speech acts of giving explanations and making promises and the contributions of those speech acts to the building up or tearing down of trust, knowledge and legitimacy between the residents, between the residents and their institutions (area commission and its zoning committee in this research) and between the members of those institutions. The goal is to contribute to our understanding of how residents can move between the rungs of Arnstein’s participation ladder so they may participate authentically as partners in the future of their neighborhoods rather than simply giving input. The analysis is based on regime theory utilizing a Participatory Action Research (PAR) methodological framework.

The analysis is based on two case studies from one neighborhood in Columbus, Ohio. Those two case studies confirm the assumption that humans connect to each other and learn from each other through reciprocal acts of exchange or speech acts. Constructive speech acts strengthen trust, knowledge, and legitimacy between people. Under certain conditions destructive speech acts can push people into positions that strengthen their trust, knowledge, and legitimacy. Conversely, destructive acts of
exchange can convince people that they have no knowledge or legitimacy and can limit the trust that they build with each other and with their institutions.

We have also learned that the speech acts of leaders (both those who hold positional authority and those who hold personal authority) are particularly important. Neighborhood institutions (e.g. area commissions, civic associations, and other neighborhood-based organizations) are also significant because they provide the spaces and conditions for trust, knowledge, and legitimacy to develop. We learned that the lack of this social infrastructure can be a significant impediment to the development of civic capacity.

The area commission, we learned, is particularly important because it provides a pre-existing institutional “shell” for resident appropriation into a trust-building, knowledge-building, and legitimacy-building institution that can develop or strengthen participation capacity. However it cannot accomplish this without other social infrastructure and without leadership that supports the development of trust, knowledge, and legitimacy among the residents. Part of that social infrastructure comes from smaller, more local, social institutions, such as civic associations. However, there must be a communicative conduit connecting the area commission to the civic associations, and the communication must be bi-directional, trust-building, knowledge-building, legitimacy-building, and representative of residents’ needs and aspirations.

Policy recommendations focus on actions residents and their institutions can take within the neighborhood to build and sustain participatory capacity. Partnerships with other local institutions (such as faith-based institutions) are suggested so long as all parties have a clear understanding of each group’s goals and priorities.
Recommendations for future research include further analysis of the role and development of citizen leaders in neighborhood organizations and the impact of individual behaviors of employees within city bureaucracies.
Dedication

I dedicated this research to my wife Diana and to my sons Michael and Joseph.
Acknowledgments

To Hazel for never giving up on me.
Vita

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1989..........................................................MBA Business Administration, California State University, Sacramento

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Fields of Study

Major Field: City and Regional Planning
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Chapter 1: Introduction

Introduction

The goal of this dissertation is to describe how residents build a capacity, or conversely, are prevented from building a capacity to participate in city land-use decisions that affect their neighborhoods. I do this by examining the underlying reciprocal precursors - trust, knowledge, and legitimacy - that can prepare or obstruct conditions for participation to occur.

I examine speech acts of “promises” and “explanations” made between speaker and listener and the effects these speech acts have on developing or diminishing trust, knowledge, and legitimacy between them. I show that trust, knowledge, or legitimacy tends to develop or strengthen between speaker and listener when promises are kept or when explanations are truthful factual, and comprehensive. Consequently, social conditions exist that provide an opportunity for the development of participation capacity to emerge. Conversely, mistrust, knowledge invalidity, or illegitimacy tends to develop or build up between speaker and listener when promises are broken or when explanations contain lies, material omissions, or deceptions. The social conditions present foreclose on opportunities for the development of participation capacity to emerge.

Background

My interest and motivation for this research began in the fall of 1997 as a student intern assigned to one of the City of Columbus’ (City, Columbus) area commissions1 as part of my graduate studies in city and regional planning at The Ohio State University.

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1 Area commissions are voluntary resident organizations the City of Columbus officially recognizes as part of City government (City Code 3109). Area commissions serve in an advisory capacity only, and are charged with encouraging additional citizen participation in decision-making; and facilitating communication, understanding, and cooperation between neighborhood groups, City officials and developers.
One of the projects my area commission (Commission) had me perform was to identify housing construction trends in Columbus between 1990 and 2000. I found that during this timeframe the trend in new housing construction within the Commission’s geographical area shifted from predominantly single-family to multifamily housing, specifically apartment housing. However, during that same period the trend in new housing construction for Columbus citywide shifted from predominantly single-family to a balance between single-family and multifamily housing (Table 1.1).

### Table 1.1 Composition of New Housing Construction

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<th>1990</th>
<th>2000</th>
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<tr>
<td></td>
<td>1-2 Family Dwellings</td>
<td>Multifamily &gt;5 units</td>
</tr>
<tr>
<td>Commission</td>
<td>66.6%</td>
<td>27.0%</td>
</tr>
<tr>
<td>City of Columbus</td>
<td>61.5%</td>
<td>28.1%</td>
</tr>
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</table>

Source: Columbus Department of Trade and Development

When the Commission disseminated this housing trend information to Commission area residents (i.e., residents living within the Commission’s geographical boundaries) over the course of several monthly Commission meetings in early 2000, most residents expressed their concerns about the growing imbalance of multifamily housing over single-family housing in their area as compared to the City overall. Residents specifically talked about their concerns that the overweighting of multifamily housing construction would adversely affect the likelihood for construction of move-up single-family housing in the Commission area for households with rising incomes, and consequently would disrupt the social fabric of their community. Residents feared the area’s upwardly mobile households would move out of the area because there would be nowhere for them to “move-up” to within the Commission area, and this would result in “concentrating the poor” within the Commission’s boundaries.

Through their complaints during Commission meetings, residents in attendance conveyed to the Commission that the housing trend for the area was clearly unacceptable.

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2 Author’s observation of statements made by most residents attending several monthly Commission meetings during 2000.
Residents lobbied the Commission to represent their viewpoint to developers and Columbus City Council, and for the Commission to begin taking steps to acquire some level of influence in land-use decisions effecting their neighborhoods. Residents were openly frustrated and angry with City officials and private developers who seemingly placated, ignored, or did not take seriously residents’ concerns regarding public land-use decisions directly affecting where they lived. The time apparently had come when residents felt they needed to take a more significant role in participating in the City’s land-use decision-making process. Rather than accepting what they perceived as inconsequential benefits offered by the City and developers, as the Commission had generally done in the past, the Commission and residents faced the challenge of devising a way how to participate with the City and developers in a substantive way that would result in materially significant outcomes beneficial to their community.

Fortunately, Sherry Arnstein provides some initial help out of this conundrum when over four decades ago she fashioned a ladder metaphor describing a typology of eight degrees (rungs) (Figure 1.1) of citizen participation ranging from non-participation to citizen control of public decision-making (Arnstein 1969). Arnstein describes citizen participation as a categorical term for citizen power. It is the redistribution of power that enables the have-not citizens… to be deliberately included in the future. It is the strategy by which the have-nots join in determining how information is shared, goals and policies are set, tax resources are allocated, programs are operated, and benefits like contracts and patronage are parceled out. In short, it is the means by which they can induce significant social reform which enables them to share in the benefits of the affluent society. [P]articipation without the redistribution of power is an empty and frustrating process for the powerless. It allows the powerholders to claim that all sides were considered, but makes it possible for only some of those

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3 Author’s observation of statements repeatedly expressed by nearly all residents attending the monthly Commission meetings since 1998.

4 Columbus Dispatch, 2000. By-line and publication month and day omitted to preserve the confidentiality of specific residents included in this research.
sides to benefit. It maintains the status quo. (Arnstein 1969, 242, my emphasis)

**Figure 1.1 Arnstein's Eight Rungs on a Ladder of Citizen Participation**

Arnstein’s participation ladder is an insightful descriptive tool that allows citizens to identify and locate themselves on a particular rung of the participation/power ladder. However, Arnstein did not explain how citizens could move along the rungs of her participation ladder. Asking how residents participate delves into the actual processes involved that bring about a resident’s participation “capacity,” or “citizen power” as Arnstein (1969) called it. This research premises participation capacity on four necessary conditions: Plurality, Space, Resource Control, and Purpose. Plurality is necessary to participate as one cannot participate with oneself. Space is also necessary to permit people to come together and interact. For example, space in the form of community meeting halls, school gymnasiums, or electronic social media (e.g., FaceBook). Resource control is another necessary condition in which Arnstein rightly identified power as one such form (Arnstein 1969). Purpose is a fourth necessary condition to participate because

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5 Figure is from the Journal of the American Institute of Planners (35) 3, p. 217.
6 In this research, I use the more broadly encompassing term “resident” instead of “citizen” so to include non-citizens.
individuals need some basis in which to come together to participate in the first place. That basis is to achieve some collective purpose, which would not have been practically accomplishable individually. These four conditions when combined form necessary and sufficient conditions providing individuals participation capacity. When any of these four conditions is absent, people lack a participation capacity. However, participation capacity is not participation. It is a necessary precursor that can potentially provide an opportunity and pathway to participation. 

Need for this Research

The need for this research is great because of a general absence in the literatures addressing the “how” of participation; that is to say, how the conditions for participation are con-structed or are de-structed. In reviewing a variety of collective action and planning theories literatures, I found a general presumption that the “how” of participation is a given, a taken for granted starting point if you will. I found no substantive theories addressing the “how” of the concept participation.

In metaphoric terms, people come together at the participation (bargaining) table and work towards a collective solution. Several literatures understand the table simply as an innocuous physical space and place for participation to occur. Some literatures take the added step of “looking” under the table to see what is supporting the table. The table’s supports, that is, its legs, metaphorically represent the visible structures enabling participants to participate.

However, what are the conditions under which the table’s legs (structures) coalesce into a particular participation structure and physically manifested form? This is where the literatures stop and make the presumption that the “how” of participation is the same for every potential participant. In other words, all one needs to do to participate is “participate.” Since the “how” is presumed to be the same for all potential participants, it is also presumed to be enabling. No consideration is given to the potential disabling effects of the “how” - in what way(s) the “how” excludes or prohibits potential participants from being at the participation table.

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7 I have in mind a type of participation that includes any of the top three rungs of Arnstein’s ladder.
This research proposes that there are basic underlying precursors that make it possible or impossible not only for a particular form of participation to occur, but also for a particular type of participant to take a seat at the participation table. These basic underlying precursors - trust, knowledge, and legitimacy - reveal the “how” of participation, or what I call participation capacity.

**Importance of this Research**

This research is important because it begins to fill this “how” gap in the literature of participation. This research adds to our understanding by examining the underlying reciprocal precursors of trust, knowledge, and legitimacy that can prepare or obstruct conditions for participation to occur. This research takes a significant step forward not only theoretically by describing how one can move between the rungs of Arnstein’s participation ladder but also practically by indentifying the concrete skills residents (and planners) need to develop in order to work toward building resident participation capacity.

**Theoretical Basis of Research**

Because this research examines power distributions of participation, it begins from a premise of power through collective governance rather than from individuals trying to exert power over others in what would amount to a zero-sum gain. From this governance beginning point the “how” of participation, that is, the building of participation capacity, is developed.

Governance provides an environment (the platform) for an arrangement of plurality, space, resource control, and purpose to form into a pattern of collective action amenable to the members of a governing regime so that the regime can get things done (Stone 1989). Rules of participation must emerge between members of the governing regime, which underpin the regime’s ability to achieve collective action. Without rules of participation, each member’s individual self-interest would predominate causing the governing regime’s capacity for governance and collective action to disintegrate. Consequently, the rules of participation, which sustain a governing regime’s collective
action, necessarily include both the individual’s self-interest and the other regime members’ self-interest (i.e., Other interest). Consequently, the particular rules of participation develop from the reciprocal exchanges between regime members.

However, governance and collective action literatures are either silent on or treat the significance of reciprocal exchange in forming bonds between individuals for collective action weakly. Bonds formed between members based on trust, knowledge, and legitimacy also reinforce and strengthen the cohesiveness of the group. Therefore, this research incorporates a theory of reciprocity with which to understand specific conditions that serve in the building up or tearing down of trust, knowledge, and legitimacy between people, which can either enable or disable them from building a capacity to participate. In addition, leadership and leadership style play a necessary yet supporting role regarding the building up or tearing down of trust, knowledge, and legitimacy between people, which can also have an enabling or disabling impact on building participation capacity.

**Statement of the Problem**

The general research problem is to understand how residents build a capacity, or conversely, are prevented from building a capacity to participate in city land-use decisions that have an effect on their neighborhoods. More specifically, the problem is about understanding the effect(s) a speaker’s speech acts have on the development or diminution of direct constructive reciprocity specifically trust, knowledge, and legitimacy as it relates to building resident participation capacity.

**Research Questions**

Although I state the questions for this research in Chapter 3, I want to introduce them now to provide the reader a clearer direction of this research. There are six research questions. They are:

1. What effect does the building up or tearing down of residents’ trust have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?
2. What effect does the building up or tearing down of residents’ common knowledge\(^8\) have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?

3. What effect does the building up or tearing down of residents’ legitimacy/legitimation\(^9\) have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?

4. What effect does a Commission Chair’s “reason giving” leadership style have on residents’ ability to develop a collective capacity to participate in the City’s land-use decision-making?

5. What effect does a Commission Chair’s “go along to get along” leadership style have on residents’ ability to develop a collective capacity to participate in the City’s land-use decision-making?

6. What broader lessons do these understandings hold for other citizen organizations?

**Organization of the Dissertation**

Chapter 2 discusses literatures relevant to this research. Chapter 3 develops a conceptualizing of participation capacity for this research. Chapter 4 describes the research design, data collection, and analysis. Chapter 5 introduces the reader to the study area. Chapter 6 provides case analysis of Case 1. Chapter 7 provides case analysis of Case 2. Chapter 8 discusses the findings of the case analyses, conclusions, recommendations, and suggestions for future research.

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\(^8\) Residents’ common knowledge is a knowledge socially shared and based on their common history; built from exchanging with each other their perceptions, experiences, and understandings.

\(^9\) Legitimacy for this research is the tacit or formal approval, recognition, acceptance, support, or deference of one entity to another entity. Legitimation is the process of producing legitimacy.
Chapter 2: Review of Selected Literatures

Introduction

In this chapter, I set the backdrop for this research by describing a typology of ontological perspectives and then by locating and describing the ontological perspective of this research within this typology. Next, I discuss the difficulty of defining participation in selected literatures. I describe a promising perspective that offers a way of potentially getting at a definition of participation. I then review several planning theories emphasizing public participation discussing their strengths and weaknesses relative to building resident participation capacity. I found that each of the theories reviewed contain some but not all of the elements needed to participate preventing them from explaining the how of participation. The theories when taken together, however, provide a more complete assemblage of the elements needed to participate, but still only hint at governance as their organizing structure. I found urban regime theory provided a compatible, albeit incomplete, governing structure where I could modify it by including elements from the other theories to form a more complete picture of participation. I end the review by proposing a modified urban regime theory and approaching it from a reciprocal exchange perspective to form a connecting bridge to describing participatory relations between a governing urban regime and residents, and to show how residents can develop a capacity to participate in public decisions.

Ontological Perspective of Research

“Ontology is the study of being. It is concerned with ‘what is’, with the nature of existence, with the structure of reality as such” (Crotty 1998, 10). Embedded in the theories of social scientists are their latent ontological perspectives of human nature or
human reality. This research utilizes the ontological perspective of duality to examine human reality. It differs in some ways from other ontological perspectives, but has in common with them a particular or “biased” view of human reality that informs the social scientists’ analyses of the objects they are studying (Denzin and Lincoln 1994, 13).

Researchers infrequently state their ontological perspectives explicitly in their writings. Instead, ontology has an implicit and nearly invisible position in their writings. The importance of clarifying the researcher’s ontological perspective is the initial step in any research as all subsequent scientific assertions from the research “findings” follow from this perspective. The set of possible epistemological descriptions or explanations of a particular phenomenon under study is delineated (i.e., constrained or limited) by the ontological perspective of the researcher.

It is not my intent to provide an exhaustive review of the various philosophical literatures of human reality. This would be a major research endeavor in its own right. Instead, I restrict myself to distilling the many theories of human reality into four general typologies. My intent is to shed light on alternative ontological conceptions of human reality as a contrasting basis for discussing duality, the ontological perspective of this research.

The conceptions of human reality may be seen in a typology of four ontological perspectives: Monism, Myth, Dualism, and Duality. I provide this typology as a convenient but rough guide in locating this research within the ontological expanse. In actuality, the lines dividing theories of human reality often overlap and are blurred (Blumenthal 1936).

Monism holds that there is no fundamental difference between matter and mind, the natural and the spiritual, good and evil. All existence is viewed as an organic whole without independent parts - “as one, where the spirit is a form of nature, or nature is a form of spirit” (Buckham 1913, 157; Kainz 2008, ch.6). In other words, there can be parts to a whole, but the whole is prior to its parts and its parts cannot exist without the

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10 For various definitions of human reality (i.e., human nature) see, for example, Plato 1901, 1937; Aristotle Metaphysics, 1941; Augustine 1963; Machiavelli 1940; Bacon 1878; Hobbes 1909; Descartes 1911; Locke 1996; Hume 1888, 1902; Rousseau 1967; Smith 2005; Bentham 1969; Mill 1955; Darwin 1963; Freud 1989; and Sartre 2001.

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whole (Schaffer 2010). As Aristotle explains, “the parts are explained by reference to them, and in respect also of the power of existing apart from each other the wholes are prior to the parts” (Metaphysics Book VII Part 10).

*Myth* holds that there is no underlying stable or eternal essence of humanity. Instead, “human nature is constantly in a state of flux” (Hauskeller 2009, 97). Myth defines human reality through “the telling of a story that implicitly or explicitly … provide[s] moral guidance and justification for values, and … recommend[s] that we behave in certain ways (Hauskeller 2009, 106).

*Dualism* creates a hierarchical relationship between necessity (i.e., Nature) and freedom (i.e., those Aristotelian higher functions such as politics and philosophy) (Frank 2004). This relationship is not only hierarchical - creating positions of superiority and inferiority - but also oppositional as in matter (e.g., flesh) versus spirit (Buckham 1913). This perspective includes theology (Stenmark 2009), the moral schools of thought - that address such issues as, for example, good versus evil, right versus wrong (Henry 2009; Kobylka and Bradley 1987; Youpa 2010; Miller 1992), and the subject-object basis underlying the positivist perspective of rational planning (Lake 1993; Allmendinger and Gunder 2005; Alexander 2000; Friedmann 1987).

*Duality* is a perspective which Plato, the father of this dual conception recognized as “two distinct and uninterchangeable, but complementary forms of reality, conceived now as mind and matter, …” (Buckham 1913, 157). For Plato mind and matter are separate and independent of each other, yet each needs to unite with the other in order to form a whole reality. For example, the duality of light and dark provides a more concrete example. We would not be able to construct a meaning of light without understanding darkness and vice versa. In addition, the concept of day only makes sense when light and dark are united. Adam Smith subscribe to this ontological perspective when he incorporated sympathy (i.e., a representational form of other-interest) into Hobbes’s egotism and hedonism (i.e., self-interest and self-pleasure) theory, thereby creating a shared or dual social reality.
People share in the pleasures and pains - especially the pains - of other people. This gives them a personal, hedonistic stake in the welfare of others. By hurting someone else, people hurt themselves. Because of sympathy - because pain and pleasure are shared - individuals are motivated to suppress the total pain suffered in society and to increase the total pleasure. (Miller 1993, 223)

I acknowledge here, as Blumenthal described years ago, that human reality “has a heritage of different meanings” (1936, 19), which makes problematic any attempt to render a tidy and mutually exclusive typology of the myriad ontological perspectives of human reality. This is due to the many loose strands of ontological perspectives that overlap and fit neither wholly in one class or another. My attempt to render a typology, however, is simply to show that alternate ontologies of human reality exist. The point here is not to critique which ontology is the correct one to use. The point is to understand that we all have an ontological perspective of human reality. We must be alert to the biases each brings to the way in which we approach our research and subsequently to the way in which our ontological perspectives shape our knowledge and our conclusions (Sayer 1992).

To summarize, in this research human reality is understood as a dual construction of two necessary parts - self-interest and other-interest - both required in the make-up of the whole.

**What is Participation?**

Participation, specifically resident participation, came to prominence and rose to the level of a public entitlement with the passage of The Economic Opportunity Act (EOA) of 1964 (Rubin 1969). The EOA’s pronouncement requiring Community Action Programs be “developed, conducted, and administered with the *maximum feasible participation* of residents” (Rubin 1969, 15 emphasis added) was also applicable to state and local planning agencies. The EOA did not provide a definition of participation, and consequently each state or local planning agency developed its own definitions of
participation (Rubin 1969). As resident participation is an inextricable part of American life and governance, it is curious that the EOA omitted a definition of participation, which represents a cornerstone of American democracy. EOA’s lack of a definition of participation could be due to the term’s apparent problematic nature. Academics have long struggled to arrive at a general definition of participation. Unfortunately, there is no agreement among academicians regarding a general definition of participation.

Participation is a very broad concept (Lane 1995). Coupled with a lack of theoretical conceptualization (Lyons, Smuts et al. 2001), the result has been general definitional disagreement in the literature (Day 1997). Carpentier and Dahlgren (2011) lament,

> In academia, the stringent requirement to define core concepts is surprisingly rarely followed when it concerns participation. This black boxing of the meaning(s) of the concept of participation maybe [sic] understandable and practical, but it has not helped to develop critical theoretical reflections about the notion itself. (Carpentier and Dahlgren 2011, 7).

While the concept of participation seems to defy definition, the difficulty may not reside in defining what participation is, but rather how the researcher approaches or initially understands the concept. Does the researcher initially conceptualize participation as an object (i.e., noun), as an action (i.e., verb), as a combination of object and action, or as something entirely different such as a process\(^{11}\)? This initial understanding can set up definitional roadblocks for the researcher. Below are selected definitions of participation. Consider them first from the perspective of objects, then as actions in order to gain an understanding of the ramifications of each perspective for defining participation.

Devas and Grant (2003) define citizen participation as the “ways in which citizens exercise influence and have control over the decisions that affect them” (p. 309). Price\(^{11}\)

\(^{11}\) A verb can be considered a process, but I differentiate between the two. A verb signifies an action performed on something, and the action has a definite termination point. Process signifies back and forth interactions between the interactors, and may last a finite amount of time or be perpetual.
and Mylius (1991) understand participation as a means of citizen involvement, where “people are mobilized, manage resources and make decisions that affect their lives” (p. 6). After reviewing several community participation literatures Samah and Aref (2011) conclude, “the fundamental aspect [of participation] … is the extent of people’s involvement in the decision making process, and the degree of people’s control in the activities or projects for them as recipients of the development programs” (p. 188). After she reviewed literatures on public participation in local affairs Laurian (2003) concludes,

The literature on public participation mainly focuses on three issues: who participates …, what triggers participation …, and the outcomes of participation …. Most planning research (and practice) assumes that two prerequisites for participation are usually met. First, it takes for granted that potential participants are aware of the issue at hand and, second, that they are informed enough to participate meaningfully. (Laurian 2003, 257)

Whiteley and Seyd (2002) hold to the idea that there are “five theoretical approaches or models of political participation that have developed in the political science literature: the civic voluntarism model, the rational choice model, the social-psychological model, the mobilization model, and the general incentives model” (pp. 36-7). The civic voluntarism model seeks to explain participation through examining three questions that revolve around,

… why people do not become political activists. Three answers come to mind: because they can’t; because they don’t want to; or because nobody asked. In other words people may be inactive because they lack resources, they lack psychological engagement with politics, or because they are outside of the recruitment networks that bring people into politics (Verba et al 1995, 269).

The rational choice model understands participation through a person’s economic preferences. A “rational” person,

... can always make a decision when confronted with a range of alternatives [first by rank-ordering] all the alternatives
facing him in order of his preferences [and then choosing] from among the possible alternatives that which ranks highest in his preference ordering. [A rational person] always makes the same decision each time he is confronted with the same alternatives. (Downs 1957, 6)

The social-psychological model conceptualizes participation through a relationship between attitudes and behavior. Fishbein (1967) asserts three kinds of variables that function as basic determinants of behavior: attitudes towards the behavior, normative beliefs, and motivation to comply with the norms (p. 490). Muller (1979) adds,

Attitudes about behavior are defined through the individual’s beliefs about the consequences of his behavior multiplied by their subjective value or utility to him. Normative beliefs refer to an individual’s own belief in the justifiability of his behavior as well as to his perception of significant others’ (parents, peers) expectations about it. Motivation to comply with the norms reflects such factors as an individual’s personality and his perception of the reasonableness of expectations of others. (Muller 1979, 25)

The mobilization model asserts, “individuals participate in response to the political opportunities in their environment and to stimuli from other people. Put simply, some people participate because the opportunities for them to do so are greater than for other people and also because they are persuaded to get involved by other people” (Whiteley and Seyd 2002, 48). The general incentives model holds that, “actors need incentives to ensure that they participate in politics but that we need to consider a wider array of incentives than narrowly defined individual incentives that appear in rational choice models” (Whiteley and Seyd 2002, 51). In the general incentives model, individuals or groups are motivated to participate in response to “selective” incentives, which include “process incentives” derived from the process of participation itself, and “ideology” (Whiteley and Seyd 2002).

Tikare et al (2001) define participation as a “process through which stakeholders influence and share control over priority setting, policy-making, resource allocations, and access to public goods and services. There is no blueprint for participation because it
plays a role in many different contexts, different projects and for different purposes” (p. 3).

Oakley and Marsden (1984) define participation as a continuum based on different interpretations, ranging from a means to an end at one end of the continuum to an end in itself at the other end of the continuum.

Carpentier (2011) indentifies “power” as the “key defining element of participation,” which is always situated in “particular processes and localities, and involves specific actors” (p. 24).

The concept of participation is contingent and itself part of the power struggles in society. It is … a struggle that is lived and practiced. The definition of participation allows us to think, to name and to communicate the participatory process … and is simultaneously constituted by our specific … practices. As a consequence, the definition of participation is not a mere outcome of this political-ideological struggle, but an integrated and constitutive part of this struggle. Access and interaction … are … conditions of [participation’s] possibility. The concept of access is based on presence…. Interaction is a second condition of possibility, which emphasizes the social communicative relationship that is established with other humans or objects. (Carpentier 2011, 25-31, emphasis added)

Another significant aspect of Carpentier’s definition of participation is that he does not define participation externally, such as naming an object; rather his definition of participation emerges organically and through the practiced actions of those participating.

The above authors have defined participation generally as an object (i.e., noun), as an action (i.e., verb), as a process, or as a combination. However, Carpentier provides the most appropriate definition of participation for this research because his definition arises from the practical acts that constitute participation. In other words, participation is not whatever one says it is; its definition emerges from the act of participating. Defining the object participation is a non-sequitur as it can have nearly limitless definitions. However, if we understand participation as constituted from the practice of participating, its definition is particular and specific, and arises from within the context of those involved
in constituting their participating. Carpentier’s perspective that a definition of participation is obtainable through examining the constitutional actions of those practicing participation provides a suggestive glimpse into “how to do” participation, a concept I will return to in a later section. The next section of this chapter describes an historical review of planning and its relationship to participation.

**Planning Theories - A Brief Review of Planning’s Historical Pedigree**

What *is* Planning? Explaining what Planning is has been difficult for planning theorists (Kaplan, 1964; Faludi, 1973; Brooks, 1993; Alexander and Faludi, 1996; Yiftachel, 1999; Hall, 2002; Allmendinger and Twedwr-Jones, 2002; Campbell and Fainstein, 2003) since before Planning became its own academic discipline. Moreover, the difficulty is not simply an academic one, as planning is also a profession practiced in creating the built environment, and this affects people’s everyday lives (Breheny, 1983; McClendon and Catanese, 1996).

From the litany of planning definitions offered in the literature (Mannheim, 1940; Banfield, 1959; Chadwick, 1971; Mandelbaum, 1979; Hudson, 1979; Forrester, 1989, 1999; Alexander, 1992, 2009; Friedmann, 1993, 1996; Throgmorton, 1993; Wolfe, 1994; Wachs, 1995; Westley, 1995; Wadley and Smith, 1998; Ferreira et al., 2009) I have assembled a composite definition of Planning for this research. Planning is the conscious act of developing a strategy for future action to achieve a desired goal, which includes a capacity to assemble resources necessary to implement the chosen strategy. Clearly, the above definition of Planning does not settle the debate over what Planning *is*. My intent here, however, is to show that no matter how Planning is defined, all definitions have in common the aspects of *thinking* and of *doing* some-thing in the future (McDowell 1986). This thinking aspect of planning is an act of deliberate and purposeful intention premised on some sort of reasoned rationality. Reasoned rationality is the justification for an action or outcome based on logic. For convenience, I have shortened reasoned rationality to simply rationality, since the exhibition of rationality implies reasoning. The question then is what is Planning’s epistemological basis of rationality? It is based on establishing
Objective analysis of data and decision rules based on the maximization of individual utility - maximizing self-interest (Banfield 1959; Dalton, 1986; Friedmann, 1987)

**Rational Planning**

From the time when Aristotle described Hippodamus as the one “who invented the art of planning cities” (*Politics* Book 2 Part VIII) rationality in city planning was already being employed, but in a unilateral and segregated manner. Hippodamus’ rationally was the rational model for planning a city, which was to be segregated not only by function, but by social status where, for example,

> The city of Hippodamus was composed of 10,000 citizens divided into three parts - one of artisans, one of husbandmen, and a third of armed defenders of the state. He also divided the land into three parts, one sacred, one public, the third private: the first was set apart to maintain the customary worship of the Gods, the second was to support the warriors, the third was the property of the husbandmen. (*Politics* Book 2 part VIII)

The rational model has been the quintessential tool used by planners (Allmendinger 2002) since Hippodamus. Healy provides insight into the historical basis of the ascendance of the rational model.

> As with so much of Western culture, the contemporary ideal of planning is rooted in the enlightenment tradition of modernity. This freed individuals from the intellectual tyranny of religious faith and from the political tyranny of despots. By the application of scientific knowledge and *reason* to human affairs, it would be possible to build a *better* world. (Healy 1992, 145, emphasis added)

Planning therefore sought to graft onto its fledgling discipline the natural sciences’ scientific method of inquiry, which relies on objectivity, hypothesis testing, and scrutiny.

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12 Although there are several types of rationality as Alexander (2000) discusses, I am concerned specifically with instrumental rationality.
of the results, as a way of validating and legitimizing its knowledge and professionalizing the discipline to public/private decision-makers (Beneviste 1989; Baum nd).

During the first half of the twentieth century, early planners were “preoccupied with how to create stables cities …” (LeGates and Stout 2000, 359) and “perceived their activity as an act of universal reform. “Planning was ‘good for everyone’, [by] rescuing ailing industrial cities from chaos and decay” (Yiftachel 1989, 33). For decades, planning was defined as the “art of making social decisions rationally” (Friedmann 1987, 36). Rationality was understood as a kind of “recipe” for making decisions “whereby the planner clarifies goals, conducts systematic analysis to generate a set of policy alternatives, establishes criteria to choose among these alternatives, and, once choices have been made and implemented, monitors results” (Beneviste 1989, 57).

However this “ivory tower approach was never very practical and was no longer defensible by the 1950s …” (LeGates and Stout 2000, 359-60). It was not until the general social and political upheavals of the 1960s when overt challenges to “the conventional wisdom of land-use planning as ‘working in the public interest’ [led to a] ‘paradigm breakdown’” (Yiftachel 1989, 33). The problem with the rational model arose from its accompanying assumptions, which “encourages planners to think of themselves as living in a world of information without human beings, with a task to organize information logically, but not to organize people politically” (Baum ND, 92). The artificial separation, indeed dislocation, between planning’s technical aspect and its political context had become the focus of professional and academic attention. The focus of planning from the 1960s to the present has revolved around the contention that planning cannot be an objective science such as the natural sciences. Howe (1992), quoting Klosterman, agrees that the foundation upon which the rational model stood, based on objectivity, and therefore value neutrality, is simply impossible. The effect of such a model has been harmful to the practice of planning for a variety of reasons:

From a practical standpoint the idea of value neutrality narrows the role of rationality in decision-making by putting all choices of values beyond analysis .... From a moral point of view, it produces moral impoverishment or
alienation and reduces sensitivity to the moral costs of action by creating a false sense of moral distance .... Perhaps most damaging from a political point of view, the analyst’s insistence on only answering questions of means rather than framing questions of ends leaves particular kinds of political interests that never ask for policy advice simply unrepresented in the process. (Howe 1992, 332-33, emphasis added)

Consequently, the objectivity of rational planning’s epistemological basis was significantly drawn into question, thereby forcing recognition that planning is not value-free. This recognition draws politics and conflict to the center of planning’s epistemology. Left undisturbed, however, was planning’s other epistemological basis of utility maximization (i.e., self-interest), which has permeated subsequent planning theories and has had a debilitating effect on participation as described in the following planning theories.

**Advocacy Planning Theory**

Paul Davidoff’s (1965) seminal work in advocacy planning signaled the first redirection in academic thinking away from planning as a technical function and towards the substantive nature of planning. Paralleling the “enactment of [1960s] legislation mandating citizen participation in federal and state programs, advocacy planners argued that existing plans reflected the distribution of power in society” (Beneviste 1989, 65). Davidoff’s advocacy planning represented a turn in planning that focused attention on who gets what, when, where, why, and how in the allocation of public resources. Davidoff emphasized that planners should be advocates for minorities, for the poor, and for other underrepresented groups. Advocacy planning encouraged planners to examine the substantive aspect of planning and realize that planning could place disproportional burdens on certain segments of society. Advocacy planning encouraged planners to work deliberately towards ameliorating those potential negative effects (Davidoff 1965). Unlike the rational model that clings to the illusion of objectivity, advocacy planning

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acknowledges and embraces the political nature of planning, and advocates politicizing planning decisions because, according to Davidoff, planning cannot be value-free. Davidoff did not deny the fact that values drive the motivations of the decision-makers, but such values should be made visible and explicit in the planning process (Davidoff 1965, 331-332).

Although advocacy planning took a bold step forward for Planning, it is not without its problems. From a practical standpoint, advocacy planning advocates a plurality of plans not a single plan. Interest groups and city departments other than the planning department can develop and propose alternate competing plans. Davidoff does not offer a way to resolve conflicts between competing plans. In fact, advocacy theory is adversarial based, modeled after the legal profession (Hudson, et al., 1979). Since advocacy planning encourages a plurality of plans from diverse and competing interest groups, it is more likely to promote conflict and not collaboration or resolution. Consequently, advocacy planning is inclined to create an environment of opposing self-interested stakeholders, which can lead to zero-sum gain outcomes.

Another problem of advocacy planning is a potential loyalty dilemma. Whose interests can the planner really represent, the underrepresented or his municipal employer? A final problem of advocacy planning is its tendency to privilege the planner’s knowledge, expertise, and legitimacy to a position superior to that of the stakeholders the planner represents. Consequently, this superior position can lead the planner into believing that s/he knows the stakeholders and as such can represent their interests. However, as Stieglitz (1999) elegantly argues, it is doubtful whether planners can really know and represent the interests of their community (i.e., the Other). Consequently, advocacy planning tends to build dependency, complacency, and clientism in residents for planners. More important, however, this client group can become dependent upon the planner for its “voice” and participation in public decision-making. Consequently, advocacy planning may not help underrepresented groups empower themselves, but instead, may inadvertently dis-empower them by making them more dependent on the planner. This is a weakness of advocacy planning theory, which this research addresses. One of the goals of this research is to examine how residents can
empower themselves by developing a capacity to participate in a way that enables them to influence public decisions. Another weakness of advocacy planning theory is that it makes no changes to its self-interest epistemology. For example, it recognizes only the self-interests represented in one plan pitted against the self-interests represented in other plans. Representation of the other’s interest is completely ignored, which this research reestablishes by incorporating a duality perspective.

**Transactive Planning Theory**

John Friedmann is another planning theorist who advocates utilizing planning as a catalyst to transform and improve society. Friedmann developed his transactive approach “in response to the problems posed by centralization in social planning situations relying on rational-comprehensive models” (Mc Avoy, et al. 1991, 45). From Friedmann’s perspective, “Planning is that professional practice that specifically seeks to connect forms of knowledge with forms of action in the public domain. What we need to do, then, is to rethink the questions of knowledge and action” (Friedmann 1993, 482, original emphasis). Friedmann had two kinds of knowledge in mind for planning: “expert and experiential knowledge. Because experiential knowledge is not codified, it becomes manifest primarily through speech” (Friedmann 1993, 484). Speech, specifically dialogic speech\(^\text{14}\) coupled with mutual learning became the core basis of Friedmann’s (1973) transactive planning theory. Friedmann defined mutual learning “as the integration of personal and processed knowledge through dialogue. Personal knowledge is brought to the planning process by both the clients and the planners. Processed knowledge is brought to the planning process by the planners and the centers of research acting in concert with the transactive process” (Mc Avoy, et al. 1991, 46). Embedded in acts of dialogue and mutual learning is a presumption of “development of trusting interpersonal relationships” (Hudson 1979, 394) among and between all parties involved in the planning process (Khakee 1998, 368). “Participation and empowerment … become goals

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\(^{14}\) Dialogue as opposed to monologue. Dialogue stresses interactive communication that involves each speaker listening to the other. Monologue need not include communication and listening; the speakers can simply talk passed each other.
to be attained rather than methods to be used” (Lane 2005, 293) against other participants.

Communication is of paramount importance to transactive planning theory. Friedmann states communication,

presumes a relationship that is applicable to all forms of human intercourse. This I shall call the life of dialogue. The life of dialogue always occurs as a relationship between two persons, a You and an I. (Friedmann 1973, 177)

And he lays out the characteristic features of this dialogue as presuming a,

- relationship that is grounded in the authenticity of the person and accepts his “otherness” as a basis for meaningful communication.
- relationship in which conflict is accepted.
- relationship of shared interests and commitments.
- relationship of reciprocity and mutual obligation (Friedmann 1973, 177-181).

The crux of Friedmann’s transactive planning is the development of a “social learning model” that transforms “the process of societal guidance” (Friedmann 1973; 1993) into one that is more inclusive and beneficial for all members of society. Friedmann places the initial responsibility for social learning and transformation of societal guidance squarely on the individual, whereas

a guided transformation of society is possible only insofar as it begins with a transformation in man. [T]he process of learning. . . must reflect the fundamental relationship of reciprocity - [where] man produces reciprocal effects on the environment that run through intricate chains of consequences back to himself. (Friedmann 1973, 225-231)

Transactive planning also has its shortcomings. Hudson points out that transactive planning theory does not provide for “an explicit treatment of power” (1979, 392). Mc Laughlin comments, a “major weakness of the theory is its inability to deal
with the concepts of ‘organized capacity’ and ‘willingness to act;’… concepts [that] are concerned primarily with group interaction, group formation and the atmosphere in which groups interact” (1977, 218-219). Palermo and Ponzini identify communication issues with Friedmann’s transactive “logic.” They explain,

communication is never unilateral … but mutual. Each actor can learn from the others as long as they are all motivated to participate in the dialogue. [However, the] means of communication are numerous. They are not simply different forms of discourse, but … intersubjective experiences …, often entailing moral judgements [sic]. Consequently, the variety of communicative techniques that need to be used can be considerable (Palermo and Ponzini 2010, 69).

Even Friedman acknowledges that transactive planning’s stress on dialogue could enable skillful speakers to manipulate others, which may not reflect real collective decision-making.

Finally, Roos (1974) complains about Friedmann’s social learning model as a necessary precondition for the functioning of transactive planning. At issue is whether a democratically based planning system can make appropriate societal decisions. According to Roos, “for planning to exist, there must be some forms of comprehensive, collective control over the development of the society as a whole, and this apparently cannot be found within the counter-planning framework” (Roos 1974, 227). Roos explains his position further by quoting Claus Offe,

The problem of democratic legitimation of planning is unsolved, and a solution which would cover both the process and content of planning, is not to be found in the framework of the existing institutional preconditions and alternatives. As long as this is so, planning is going to be imprisoned in the power and political class relations and thus cannot present itself innocently as comprehensive societal rationality. (Offe 1973, 151)
Although Friedmann’s transactive planning theory lacks an explicit treatment of power relations, it does suggest utilizing some elements that can potentially help in understanding the how of participation. Reciprocity is a basic idea to Friedmann’s theory where the duality of self and other unite to form the whole. This indicates an epistemological shift away from a strictly self-interested paradigm of planning. Friedmann’s notion of dialogue as a form of reciprocal exchange where social relations come into contact and the potential for social transformation can occur is adapted and utilized in this research. It also accepts conflict as integral to the reciprocal exchanges of social relations. Friedmann’s concept of social learning also informs this research in that he sees knowledge, particularly experiential knowledge, as socially produced. However, transactive planning theory did not fully connect the social production of knowledge to its close relative legitimacy, also socially produced. Consequently, Friedmann assumes trust is an (eventual) outcome of mutual learning and the collective production of knowledge and legitimacy. This research approaches trust as socially produced, not as an outcome of the production of knowledge and legitimacy. Indeed, this research understands trust as a precursor to the production of residents’ collective knowledge and legitimacy.

**Radical Planning**

Friedmann also took a parallel path of planning inquiry into the realm of rationality, which at one time complemented and at other times diverged from his transactive planning theory. Here Friedmann differentiates between two types of rationality, market rationality and social rationality. Market rationality is the 

unrestrained pursuit of self interest by individuals and corporations … where the individual is assumed to be logically prior to society, and the satisfaction of material needs is said to be the principal reason people live in social groups. (Friedmann 1987, 20)
Whereas Friedmann defines social rationality as a contrasting doctrine in which social formations were said to be logically prior to the individual, whose separate identity as a person derived from membership in a specific group. … collective interests, in this view, always took precedence over the interests of individuals. (Friedmann 1987, 20)

In a spirit similar to the tensions Tönnies’ (1988) identified between “gemeinschaft” (community) and “gesellschaft” (society), Friedmann recognizes the tensions and contradictions between market and social rationalities within capitalistic society. However, Friedmann separates and allocates the function of market rationality to the private sector (i.e., corporate interests) and the function of social rationality to the public sector (i.e., government), which he places in a subordinate role to the private sector. Friedmann justifies social rationality’s subordinated position on the grounds that in capitalist societies most people “gain their livelihood principally through private business, the proper functioning of the private sector is essential. State planning is therefore generally supportive of business ….” (Friedmann 1987, 27). However, Friedmann clarifies that the state is not monolithic to capital’s needs, but also includes policies and programs that correspond primarily to social rationality, and these may bring the state into conflict with interests that adhere to the market principle of conduct. The major planning uses that are resolved primarily with reference to socially rational criteria are income redistribution, coordinated planning for regional and rural development, restraints on market rationality, income transfers to victims of the market, and efforts to ameliorate the effects of market rationality. The point of greatest potential conflict with market forces … concerns policies that restrain the normal operation of markets. Historically, it is precisely here that the major public-private battles have been waged. (Friedmann 1987, 28-9)
What Friedmann is alluding to is class conflict, which is fundamental to capitalist society. The State according to Friedmann functions to facilitate accumulation and control class conflict by couching its deliberations in terms of a collective purpose, or what is also called the general or public interest. Although this interest may be nothing more than a fleeting political consensus, the state must maintain at least the appearance of serving it. If it does not, its very legitimacy may be in doubt. (Friedmann 1987, 27)

Friedmann concludes by stating, “[I]t is probably correct to say that in most cases public sector programs are successfully launched only when they are broadly compatible with the interests of corporate capital” (Friedmann 1987, 21). Given this fatalistic conclusion by Friedmann how can he also be an advocate of utilizing planning for transforming and improving society? Friedmann’s response is

unrestrained profit making destroys the bonds of human reciprocity that lie at the foundation of all social life …. For this reason, the state, which expresses the political community and is therefore accountable to it, is obliged to play a dual role: it must encourage and support the interests of capital, but it must also prevent those interests from eroding the foundation of a common life. As an instrument of societal guidance, actual planning practice inevitably reflects this complex, conflict-ridden role. (Friedmann 1987, 29)

So how do planners, agents of the State, resolve this conflict? Friedmann identifies three basic forms that planning may take: 1) allocative planning, 2) innovative planning, and 3) radical planning and practice. Radical planning is relevant for this discussion as it is “distinctive in drawing on organized citizen power to promote projects pointing toward social transformation” (Friedmann 1987, 33-4).
The centerpiece of Friedmann’s radical planning is the concept of action. Friedmann uses Arendt’s (1998) definition of action in which

action signifies both a departure from routine behavior (a new path or an innovative practice) and the initiation of a chain of consequences that, except for the action, would not have occurred. [W]e shall say that action means to set something new into the world. Goal achievement is not an essential part of it. (Friedmann 1987, 39-44)

Friedmann stresses how knowledge is produced and turned into material actions. However, the primary action Arendt (1998) had in mind was the action of plurality, of people being together face to face, which could enable a second action of political speech, of discourse between and among people. Friedmann’s radical planning does not attempt to change the structural relations between the State and capital, which is a chief complaint of Marxist-oriented planners.

There are three relevant ideas of radical planning theory applicable to this research. First, is the notion of reciprocity which I discussed above. Second, reciprocal exchanges occur within the constraints of a social context. The social context of this research is capitalist class conflict, which places constraints on the effects reciprocal exchanges may produce. Third, radical planning theory asserts knowledge is produced and turned into material actions. Unlike Friedmann’s assumption that the state and market are the appropriate actors to turn knowledge into actions, this research pre-establishes no such roles. Instead, operating within the existing social context of class conflict, the actual struggle itself comes to define the actors that produce the knowledge and turn it into material actions.

**Collaborative Planning Theories**

Some of the latest theories espousing social transformation include “deliberative” planning (Forrester 1999), “communicative” planning (Healy 1992; Innes 1998), and “consensus building” planning (Innes 1996). I group all three types together as
collaborative planning theories as they all emphasize the actions of talking, dialogue, and understanding social meanings.

**Deliberative Planning Theory**

Forrester asserts that planners are the mediating experts that open and channel the development and flow of knowledge to all stakeholders, assist in the formation of policy agendas, and facilitate the processes through which inclusive agenda formation can take place. The core of deliberative planning rests on the relations of knowledge and power, and the transformative ability learning has on the social construction of identity. Deliberative planners act as transformative catalysts facilitating participatory and deliberative processes. These processes can transform an individual’s sense of self thereby creating an opportunity for changes in the relations between stakeholders. Forrester argues that interests are socially constructed, and therefore can be changed.

Forrester attempts to elaborate a progressive and pragmatic planning approach. His main point is that in “the face of structural imbalances of power and life-chances, active interventions seeking social justice are required, interventions that go beyond liberal-pluralist bargaining and incrementalist strategies” (Forrester 1989, 62). Progressive planners can encourage and inform the mobilization and action of affected citizens. Forrester’s notion of “progressive planning” is that of a genuinely democratic planning process that fosters resident participation in issues that affect people’s lives, and that can change the structural distortions. Forrester advocates for a pragmatic planning approach, where he defines “pragmatic” as “doing” the practical within the limitations of a particular situational context. And “[d]ifferent contexts, then, call for correspondingly different practical strategies of action” (Forrester 1989, 62). Forrester defines practical as “responding to the demands of any situation with all its particularities” (Forrester 1989, 63).

Lucie Laurian emphasizes dialogue in the deliberative process, and involving “a wide segment of the public in local decision making with the hope that citizens’ involvement will improve the quality of decisions, as well as their legitimacy, implementation and outcomes, while simultaneously generating additional benefits, such
as social learning, social capital and empowerment” (Laurian 2009, 381). Laurian recognizes “[t]rust, collaboration and communication are mutually reinforcing,” but she also acknowledges their relational paradox. While “trust is necessary for open communication and collaboration, open communication and collaboration are also preconditions of trust” (Laurian 2009, 384). By employing a Habermasian approach, Laurian understands that the ideal speech conditions for undistorted communication are conditions supporting trust, which include: “comprehensibility, truthfulness, sincerity, legitimacy, equal standing and respect for all forms of knowledge, inclusiveness, openness and transparency. Openness and transparency are particularly important and complex for trust” (Laurian 2009, 384).

Laurian concludes by indicating that there is a gap between planning theory and planning practice. While planners in the field are well aware of the significance and complexities trust and distrust play in their daily planning practice, there is limited theoretical and empirical understanding of the interactions between trust and planning. Laurian explains part of the problem is that planning scholarship only anecdotally mentions trust and distrust (in individuals or institutions) as contributing to the outcomes of specific participatory planning processes. [W]hat planners experience as a problem or crisis of trust is principally a failure of the local institutions of civil society to provide the foundations of trust. Ideally, such institutions will engage citizens to learn and grow together through dialogue, will generate mutual trust and will provide the basis for social trust, which in turn facilitates cooperative action. (Laurian 2009, 385)

Consequently, a major weakness of deliberation theory is that it lacks the theoretical means by which to achieve its transformative promise of creating a more progressive and democratic society. In his conception of deliberation theory, Forrester somehow endows planners with a special kind of knowledge and power to educate stakeholders, which facilitates the transformation to a better human identity. Forrester does indicate there is a “pragmatic” limiter on how far social transformation can go. This limiter comes in the form of doing the practical within the limitations of a particular situational context.
However, Forrester appears to utilize the same knowledge and power relations, only inverting them, to rectify social inequities. Therefore, it seems unlikely utilizing the same means of knowledge/power production would yield transformative and progressive social results, which was a point Laurian made. This research does not privilege planners with a special kind of knowledge and power to educate stakeholders, which facilitates a transformation to a better society. Instead, this research problematizes knowledge and the construction of knowledge by placing it at the intersection of conflict.

Deliberative planning theory proposes utilizing ideal speech as the operational mechanism to produce a form of knowledge, trust, and cooperation that corrects for institutional failures, which can lead to social transformation. Unfortunately, as Laurian pointed out, “trust is necessary for open communication and collaboration, open communication and collaboration are also preconditions of trust” (Laurian 2009, 384). The difficulty is that trust and open communication and collaboration are conceived as mutually entailing, and deliberative planning theory can not provide for their resolution. This is due to the theory’s use of an external stimulus (e.g., planner) as the catalyst for action or change. This research sees the mutually entailing nature of trust, communication, and collaboration (also knowledge and legitimacy) from a reciprocal exchange perspective where resolution comes from the building up of trust, for example, develops from each exchange iteration.

**Communicative Planning Theory**

Healy introduces the idea of “communicative rationality” as “inter-subjective mutual understanding – a shift in perspective from an individualized, subject-object conception of reason, to a notion of reason as inter-subjective mutual understanding arrived at by particular people in particular times and places (Healey 1992, 150).

In this way, knowledge for action, principles of action and ways of acting are actively constituted by the members of an inter-communicating community, situated in the particularities of time and place. Right and good actions are those we can come to agree on, in particular times and places, across our diverse differences in material conditions.
and wants, moral perspectives and expressive cultures and inclinations. Planning, and its contents, in this conception, is a way of acting in which we can choose after debate. (Healey 1992, 151)

Healy states Habermas’ conception of communicative action has been criticized on grounds that reasoning and consensual positions can be arrived at, whereas contemporary social relations reveal deep cleavages, of class, race, gender and culture, which can only be resolved through power struggle between conflicting forces. (Healy 1992, 151)

Habermas justifies his retention of reasoning as a legitimately guiding principle of collective affairs on the grounds that where collective acting in the world is our concern we need to engage in argumentation and debate. We need a reasoning capacity for these purposes. We cannot just engage in aesthetic presentation or moral faith if at some point we are faced both with making sense together and working out how to act together. In the end, the purpose of our efforts is not these (doing analysis, telling stories, rhetoric), but doing something, i.e., acting in the world. (Healy 1992, 151)

The communicative approach to knowledge production, according to Healy is knowledge not pre-formulated but specifically created anew in our communication through exchanging perceptions and understanding and through drawing on the stock of life experience and previously consolidated cultural and moral knowledge available to participants. (Healy 1992, 153)

Innes (1998) further develops the idea of knowledge production by describing three major aspects of the communicative approach. First, information in practice influences understandings, practices and institutions, rather than being used just as evidence.
Second, the process by which information is produced and agreed on is crucial and must include substantial debate among key players in the social process to develop a shared meaning for the information. Third, many types of information (e.g., personal stories, intuition) other than ‘objective’ information is acknowledged as valid information (Innes 1998). Innes evaluates communicative rationality as a process of deliberation where, Individuals representing all the important interest[s] in the issue must be at the table. All stakeholders must be fully and equally informed and able to represent their interests. All must be equally empowered in the discussion. The discussion must be carried on in terms of good reasons, so that the power of a good argument is the important dynamic. Within the process it must be possible for the participants to assess the speaker’s claims in terms of four tests: Speakers must speak sincerely and honestly; they must be in a legitimate position to say what they do, with credentials or experience to back them up; they must speak comprehensively - jargon and technical language communicates poorly; and what they say must be factually accurate in terms of scientific or other methods of verification. Finally, the group should seek consensus. (Innes 1998, 60)

In addition to the production of knowledge, communicative theory also focuses on power relations and acknowledges that “power infiltrates every dimension of planning” (McGuirk 2001, 197). Where “agendas of decision making are politically and selectively structured; and citizens cannot participate equally in decisions affecting them” (McGuirk 2001, 197). McGuirk states that the purpose of communicative planning practice (CPP)
is to transform power relations by creating deliberative forums which can (temporarily) negate the power context of planning - the inequalities that stakeholders bring with them on entering participatory processes. These power-neutral forums are aimed at producing, however temporarily, a “shared-power-world” in which the relations of power that inhere in communication might be transformed. The role of planners in CPP is thus one of
exposing the power/knowledge/rationality frames that position claims for attention. (Mc Guirk 2001, 197-98)

For McGuirk, planners need to “manipulate power relationships” during “deliberation, shaping its outcomes, and expertly mediating the intersection of these outcomes with the governance procedures and institutions which frame planning practice” (Mc Guirk 2001, 198).

Communicative theory’s transformative aspirations are admirable, but the theory lacks the theoretical means to move towards a practical parity in participant power relations. Tewdwr-Jones et al provide a useful critique of communicative theory. Although their critique is geared to a Habermasian perspective of communicative rationality, they nevertheless bring up important questions/issues relevant to communicative theory.

Tewdwr-Jones et al have four major issues with communicative theory. First, communicative theory “assumes that all sections of a community can be included within the collaborative planning discourse, although little has been said on how this could be achieved, or even how all these stakeholders can be identified, and by whom” (Tewdwr-Jones et al 1998, 1980). Second, communicative theory recognizes the uneven power distribution between stakeholders, and suggests that “by building up trust and confidence across these fissures in interpersonal relations, new relations of collaboration and trust ... [will] shift power bases” (Tewdwr-Jones et al 1998, 1980). Unfortunately, communicative theory does not describe how, or by what mechanism(s), or through what process(es) trust and confidence are built up. Third, communicative theory “is founded on the rationale that negotiative processes within collaborative discourse arenas are founded on truth, openness, honesty, legitimacy, and integrity,” but “fails to include the possibility that individuals can deliberately obfuscate the facts and judgments for their own benefit, and for the benefit of their own arguments” (Tewdwr-Jones et al 1998, 1981-82). Finally, communicative theory presupposes individual participants possess the “same knowledge about issues to be discussed” coupled with “the required skills to enable effective participation” (Tewdwr-Jones et al 1998, 1986). As a result of this
presumed parity of knowledge and skills between participants, communicative theory assumes participants would “act openly and honestly,” and would “be prepared to see their values subjected to scrutiny, criticised by stakeholders, and would then admit ‘defeat’ in the face of competing [and better] arguments” (Tewdwr-Jones et al 1998, 1986). These criticisms of communicative theory reflect the uncritical way in which participation is treated. Communicative theory symptomatically describes disparate and unequal outcomes of participation - domination of knowledge production, unequal power distribution, and order of social legitimacy and validity. The theory also presumes self-interest is the sole motivating force in an individual’s need or desire to participate, and implicitly subsumes the “Other’s” interest within self interest or disregards the “Other’s” interest as a motivating source altogether. This research draws the disparate power relations out into public at the intersection of conflict, in the reciprocal exchanges between stakeholders as they perform their dialogues to each other.

**Consensus Planning Theory**

Consensus theory is based on a theory of “interest-based negotiation and mediation” (Innes 2004, 5). Consensus theory emerged parallel to communicative theory, and mirrors many aspects of the communicative approach, but places more validity on “experiential, subjective, and socially shared knowledge” (Innes 1996, 463). Innes explains consensus theory as “a method of group deliberation that brings together for face-to-face discussion a significant range of individuals chosen because they represent those with differing stakes in a problem” (Innes 1996, 461).

According to Judith Innes, the act of consensus building “is only appropriate in situations ... where all stakeholders have incentives to come to the table and [recognize a] mutual reciprocity in their interests” (2004, 5). However, consensus building cannot work when stakeholders have no incentive to come to the table, and “it is not called for if stakeholders do not have reciprocal interests” (Innes 2004, 15).

Players come to the table only because they know their interests are not being served well by going it alone. Everyone at the table at least potentially has interests that
are in some way reciprocal with at least some of the others’. This is essential if stakeholders are to stay attached and committed to the process. That is, each player must have something to offer one or more other players at the table and others must be able to offer them something (Innes 2004, 9).

However, not every negotiating process can be called consensus building. Inness offers “a number of conditions” that need to exist before a “process” can be described as consensus building. These conditions include:

1. Inclusion of a full range of stakeholders;
2. A task that is meaningful to the participants and that has promise of having a timely impact;
3. Participants who set their own ground rules for behavior, agenda setting, making decisions and many other topics;
4. A process that begins with mutual understanding of interests and avoids positional bargaining;
5. A dialogue where all are heard and respected and equally able to participate;
6. A self-organizing process unconstrained by conveners in its time or content and which permits the status quo and all assumptions to be questioned;
7. Information that is accessible and fully shared among participants;
8. An understanding that ‘consensus’ is only reached when all interests have been explored and every effort has been made to satisfy these concerns (Innes 2004, 7).

A successful outcome of consensus building is not restricted to finding agreement between the stakeholders. A successful consensus building outcome may produce no agreement at all, but instead produce an “authentic dialogue” between stakeholders in which each acknowledges the other’s “diverse views and multiple knowledges and understandings” (Innes 2004, 9). Participants develop reciprocal understandings through telling each other their stories.

Participants tell stories to describe their interests; they tell stories to identify and label the problems; they tell stories to imagine what will happen if nothing is done; they tell
stories to describe the harm that will come to them and their constituencies if some proposed action is taken and they collectively weave new stories for a future out of the pieces of stories each brings to the table (Innes 2004, 11).

This weaving together of stakeholder’s stories creates a potentially new social fabric that “can build societal and institutional capacity” (Innes 2004, 9).

The potential for consensus theory to be a catalyst for social transformation is doubtful. As Innes laid out consensus theory she provided no definition (theoretical or otherwise) of the concept of participation yet provided two criteria to participate: 1) There must be an incentive for a stakeholder to come to the negotiating table, and 2) Each participant must have something to offer other participants at the table. Consequently, consensus theory takes reciprocal interests as a given, as a necessary attribute for stakeholder admission to the negotiating table as a participant. This reciprocal interest, the capacity to offer something to other participants, is problematic in that it presupposes the process (including rules) of consensus building itself is predetermined prior to the participants coming to the so-called negotiating table. This precondition to participation obscures power disparities rather than equalizing them. Consequently, questions about who are the “Who” in deciding which stakeholders are allowed to participate, and what rules establish the consensus building process are not asked. Innes’ conception of reciprocity is tantamount to a social exchange of mutual self-interests; thus ignoring the “Other’s” interests (i.e., collective interests’) unless the “Other’s” interests fold into the goals of self-interest. In this way the “Other’s” interests are either ignored or subsumed into self interest, and as a result the “Other’s” interests are devalued and delegitimized.

The relevancy of consensus theory for this research is twofold. First, I use the self-selection quality of consensus theory as a contrast to this research. In consensus theory, stakeholders participate only when participating furthers their self-interests. Therefore, consensus theory is unable to cope with situations where stakeholders have no incentive to participate. This quality of self-selectivity conceals power disparities, similar to those discussed in the above planning theories. Where consensus theory tries to find common
ground among participants, this research deliberately searches for conflicts, for disparities, for abnormalities, for missing participants, in short, for the power disparities between participants so they are brought into public view.

A second relevant and similar aspect of consensus theory to this research regards the meaning of successful outcome. A successful outcome for consensus theory is not restricted to finding consensus, but includes producing an “authentic dialogue” between stakeholders. This research is framed in a similar way where a successful outcome is not limited to a “winner” and “loser” of a conflict, but in nuanced ways such as building or strengthening relationships of trust, building or enhancing a community’s collective knowledge, or building or validating a community’s legitimacy of itself or recognition of it by communities external.

**Summary**

The connection of the above planning theories (except for rational planning theory) to this research is that they all contain fragments of the components necessary for participation, but not enough to flesh out the constitutional elements of participation. That is their weaknesses. Instead, each theory assumes or subsumes participation as a given state of being, and in doing so ignores conditions that underpin the environments that enhance or diminish the potential for participation to develop. In addition, these theories do not, or, weakly address power disparities between participants. Urban regime theory, however, provides a start to solving this fragmentation of components by connecting the participation components together into a governance framework. An additional feature of urban regime theory is that it addresses disparate power relations, which is central to this research.

**Urban Regime Theory**

Urban regime theory provides a way in which residents can make a foray into the economic and political power relations between the state and market realm by not subsuming the political as a part of the economic  – where politics really does matter. The origin of urban regime theory “can be traced [back] to Charles Lindblom’s (1977)
seminal work on political economy at the national level.” (Imbroscio 1998, 234). Elkin (1987) adapted regime theory to the city, and Stone (1989) extended it and applied it to a case analysis of Atlanta. Thus, this political economy approach to public participation in public decision-making is appropriate for the types of questions this research asks.

As Imbroscio (2003, 271) points out, “[u]rban regime theory rightfully reigns as the dominant paradigm in the analysis of local governance.” He goes on to say the

strong appeal of the regime approach is that, as Lauria (1997, 1) points outs, “it dispenses with the stalled debates” between pluralist (see Dahl, 1961) and elitist (see Domhoff, 1978) accounts of urban politics, while avoiding the economic determinism of more recent theories of urban politics rooted in a political-economy perspective (see Peterson, 1981). Regime theory adopts the central tenet of political economy - that economic forces play a strong role in shaping urban outcomes - but appreciates that “politics [also] matters” in shaping these outcomes (Stone, 1987, p. 17). (Imbroscio 1998, 234)

However, regime theory is not without its critics. Regime theory has come under intense scrutiny because of what many scholars view as its conceptual limitations and weaknesses that are inherent in this approach. Lauria (1997) criticizes urban regime theory for its failure to move beyond “middle-level abstractions.” Ward argues that

regime theory is underpinned by two theoretical weaknesses; it is both localist and empiricist That is, regime theory has focused attempts to study the mediating of power through local economic development and negated considering structural factors and over-simplified the problem of scale in either regime formation or regime sustenance. Urban regime theory instead has sought explanation through empirical observations, which have themselves limited explanatory power. This is because urban regime theory does not get to grips with the processes underlying power in the contemporary city. (Ward 1996, 431-432)
DiGaetano and Klemanski (1993) claim regime theory is a “bottom up” approach, where

The local polity, not the nation state, is the object of analysis. In short, regime theory posits that the configuration of power at the local level, which may indeed entail forming alliances with non local leaders, should be the point of departure for the study of urban governance. (DiGaetano and Klemanski, 1993, 381)

Cox is perhaps the harshest critic of regime theory for its conceptualization of the “local” (Cox, 1991a, 1991b, 1993). According to Cox, regime theory is one of several similar theories he categorizes as the new urban politics (NUP). Cox asserts that the NUP have engaged in oversimplified and often unexamined understandings of both locality and autonomy, which he criticizes the NUP for their over-simplified assumptions about globalization (Cox, 1993, 1995). DeFilippis (1999) is also critical of the NUP’s presumption that the “local” exists a priori. He states that localities are “continuously being constructed and reconstructed, both by their relationships with the rest of the world, and by the struggles that take place within them. [I]ts theorists have assumed away questions of what constitutes and produces the local.” (DeFilippis 1999, 976). Finally, McCann summarizes the three basic flaws of urban regime theory, with regards to understanding the linkages between urban political economies and similar processes at other scales: (1) the tendency to theorize urban regimes only from the bottom-up and employ methodologies that conflate the extent of urban economic processes with the formal political boundaries of cities; (2) engagements with detailed case studies of urban regimes which do not adequately delineate the linkages these systems of governance and economic development have to other scales … and (3) regime theories concerned with the political activities of elites, especially with regards to economic development policy, not only provide a partial story of the manner in which policy is formulated but tend to fall into problematic, individualist and voluntaristic conceptions of decision-making. (McCann 1998, 67)
Urban regime theory as it currently stands does suffer from the deficiencies described above and is rightly critiqued for allowing, in Marxist terms, the forms of social relations to guide analysis instead of the actual structures of social relations. Urban regime theorists need to dig down past the appearances - the symptoms - that obfuscate explanation of concrete behaviors/decisions at the urban level, and get to the fundamental social relations that drive human behavior/decisions. This is not an easy thing to do especially when case studies have been the backbone of urban regime analysis. However, this is something that must be done in order to strengthen the theoretical basis of regime theory. What is somewhat ironic, however, is that the potential resolution to all the critiques against urban regime theory are contained in the basic tenets of the theory itself when considered in its pure form. A reevaluation of urban regime theory is necessary, first to get back to the fundamental roots of the theory, and second, to extend and amplify those theoretical roots towards a more complete understanding of the basic structure of human relations.

**Understanding Urban Regime Theory**

This dissertation begins from the theoretical perspective of urban regime theory as developed by Stephen Elkin. Although Elkin never uses the term urban regime in his book, *City and Regime in the American Republic*, he implies it through the object of his study, namely the city. Elkin, however, does provide a definition of regime as the “[p]olitical institutions [that] help to form what may be called the political way of life of a people. I will call the desired political way of life the ‘regime.’” (Elkin 1987, 110). Elkin has in mind a particular political way of life, which he calls a commercial republic. A commercial republic is “the organization of economic life [that] is to be guided by its contribution to a constitutional popular government …” (Elkin 1987, 120). According to Elkin the origins of the commercial republic come from America’s founders, who “thought that this enterprise of limited republican government was to be guided by two principles: a concern for individual rights and the promotion of a commercial society.” (Elkin 1987, 113).
Taking his cue from America’s founders Elkin interprets the regime based on “the division of labor between state and market as it has become manifest in cities. The interpretation … takes seriously what common sense tells us, namely that city politics is a profoundly economically oriented enterprise.” (Elkin 1987, 7). By using a state-market approach Elkin acknowledges that,

there are only certain kinds of politics that can flourish given the particular form that the division of labor between state and market has taken in cities. The structural factors that define that division are most likely to facilitate a politics that revolves around the following axes: (1) efforts by public officials and local businessmen to construct an alliance focused on promoting economic growth in the city; (2) efforts by local politicians to organize electoral coalitions and the inducements necessary to sustain them, and (3) efforts by city bureaucracies to gain autonomy in the shaping of the policies that guide their bureaucratic domain. (Elkin 1987, 36)

These three axes consequentially circumscribe the political sphere into a diminished space that supports activities for the enhancement of the city’s economic prosperity. As Elkin eloquently states, “[t]he battlefield of city politics is not flat but is tilted toward an alliance of public officials and land interests. Those who want it any other way must push uphill, whereas such an alliance only has to sit still and wait until the task of pushing the rock up the incline grows too burdensome.” (Elkin 1987, 100-101).

Elkin’s chief concern is that over time the city’s political form has increasingly tilted towards accommodating business interests through the constitution and/or reconstitution of the political institutions that both public officials and citizens act out in their respective roles: public officials primarily act to “facilitate inducement of city growth” (Elkin 1987, 41); citizens primarily act as “potential bargainers in a set of political institutions that work to aggregate interests, and as clients of city bureaucracies.” (Elkin 1987, 84). Consequently, these institutionally constructed roles in which public officials and citizens find themselves diminish the broader meaning of the commercial

15 Like that of King Sisyphus’ plight of fruitless labor in Greek mythology.
republic. Put another way. Is there something more to a commercial republic than promoting economic growth? Elkin says there is.

Elkin asserts that the current state of the city regime lacks institutional arrangements that allow for the full potential of the commercial republic to emerge. He argues that for the full potential of the commercial republic to be realized “the institutional arrangements must be participatory, legislative in form, and public in argument; that is, they must involve a substantial number of citizens standing in relation to each other as reason givers if our aspirations are to be served” (Elkin 1987, 171 my emphasis). Elkin is expressing his notion of a deliberative democracy in which citizens engage in public discourse through “reason-giving.” which is justifying one’s proposal/action/decision to other citizens regarding public choices (Elkin 1987, 149-150). Elkin quotes Hannah Pitkin, a quotation worthy of inclusion here because of the clarity she provides regarding the institutional role of citizens aspiring to create a commercial republic:

Drawn into public life by personal need, fear, ambition or interest, we are there forced to acknowledge the power of others and appeal to their standards, even as we try to get them to acknowledge our power and standards. We are forced to find or create a common language of purposes and aspirations, not merely to clothe our private outlook in public disguise, but to become aware ourselves of its public meaning. We are forced, as Joseph Tussman has put it, to transform “I want” into “I am entitled to,” a claim that becomes negotiable by public standards. In the process, we learn to think about the standards themselves, about our stake in the existence of standards, of justice, of our community, even of our opponents and enemies in the community; so that afterwards we are changed. Economic man becomes a citizen. (Pitkin 1981, 347)

Pitkin presents reason-giving as more than simply justifying one’s proposal/action/decision to others. Reason-giving is also a mediating process through which human relations can be transformed (King, 2003). The process of reason-giving includes “[a]rguments [that] are to be tested, reworked, and withdrawn, not asserted as if
their blinding rationality compels assent” (Elkin, 1987, 150). In this way we not only look at “how values were formed or what motives or beliefs stood behind my action, …[but we also] look forward to what my action creates, what it brings into being” (McGowan 1998, 174).

In summary, the two crucial elements of Elkin’s regime theory are: 1) political institutions are much more than tools, they are *formative*, they help to form the citizenry and define citizenship, “for that is what the constitutive nature of political institutions is finally about” (Elkin 1987, 199-200), and 2) political institutions must provide a public space in which citizens can interact in relation to each other as “deliberators or reason givers [i.e., reason-giving]” (Elkin 1987, 152) in order to realize the full potential of a commercial republic.

This dissertation begins from Elkin’s original premise in which political institutions help to form a people’s political way of life. While this author agrees with Elkin that we are constituted in part by the institutions that represent us, it is my contention that his state-market framework is too narrow and places limits on the political capacities of people, and consequently the options available to people to make changes to their environment. Elkin himself capitulated near the end of his book and expressed reservations about whether his idea of a re-formed institution could withstand the structural forces of capital. “There will inevitably be some constraints on popular control in any regime built around a division of labor between market and state” (Elkin 1987, 186). Elkin has good reason for his cognitive dissonance, but not due to his regime theory being based on a flawed (i.e., state-market) approach. Clearly, Elkin is envisioning a regime theory operating within the parameters of capitalism, which he interprets through the analytical lens of a division of labor between state and market. But by utilizing a state-market approach, Elkin has inadvertently put himself into a theoretical

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16 This should not be misconstrued as an attempt of this research to replace capitalism with another social system.
dilemma. On the one hand, he is optimistic that structural change can occur in the current social system:

Alter*ing* the inherited structural features that have shaped city politics will give the deliberative politics set in motion by the new city political institutions a chance to flourish. Structural *change*, then, is fundamental to a politics that has as its core a concern with the commercial public interest of the city. (Elkin 1987, 179 my emphasis)

On the other hand, Elkin is pessimistic that a sufficient amount of structural change can occur that would allow the full potential of a commercial republic to emerge due to the constraints put in place by the current social structure:

Understanding contemporary city politics is largely an exercise in grasping the implications of the structural factors that *define* (1) the powers of cities, (2) the prerogatives of asset holders, and (3) the relations between them. Once these structural factors are in place, the dynamics of contemporary city politics are *set*. (Elkin 1987, 33 my emphasis)

The dilemma Elkin faced was not with regime theory, but with his own narrow perception of the extreme difficulty of changing an existing social structure – which explains why Elkin expresses such concern. The issue, however, is not with regime theory but with Elkin’s perceived worldview17 of it.

Fortunately, Clarence Stone explains a way around this dilemma. Stone acknowledges that social structures are not fixed and can be changed. “Action does not simply occur within the bounds set by structures but is sometimes aimed at the structures themselves, so that a process of reshaping is taking place at all times” (Stone 1989, 10). Stone’s perspective therefore opens a space in the current social structure for Elkin’s

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17 My understanding of Elkin after reading his book, *City and Regime in the American Republic*, is that his worldview tends towards a structuralist view. In addition, this research neither advocates voluntarism nor takes a voluntarist position (i.e., people can get things done just by deciding they want to, regardless of overarching structures).
formative institutions to exist and potentially facilitate the emergence of a full-fledged commercial republic.

Stone’s empirical study of Atlanta extends Elkin’s theoretical framework of urban regimes by “[p]ainting the picture of governance in Atlanta” (Stone 1989, ix). Stone acknowledges that painting such a picture “requires a broad canvas” (Stone 1989, ix), but, using his own metaphor, the palette of colors he uses in depicting Atlanta’s governing essence is constrained by the way in which he understands urban politics. “Politics … as the art of arranging … is at the heart of the Atlanta story” (Stone 1989, xii). This “arranging” Stone refers to is an arranging of a “capacity for common action … on those matters that people might choose by reasoning together” (Stone 1989, xii, my emphasis). What is important to understand is that, for Stone, the extent of “reasoning together” is governed by the capitalist mode of production. How we make sense of the world is tilted toward a particular social structure of economic organization, or as Elkin puts it the “organization of economic life” (Elkin 1987, 120).

This social structure does not encourage equality among people, but instead compels inequality through a division of labor in which some people ascend to a privileged position by possessing the means of production, which they can use to dominate those who have no such means. Stone captures this fundamental inequality when he states, “… the underlying structure of the capitalist order affords the investor class a strong opportunity to protect itself politically. By its very nature, capitalism divides authority and furnishes investors with the means to maintain an autonomous sphere of economic activity” (Stone 1989, 226). Since the investor class (i.e., those possessing the means of production) is in a structurally privileged position, “arranging” is tilted toward their interests as they have the resources to constrain “arranging” to an economic predilection. This is not to say that urban governance is economically determined, but that the organization of a particular structure of economic life (i.e., capitalism) puts up “guard rails” to facilitate decisions favoring the enhancement of that particular form of economic life.

There is, however, space for non-economic goals to be pursued such as “fund drives and luncheon clubs” (Stone 1989, 191) and other kinds of social networks that genuinely
seek to build civic bonds between people. However genuine these non-economic pursuits are, there still remains a propensity for these civic networks to re-center people back to taking care of their individual or collective economic life. “In short, if one is seeking credit, donations, technical expertise, prestigious endorsements, organizational support, business contacts, media backing, or in-depth analyses of problems, then very likely one is thrown into contact with the civic network that emanates from the activities of the downtown business elite” (Stone 1989, 192).

Politics as the art of arranging therefore exists within the constrained sensibilities, both individually and collectively, of providing for the enhancement of an economic life. As such the institutions that form the governing urban regime are structurally predisposed to favor projects, policies, and goals that lead to the enhancement of a city’s economic life. By the very structure of the social relations of capital the purpose of institutions tilts towards producing material benefits for the governing regime. Consequently, institutional discourse tends to concentrate on satisfying interests and on the accumulation of benefits, and discourages reason-giving and justification as bases for discourse; as such these discourses question the underlying basis of “reasoning together” and threaten to reveal the exploitive nature of the capitalist social system. By conceptualizing politics in this way Stone diverges from the reason-giving path Elkin (1987) proposed as critical to institutional reformation in which a commercial republic could fully emerge. Stone in fact states, “at its best, politics is about reason-giving …” but dismisses it as romantic and idealistic, and favors, instead the practical art of “arranging” economic, political, and civic actors (i.e., persons and institutions) as the descriptors of urban politics (Stone 1989, xii).

Because Stone understands politics as “arranging” he is interested in illuminating: 1) the informal arrangements of resources and interests that establish and/or sustain urban regimes, and 2) the mechanism that brings about and holds these informal arrangements together as stable and enduring urban regimes. Resources can be brought to bear by private or public interests on the regime to influence it. Resources can take many forms. Some of the most obvious include: capital investment, control of finance and credit, legal authority, and so forth. Resources can also take on less obvious forms such as an
electoral voting bloc, media control, individual reputation, and so forth. Stone makes clear that private interests do not mean solely business interests. “Indeed, in practice, private interests are not confined to business figures. Labor-union officials, party functionaries, officers in nonprofit organizations or foundations, and church leaders may also be involved” (Stone 1989, 7). Stone does acknowledge paying particular attention to business interests for two reasons. “One reason is the now well-understood need to encourage business investment in order to have an economically thriving community. A second reason is the sometimes overlooked factor that businesses control politically important resources and are rarely absent totally from the scene” (Stone 1989, 7).

According to Stone’s perspective, in order to participate in the governing regime political actors must bring to the regime table a capacity and the willingness to contribute to the overall enhancement of the city’s economic life. Stone identifies four such actors in his study of Atlanta: city government, the local white business elite (LWBE), the black middle-class, and the ministers of Atlanta’s largest black churches. The reason for this quartet is obvious. Each needed the other to a greater or lesser degree in order for Atlanta’s economic life to flourish, which in turn enhanced each actor’s particular circumstances. The city of Atlanta needed the LWBE to invest in and to facilitate a continual stream of investment into the city to keep the city economically attractive and financially solvent. The city could accommodate private investment by providing the legal authority to speed projects through the approval process, by neutralizing public opposition, and by providing the public infrastructures (e.g., roadways) business investment needed. The LWBE was geographically fixed to the city due to their investments in real estate downtown and/or the relationships they developed over time with the market segments they served. Because of this geographical fixity the LWBE needed the city to invest in public capital projects to protect their investments and keep markets from eroding. The LWBE also needed the black middle class electorate, as the black population was becoming the majority-voting bloc in city elections. It was necessary for the LWBE to court the black electorate to favor its perspective of what was good for Atlanta. Finally, the LWBE needed the black ministers to provide the black leadership to help settle racial tensions in Atlanta.
The black middle class needed the LWBE to open access for them to mainstream business opportunities and to assist in reducing racial tensions. In return they provided an important voting bloc amenable to the LWBEs perspective of enhancing the city’s economic life, albeit with the additional proviso of promoting racial moderation. Black ministers acted as the gatekeepers for the black electorate in citywide elections. They are the links between black officeholders and the black public, and maintain black solidarity. “[B]lack ministers (somewhat in the manner of precinct bosses of old) ask city officials for favors and considerations for parishioners” (Stone 1989,167-8). In return, the ministers act as conflict mediators smoothing out potential problems and keeping black residents in-line. In doing so, the black ministers shape the voting behavior of the black electorate into going along with the policies of the governing regime. Stone calls this relationship “go along to get along” (Stone 1989, 192). In other words it is better to go along with the momentum of the governing regime rather than oppose it, as the rewards appear to outweigh the costs. Politics framed in a “go along to get along” perspective makes perfect sense given that interests and benefits dominate individual and collective reasoning, and this explains why reason-giving all but disappears from consciousness.

Stone also indicates that an outside group posing a real threat to the stability of the governing regime has the potential to gain access to the regime. However, it takes more than the threat to disrupt the regime enough to gain access. The rise and fall of the neighborhood movement in Atlanta is a good case in point. As Stone describes it,

In the 1970s, Atlanta's neighborhood movement had made itself a formidable political force. It occupied a strategic balance-of-power position in electoral politics, providing a significant bloc of votes, strong candidates, and all-important volunteers for both citywide and district elections. The 1980s were a different story. Though there were some successes, the 1980s have been on the whole a period of defeat and frustration for neighborhoods. The most important fact about Atlanta neighborhoods is … that they are politically fragmented, responding on a highly segmented basis, building alliances issue by issue. Atlanta neighborhoods proved eventually to be politically weak
because they did not solve the collective-action problem for citywide organization. (Stone 1989, 131)

The neighborhood movement threatened to gain access to the regime, but in the end failed to gain even a finger hold within the regime, and it is questionable whether the neighborhood movement ever had any access to the regime. In any event Stone explains that the main reason why the neighborhood movement failed is because it did not have a mechanism, what Stone refers to as “civic cooperation,” to bring and hold together the various interest groups.

Civic cooperation can be gained in several ways, but the traditional solution “has been selective incentives; that is, to supplement group benefits by a system of individual rewards and punishments administered so as to support group aims” (Stone 1989, 186). But according to Stone selective incentives are not the whole story of collective action. Reciprocity in the form of “tacit and imprecise exchanges” can potentially form into relationships of trust and mutual loyalty. Selective incentives coupled with reciprocity provide the mechanism through which partners in an alliance are able “to count on one another to contribute to the combined capacity to govern” (Stone 1989, 180). In addition, Stone describes a beneficial compounding effect in this form of civic cooperation:

As the circle of cooperating allies grows, its effectiveness becomes cumulatively greater. The governing coalition has a kind of gravitational pull; as its own weight increases, its capacity to attract other civic entities increases. As the network of civic cooperation makes its presence felt, others realize that cooperation pays and noncooperation does not. That is what “go along to get along” means, and it constitutes an effective form of discipline based on the selective-incentive principle. Opposition is costly and gives the term “opportunity costs” special meaning in this context. (Stone 1989, 193)

What, then, are the odds that neighborhood groups (e.g., residents) can become a part of a governing regime when using Stone’s understanding of urban regimes? First, Stone states there are three elements that define an urban regime: “(1) a capacity to do something; (2) a set of actors who do it; and (3) a relationship among the actors than [sic]
enables them to work together” (Stone 1989, 179). Stone’s first element, capacity, refers to possessing the resource or resources to do something. Stone’s example of Atlanta’s neighborhood movement clearly indicates that neighborhood groups can possess a capacity to do something. Neighborhood groups possessed capacity, for example, in the form of: financial wherewithal, legal competency, organizational expertise, and a substantial voting bloc.

Stone’s second element, a set of actors, has a double meaning. The first meaning of actor is as an actual person such as an elected official, a businessperson, or a minister. Again, from the Atlanta examples, Stone indicates that this is clearly possible for neighborhood groups. The second meaning of actor is as an institution in its broadest sense where law, tradition, culture, and so forth establish the rules of engagement and conduct between and among people and between and among institutions. The area commission in this research’s case studies is a ready-made institutional “shell” ripe for resident appropriation into a trust-building, knowledge-building, and legitimacy-building institution.

Stone’s third element, a relationship among the actors, is what Stone otherwise calls civic cooperation. As Stone defines politics he acknowledges that it is exceedingly difficult for neighborhood groups to devise an enduring mechanism of cooperation, which he attributes to the neighborhood groups’ failure to solve its collective-action problem. Stone suggests that if neighborhood groups are going to gain a position in the governing regime,

... they have to develop comparable capacities and demonstrate an ability to work together. That is, they have to solve their individual problems of organization and, in addition, work out a viable form of cooperation among themselves. Forming a federation or making a compact of mutual support is an additional step needed to create a coherent force .... Without an independent institutional capacity and a broad federation of groups, business will fill the organizational vacuum. (Stone 1989, 215-16)
However, Stone does not offer a mechanism upon which a neighborhood federation could be based. Clearly it must be based on some mechanism at least as attractive (i.e., compelling) as the governing regime’s. Otherwise, why would anyone risk joining a federation the governing regime may be perceive as a threat and be subject to the regime’s discipline? I contend that the reciprocal relationship of trust is more basic, and therefore more necessary, than selective incentives of civic cooperation. Indeed, Stone himself alludes to the necessity of trust as a fundamental bond of cooperation (Stone 1989, 180).

It appears unlikely that neighborhood groups can gain access to an urban regime for any sustainable time period. The structure of the state-market relationship essentially inhibits the kind of coalitional alliances and civic cooperation necessary based on the satisfaction of interests. Analyzing urban regimes based on the art of arranging may be adequate when examining entities possessing or likely to possess all three elements by which Stone defines an urban regime. However the limits of such an approach quickly become apparent when one tries to apply the same analytical approach to entities that lack one or more of a regime’s defining elements.

Stone’s use of “arranging” as a basis for urban regime analysis runs into difficulty when applied to neighborhood groups. The problem is not, however, with a fundamental inability of neighborhood groups to become members of an urban regime. It is rather an issue of using a self-limiting basis (i.e., arranging) in the analysis of urban regimes. By focusing so intensely on resources and interests that establish or sustain urban regimes Stone effectively forecloses on alternative perspectives that may broaden the essence of urban regime building18. This was the point Elkin made in advocating for reason-giving instead of satisfying interests and accumulating benefits as a basis of regime analysis. Elkin’s insistence on using reason-giving is that it opens up regime analysis to a broader meaning of politics, which could create a space in the governing regime to allow for the possibility of a full-fledged commercial republic to emerge. What needs to be done is to

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18 Once again this should not be misconstrued as an attempt of this research to replace capitalism with another social system. This research will follow Stone’s understanding of social structures and citizen actions as mutually constituting. That is, a social structure influences citizens’ choices and actions, and that the actions of citizens (i.e., agency) also influence a social structure.
modify the basis of urban regime theory to allow for the potentiality of neighborhood groups (i.e., residents) to enter into the deliberative decision-making process of the regime on the residents’ own terms.

To accomplish such a regime modification requires a re-examination of human social exchanges from an ontological perspective of duality. This perspective can provide a basis for reconceptualizing a notion of participation; where self- and other-interest necessarily co-entail each other; and potentially enable once excluded individuals and groups opportunities to participate with the governing regime on a par approaching the upper three rungs of Arnstein’s participation ladder. That entails developing conceptions for trust, knowledge, and legitimacy, which when exposed by dialogue at the intersections of conflict render visible the power disparities that prevent the emergence of an authentic\textsuperscript{19} participation. The next chapter lays out a conceptual framework for a modified urban regime theory, which conceptualizes trust, knowledge, and legitimacy and integrates a reciprocal exchange approach into its theoretical basis.

\textsuperscript{19} Authentic participation for this research means any of the top three rungs of Arnstein’s ladder of participation.
Chapter 3: Conceptualizing Participation Capacity

Introduction

The previous chapter uncovered the fragmentary manner in which planning has approached the concept of participation. Urban regime theory introduced a way of drawing together those fragmented components of participation within a framework of governance. Stone (1989) described selective incentives and reciprocal exchanges as a mechanism to elicit participation and cooperation from members of a governing regime. However, the way Stone saw reciprocal exchange implies a reciprocation of mutually benefiting self-interests between members of a governing regime. Consequently, reciprocation is severely limited or non-existent for interests’ of “others” who are not members of the governing regime. Stone’s reciprocation is at best partial and at worst an illusion of reciprocation. However, his idea of reciprocal exchange as a (partial) mechanism of cooperation needs fuller examination, which this research seeks to accomplish. To address the theoretical shortcomings leveled by critics of urban regime theory and make it more theoretically robust, I approach urban regime theory from a reciprocal exchange perspective.

The basic purpose of this research is to understand how residents develop a capacity to participate or, conversely, are prevented from developing a capacity to participate in city land-use decisions that have an effect on their neighborhoods. The concept “participate” when used in this research, is understood as a resident’s “capacity” to participate. The capacity to participate, then by definition, must entail certain necessary conditions in order to emerge, develop, and continue to function.

The specific necessary conditions include: Plurality, Space, Resource Control, and Purpose (Figure 3.1). Plurality is a necessary condition to participation, as one cannot participate with oneself. In other words, to participate takes at least two people
interacting with each other - it cannot occur individually. There also needs to be a space in which people can come together and interact. When talking about space, what is really being discussed is the phenomenon of space-time, wherein space and time are inseparable. For this research I use the term space as shorthand for space-time; while acknowledging the fact that the act of participation needs not only a space in which to occur in but also an amount of time in which to be performed. The form of space can range from community meeting halls to internet bulletin boards. The critical aspects of space are that it is accessible to people and that people can express themselves. While plurality and space are necessary conditions, they are not, however, sufficient conditions to participate. Another necessary condition is resource control. Arnstein rightly identified power as one form of resource (Arnstein 1969). The most crucial aspect of resource control is the controller’s ability to utilize resources to alter or otherwise influence the decisions or behaviors of others. Finally, to participate implies that there is some basis on which individuals come together to participate in the first place. That basis is to achieve some (collective) purpose which would not have been practically accomplishable individually. These four conditions when combined form the necessary and sufficient conditions providing individuals a capacity to participate. When any of these four conditions is absent, people lack a capacity to participate.

Figure 3.1 Four Conditions of Participation Capacity

However, we must also recognize that an individual’s capacity to participate is mediated by social forces and processes underpinning it. To use an onion analogy, the capacity (or lack thereof) to participate is an apparential form (the outer skin of

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20 The condition of purpose subsumes an individual has interest and motivation to take action.
underlying and layered historical social relations. These historical social relations establish a specific set of conditions that mediate the social context, which tend to limit the range of actions available to individuals or groups.

**Context Matters**

There is a connection between a society’s present social context and its historical social relations. The historically specific set of conditions that mediated past social relations also permeates into the present. As Marx insightfully remarked,

> Men make their own history, but they do not make it as they please; they do not make it under self-selected circumstances, but under circumstances existing already, given and transmitted from the past. The tradition of all dead generations weighs like a nightmare on the brains of the living. (The Eighteenth Brumaire of Louis Bonaparte, 5).

Elkin also recognized this constraint of the past weighing on the present in his acknowledgment of the difficulty of achieving institutional re-formation given the structural forces of capital in which there will, “inevitably be some constraints on popular control in any regime built around a division of labor between market and state” (Elkin 1987, 186).

Stone, and others (Abrams 1982; Giddens, 1986), however, see social structures not as permanent and fixed, but as changeable. “Action does not simply occur within the bounds set by structures but is sometimes aimed at the structures [e.g., the structure of legitimate authority] themselves, so that a process of reshaping is taking place at all times” (Stone 1989, 10). Stone does not deny the existence of social structures or the formidability of a historically specific set of conditions bearing down on those structures. Indeed, because of capital’s contradictory nature, it necessarily produces conflict and struggle from which the potentiality for change can occur.

I recognize the structural constraints of capital in which this research is situated, specifically its contextual form of uneven geographical development (Harvey 1982; 1989; 1996) and local dependence (Cox and Mair 1988). It is within these contextual constraints where conflict emerges and struggle occurs that change can potentially erupt.
I examine the reciprocal exchanges of residents’ speech acts and focus on three intersections of conflict (trust, knowledge, and legitimacy), which have a direct bearing on a resident’s ability to develop a capacity to participate (Figure 3.2).

**Figure 3.2 Reciprocal Exchange**

![Reciprocal Exchange Diagram]

**Reciprocal Exchange**

For participation to occur within a governing regime there must be an interaction between people, or more precisely an exchange between people. Exchange is therefore a locomotive mechanism for participation. Through their acts of exchange, regime participants put participation into motion, which set up a potential for a future round of exchange, which then facilitates additional participation, and so on, that may eventually lead them to achieving a collective decision or action.

This research utilizes exchange not as a theory, but similar to Emerson’s (1976) idea of exchange as “a frame of reference,” so that urban regime theory might gain a
different perspective about participation. The exchange perspective implicit in urban
regime theory is a combination of perspectives that can be traced back to George Homans
and Peter Blau. Homans’ exchange perspective is a “backward looking” (Cook and Rice
2006) reinforcement view, which means that the act of exchange relies on past
(beneficial) exchanges as the motivational force for future exchanges and the
continuation of the exchange relationship. On the other hand, Blau’s exchange
perspective is a “forward looking” (Cook and Rice 2006) utilitarian view. People will
enter into an exchange based on the “anticipated rewards that benefit them and they tend
to choose that alternative course of action that maximizes benefit (and minimizes cost)”
(Cook and Rice 2006, 55). For both Homans and Blau self-benefit (i.e., self-interest) is
the primary reason for entering an exchange.

Equally significant was that neither Homans nor Blau considered a participant’s
capacity to participate in an exchange and the effects that a participant’s capacity might
have on other participants’ behaviors or the potential access of other would-be
participants to the exchange. For example, power disparities may provide an advantage
to one participant over other participants resulting in domination over the exchange
process and its outcome. In addition, power disparities may also provide an exchange
participant the ability to prohibit other potential participants from entering into the
exchange.

Emerson (1962; 1972) was one of the first who argued, “reciprocity was a core
feature of exchange relations ….” (Cook and Rice 2006). However, Emerson’s notion of
reciprocal exchange contained only self-interested participants competing in a power
struggle based on their mutual interdependence of each other. Again, we are back to a
notion of reciprocal exchange involving only those participants representing their mutual
self-interests in the exchange. Additionally, Emerson took the participants of an
exchange as given without considering how the participants were able to be participants
of the exchange in the first place. Without this consideration, it is easy to overlook others
who wish to participate, but lack the resources (e.g., power) to transform themselves into
participating members in the exchange, and therefore are precluded from participating.
Marshall Sahlins (1972) depicted reciprocal exchanges as occurring along a continuum from negative to balanced to generalized reciprocity, but his depiction creates an impression that reciprocal exchange is something akin to a ‘container’ filled with rules that participants follow. While a continuum may best describe reciprocal exchange, it begs the question of who established the reciprocal exchange rules. While Gouldner’s norm of reciprocity (1960) provides a reasonable explanation of who establishes the rules (e.g., through social norms, culture, traditions); we must not forget that it is the dominant social norms, the dominant culture, and the dominant traditions, which likely prevail; and from that dominance arise those who become the participants in the exchange. Marginalized are those who are minority members of the dominant society, faced with no pathway to becoming a participant. If reciprocal exchange is re-envisioned as a space, rather than a container, where participants through their acts of participation and exchange can alter existing rules or form their own rules, then the potential for a space opens up to include all those desiring to participate.

Gerald Corey offers such a re-envisioning of reciprocal exchange that potentially opens up a more inclusive space to those wishing to participate. Coming from a bio-neurological basis, Cory (2004) identified two distinct neurological programmings as “self-interest” - associated with our self-preservation programming - and “other-interest” - associated with our affectional programming. These two basic neurological programmings, self-interest and other-interest form the fundamental human relationship Cory called reciprocity, which is always in a state of tension. For Cory, self-interest and other-interest are mutually entailing, and neither can be excluded from nor subsumed into the other and still retain its reciprocal nature.

Corey also asserted that reciprocity contains homeostatic regulation (2004, 33), a basic mechanism of human survival. Homeostasis describes the environmental range in which an organism can survive. If the homeostatic limit is exceeded the organism either self corrects, adapts, or breaks down (i.e., dies) (Cory 2004). Homeostatic regulation as it relates to reciprocity means maintaining a balance between the behavioral expressions of self-interest and other-interest within the range of human survival. And it is within the range of human survival that tensions between these two neurological programmings
emerge, and must find equilibrium or what Cory calls “dynamic balance”. According to Cory, dynamic balance is “managed” by the brain’s frontal cortex, which makes the “executive” decisions “to choose between our contending sets of behavioral impulses” (Cory 2004, 17).

This managed interplay of tension between self- and other-interest to achieve equilibrium or dynamic balance is not a single point solution, but rather many possible solutions set on a continuum between self- and other-interest. Reciprocity is thus the condition and the mechanism in which to find balance both internally (i.e., individually) and socially (i.e., group and society) between the tensions of self-interest and other-interest. For example, when an individual or a group feels no tensions (i.e., they don’t feel out of balance) between self-interest and other-interest - that is to say when they are in balance (or near balance) - no action is felt needed to restore balance. Conversely, when an individual or a group feels reciprocity is out of balance, their feelings tell them action needs to be taken to restore balance. There exists, however, as Gramsci (1971) showed, a potential for cultural hegemony to distort or otherwise obscure reciprocal disequilibrium or at least diminish the disequilibrium being felt by an individual or an entire subpopulation.

Corey’s perspective of reciprocity contributes three characteristics that are significant to this research, which include:

1. Reciprocity is created through the exchanges of participants
2. Reciprocity is comprised of both self- and other-interest
3. Reciprocal exchange affects relationships, and is affected by relationships

**Constructive Reciprocity**

Reciprocity has many definitions (Gouldner 1960), but I prefer using Sobel’s (2005) terminology of constructive and destructive reciprocity since I believe his terminology offers the best intuitive clarity. Sobel understands “repaying unkindness with unkindness” to be “destructive reciprocity” and “repaying kindness with kindness” to be “constructive reciprocity” (Sobel 2005, 397). Although I borrow Sobel’s terms of constructive and destructive reciprocity, I modify their meanings more generally in this
research as follows. Constructive reciprocity includes social exchanges that help connect people closer together in a communal sense (i.e., in a particular and intimate knowable way), thus promoting community (i.e., cohesion). Destructive reciprocity includes social exchanges that help to socially disconnect and distance people from each other, thus promoting individualism. Constructive reciprocity takes into account both self- and other-interest, whereas destructive reciprocity takes into account only self-interest. Constructive reciprocity is implicitly the kind of reciprocity Cory theorized about since by definition reciprocal equilibrium is achievable only when the tensions between self- and other-interest are in balance.

**Direct and Indirect Reciprocity**

An institution provides a structure (a physical and social structure) in which certain rules of conduct between people have emerged. Through the institution direct face to face social reconciliation is mediated in a more permanently constructed form, one that is able to outlast an individual human’s lifespan. In this way the institution provides a level of permanence in the type of human relationship established. Also in this way the act of reciprocity and reciprocal equilibrium is partially or completely removed from the humans actually involved in social exchanges and posited within the institution. As a result, the institution (i.e., the concrete institution or institutional rules) acts as a reciprocal intermediary between people’s social exchanges, resulting in an indirect form of reciprocity. This indirect reciprocity, however, is not limited to institutions. Indirect reciprocity occurs when the act of reciprocation involves more than two entities (e.g., people, institutions, etc.). Molm et al. provide a clear distinction between direct and indirect reciprocity;

In forms of exchange with direct reciprocity, two actors exchange resources with each other - A provides value to B, and B to A - and B’s reciprocation of A’s giving is direct. In forms of exchange with indirect reciprocity, the recipient of benefit does not return benefit directly to the giver, but to another actor in the social circle. The giver eventually receives some benefit in return, but from a
different actor. Thus, A’s giving to B is not reciprocated directly by B’s giving to A, but by C’s giving to A, where C is a third party. (Molm et al. 2007, 207-8)

Figure 3.3 illustrate direct and indirect reciprocity. The strength of direct reciprocity illuminates the weakness of indirect reciprocity in relation to resident participation. In direct reciprocity the exchange is directly between the two reciprocating people. If either person feels their giving or receiving in the social exchange is not in balance, direct feedback (i.e., adjustment to the reciprocal relationship) can be made in the form of, for example, complaint, reconciliation, or sanction between the reciprocating parties to achieve reciprocal equilibrium. The same cannot be said of indirect reciprocity

![Figure 3.3 Direct and Indirect Reciprocity](image)

where the reciprocal exchange does not involve the same people directly. In indirect reciprocity the social relations that bind people together (i.e., the rules of human conduct) are institutionalized and external to the parties themselves, and mediate the exchange. Since indirect reciprocity is external it can only take a generalized form, built from an aggregation of direct reciprocal relationships coalesced into what is known as society. In as much as indirect reciprocity is generalized its ability to satisfy every specific individual reciprocal act is only approximate, but still must fall within the homeostatic range. When it falls outside this range, revolutions, war, and other types of social upheavals are likely to result. In addition, unlike direct reciprocity, indirect reciprocity is doubly difficult to adjust for disequilibrums. First, there is no one person (or group) to confront to try to reconcile the imbalance. As an aggregate manifestation of a society’s
rules of conduct, indirect reciprocity is freed from its corporeal form. There is virtually no body in which to get redress about reciprocal disequilibrium. At best an institution representing the concrete form of reciprocity (e.g., the state) replaces the actual human body and becomes the body politic. Second, the concrete institution is by design able to address reciprocity only in the aggregate - as in the public’s interest. Consequently, unlike direct reciprocity in which there are only two actors, any reciprocal adjustment to indirect reciprocity would have an effect on the whole of society. While indirect reciprocity plays a significant role in social relations, the scope of this research is limited to examining direct reciprocal exchanges.

Civic Capacity and Leadership Capacity

In his analysis of Atlanta’s governing regime, Stone makes a significant error of presupposition regarding the failure of Atlanta’s neighborhood movement to become part of the governing regime. Stone states that the neighborhood movement failed because it could not solve its collective action problem. However, this presupposes residents possess the civic skills set, the “tools” if you will, to engage the governing regime. It never occurred to Stone that other than providing an opinion, an “input”, or physical violence – ignoring voting – residents may not know how to participate with the governing regime. Stone’s error is not an isolated instance. There is a general presupposition hidden within regime and collective action literatures which takes for granted that residents possess two capabilities necessary to move up the rungs of Arnstein’s participation ladder: 1) civic capacity, and 2) leadership capacity. Underlying these capabilities is a framework that provides the foundation for, encourages and sustains both civic and leadership capacities within the neighborhood.

Civic capacity is a capability enabling people to unite together. Plurality, reciprocity, and trust (Arendt 1998; Gutmann 2005; Kweit and Kweit 2007; Crick 1999; Taylor and McGlynn 2009) constitute the foundational elements of this capability, which connects one human to another. Plurality in its purest form is the human need to be together – to combat the mind’s loneliness by making and sharing experiences together to confirm our existence. In being together, humans inevitably learn and practice
reciprocity. Humans learn by exchanging things – whether tangible such as food or technology, or intangible such as ideas or belief systems – with which the struggle to survive can be mitigated. This exchanging of things between people is mutual – that is, I give you something and in return I get something from you. There is no reciprocity if I take from you and give you nothing in return. Reciprocity occurs only when exchange is mutual, continual, and constructive. The final element, trust, is the human experiential condition of a consistent and reliable outcome or expectation between human interactions (discussed in more detail below). Without trust, reliability of a consistent expectation cannot develop between people, and consequently reciprocity is hindered. Plurality, reciprocity, and trust are the bedrock of human social relations without which humans could not live together and there could be no human world. These three underlie civic capacity, which is one of two necessary capabilities to move up the rungs of Arnstein’s ladder of participation.

The other necessary capability is leadership capacity. Leadership capacity is “the interaction among members of a group that initiates and maintains improved expectations and the competence of the group to solve problems or to attain goals” (Bass 1990, 20). Locke defines leadership as “the process of inducing others to take action toward a common goal” (Locke et al 1991, 2). What is particularly appealing about Locke’s definition is that leadership is understood as a relational concept in that there is a connectedness between people (i.e., a relationship) that binds them together. Furthermore, couching leadership as a process signals that leadership must be continually worked at to maintain its existence. The relational and processional aspects of leadership also include the same elements of plurality, reciprocity, and trust that comprise civic capacity. Thus, leadership capacity is a second necessary enabling capability providing people the ability to deliberately and purposefully unite to move up the participation ladder.

Lastly, both civic capacity and leadership capacity require an underlying framework providing an environment (e.g., practices, rules of conduct) in which to emerge, grow, and develop. As Elkin alluded to above, institutions are formative, they help form the citizenry. Conversely, the practices and actions of the citizenry help form the basis of
institutions (Knight 1992). Institutions can provide the environmental conditions for civic and leadership capacity to develop, but only if the institutions themselves possess the appropriate conditions, which Gualini explains as the “social mechanisms which nurture and sustain new forms of collective action” (2002, 35). The social mechanisms are themselves the seeds of civic and leadership capacity of which reciprocity is a basic social mechanism.

**Defining Trust, Knowledge, and Legitimacy (Legitimation)**

*Trust*

Trust, if not the first, is one of the first human reciprocal acts of exchange. It might be asked why not fear instead of trust. Reciprocity is a necessary mechanism to invoke trust, but not to invoke fear. Fear is instinctual; it is hard wired into our brains, whereas trust is (potentially) produced through the act of exchange. Trust derived from reciprocity provides one of the necessary institutional elements for civic capacity and leadership capacity to development. There are many definitions of trust, and consequently there is no general interdisciplinary agreement on a definition of trust (McKnight and Chervany 2001; 2000; Maloy 2009). Above I defined trust as the human experiential condition of a consistent and reliable outcome or expectation between human interactions, and I am also reminded by Semmes to add, “without coercion” (Semmes 1991, 452). This implies that a person’s decision to trust their exchange partner involves taking on risk and being vulnerable to an uncertain outcome (Molm et al 2007). Also embedded in this definition of trust is a belief that their exchange partner can be relied on to “behave benignly or favorably” toward them and resist exploiting them (Molm et al 2012, 143). Paulo Freire describes in common everyday language how trust is defined in this research:

> Trust is contingent on the evidence which one party provides the others of his [or her] true, concrete intentions; it cannot exist if that party’s words do not coincide with his

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21 This view of trust is qualitatively different from those derived from appearances or “fronts” (Goffman 1959) or from accepted perceptions (Henslin 1972).
[or her] actions. To say one thing and do another - to take one’s own word lightly - cannot inspire trust. (Freire 1970, 80)

**Knowledge**

This research presumes knowledge is socially constructed, and privileges those who are able to manipulate the production and content of such knowledge. Therefore, knowledge and knowledge production are brought into question by recognizing that an alternative type of knowledge, a people’s knowledge (Gaventa 1991), exists concurrently with the dominant culture’s “objective” knowledge. Thus, I define knowledge as people’s knowledge, as the “knowledge and action directly useful to a group of people” (Reason 1994, 328). This is an intersubjective knowledge, a “what people know” (Hildreth & Kimble 2002, no page number) type of knowledge. It is a “socially shared knowledge” (Innes 1996, 463) resulting from an exchange of “perceptions and understanding[s] … drawing on the stock of life experience[s]” (Healy 1992, 153) based on a common history.

**Legitimacy**

Legitimacy is a slippery value-laden concept given that at “its most abstract level is the moralization of authority” (Parkinson 2003, 182). As a result of its value-laden nature, “… there is disagreement in contemporary theory and practice about [the meaning of] legitimacy”, and consequently, the “definition of legitimacy has not been settled by consensus” (Stillman 1974, 39). With that said, attempts have been made to define legitimacy as “tacit approval” (Häikiö 2007, 2149); or the “recognition, acceptance and support of a political system by those who are bound by its decisions” (Stewart et al. 2004, 25). In other words, legitimacy can be viewed as “consent” (Häikiö 2007, 2150) or as consisting in the “soundness of political procedures” (Garthoff 2010, 669). However, a distinction has been made between legitimacy and its close relative legitimation.

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22 I uncovered the knowledge of those people that participated in the review of these two cases (Commission members, Commission area residents, other named community stakeholders, the developers involved, and the City personnel involved). I did not uncover all of their knowledge, but only the knowledge pertaining to the two cases via their speech acts and their deeds.
Whereas legitimacy is about that which already possesses recognition, acceptance, or support; legitimation is “the process of gaining that recognition, acceptance, and support” (Häikiö 2007, 2150, my emphasis). The difference is between that outcome which has already been produced and the activity which may potentially produce that outcome. The act of legitimation has also been divided into sub-categories of input-legitimation, throughput-legitimation, and output-legitimation. Input-legitimation emerges through the performance of “some kind of ‘authentic participation’ … [meaning] the possibility of expressing consent or dissent with proposed policies and of influencing the decision on these policy proposals” (Haus and Stewart 2005, 14-15). Throughput-legitimation refers to the need of a governing regime’s institutions and processes to be “transparent and accountable” (Stewart et al. 2004, 25) to its constituency. Consequently, the “social environment has to understand how measures are taken and who is responsible for them, in order to make actors accountable for what they have done…” (Haus and Stewart 2005, 15). Output-legitimation refers to how effective or “…the degree [to which] …those actors who are crucial for the successful implementation of measures … solves the problems that affect the fate of the community it claims to represent” (Haus and Stewart 2005, 15). Table 3.1 summarizes these three forms of legitimation.

### Table 3.1: Different Forms of Legitimation

<table>
<thead>
<tr>
<th>Principle</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Input-legitimation</td>
<td>Participation</td>
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<tr>
<td></td>
<td>Consent</td>
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<tr>
<td>Throughput-legitimation</td>
<td>Transparency</td>
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<td>Accountability</td>
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<tr>
<td>Output-legitimation</td>
<td>Effectiveness</td>
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<tr>
<td></td>
<td>Problem-solving</td>
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</tbody>
</table>

( Modified from Table 2.1 Haus and Stewart 2005, 15)

For this research I define legitimacy as the tacit or formal approval, recognition, acceptance, support, or deference of one entity (e.g., person, group, organization, etcetera) to another entity. I also define legitimation as the process of potentially producing such legitimacy.
I must point out a potential risk of misunderstanding that awaits the reader of the words “trust,” “knowledge,” and “legitimacy”. Legitimation resolves much of this risk for legitimacy and so serves as a good example. The risk for the reader is in understanding that the effect of these words is to be found somewhere. For example, legitimacy can be found in a city council’s chamber; or found in something, as an object to be acquired - a person’s elected political position for example - and once acquired needs no additional effort on the part of its possessor for the continual enjoyment of such legitimacy.

However, they are not objects to be possessed, but relations that must be continually worked at in order to exist and which are always in a state of becoming - becoming more, or becoming less, or becoming nothing at all (Arendt 1996). Creating trust, creating knowledge, and creating legitimacy represent actions people must perform for the words to have any meaning and consequence in their lives. Trust, knowledge, and legitimacy are simply words that only come alive, that is they have meaning, force, and effect, when they are humanly “performed.” It is through the performance of human reciprocal acts that these words are analyzed in this research.

**The Speech Act**

This research examines the development or diminution of trust, knowledge, and legitimacy between people through their reciprocal communicative acts. A communicative act is the broad term that includes verbal and non-verbal communicative acts. However, for this research I specifically analyze the verbal communicative act, otherwise known as the speech-act. A speech act is simply “an act that a speaker performs when making an utterance” (SIL International 2003). During the performance of a speech act I analyze the interactions of meanings and intentions (as I perceive them to be) as they flow back and forth between speaker and listener. To put it in Austinian terms, I examine how people do things with words (Austin 1975), which is to say that in performing a speech act one is not merely “saying something but doing something” (Austin 1975, 25 my emphasis). This doing can be categorized as: 1) the performance of an intention - an illocutionary act (Austin 1975, 121) or illocutionary force (SIL
International 2003), and 2) the achieving of certain effects - a perlocutionary act (Austin 1975, 121). However, the effects produced can be both intentional and unintentional (SIL International 2003). Thus, I examine the perceived intention and perceived effect(s) a speaker’s speech act have on the development or diminution of direct constructive reciprocity between Commission residents, between Commission residents and City Council members, and between Commission residents and land developers (or through their legal representatives). I am looking at those communicative reciprocal acts that build up or tear down trust, knowledge, and legitimacy between people.

I analyze the intention and the effect(s) a speaker’s speech act have on the development or diminution of direct constructive reciprocity by following a somewhat modified approach to that of Freire’s comparison between what a person says he or she is going to do with what he or she actually does (Freire 1970). I look for the specific speech acts “giving promises” (Arendt 1998) and “giving explanations” (i.e., reason-giving) (Elkin, 1987) taking place during the interaction between speaker and listener.

**Linking Reciprocal Exchange to Urban Regime Theory**

Institutions form the essence of regime theory (Elkin 1987, Stone 1989). However, regime theory has moved away from looking at the institutional nature of regimes, and instead has focused on describing typologies of regime characteristics. Additionally, urban regime analysis generally uses approaches revolving around some form of tension between state and market, which is driven by self-interest. Regime analysis never critically analyzes the institutional nature of regime formation. It embraces a pseudo reciprocity based exclusively on the exchanges of self-interest between parties.

The main focus of this research is not about social networks or even the processes in which social networks form (e.g., social capital). The main focus is on the forces that provide an environment or condition for social networks to form (how residents build capacity to participate), and most significantly, to continually reproduce a particular “form” of social network. In Figure 3.4 I lay out the (potentially evolutionary) cognitive pathway I use in this research. In Figure 3.5 I provide my conceptualization of resident participation capacity for this research.
In figure 3.4 a reciprocal imbalance provides an individual the “gut feeling” that something is wrong or out of balance in their life. The first step then is to learn more about this out of balance feeling. I follow Paulo Freire’s method of learning, what he calls conscientização (Freire 1970), that is learning to recognize the social, political, and economic contradictions that affect a person’s life chances. As Freire explains,

> [t]he very structure of their [the oppressed] thought has been conditioned by the contradictions of the concrete, existential situation by which they were shaped. This phenomenon derives from the fact that the oppressed, at a certain moment of their existential experience, adopt an attitude of “adhesion” to the oppressor. This does not necessarily mean that the oppressed are unaware that they are downtrodden. But their perception of themselves as oppressed is impaired by their submersion in the reality of oppression. To surmount the situation of oppression, men [sic] must first critically recognize its causes, so that through transforming action they can create a new situation, one which makes possible the pursuit of a fuller humanity. (Freire 1970, 30-32)

Consequently, the true reciprocal nature of human relations, that is, the inseparability of self-interest and other-interest, creates the institutional environment in which human relations are expressed in their concrete forms. When reciprocity is manipulated or distorted to the effect that self-interest becomes privileged and other-interest is subsumed or altogether (seemingly) obliterated, the resulting institutions appear natural in the disparities they create between people. But this naturalness is only an appearance, an illusion, of the oppression being concealed. The task at hand is to strip away the illusions, the distortions, and the manipulations.

In order to do this I approach urban regime theory from a reciprocal exchange perspective to understand the relations that form (or conversely are prevented from forming) between residents as they learn (or are prevented from learning) how to achieve a capacity to participate in public decision-making. I examine those human social exchanges that exert constructive reciprocity, namely: trust, knowledge, and legitimacy. I also focus exclusively on the formation of direct reciprocity as I believe (i.e., assume)
that direct reciprocity precedes all indirect reciprocity, and therefore is the fundamental starting point for all social change.

**Figure 3.4 Cognitive Functionality of Research**

(Boxes represent the cognitive/behavioral/organizational rules that keep plurality from turning into chaos. Arrows represent the processes that move human relations from isolation to plurality to individuality.)

The writings of Abraham Maslow and Paulo Freire provided the inspiration for this flow diagram.
Human Nature  
Why Humans Do What They Do?  

Reciprocal Exchange Explanations  
(e.g., Self-Interest/Other-Interest)  

Motivational Mechanism:  
Constructive Reciprocity  

Dimensions:  
Self-Interest  
Other-Interest  

Direct Reciprocity  
Indirect Reciprocity  

Individual Reciprocity  
Group Reciprocity  
Institutional Reciprocity  

Dimensions:  
Trust  
Knowledge  
Legitimacy  

Operationalized Attributes:  
Dialogue  
Education  
Praxis  

Outcome(s)  

Total Resident Capacity  
To Participate  
Maintenance Of Status Quo  

Solid lines represent structural flows. Dashed lines represent structuration flows. Ellipses represent contingent possibilities.
Research Objectives

The objective of this research is to examine the perceived intention and the effect(s) a speaker’s speech act have on the development or diminution of trust, knowledge, and legitimacy: between Commission members; between the Commission and residents; and between the Commission and City officials. Following a modified version of Freire’s comparison between what a person says he or she is going to do with what he or she actually does (Freire 1970) this research examines the specific speech acts of “giving promises” and “giving explanations” taking place during the interaction between speaker and listener.

The speech act of “giving promises” is matched to residents’ perceived outcomes of promises made (i.e., the effects of giving promises). When the receiver (i.e., listener) of the promise perceives the promise-maker (i.e., speaker) kept his promise, this research expects to find that trust, knowledge, and/or legitimacy (not necessarily all) tend to develop or build up between speaker and listener. As a result, social conditions are present that provide an opportunity for the development of participation capacity to emerge. Conversely, the opposite occurs when a promise is broken. Then social conditions are present that may foreclose opportunities for the development of participation capacity to emerge.

In a similar way, speech acts of “giving explanations” are matched to residents perceived outcomes of explanations given (i.e., the effects of giving explanations). When the receiver (i.e., listener) of the explanation perceives the explainer’s (i.e., speaker) explanation as congruent with the listener’s knowledge (i.e., explainer spoke truthfully, factually, and comprehensively), this research expects to find that trust, knowledge, and/or legitimacy (not necessarily all) tend to develop or build up between speaker and listener. As before, social conditions are present that provide an opportunity for the development of participation capacity to emerge. And the converse decreases trust, knowledge, and legitimacy and social conditions are present that may foreclose opportunities for the development of participation capacity to emerge.
Statement of the Problem

The general research problem is to understand how residents build a capacity, or conversely, are prevented from building a capacity to participate in city land-use decisions that have an effect on their neighborhoods. More specifically, the problem is about understanding the effect(s) a speaker’s speech acts have on the development or diminution of direct constructive reciprocity, specifically trust, knowledge, and legitimacy, as it relates to building resident participation capacity.

Research Questions

Six questions emerge to address the above problem statement:

1. What effect does the building up or tearing down of residents’ trust have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?

2. What effect does the building up or tearing down of residents’ common knowledge have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?

3. What effect does the building up or tearing down of residents’ legitimacy/legitimation have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?

4. What effect does a Commission Chair’s “reason giving” leadership style have on residents’ ability to develop a collective capacity to participate in the City’s land-use decision-making?

5. What effect does a Commission Chair’s “go along to get along” leadership style have on residents’ ability to develop a collective capacity to participate in the City’s land-use decision-making?

6. What broader lessons do these understandings hold for other citizen organizations?

The following chapter utilizes this conceptualization of participation capacity to lay out the design of this research.
Chapter 4: Research Design

Introduction

To this point there has been only an implicit description of the research methodology employed in this dissertation. Crotty understands methodology as “the strategy, plan of action, process or design lying behind the choice and use of particular methods and linking the choice and use of methods to the desired outcomes” (1998, 3 my emphasis). This dissertation begins at a point before methodology. It starts from a specific philosophical awareness that informs the methodology utilized in this research. This dissertation then uses an explicit qualitative research approach known as Participatory Action Research (PAR). PAR can be many different things and does not belong solely to the domain of the academy. PAR can be used as a technique (method), a methodology, a paradigm, or as Fals-Borda describes it, “a fulfilling way of life” (Fals-Borda 2001, 27). This dissertation utilizes PAR, first as a way of life, and second as a methodology-informing paradigm (Fals-Borda 2001; Fals-Borda and Rahman 1991). It is necessary to explain PAR before proceeding to the discussion of how this research design reflects the conceptual framework.

Participatory Action Research - Methodology, Paradigm, Way of Life

What is Participatory Action Research? Since PAR can be used in so many different ways (i.e., technique, paradigm, way of life) it may be easier to understand PAR by describing the purpose of PAR, which does not change according to how it is used. Consciousness raising and self-emancipation are the most important and overarching purposes of PAR. “The purpose of participatory research is not merely to describe and interpret social reality, but to radically change it” (Maguire 1997, 28). Radically
changing social reality brings into question the very nature of knowledge and knowledge production (Fals-Borda and Rahman 1991). As Reason states, “[o]ne aim [of PAR] is to produce knowledge and action directly useful to a group of people…” (1994, 328). Reason is not only talking about the production of useful “common knowledge” or “people’s knowledge” (Gaventa 1991), but of a knowledge that is as legitimate as the dominant knowledge.

PAR therefore questions the very basis of knowledge production and the institutions that occupy privileged positions regarding the production of knowledge. The production of knowledge is of critical concern to this dissertation as the type of knowledge produced, and its producers, substantially shape the social reality of a society. Take for example, a case of apparent traffic congestion. A city’s traffic study typically over-rules the experiential knowledge of neighborhood residents regarding excessive traffic congestion on their residential streets because the study’s “objective” results find that no such congestion exists or exists to such a minor extent that no traffic modifications are recommended or warranted. The PAR approach tries to place all knowledge on an equal footing whether it is scientific, experiential or some other derived form of knowing.

PAR is far from being a vehicle simply to generate a policy recommendation for others to decide whether to implement. PAR goes beyond thinking and enters the realm of doing. The PAR approach takes action. Implementation occurs throughout the research process, not at its end – and not only by policy makers. Stringer calls this process “look, think, act.” “As participants work through each of the major stages, they will explore the details of their activities through a constant process of observation, reflection, and action” (1999, 19). West and Merritt-Gray in their feminist critique of PAR concur with Stringer (in quoting Hart) “that the process is ‘based on continuous interaction between research, action, reflection, and evaluation.’” And subsequently they add, “Action and change occur during the research process, not just as a final outcome.” (West and Merritt-Gray 1997, 286). This is one reason why the ideas of Hannah Arendt are important to this research. Arendt is critical of the academy for not doing. Arendt also resonates with the PAR approach in that both require us to think critically and reflexively about what we are doing.
PAR is unlike other emancipatory theories in that the researcher does not “liberate” oppressed people. Rather, oppressed people free themselves. The researcher may play the role (or several roles) possibly as a collaborator, facilitator, or catalyst. Ideally the researcher does not dominate any aspect of the research – from topic selection to research design to written report – but is a co-researcher with his or her subject group. In effect, the conventional subject/object research dichotomy is alien and incomprehensible in PAR. McTaggart eloquently makes this point clear,

Authentic participation in research means sharing in the way research is conceptualized, practiced, and brought to bear on the life-world. Participatory action research is research that treats people as autonomous, responsible agents who participate actively in making their own histories and conditions of life, able to be more effective in making their histories and conditions of life by knowing what they are doing, and collaboratively potent in the construction of their collective history and conditions of life (1997, 28, 39).

One deliberate reason behind PARs democratic research collaboration is the intent “to transform reality ‘with’ rather than ‘for’ oppressed people” (Maguire 1997, 28). “[I]t means breaking up intentionally by means of vivencias23 the asymmetrical subject/object relationships of submission, dependence, exploitation and oppression that exists between persons, groups and social classes” (Fals-Borda and Rahman 1991, 152). Simply stated PAR allows people to discover and rely on their own resources and PAR tries not to reproduce dependence on the dominant culture or society. In the end, the goal of PAR research is to put people first by striving to assist people in their own emancipation, which goes to the very philosophical core and purpose of this dissertation.

**Methodology**

The previous subsection briefly described the philosophic/paradigmatic aspects of the PAR approach. This subsection lays out the methodology that this research utilizes. This

23 *vivencias*, is a Spanish neologism that may be translated roughly as “inner life-experience” or “happening”. It is somewhat comparable to Habermas’ term “life-world”.

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research is a direct outgrowth from my experiences working with the Commission members and residents initially as an OSU graduate-student planning intern from 1997-2000, a pro bono community consultant from 2000-2003, and subsequently as a Commission member from 2003-2005. During that period we (residents and I) were unaware that we were following the PAR approach. The genesis of this study’s topic, much of the theoretical perspective, questions, and methodology utilized originated from the experiences and knowledge we developed together collectively.

Maguire provides a clear way to get at a complex social-political dynamic. Maguire recommends using “…a three part process of social investigation, education and action to share the creation of social knowledge” (1997, 3). The first is social investigation (i.e., fact finding). Where does the researcher go to find these “facts”? To the experts, according to PAR, but the experts are not government officials, academicians, or other conventionally understood symbols for experts. The experts are the people actually experiencing oppression. The researcher learns about their facts, their realities, and their life contexts. In order for a researcher to fully grasp (to his or her best ability) the peoples’ experiences and interpreted realities, he or she must spend an appreciable amount of time in the community. This is especially true if the topic under study is of a sensitive nature or if past events have led to community relations of suspicion and mistrust. It takes time for people to get to know someone new to their community, especially if the person does not look or act like they do. Until the researcher gains real entrée with the people, they will reveal no more than superficial information about their realities.

The next part of Maguire’s process is education. This may very well be the most time consuming area of all of PAR research. Education is a continuous process and comes in a variety of forms (e.g., experiential, practical, formal, etc.); but it is the dissemination of education that is of critical importance. Communication through dialogue is of paramount importance in the cases discussed here, since there was a time in the not too recent past in the Commission where a significant portion of the community
would seek refuge in rumor and misinformation, rather than struggle through the reality of the community’s concerns.\textsuperscript{24}

The third part of Maguire’s process is action. This dissertation focuses on dialogic speech as the main resident action. Through face-to-face dialogue between residents, residents and government officials, and residents and private developers, Maguire’s process could begin to address three themes: trust, knowledge, and legitimacy. As I briefly alluded to above, trust within and without the Commission and its residents is problematic and mistrust is chronic. The causes of this mistrust are complex, and at the risk of oversimplifying here, it can be traced back to a spread of misinformation by residents; and by broken promises, non-explanations, and a lack of acknowledgement and validation of the community’s knowledge and legitimacy by developers, City officials, and City staff.

The last component of this research’s methodology is to put everything into motion, “… learning through doing, people strengthen their awareness of, and belief in, their abilities and resources for organizing” (Maguire 1997, 30). This methodology is not a linear process, but a dialectical and iterative process, which can move from one process to another in a smooth and orderly manner as I have laid it out here, or leapfrog over one process to another or move backwards from one process to another in a messy manner.

\textbf{Method}

Participatory Action Research (PAR) is the principal method utilized in conjunction with case study. PAR requires direct face-to-face contact with Commission area residents, and according to the PAR literature includes long-term immersion within the Commission area community in order to gain a fuller understanding of the community’s non-verbal issues, coping mechanisms, and power creating mechanisms. This is similar to Sayer’s (1992) acknowledgement that knowledge is not all verbally or textually acquired; much is tacitly derived through practical relationships created and maintained over long periods of time.

\textsuperscript{24} This is the state of resident relations that I observed when I first entered the community via the Commission as an OSU intern in the autumn of 1997.
**Data Collection**

This research employed three methods of data collection. The primary data collection method used was direct participant observation with residents in their neighborhoods and at their public meetings. Voice recordings were made along with personal notes after the events to add additional information not captured by the voice recordings. I have replaced residents’ actual names with pseudonyms to protect the identity and confidentiality of the residents and their stories used in this research.

A second method used in this research was semi-structured and unstructured interviews. Semi-structured interviews were conducted with three current and former Commission chairpersons; eight unstructured interviews with previous and current Columbus City Council members; two unstructured interviews with directors and administrators of selected City departments; three unstructured interviews with owners of private real estate development companies; two unstructured interviews with representatives of non-profits; two unstructured interviews with faith-based organizations; and one unstructured interview with a public education administrator. Because of the candidness of responses during the interviews and as a matter of confidentiality in protecting the individuals interviewed, only their insights are presented in this research, not their identities. Interviews were scheduled for forty-five minutes. I conducted twenty-one interviews over the period of November 2007 to February 2009. The actual interview times ranged from thirty-nine minutes (two interviews) to one hour fifty-four minutes (two interviews). The length of most of the interviews was approximately fifty minutes. A sample list of questions used during the semi-structured interview is provided in Appendix C. I also conducted twenty-five unstructured interviews with Commission area residents, and twelve with Commission members from 1997 through 2005 to gain an understanding of the perceptions and meanings these stakeholders hold dear, and to corroborate field observations.

The third and final method utilized was the collection of texts relevant to this research, specifically newspapers, meeting minutes and other official documents, and
other relevant historical artifacts to triangulate the above methods and verify the consistency and validity of meanings, perceptions, and rhetoric with observed practices.

**Institutional Review Board**

This research involved interviews of living persons, which created a potential to harm the interviewees from the interview process or reporting results collected from interviewees. While the potential to harm any interviewee was highly unlikely, a potential still existed, which consequently required this research to obtain the approval from The Ohio State University Office of Responsible Research Practices through its Institutional Review Board (IRB). Application was made in May 2005, which the IRB approved, thus permitting this research to go forward.

**Research Quality**

“Most quantitative researchers recognize and document the worth of a project by assessing the reliability and validity of the work” (Krefting 1991, 214). The quality or “worth” of quantitative research derives from “the soundness of its method, the accuracy of its findings, and the integrity of assumptions made or conclusions reached…. Ambiguous or meaningless findings may result in wasted time and effort, while findings which are simply wrong could result in the adoption of dangerous or harmful practices” (Long and Johnson 2000, 30). Quantitative research utilizes several tests to assure the research undertaken produces a quality product. Traditionally, these tests of quality include: internal validity, external validity, reliability, and objectivity (Lincoln and Guba 1985). Consequently, the ultimate goal is to demonstrate that the research is valid and the results and conclusions can be trusted.

For Lincoln and Guba (1985) the issue of trust is basic to any research. Trust revolves around the “trustworthiness” of the research, or the question, Can I trust the findings and conclusions of this research? “The basic issue in relation to trustworthiness is simple: How can an inquirer persuade his or her audiences (including self) that the findings of an inquiry are worth paying attention to, worth taking account of?” (Lincoln
Lincoln and Guba developed four questions germane to all research, whether quantitatively or qualitatively based. They are,

1. “Truth value”: How can one establish confidence in the “truth” of the findings of a particular inquiry for the subjects (respondents) with which and the context in which the inquiry was carried out?
2. Applicability: How can one determine the extent to which the findings of a particular inquiry have applicability in other contexts or with other subjects (respondents)?
3. Consistency: How can one determine whether the findings of an inquiry would be repeated if the inquiry were replicated with the same (or similar) subjects (respondents) in the same (or similar) context?
4. Neutrality: How can one establish the degree to which the findings of an inquiry are determined by the subjects (respondents) and conditions of the inquiry and not by the biases, motivations, interests, or perspectives of the inquirer? (Lincoln and Guba 1985, 290)

Lincoln and Guba explain, within “the conventional paradigm, the criteria that have evolved in response to these questions are termed “internal validity,” “external validity,” “reliability,” and “objectivity” (Lincoln and Guba 1985, 290). Whereas,

*Internal validity* may be defined … as the extent to which variations in an outcome (dependent) variable can be attributed to controlled variation in an independent variable. (p290)

External validity may be defined, as do Cook and Campbell (1979, p. 37), as ‘the approximate validity with which we infer that the presumed causal relationship can be generalized to and across alternate measures of the cause and effect and across different types of persons, settings, and times.’

*Reliability* is typically … synonymous with dependability, stability, consistency, predictability, [and] accuracy. Ford (1975, p. 324) suggests, ‘to assume that each repetition of the application of the same, or supposedly equivalent,
instruments to the same units will yield similar measurements.’

Objectivity is usually played off against subjectivity. … the usual criterion for objectivity is intersubjective agreement; if multiple observers can agree on a phenomenon their collective judgment can be said to be objective. Another conventional approach to the problem of establishing objectivity is through methodology; to use methods that by their character render the study beyond contamination by human foibles (Lincoln and Guba 1985, 290-292).

For qualitative research, tests of quality (i.e., trustworthiness) are no less rigorous from that of quantitative research, although the focus and terminology are different. The four terms “internal validity,” “external validity,” “reliability,” and “objectivity” are “equivalents” to “the naturalist’s [terms] “credibility,” “transferability,” “dependability,” and “confirmability” (Lincoln and Guba 1985, 301).

**Truth Value**

The “truth value” criterion - the qualitative equivalent to internal validity - applied to qualitative research must demonstrate that the researcher’s findings, interpretations, and conclusions have “represented those multiple constructions adequately” of the study group, that is, the inquiry is “credible to the constructors of the original multiple realities” (Lincoln and Guba 1985, 296).

**Prolonged Engagement**

Guba and Lincoln (1985) suggest qualitative research employ techniques of prolonged engagement, persistent observation, and triangulation “that make it more likely that credible findings and interpretations will be produced” (Lincoln and Guba 1985, 301). However, it is member checks, according Lincoln and Guba that is “the most crucial technique for establishing credibility” (Lincoln and Guba 1985, 314). The researcher must spend a sufficient amount of time in the field to learn the culture, test for misinformation, and build trust (Lincoln and Guba 1985). It is imperative that the researcher,
spend enough time in becoming oriented to the situation, “soaking in the culture through his or her pores,” to be certain that the context is thoroughly appreciated and understood. Just how long is that? The answer to that question is of course relative to the context’s scope and sophistication, but at a minimum it must be: Long enough to be able to survive without challenge while existing in that culture. (Lincoln and Guba 1985, 302)

I spent approximately seven years in the Commission area community, which provided me with an adequate amount of time to soak up the culture and understand the aspirations and challenges the community collectively faced. During that time, I was able to decipher individual personal agendas and get to the major themes common to the Commission area community.

Also during prolonged engagement, Lincoln and Guba warn about potential distortions that might creep into the data, particularly personal distortions from the researcher. The researcher can introduce “distortions based on his or her own a priori values and constructions. No one enters a site in a mindless fashion; there are always prior formulations” (Lincoln and Guba 1985, 302). This was a real concern for me since I looked different and came from a different cultural background than the people I was studying. I am a Caucasian man coming from the dominant American middle-class culture trying to engage with and understand the perspectives of a predominantly African-American working-class community. At first blush, one might conclude that I am the beneficiary of my dominant cultural heritage, which gave me an advantage over Commission area residents. Because of my cultural heritage, I might have been able to influence the behavior and possibly the perceptions of Commission area residents. If this is true, then I not only distort my perceptions about the people I am studying, but through my actions and simply being in their presence, the Commission area residents distort their own perceptions about themselves, which in turn would distort the findings and conclusions of this research.

However, I am reasonably confident that the above scenario did not occur, and that the amount of researcher-induced distortion was kept to a minimum. I make this
assertion based on two observational points. First, when I first entered the Commission area community the community immediately held me in suspicion and accused me of being a “spy for the City.” Residents came to me to get information out of me; they were not looking for my opinions. Indeed, for the first year or so residents kept me at arm’s length. It was not until I started to ask questions in public for residents that the community in general changed its perception of me and permitted me entrée into their world. I base this on several residents with whom I frequently spoke with began opening up to me and providing me with their stories showing their vulnerabilities, which could be used to humiliate and embarrass them. Apparently, the “word” got around the community that I was a person that could be trusted. Consequently, people whom I never met were coming and confiding in me in matters concerning the future of their neighborhoods. In other words, the community and I were developing a relationship of trust.

Second, my personality coupled with my insatiably inquisitive nature are also an area of potential distortion and contamination of this research if it were not for Commission Chair Martin Roundtree. Roundtree became a member of Commission at the end of 1999, about the same time I began asking questions for residents at Commission meetings. Roundtree’s personality is similar to my own, and since he was in the Commission’s top leadership position, he used that position to encourage residents to be more involved in Commission meetings, to ask questions, and generally to participate more in the affairs of their community. Because he was a Commission member and from the community, Commission Chair Roundtree’s behavior and actions had greater influence over Commission and Commission area residents’ participation behaviors than I did. Although my presence and behavior likely caused some level of influence (i.e., perceptual distortion or behavioral contamination) to the Commission and Commission area residents, Commission Chair Roundtree’s presence and involvement diminished that likelihood to a nominal level. In other words, the Commission and Commission area residents would have likely behaved and acted the same with or without my presence.
Lastly, Lincoln and Guba point out that the period of prolonged engagement is intended to provide the investigator an opportunity to build trust. Building trust is not a matter of applying techniques .... [T]rust is not a matter of the personal characteristics of the investigator: a “nice guy” to whom respondents will instinctively confide their innermost secrets. Rather, it is a developmental process to be engaged in daily: to demonstrate to the respondents that their confidences will not be used against them; that hidden agendas … of the investigator … are not being served; that the interests of the respondents will be honored …; and that the respondents will have input into, and actually influence, the inquiry process (Lincoln and Guba 1985, 303).

This is exactly how the Commission community and I earned our mutual trust. Trust did not emerge because someone said, “you two need to trust each other.” Trust developed and emerged from the continuous interactions between the Commission community and me. Essentially every interaction was a test to explain our intentions to the other, probing for hidden agendas and deceptions until, through our actions, we laid bare our real intentions to one another.

**Persistent Observation**

Persistent observation is another technique Lincoln and Guba suggest to make credibility of the research more likely. The purpose of persistent observation is to “identify those characteristics and elements in the situation that are most relevant to the problem or issue being pursued and focusing on them in detail” (Lincoln and Guba 1985, 304). As I mentioned above, I spent approximately seven years participating in the Commission community. During that time I listened to various resident-based narratives explaining the Commission community’s reality. From those narratives emerged the three major themes of this research: trust, knowledge, and legitimacy.
**Triangulation**

Triangulation is a third technique for enhancing the credibility of research. Triangulation is based on the idea of convergence of multiple perspectives for mutual confirmation of data to ensure that all aspects of a phenomenon have been investigated (Lincoln and Guba 1985). This research utilized multiple data sources (e.g., interviews, public meetings, newspaper accounts) to corroborate the Commission community’s perspectives and identification of the three major themes.

**Member Checks**

The final and most important technique for assessing the truth value of this research is the member check. The member check consists of presenting the “data, analytic categories, interpretations, and conclusions” to the participants of the research and having them judge whether the text of the research is “recognizable” and portrays an “adequate representation” of their reality (Lincoln and Guba 1985). Member checking is both informal and formal, and it occurs continuously (Lincoln and Guba 1985). This research employs the PAR approach, which stresses active and continuous participant (i.e., subject) involvement in every aspect of the research from conceptualization to the type of finished product presented for publication (e.g., paper, film, poetry, etc.). Additionally, this research stressed using the participants’ own words and meanings as much as possible to ensure that their voices came through clearly and not overshadowed by mine.

Finally, the nature of the research questions and the dialogic iterative method of analysis ensure a continual member checking process. Member checking used in this research consisted of Commission members, residents, and other stakeholders coming together at Commission meetings during the actual case review processes and discussing, debating, accepting, rejecting, or resolving assertions being made. This type of member checking was continuous until the Commission, residents, and other stakeholders were satisfied with the accuracy and validity of the assertions made or until the Commission and residents concluded that further dialogue would not change the Commission’s and residents’ belief of assertions made.
I did not provide each individual involved the write up of this text and an opportunity to review and approve its contents as accurate and valid. The reason for this is twofold. First, this research did not start out as a research project but as two zoning review cases of importance and consequential to the Commission and residents. I did not record Commission meetings with the intent to discover a research topic, but to aid me in taking Commission minutes. Consequently, member checking was performed by the participants themselves during the dialogue occurring between speakers and listeners during Commission meetings. Hence, the accuracy and validity of what transpired during Commission meetings was tested by the members themselves in real time during the meetings. Every person that participated in the rezoning review process of the two cases comprising this research had an opportunity of unrestricted access to confirm, correct, revise, or refute the outcomes of member checks from the beginning to the end of each zoning review process. Second, because of the length of time involved in each case and the time-period separating one case from the next (approximately four years), reliance on actual audio recordings of conversations occurring during Commission meetings is preferable to relying on a participant’s recollections about what they said years in the past. I preferred using the recordings because they provided a record of what the participant actually said within its proper context.

**Applicability**

“Applicability refers to the degree to which the findings can be applied to other contexts and settings or with other groups; it is the ability to generalize from the findings to larger populations” (Krefting 1991, 216). There are two perspectives regarding applicability relevant to qualitative research. The first perspective suggests that, generalization is somewhat of an illusion because every research situation is made up of a particular researcher in a particular interaction with particular informants. Applicability, then, is not seen as relevant to qualitative research because its purpose is to describe a particular phenomenon or experience, not to generalize to others (Krefting 1991, 216 quoting Sandelowski 1986).
Guba presents a second perspective “referring to fittingness as a criterion against which applicability of qualitative data is assessed. Research meets this criterion when the findings fit into contexts outside the study situation that are determined by the degree of similarity or goodness of fit between the two contexts (Guba 1981, 81-86).

Lincoln and Guba (1985) noted that transferability is more the responsibility of the person wanting to transfer the findings to another situation or population than that of the researcher of the original study. They argued that as long as the original researcher presents sufficient descriptive data to allow comparison, he or she has addressed the problem of applicability (Krefting 1991, 216).

Guba does, however, suggest to “[d]evelop thick description of the context in order to make judgments about fittingness with other contexts possible” (Guba 1981, 86). While

“it is not entirely clear just what thick description is... [it] begin[s] to interpret it by recording the circumstances, meanings, intentions, strategies, motivations, and so on that characterize a particular episode. It is the interpretive characteristic of description rather than detail per se that makes it thick (Schwandt 1997, 161).

This research has used thick description to provide the reader a link of transferability to other contextual situations. Situations where residents perceive disparate power relations between them and local government; or situations where mistrust among residents or between residents and local government appears to be the “natural state” of relationships.

**Consistency**

Consistency of the data refers to “whether the findings would be consistent if the inquiry were replicated with the same subjects or in a similar context. “In quantitative research, reliability is the criterion concerned with the stability, consistency, and equivalence in the study (Krefting 1991, 216). However in qualitative research for Guba, “the concept of consistency implies not invariance but trackable variance - variance that
can be ascribed to sources.” Consequently, the qualitative researcher “interprets consistency as dependability” (Guba 1981, 81). Describing the methods of data gathering, analysis, and interpretation in sufficient detail so that another researcher can clearly follow the decision trail used by the researcher of the study enhances the research’s dependability, thereby providing an audit trail (Lincoln and Guba 1985). This research has attempted to provide an audit trail of sufficient descriptive information to allow another researcher to follow the decision trail of this research.

**Neutrality**

“[T]he typical criterion that is invoked to judge objectivity is that of intersubjective agreement. That is, “if multiple observers can agree on a phenomenon their collective judgment can be said to be objective” (Lincoln and Guba 1985, 292). In other words, “[w]hat a number of individuals experience is objective and what a single individual experiences is subjective…” (Lincoln and Guba 1985, 300). There are clear problems with this definition, and many qualitative researchers prefer a definition that

removes the emphasis from the investigator (it is no longer his or her objectivity that is at stake) and places it … on the data themselves. The issue is no longer the investigator’s characteristics but the characteristics of the data: Are they or are they not confirmable? (Lincoln and Guba 1985, 300)

This research demonstrates its confirmability through its use of the PAR approach and directly involving the participants of the study group as close to being equals with the researcher in the research as practical. A major goal of this research is to elucidate the participants’ constructions of reality by incorporating their own thoughts, feelings, words, and meanings into the text of this research while simultaneously trying to minimize my dominance as the researcher and as the author, and allowing the voices of the multiple authors to emerge. I saw one of my roles as listening to the myriad of Commission area voices and see if there was any collective intersubjective agreement. In the seven years of engaging the Commission community, three collective themes emerged from their
conversations filtered through my experience and background: trust, knowledge, and legitimacy.

Data Analysis

Introduction: Unpacking Analysis - Understanding What Analysis Is and How It Is Done In This Research

When I first began working on this dissertation I struggled with understanding and developing the main concepts of the research. It was suggested to me not to look too deeply for the essence of the concepts, for I would experience the same fate as the “paralyzed centipede who never walked again once he was asked to consider the difficulty in manipulating all those legs” (Myerhoff & Ruby, 1982, p. 2). This “thinking about thinking,” as Myerhoff and Ruby put it, or thinking reflexively, can be a double-edged sword. For reflexive thinking “generates heightened awareness and [also] vertigo, the creative intensity of a possibility that loosens us from habit and custom and turns us back to contemplate ourselves just as we may be beginning to realize that we have no clear idea of what we are doing” (Myerhoff & Ruby, 1982, 1).

Reflexive thinking is, however, central to the PAR approach and correspondingly made this section of the research very difficult for me to reconcile with existing literatures on the matter of analysis. Indeed, thinking reflexively created a seemingly irreconcilable splinter in my mind between what I have found most literatures to characterize as analysis and what Commission members and I have experienced and done as analysis. The conventional academic characterization of what analysis is and how it is done was foreign to the kind of analysis we were experiencing. This is not to say that the academic literature on analysis is incorrect and the way in which we were experiencing our own analysis was correct, or vice versa. Rather, it is to say, that by thinking reflexively alternate plausible conceptualizations of analysis can emerge providing different perspectives of understanding and meaning of a particular phenomena. Thinking reflexively about analysis revealed to me that the conventional academic conceptualization of analysis is not universal, and needed to be addressed. If analysis as concept is not addressed, then we run the risk, not of becoming paralyzed like the
centipede metaphor, but of creating a blind spot in our understanding; this can occur simply because we ignore fundamental questions that may bring into focus potential contradictions in our assumptions.

The PAR approach compelled me to reexamine the concept of analysis - what analysis is and how analysis is done. The compulsion is driven by PARs emancipatory principles, of which the re-appropriation (re-construction) of knowledge is of crucial importance (Freire, 1970). By thinking and acting reflexively “[w]e may be led into new possibilities.... We may achieve a greater originality and responsibility than before, a deeper understanding at once of ourselves and of our subjects” (Myerhoff & Ruby, 1982, 2). The mental splinter I referred to above, this cognitive dissonance, comes from the conflation many scholars commit when regarding what analysis is as a concept with how analysis is done - that is committing the error of interchanging the essence of analysis with the activity of analysis as having synonymous meaning.

Analysis as Concept - What is Analysis?

What is analysis? Webster’s New World Dictionary (1999) defines analysis as “a) a separating or breaking up of any whole into its parts, especially with an examination of these parts to find out their nature, proportion, function, interrelationship, etc. b) any detailed examination.” Both of these definitions describe what is being done during analysis (i.e., how analysis is performed), but not what analysis is - the fundamental nature of analysis. Part of the confusion over what analysis is (i.e., this conflation of activity with concept) stems back to the word’s etymology. The origin of analysis can be traced to the ancient Greek word analusis (from ana and luein), which means “a breaking up, a loosening, [or] releasing” (Harper, nd), and also “to unloose, to resolve into its elements...” (Swinton, 2006). Sometime during the latter part of the sixteenth century Medieval Latin distilled the word further, and analysis eventually came to mean the “resolution of anything complex into simple elements” (Harper, nd). The idea of what analysis is was overshadowed by the precepts of the Enlightenment as superstition and
religion gave way to science, which adopted this received view of analysis\textsuperscript{25} (i.e., reducing the complex to its constituent elements) as the preeminent way of understanding, describing, explaining, in short, of \textit{knowing} the physical world. Consequently, the rise and dominance of the physical sciences coupled with the word’s etymological roots solidified the definition of analysis to mean a function or an activity (and the very specific type of activity of breaking down a phenomenon) performed upon some thing without considering whether this special type of activity is appropriate; while simultaneously concealing the concept of analysis as the subject matter of scientific thought. This is not to deny that the act of analysis - to analyze - is discrete and separate from the concept of analysis. In fact it is precisely because activity and concept are so intimately entangled that it is difficult to establish where one begins and one ends.

I will try to draw a demarcation line between activity and concept, although such a line is admittedly an artificial one; and one prone to all manner of exceptions and dualities that blur it. With this caveat in place let me proceed with unpacking the concept of analysis for this research by demystifying the “magic” of analysis by opening its “black box” (May 1994).

Discovering the essence of analysis means we must understand the fundamental nature of analysis as concept apart from analysis as activity. In their seminal book, \textit{Qualitative Data Analysis An Expanded Sourcebook}, Miles and Huberman define \textit{analysis} as consisting of three concurrent flows of activity: data reduction, data display, and conclusion drawing/verification. \textit{Data reduction} refers to the process of selecting, focusing, simplifying, abstracting, and transforming the data that appear in written-up field notes or transcriptions (Miles and Huberman 1994, 10).

Miles’ and Huberman’s definition of analysis as an “activity” and “process”, in short, the act of \textit{doing} analysis, does not bring us any further in understanding what analysis is as a concept. Instead, Miles and Huberman only provide us with one method in a myriad

\textsuperscript{25} Analysis is defined in the \textit{Dictionary of Statistics and Methodology} as “(a) The separation of a whole into its constituent parts so as to study them. (b) The study of the elements of a whole and their relationships” (Vogt 1993, p. 6)
variety of methods for doing analysis - from regression analysis in quantitative research to discourse analysis in qualitative research - which are no more than tools that operationalize, but not reveal the premises, assumptions, and interpretive biases forming the concept analysis contained in a researcher’s mind. Miles and Huberman are not alone in their preoccupation with the activity of doing analysis over understanding what analysis is.

Bauer and Gaskell (2000) define data analysis as “[a]ny approach, qualitative or quantitative, to reduce the complexity in the data material, and to come [to] a coherent interpretation of what is and what is not the case” (p. 355). The idea of reducing complexity in order to gain an interpretation of what is and what is not the case can be contradictory. For example, reducing a human being down to chemical components provides a reduction of human complexity into its component parts; however, it destroys or otherwise obscures other essential elements that make those chemical components a human being. The act of reduction or simplification of a phenomenon can alter the fundamental nature of the phenomenon. The outcome is no longer about explaining or understanding the phenomenon, but about explaining or understanding the altered phenomenon (i.e., after the analytical approach is applied to the phenomenon).

Hardy and Bryman (2004) also understand data analysis as an activity of data reduction, but include a qualifier saying analysis is more than data reduction. However, they immediately go on to state that “… to provide an analysis will always involve a notion of reducing the amount of data we have collected so that capsule statements about the data can be provided” (p. 4). They say that analysis is more than data reduction, but do not explain what that “more” of analysis is. Again, their emphasis is on the activity of doing analysis without first addressing what analysis is.

Harry Wolcott (1994) defines analysis as understanding “how things work” (p. 12). Wolcott proposes two working definitions of analysis; analysis in “that broad transforming data sense … and a less expansive definition in which analysis refers quite specifically and narrowly to systematic procedures followed in order to identify essential features and relationships …” (p. 24). Yet in both his definitions, activity still remains
Wolcott’s core emphasis; activity in the form of management and reporting of the data, and activity in the form of procedures to be followed.

Other conventional ways of defining analysis as an activity are through the discovery of patterns or regularities in the data. Bogdan and Biklen (2007) define analysis as “[t]he process of sorting, arranging, coding, and in other ways looking for patterns in data for the purpose of coming up with findings” (p. 271). Bernard and Ryan (2010) state, “[l]ooking for regularities” is analysis (p. 3).

Analysis is the search for patterns in data and for ideas that help explain why those patterns are there in the first place. Interpreting those patterns - deciding what they mean and linking your findings to those of other research - that’s real analysis (Bernard and Ryan 2010, p. 109).

But how does the researcher recognize any pattern without at least a rudimentary understanding of what a “pattern” is? Furthermore, how does the researcher know whether he has “findings”? What is informing him of his findings and how does he understand what he is observing? Of course the obvious answer is by consulting past research and literatures. But this begs the question; what do we find when we move back through each preceding generation of research or literature, back to the very first research or literature; and then ask, what informed this first research or literature? At this point there is no prior research or literature to consult. So what was the basis of the first research and the first literatures?

Renata Tesch (1990) begins to address this question in a somewhat apologetic way as “… the notion of qualitative analysis is fluid and defies definition. The only agreement we would find among qualitative researchers is that analysis is the process of making sense of narrative data” (p.4, my emphasis). Glesne (1999) elaborates on this sense-making idea of what analysis is in which

Analysis does not refer to a stage in the research process. Rather, it is a continuing process that should begin just as soon as your research begins [p. 84]. Data analysis involves organizing what you have seen, heard, and read so that you can make sense of what you have learned.
Working with the data, you describe, create explanations, pose hypotheses, develop theories, and link your story to other stories. To do so, you must categorize, synthesize, search for patterns, and interpret the data you have collected (Glesne 1999, p. 130).

However, as soon as Tesch and Glesne begin to shed some light on what analysis is, they both fall back on the received view of analysis as an activity. How then does she make sense of the world around her? She makes sense by thinking about the world. But it is more than just the act of thinking. It is thinking built on logic and reason joined with experience (which includes memory), imagination, and creativity. “All our knowledge begins with sense, proceeds thence to understanding, and ends with reason...” (Kant 2010, 212). There is no magic involved in analysis as Kant (2010) established in his critique of pure reason. As Kant asks,

how is it possible that the faculty of cognition should be awakened into exercise otherwise than by means of objects which affect our senses, and partly of themselves produce representations, partly rouse our powers of understanding into activity, to compare to connect, or to separate these, and so to convert the raw material of our sensuous impressions into a knowledge of objects, which is called experience? (p. 27)

In other words, we “make sense” of the world through the filtering lenses of our ideological and philosophical orientations (i.e., through our values or beliefs). Our particular orientations are known as representations or perceptions (Figure 4.1). Seen in

![Figure 4.1 Perception](image-url)

<table>
<thead>
<tr>
<th>Making Sense</th>
<th>Logic/Reason</th>
<th>Lens of Perception/Understanding</th>
<th>Sense Object</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is it an old woman? or young woman?</td>
<td>![Brain Image]</td>
<td>![Perception Image]</td>
<td>![Object Image]</td>
</tr>
</tbody>
</table>

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this way analysis is much more than simply an activity. *Analysis is the quality, capability, or faculty of the mind that makes sense of the world.* The mind makes sense of the world by utilizing its logic, reason, experience, imagination, and creativity to construct a representation or perception of the world. “The most crucial aspect to defining the analysis is attending to how our ideological and philosophical orientations structure what we do as analysts” (Baptiste 2001, no page number). The capability of the human mind to understand and know the world relies on the mind’s ability to make sense of the world, which does not necessarily come from breaking down the complex into its simpler elements. It can just as well come from the combining of simpler elements into something more complex (i.e., synthesis). It can also come from an accretion - the building up, accumulation, or additive quality that is characteristically different from synthesis - of the mind’s experience with its logic, reasoning, imagination, and creativity. “[A]s Michael Agar (1991) rightly cautions, intensive data coding, disassembly, sorting, and sifting, is neither the only way to analyze your data, nor is it necessarily the most appropriate strategy” (Seidel 1998, p. 4).

This then is how this research defines analysis. I could find no better example of the way in which analysis is utilized in this research than Kapoor’s (2009) elegant and concrete terms:

> when it came to data analysis and coding/thematic developments, one community-based RA [research associate] put it quite succinctly, ‘What are you doing to us?’ The idea of blending/sorting/coding across people, villages, perspectives, and specific words shared over the course of data collection appeared to be viewed as an act of dismemberment. The integrity of what had been shared was lost in this act of data analysis…. Analytical representations were in danger of mis-representing or worse still, missing a collective political message (a collage [of] impact/meaning) through such an analysis (blending down) - so [rather] than collapse, data analysis was to be more about expansion and connection of multiple whole expressions (pieces of data) that when taken together, would convey the desired meaning(s) (p. 33, my emphasis).
To summarize, analysis is defined for this research as the capability of the human mind to make sense of the world in a holistic manner from an accretion (the building up, accumulation, or additive quality) of the mind’s experience with its logic, reasoning, imagination, and creativity.

Displaying the Inner Workings of This Research’s Analysis “Black Box”

Analysis is the quality, capability, or faculty of the mind to make sense of the world. The mind makes sense of the world by utilizing its logic, reason, experience, imagination, and creativity to construct a representation or perception of the world. Every researcher possesses all five of these faculties, which come in varying degrees; and every researcher relies on one or more of these faculties to a greater or lesser extent than the others in the analysis of their research. Consequently, this mental variability keeps the specific details of each researcher’s analysis “black box” beyond generalization. In this regard my analysis “black box” is also unique, but I make an attempt here to open it to the reader and describe its inner workings for this research.

Writing this section generated a great amount of ambivalence in me. The predicament is in deciding how far to let the reader into the intimate inner workings of my analysis black box. It is difficult for me to balance the amount of detail necessary and appropriate for the reader to know “where I am coming from” ideologically and philosophically with detail that should remain private.

Therefore, let me begin somewhat generally and impersonally with Sally Thorne (2000) who states:

the theoretical lens from which the researcher approaches the phenomenon, …, and the understandings that the researcher has about what might count as relevant or important data in answering the research question are all analytic processes that influence the data. (p. 68, my emphasis)
The theoretical lens and understandings are value laden (Sayer 1992), which the researcher can trace back to her formal academic training; societal indoctrinations through social conventions, traditions, habits and rituals; and experiences gained throughout her life interacting with people and her environment. Prior to developing the research question, her values and beliefs have already shaped the subject matter of her question and even how the question will be posed (Baptiste 2001). From a positivist research perspective this is called bias, which is the interference or contamination of the object of study preventing “genuine knowledge”, and must be eliminated or minimized as much as possible (Vogt 1993). However, from a naturalist (i.e., constructivist) perspective, which this research embraces, bias is understood not as a liability to the integrity of research, but as an acknowledgement that all research is value laden. And because all research is value laden it is the researcher’s responsibility to present and clarify as best as possible the assumptions, premises, and ideological and philosophical orientations (i.e., biases) that guide the research(er) and the choices made during the research. In short, it is making visible the lens that shapes the researcher’s interpretations of the world (Schwandt 1997; Merriam 1998).

I would like to note here that my interpretive lens, although relatively stable, is not static or permanent. Rather, my interpretive lens should be seen as evolutionary and semi-permanent. It is in a continual state of change and development as my knowledge and life-experiences broaden. This is due to my reflexive tendency to question or problematize those truths I hold most dear, which I do so as not to become deluded into believing that they are absolute Truths. Therefore at this particular moment in time I attempt to make visible my interpretive lens for this research, arising from my five mental faculties - logic, reason, experience, imagination, and creativity.

I have been fortunate - or I suppose unfortunate based on one’s perspective - to have witnessed a time in America of great cultural and political upheavals, which left an indelible mark upon me as a child growing up in a working-class ethnic family during that extraordinary decade of the 1960s. I remember the tremendous tug and pull on my emerging values system, between my parents relentless instillation of their traditional Protestant values - self-reliance, commitment to family, putting in an honest day’s work,
getting a college education, etcetera - against the values of an emerging countercultural revolution - love, peace, and freedom. These were tumultuous times in which the old rules of normalcy and authority were cracking at their foundations as people questioned the old rules of society. Of all the memories I have of the counterculture revolution, the most vivid is the one regarding questioning authority. People gave back to themselves the power to openly question authority, to question why the world was the way it was; and this questioning of authority became the mantra of young people coming of age during the 1960s.

The values I learned were not new values supplanting the old; rather it was more of a re-examination of all values and beliefs claiming to be eternal or absolute Truths or Facts. To put it in a more concrete way, I retained many of the traditional Protestant values of my parents, however, recognizing that truths and facts (i.e., values and beliefs) are social constructions, contingent and temporary; and their “absoluteness” lasts only until better fitting truths or facts emerge and replace them. This, however, does not mean that an inevitable absolute Truth or Fact will eventually come to pass.

Reinforcing my familial values were President Kennedy’s inspirational messages of optimism and hope; to go forth and help others through community service (e.g., peace corps), and that Americans could do anything they put their minds to - as demonstrated by the US manned moon landing in 1969. This commitment to community service has remained with me throughout my life and has been a major reason why I have pursued an education in city and regional planning.

However, not everything that occurred during the 1960s was positive and enlightening for me and for most Americans, as we were about to lose our naïve innocence. President Kennedy’s assassination replaced optimism and hope with a National feeling of dread and despair. The murder of Malcolm X in 1965 brought Black/White racial tensions to a boiling point, and they erupted later that year in Watts as riots - about fifteen miles away from where I lived in the San Fernando Valley. This generated quite a bit of media fear that the riots would spill out of Watts and reach into the suburbs. Black power was portrayed by news media, politicians, and law enforcement agencies (particularly the FBI) as undermining “traditional” American
values. The assassination of Martin Luther King Jr. in 1968 and the riots that occurred in its aftermath seemed to obliterate King’s dream that America had finally found the political will to afford civil rights to all Americans. It was during these turbulent times I first began wondering about civil rights and why African Americans were rioting. And it was also during these times that I started to understand what Dr. King meant by his dream of the day when a person was not judged by the color of his skin, but by the content of his character.

The actions and reactions that took place between people and the government during the 1960s civil rights movement imprinted upon me a sense of duty, a responsibility to help the people who are the most vulnerable in our society - the impoverished, the exploited, the disenfranchised, and the marginalized - achieve social equality.

While all these events and so many more were going on, the threat of nuclear war hung ever-present over all Americans. I vividly remember the “duck and cover” nuclear bomb drills I did at school with my classmates. Those drills simultaneously reinforced the instillation of fear of a Soviet Union invasion, and an indoctrination of hatred towards the Soviet Union because it was an immoral and godless nation wanting only to enslave the world under its communist domination; or as Ronald Reagan would later call it an “evil empire”.

From an early age I remember my parents telling me to go to school and get a good education because knowledge was power. What I discovered during my junior high and high school years was that the education and knowledge I was learning in public school was a socialization and indoctrination process to the rules of the dominant culture of society. As I began to question my teachers about the values they were trying to instill in me, the more resistance I received from them and the clearer it was to me that there was something they did not want me to understand - or perhaps did not understand themselves. It was only later during my college years that I began to understand that that something was the hegemony of a dominant culture bearing down on all members of society. I also discovered that through this cultural hegemony some members of society
are privileged while other members of society, specifically the impoverished and minorities are exploited.

In addition to the civil rights movement, culturally biased public education, and the omnipresent threat of nuclear annihilation if the Cold War suddenly turned hot, was the Vietnam War, which became another major National issue during the 1960s that affected the psyche of most Americans, and which also profoundly affected me. One of my greatest fears during the time of the Vietnam War was of being drafted and forced to go to war and kill another human being. I remember sitting in front of our television set every night during the six o’clock news watching Walter Cronkite giving the daily US body count.

I remember the transformation in public sentiment taking place about the war. Initially public sentiment began as reluctant acceptance of the necessity of the war to stop the spread of communism, but slowly changed over several years to fervent public protests occurring around the country against the war. The public protests were not only against the war, but also against the US government; accusing government officials of lying to the public about the reasons why America was in Vietnam, which had little to do with stemming the advancement of communism, and more about extracting natural resources such as petroleum, rubber, and tin from its land. Subsequently, the Pentagon Papers released in 1971 ultimately verified these accusations, and that the US Government (i.e., the Office of the President) lied to the American people. I was beginning to see the US government not as the defender of freedom and democracy, but as a tool to confer privilege on particular persons while deluding the rest of its people with an appearance that it was working in their best interests. Coming on the heels of the Pentagon Papers revelation was President Nixon’s Watergate scandal during the early 1970s, which essentially corroborated my emerging interpretive perspective that reality, truth, and fact are essentially social constructions.

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26 Sadly, the public also turned against US troops who served in Vietnam.
This brief sketch of the evolution of my interpretive perspective has traversed a mental landscape covering several decades of which the 1960s had the most impact on my values system. My values began from a perspective based on an absolute Truth derived from fear and authoritative repression and has transformed into its current stage based on a contingent and ephemeral truth derived from an experiential recognition that absolute Truth is an illusion. The above recollections are intended to provide only the briefest gist - a general representative iconography - rather than a literal expression of all my experiences as many more individuals and circumstances with similar and dissimilar values have influenced me in addition to those mentioned above.

The current stage of my interpretive lens views reality as socially constructed. By this, I mean reality is created by and through “people”; or to paraphrase Arendt (1996; 1998), the Creator created Heaven and earth, but men and women create the world. And the reality of the world is represented through the production of human artifacts, such as language, knowledge, and law, just to name a few. While this socially constructed world springs forth from the work of all people of a society, not all people have equal voice, or perhaps any voice, in how they are treated in this world. Some people have a greater influence over the social construction of their world than others, and consequently enjoy greater privilege within that world than others. Accordingly, I see a world built on economic and political disparities wherein I am inclined to help the most vulnerable. This is how I generally see the world; this is my interpretive perspective, my lens for making sense of the world. Is my interpretive perspective biased? Yes, of course it is. However, recognizing and reflexively understanding my biases enables me to confront them rather than be controlled by them in conducting this research. By consciously identifying and acknowledging my biases and comparing them

28 World does not necessarily connote an overarching societal order like a world government. Indeed, many worlds can and presently do exist simultaneously on our planet.
29 The phrase “production of human artifacts” is used in a dual sense. In one sense, it is the product of production, which once produced is separated from its human producer and cannot be produced again. In a second sense, it is the act of producing, which cannot be separated from its human producer, can be performed repeatedly, and each subsequent product may be different from the previous product (not be confused with reproduction or the making of the same thing).
to the biases of participants of this research, I am calibrating this research’s analytical instrument (i.e., me).

**What is Being Analyzed**

The purpose of this research is to understand how residents participate or, conversely, are prevented from participating in city land-use decisions that have an effect on their neighborhoods. In another earlier chapter of this study I conceptualized the concept “participate” as a “capacity” to participate. I further conceptualized that a capacity to participate must entail certain necessary conditions in order to emerge, develop, and continue to function. Those specific necessary conditions include: Plurality, Space, Resource Control, and Purpose (Figure 4.1).

![Figure 4.2 Four Conditions of Participation Capacity](image)

In order to analyze capacity to participate it is necessary to analyze the four conditions that create this capacity. Therefore, this research analyzes the underlying reciprocal basis of human social exchange to understand the environment (the underlying conditions), which prepare and provide an opportunity for participation capacity to develop. Specifically targeted for analysis are the elements: trust, knowledge, and legitimacy. In other words, I am analyzing the development or diminution of trust, knowledge, and legitimacy between people through their reciprocal interactions.

For example, the City sends a notice to the Commission and residents alerting them to a rezoning application in which a developer intends to construct and operate a commercial composting facility within a Commission neighborhood. What do the
residents do? Residents know from past experiences that City Council takes more seriously the concerns of a large group of united and organized residents as compared to the concerns of a few unorganized residents. As a Commission chair remarked to me in a 2008 interview, “the squeaky wheel gets the grease.” Therefore, residents know their plurality makes them politically stronger than they would otherwise be individually. But what draws residents together? The Commission, residents know, or learn from their neighbors, is the entity to which they can go to and express themselves. The Commission can provide both the space and place for residents to come and be together and discuss their thoughts about the advantages and disadvantages of having a composting facility located within one of their neighborhoods. The Commission can provide a safe harbor for anyone wishing to express a point of view. Speech and dialogue between residents and others (the applicant, non-resident stakeholders, and City personnel) highlight the potential emergence of control of a resource. That resource is a speaker’s ability to influence the decisions or behaviors of others by providing a reasoned argument or explanation for their support or opposition of the proposed composting facility. The Commission can provide an environment where ideas or assertions are brought into the light of day and examined in a rational and civil manner. The Commission can also provide a focusing point to which residents come with their individual concerns and then from which they leave with a collective concern and common purpose to communicate to City Council. The existence of or the extent to which trust exists within the environment the Commission provides to residents figures significantly regarding whether residents have or can trust the Commission and each other. The environment the Commission provides to residents likewise significantly affects the extent of or level of community (i.e., peoples’) knowledge and the extent that the community’s knowledge is legitimate, which in turn validates or invalidates the legitimacy of the residents as part of the larger society. Therefore, the building up or tearing down of trust, knowledge, and legitimacy occurs as part of and within the constructed environment the Commission creates for

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30 The Commission does not unilaterally create this environment. Rather, the Commission should be viewed as a vessel in which the environment is created by the combined inputs of the Commission, the Commission community (e.g., residents, nonprofits, faith-based organizations, etc.), and forces external.
residents; which in turn provides the elemental bases in which the conditions of plurality, space, resource control, and purpose potentially coalesce into participation capacity. The commission provides the context within which the environment for participation emerges.

My interpretive perspective sees the world as socially constructed, and so it follows that I also see knowledge as socially constructed. However, this research presumes socially constructed knowledge privileges those who are able to manipulate the production and content of such knowledge. Consequently, this research uses the PAR approach to reveal such knowledge privilege and brings into question the very nature of knowledge and knowledge production (Fals-Borda and Rahman 1991). This research brings knowledge and knowledge production into question by recognizing that an alternative type of knowledge, a people’s knowledge, exists concurrently with the dominant culture’s “objective” knowledge.

**Restatement of Research Problem**

The general research problem is to understand how residents build a capacity, or conversely, are prevented from building a capacity to participate in city land-use decisions that affect their neighborhoods. More specifically, the problem is about understanding the effect(s) a speaker’s speech acts have on the development or diminution of direct constructive reciprocity, specifically trust, knowledge, and legitimacy, as it relates to building resident participation capacity.

**Restatement of Research Questions**

1. What effect does the building up or tearing down of residents’ trust have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?

2. What effect does the building up or tearing down of residents’ common knowledge have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?
3. What effect does the building up or tearing down of residents’ legitimacy/legitimation have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?

4. What effect does a Commission Chair’s “reason giving” leadership style have on residents’ ability to develop a collective capacity to participate in the City’s land-use decision-making?

5. What effect does a Commission Chair’s “go along to get along” leadership style have on residents’ ability to develop a collective capacity to participate in the City’s land-use decision-making?

6. What broader lessons do these understandings hold for other citizen organizations?
Chapter 5: Genesis of Columbus Area Commissions and Entering the Field

Introduction

The case studies on which this research is based occurred in the city of Columbus in Franklin County. The county is centrally located in the state of Ohio. The Columbus metropolitan area (MSA) is comprised of seven counties: Franklin, Delaware, Union, Licking, Madison, Pickaway, and Fairfield (Figure 5.1) with an MSA population of approximately 1.8 million people\(^\text{31}\), of which

Figure 5.1  Columbus Metropolitan Area

over 711,000 people live within the city limits of Columbus (Columbus Chamber of Commerce, 2010). Columbus is the largest city in Ohio, and the 16\(^{\text{th}}\) largest city in the

\(^{\text{31}}\) As reported in 2009 by the City of Columbus Economic Development Department
United States (Columbus Chamber of Commerce, 2010). Table 5.1 provides selected demographic comparisons of the City of Columbus with those of Franklin County, the Columbus MSA, Ohio, and the United States. This information, particularly that of the City of Columbus’ educational attainment and poverty status is of significance when compared to the same demographics of the commission area under study, shown in a subsequent section.

Table 5.1 Selected 2000 Demographic Characteristics

<table>
<thead>
<tr>
<th></th>
<th>Columbus City</th>
<th>Franklin County</th>
<th>Columbus MSA</th>
<th>Ohio</th>
<th>US</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race: White</td>
<td>67.9%</td>
<td>75.5%</td>
<td>81.3%</td>
<td>85.0%</td>
<td>75.1%</td>
</tr>
<tr>
<td>Black or African American</td>
<td>24.5%</td>
<td>17.9%</td>
<td>13.4%</td>
<td>11.5%</td>
<td>12.3%</td>
</tr>
<tr>
<td>All Other Races</td>
<td>5.0%</td>
<td>4.4%</td>
<td>3.4%</td>
<td>2.1%</td>
<td>10.2%</td>
</tr>
<tr>
<td>Educational Attainment (pop. ≥ 25 years):</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percent high school graduate or higher</td>
<td>83.8%</td>
<td>85.7%</td>
<td>85.8%</td>
<td>83.0%</td>
<td>80.4%</td>
</tr>
<tr>
<td>Percent bachelor's degree or higher</td>
<td>29.0%</td>
<td>31.8%</td>
<td>29.1%</td>
<td>21.1%</td>
<td>24.4%</td>
</tr>
<tr>
<td>Median Household Income (dollars)</td>
<td>$37,897</td>
<td>$42,734</td>
<td>$44,782</td>
<td>$40,956</td>
<td>$41,994</td>
</tr>
<tr>
<td>Poverty Status in 1999:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Families</td>
<td>10.8%</td>
<td>8.2%</td>
<td>7.1%</td>
<td>7.8%</td>
<td>9.2%</td>
</tr>
<tr>
<td>Individuals</td>
<td>14.8%</td>
<td>11.6%</td>
<td>10.1%</td>
<td>10.6%</td>
<td>12.4%</td>
</tr>
</tbody>
</table>

Source: US Census Bureau, Census 2000 (Tables DP-1 - DP-4)

**Genesis of the Columbus Area Commission Program**

The Columbus area commission program is a quasi-public entity created by City ordinance, rather than a private entity such as a homeowner’s association or civic association. In general, the major function of the area commission is to channel the many community voices within a commission’s boundaries into a single representative voice that may be heard by City Council.

The popular explanation for the creation of area commissions is that they were a natural outgrowth of resident dissatisfactions with not having their concerns recognized by City government. The following excerpt is an example:
As has been shown, Columbus has a long tradition of participation in hearings, boards, and commissions. In spite of this tradition, resentment of the municipal decision making process is a common theme not only in Columbus but also nationwide. City Hall and government in general is seen as an impregnable body which the average citizen can have little impact. (Preston 1998)

However, this view is not a complete account according to other sources. In 1998, this author interviewed retired Columbus City Councilman Morey Portman, who described a set of circumstances culminating in the late 1960s that prompted the creation of an area commission. The circumstances focused on the encroachment of The Ohio State University (OSU) student housing on nearby owner occupied housing and property destruction of local businesses.

According to Mr. Portman student riots after OSU athletic events, particularly football, were frequent and often led to property destruction in the form of smashed storefront windows, and burning of couches and dumpsters. Residents, businesses, and public safety officials were fed up with reacting to one crisis after another and decided it was time to pressure City Council for a permanent solution. City Council, according to Mr. Portman, was also weary of the phone calls that would pour into their offices after a day of mayhem.

Leading the charge from the community were the High Street businesses that were experiencing the greatest losses from student rioting. Not only did they experience property destruction, but also lost sales from patrons who stayed away due to fear for their personal safety. Homeowners were also pressuring City Council to stop the advancement of student rooming houses on the bases that it contributed to increased incidences of criminal activity and was destroying their property values.

Councilman Portman endorsed the idea of creating a permanent formal public body at the neighborhood scale linked to City Hall. It was Mr. Portman’s opinion that City Council was too far removed from the specific problems at the neighborhood scale to effectively develop timely resolutions. The beauty of the area commission concept per Mr. Portman was that it allowed the people who know the most about their
neighborhoods or community issues – the residents – to identify and develop solutions that impact them, and directly advise City Council for consideration.

The University Area Commission was the first area commission established in 1972. It is one of the now seventeen area commissions in Columbus (Figure 5.2). One of the first actions the University Area Commission undertook was to advise City Council on the need for building code enforcement and added police protection to curb inappropriate behavior. However, as the area commission program was codified into a City ordinance, its role was expanded.

**Figure 5.2 Map of Columbus Area Commissions**

Source: City of Columbus Department of Development.
Prescribed Roles of the Area Commission

Chapter 3109 of the Columbus City Code states,

Area commissions are established to afford additional voluntary citizen participation in decision-making in an advisory capacity and to facilitate communication, understanding and cooperation between neighborhood groups, city officials, and developers.

The foremost function of the area commission is the facilitation of local area development through which the commission acts in a dual capacity. First, it acts as a reviewing entity for re-zoning requests, variances, special use permits, and demolition permits. The area commission provides the platform for the community to meet with developers and establish a dialogue where concerns can be discussed and resolved. Second, the commission acts as a focal point where community interests are coordinated and internal differences resolved. The result is one community voice speaking to City Council instead of many separate special interests lobbying Council for favors at the expense of the greater community at large.

Another role the area commission plays is one that identifies community problems and needs and provides recommendations to the appropriate authority. For example the level of police presence in a particular area may need to be increased to control criminal activity. Preparing a strategy that cleans trash and other debris from a park and also incorporates replanting may form a parkland revitalization and enhancement recommendation. Capital improvements such as street repair and street lighting may form yet another recommendation strategy that enhances the overall desirability of a commission’s neighborhoods.

To summarize, the role of the area commission as prescribed by Columbus City Code is to promote local interests through policies that facilitate future development of the area. The area commission is the representative apparatus through which competing neighborhood interests come together and collectively participate in the planning and
development of their community’s future with City Council, albeit it is only in an advisory capacity (Appendix D).

**Area Commission Structure**

Chapter 3109 of the Columbus City Code clearly defines an area commission as an advisory body with no decision or legislative authority (Columbus City Codes). The area commission’s purpose is to make recommendations to City Council. Although each commission has its own unique set of by-laws specifically tailored to meet its special circumstances, the by-laws must not conflict with the ordinance’s specified requirements. First, commission members serve without compensation. This includes expense accounts that can be construed as an alternate form of compensation. Second, commission members serve for a term of not less than two years and not more than four years. This does not restrict a commission member from serving several consecutive terms, as the language of Chapter 3109 is silent regarding term limits. Third, residents vote to elect the candidate they wish to represent their interests on their commission. However, the Mayor with City Council’s concurrence makes the official commission appointment of the resident-elected commission member.

The financial structure of the commission is severely restricted. City Code prohibits area commissions from generating any form of revenue. This includes revenue from sources such as fundraisers (e.g., community car wash); grant funding from non-profit organizations, such as The Columbus Foundation and The United Way; and outright donations from the community at large. However, the City does allocate three thousand dollars to each area commission’s annual budget for expense items such as postage and copy paper. The funding is available on a reimbursement basis and reimbursement requires on average between four to six weeks.\(^\text{32}\)

The case studies discussed in this research involve rezoning proposals that came before one of the area commissions. Figure 5.3 presents a simplified version of the rezoning process from initial submission to City Council decision. A re-zoning applicant

\(^{32}\text{This was the average waiting period to receive reimbursement by the City that I observed during my time working with the commission under study.}\)
initially submits the application to the Department of Building and Zoning Services. From there the application proceeds to the appropriate City departments for review and staff recommendation. Concurrently, the application proceeds to the appropriate area commission (if any) in which the proposed re-zoning would be geography located. The area commission refers the applicant to its zoning committee for review, if it has one.

**Figure 5.3 Columbus Re-zoning Process**
otherwise the area commission performs this function itself. The area commission’s zoning committee studies the zoning request and may ask the applicant to contact residents that appear directly impacted by the proposed change in zoning. When the zoning committee is satisfied that an appropriate level of public input has occurred, it analyzes all the information presented and votes either to recommend approval or disapproval to the area commission, or table the matter until additional information is provided or additional public input is solicited. Once the area commission receives the zoning committee’s recommendation it generally puts the re-zoning request to a commission member vote. The commission, however, is under no obligation to adhere to the recommendations of its zoning committee. After the area commission has taken its recommendation vote, the application and the commission’s recommendation move to the Development Commission for its review and recommendation.

At the Development Commission meeting, the public may provide testimony about the re-zoning application. An opportunity is also provided the applicant to state his case; to address concerns expressed by the public, area commission, and City departments; and to modify specific items of the original re-zoning application. The City departments submit their reviews and recommendations regarding the proposed re-zoning to the Development Commission, and together with the area commission’s recommendation these are entered into the official record. The Development Commission is under no obligation to comply with any recommendation from the area commission, City departments, or with public opinion. Similar to the area commission, the Development Commission’s recommendation is purely advisory to City Council. Once the Development Commission votes on the application, the application typically moves to City Council for its decision.

Columbus City Council reviews the recommendations of the planning staff and other City departments, the Development Commission, and the area commission before

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33 The commission I worked with, in general, encouraged residents to come to commission meetings and participate in discussions involving matters that might impact the community within the commission’s geographical boundary. However, only commission members could cast commission recommendation votes.
taking action on the application. Council is under no obligation to adhere to any recommendation since they are all advisory. Council also provides the opportunity for the public to speak on the matter during the City Council meeting. For each application, Council allows up to six speakers - three proponents and three opponents - and each speaker has three minutes to make statements. Council may decide to vote on the matter or table it until a later date. Although decisions by Council are generally final in the decision process, opponents to a Council decision can petition the City for a referendum that would place the contested issue before the voters of the City or Columbus.

The Area Commission Under Study

The area commission I am studying will remain nameless to help protect the identities and confidences of those individuals and groups who participated and contributed to this research. Instead, I refer to the area commission of this research as the Commission.

As of 2000 the Commission area had a population of approximately twenty-one thousand. Also as of 2000 the Commission area was comprised predominantly (64.5%) of working class African Americans\(^{34}\). Nearly one-quarter (22.5%) of Commission area residents lived at or below the poverty level in 1998\(^ {35} \). Table 5.2 shows Commission area residents' education, income, household type, and poverty status compared to the same characteristics for residents within the City of Columbus, Franklin County, Columbus MSA, Ohio, and the US. Table 5.2 indicates the percent of college educated residents within the Commission boundaries is nearly half that of the City overall. Some explanations for this disparity could include college-educated residents moving out of the Commission area, college-educated residents not moving into the Commission area, Commission area residents simply not going to college and earning a degree, or a combination. Because of the educational attainment levels of Commission area residents,

\(^{34}\) Source: Columbus Planning Office Department of Trade and Development http://www.columbus.infobase.org/census/website

it is not surprising to find their median household income less than the City or other geographical scales. The most notable disparities appear in the poverty status and type of household statistics. Commission area families and individuals living below the poverty status are one and a half to two times the proportion as in the City, county, state, or nation. In the following chapter I further describe the Commission’s geography as it relates to the cases, and provide my experiences of entering the Commission field, which help situate my analyses of the two cases that are the focus of this research.

Table 5.2 Selected 2000 Census Demographics

<table>
<thead>
<tr>
<th>Educational Attainment (25 years &amp; over)</th>
<th>Columbus Commission</th>
<th>City</th>
<th>County</th>
<th>MSA</th>
<th>Ohio</th>
<th>US</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent high school graduate or higher</td>
<td>78.3%</td>
<td>83.8%</td>
<td>85.7%</td>
<td>85.8%</td>
<td>83.0%</td>
<td>80.4%</td>
</tr>
<tr>
<td>Percent bachelor’s degree or higher</td>
<td>15.7%</td>
<td>29.0%</td>
<td>31.8%</td>
<td>29.1%</td>
<td>21.1%</td>
<td>24.4%</td>
</tr>
<tr>
<td>Median Household Income (dollars)</td>
<td>$30,671</td>
<td>$37,897</td>
<td>$42,734</td>
<td>$44,782</td>
<td>$40,956</td>
<td>$41,994</td>
</tr>
<tr>
<td>Poverty Status in 1999</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Families</td>
<td>17.2%</td>
<td>10.8%</td>
<td>8.2%</td>
<td>7.1%</td>
<td>7.8%</td>
<td>9.2%</td>
</tr>
<tr>
<td>Individuals</td>
<td>20.9%</td>
<td>14.8%</td>
<td>11.6%</td>
<td>10.1%</td>
<td>10.6%</td>
<td>12.4%</td>
</tr>
<tr>
<td>% Female householder, no husband present, w/own children &lt; 18 years</td>
<td>17.60%</td>
<td>9.3%</td>
<td>8.3%</td>
<td>7.5%</td>
<td>7.3%</td>
<td>7.2%</td>
</tr>
</tbody>
</table>

Source: US Census Bureau, Census 2000 (Tables DP-1 - DP-4)
† Sources: U.S. Census Bureau, Census 2000 Summary File 3, Summary File 2, Summary File 3, Summary File 4
†† Source: U.S. Census Bureau Census 2000 Data Set: Census 2000 Summary File 2

Entering the Field and Emergence of this Study’s Performance Analysis

I first entered the Commission area community in the fall of 1997 as an OSU planning intern assigned to assist the Commission in ways left to its discretion. When I met with the Commission Chair, the Chair immediately assigned me the task of taking the Commission’s meeting minutes. Initially, I thought this was a sign of the value the Chair saw in me as he entrusted me with the important task of creating an historical record of the Commission’s meetings. I discovered, however, that the real reason the
Chair assigned me the task of minute taker was due to an abhorrent regard every Commission member had of doing that “dreadful” job. I got the job of minute taker because every Commission member refused to do it although the City required area commissions to perform this function.

My experience at the first Commission meeting I attended further deflated my belief that I was looked upon as a valuable asset to the Commission. I was sitting silently at a table, busily writing down notes that I would later transcribe into the Commission’s minutes when a man in the audience, a resident of the community, stood up and out of nowhere accused me of being a “spy” for the City. The resident accused me of gathering “information” about the Commission and residents, which I would then allegedly report to an apparently devious City official who would somehow use that information against the community. That very first Commission meeting was almost my last.

As I was returning home from the meeting I asked myself; why did that resident accuse me of being a spy? Did I really need to take this kind of hostility and paranoia in addition to all the challenges graduate school laid before me? What was the point of staying and trying to assist the community when this resident was suspicious of me and appeared not to want me there? Although other residents did not express similar suspicions about my purpose for being at the Commission meeting, they also did not reject the accusation, but instead remained silent. I began to wonder whether their silence amounted to agreement with what the resident accused me of in public. By the time I arrived home, I decided that before making any final decision I would give it one more try and go to one more Commission meeting the following month. I attended the following month’s Commission meeting, which turned into attending one more after that, and one more after that; and eventually I stayed engaged with the community for seven years. What I observed in the first several months after entering the community was that residents appeared generally suspicious of Commission members, the City and its employees, and of land developers.

36 This attitude pervaded all Commission members during the entire time I was in the community, from 1997 to 2005.
37 Notes from November 6th and December 4th 1997, January 8th, February 5th, March 5th, April 2nd, and June 4th 1998 monthly Commission meetings.
After about a year of attending monthly Commission meetings, I observed the relationship between the City and Commission and residents to be paternalistic. For example, I observed that when City officials, who were nearly always men, came to Commission meetings and made presentations to the community, they continually tried to impress upon the residents that the City knew what was in the community’s best interest and therefore the community should accept without question what the City had already planned (i.e., decided) for them. When Commission members or residents asked City representatives to explain the reasoning behind the plans or decisions impacting the places where residents lived, City representatives generally employed two strategies simultaneously. City representatives would generally take on a defensive strategy, appearing offended by the residents having the audacity to question the appropriateness or authority of the City’s plans or decisions. Another strategy City representatives utilized was in their responses, which appeared deliberately vague and usually did not answer residents’ questions.  

What surprised me was the Commission’s and the residents’ general reaction to these strategies. They were apparently satisfied with the non-answers supplied by City representatives. The Commission and residents were “settling” for the responses given to them without pushing back with questions probing for more adequate explanations or justifications. The Commission and residents, I observed, did not persist in demanding responses from the City’s representatives that included an explanation or rationale behind City plans or City decisions.  

What was even more incredible to me was that after a Commission meeting many audience members (i.e., residents) would come up to me and tell me that they did not get their questions answered or answered to their satisfaction. They came to me believing that I could provide them with the information to answer their questions or go find the

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38 Notes of monthly Commission meetings made throughout the 1998 year.
39 One example and a popular peeve of the community involved the (potential) building of a public swimming pool in the community, which has been included in the City’s Bond packages and the City’s Capital Improvement Plans since 1975. However, each year the City kept pushing the pool project down on its list of project “priorities” while giving the community hollow promises that the pool might be built the following year.
answers for them, because they thought I worked for the City and had special access to people and information they were not able to access\textsuperscript{40}.

During that same period, I also observed a similar relationship between developers and the Commission community when developers or developers’ agents came to the Commission to present their applications for rezoning. However, instead of using a paternalistic strategy for obtaining community support, the developer’s agent would typically use the appearance of legal authority and professionalism as a strategy to intimidate, humiliate, or otherwise suppress Commission members’ or residents’ questions requiring explanation or justification of the proposed use of the rezoning. Commission members and residents appeared conditioned to believe that any question they had was inconsequential and frivolous, and would likely demonstrate their naiveté and their lack of understanding of the matter at hand to everyone present. This would be not only an embarrassing moment for them, but also quite possibly damage their reputation and standing in the community. Consequently, I rarely observed a Commission member or resident willing to take the chance of asking questions that could possibly result in a negative public image for them. I could not understand why the Commission or residents were not asking land developers the “hard” questions (i.e., reason-giving kinds of questions per Elkin). That is, questions that probe for the actual intent of the developers by means of requiring them to explain and justify their requested zoning changes and their proposed development projects, and how they expected the zoning change and proposed development would impact current residents. In the following chapter I delve more deeply into the brief sketch I have provided here of these perceived relationships.

After the first year of working with the Commission and residents, I wanted to put to rest any resident apprehensions or lingering suspicions that I might be a spy for the City. I wanted to demonstrate to the residents that I was there for them and to do those tasks the community thought were important. Although most residents grew to trust me

\textsuperscript{40} This was a recurring situation I experienced with residents from late 1997 through most of 1998 even after I repeatedly explained to residents that I wasn’t a City employee and had no special access to City information or people.
enough to engage me in conversation and ask me for information, they still appeared apprehensive of me and unsure of my real intent and consequently held me at arm’s length. They did not allow me and get to know them and how and what they felt. I was stuck. The community was not ready to let its guard down fully and let me in, and tell me how they really felt, what they really needed, and what I could possibly do for them beyond taking Commission notes. I needed to do something that clearly demonstrated my real intent to the community. And out of my own frustration of feeling underutilized by the Commission I took an action I thought would either demonstrate to the community that they could take me into their confidence and fully trust me, thus permitting me real entrée into the community, or would completely alienate them and my time there would be over.

Based on about a year’s worth of conversations I had with Commission members and residents after Commission meetings, I concluded the reason residents were coming up to me after Commission meetings airing their concerns and asking me questions regarding matters that were presented during the meetings - besides believing I was a City employee who could answer their questions - was because I was an outsider. As a community outsider, I believed, residents did not consider me, if they considered me at all, a member of their community. Therefore, I theorized it was safe for residents to come talk with me because I did not pose any potential negative consequences to them as I did not have any prestige or influence in the community. I inferred, because residents were coming to me and asking me questions about matters brought before the Commission that they wanted answered, I could act as a kind of communication conduit to the Commission for them while preserving their anonymity. I envisioned that during Commission meetings I would ask the questions residents asked me outside of the meetings - the questions they really wanted to ask, but would not ask or were reluctant to ask during the meetings. In this way, there was no risk to the reputation or status of any resident if the response to the question made the question appear to be ridiculous.

From my perspective, this strategy met two needs. First, I could ask residents’ questions during Commission meetings with no link to a resident and, hence, without reputational risk to any specific resident. Second, by asking the questions residents posed
to me in private and insisting respondents provide complete and sufficient answers to those questions, I could demonstrate to residents attending the Commission meeting that I was “there” for them - to help them in ways they believed were important. My strategy was simple and direct: to “walk the talk” and build trust between residents and myself, and the Commission and myself. I was not aware of it at that time that this simple strategy of trying to build trust between the community and myself contained an ontological perspective of duality in which Other interest was placed in a position equal to self-interest, and was also the genesis of the performance method I would eventually use in this research.

Indeed, my strategy of asking questions for residents who were too timid or intimidated to ask for themselves appeared well received by the Commission area residents, as will become apparent as the details of the two cases unfold in the next chapter. This eventually allowed me genuine entrée into their lives and aspirations. I continued this strategy, with some modification, for the remainder of my time in the community. Over time, my approach appeared to turn into something more than a communication conduit for residents. Residents apparently saw value in the act of asking questions, and eventually began asking questions themselves. By performing this act of doing, I theorized, residents learned (or perhaps more appropriately, they discovered their own inner strengths) to ask their questions for themselves; and consequently build for themselves their own self-confidence and independence. By acting in this way, I hoped to communicate to Commission members and residents alike that it was “OK” to ask questions. That it is perfectly reasonable to ask for and expect explanations and justifications of those who propose plans, or recommendations, or decisions that have an effect on people’s lives or the places where people live. My act of doing took concrete shape in the form of asking questions in public at Commission meetings. However, as I discovered over the several years I was involved with the community, this act of doing by asking questions, of requiring explanations and justifications, whether by me, by residents or by other stakeholders, would either be encouraged or discouraged based on the prevailing Commission perspective in place at the time. Consequently, at times asking questions appeared consistent with and in agreement with a Commission
perspective encouraging openness, dialogue, and a “can do” attitude (Case 1). At other times asking questions appeared inconsistent with and in conflict with a Commission perspective encouraging secrecy, satisficing (i.e., settling for just good enough), and a fatalistic attitude (Case 2).
Chapter 6: Case 1 Analysis

Introduction

The social exchanges comprising the narrative evidence of this chapter are substantial and lengthy. Although important, I decided to place the bulk of the narratives in two appendices (Appendix A Case 1 Narrative, Appendix B Case 2 Narrative). Ideally, the reader will take the time to read these appendices in order to truly grasp the depth of the evidence. In the interests of readability, however, I have focused on describing the contexts for each case, a summary of the evidence, and conclusions in this chapter.

The overall goal of this dissertation is to understand how the Commission and Commission area residents as well build a capacity, or conversely, are prevented from building a capacity to participate in city land-use decisions affecting their neighborhoods. I do this by examining three underlying reciprocal precursors - trust, knowledge, and legitimacy - that can prepare or obstruct conditions for participation capacity to emerge or grow. In concrete terms, I examine the effect(s) a speaker’s speech acts have on the development or diminution of trust, knowledge, and legitimacy. I focus on the specific speech acts of giving promises and giving explanations. I examine how these types of speech acts encouraged or discouraged a perceived development of trust, knowledge, and legitimacy between Commission members, between the Commission and Commission area residents, and between Commission area residents.

I want the reader to know explicitly where I am coming from as my perspective colored my view of the cases and the conclusions I have drawn. Working as an area commission intern, I discovered my affinity towards the neighborhood scale, which provided a motivation for me to focus my work and observations on neighborhood networks and institutions. In addition, I believe that social change needs to start at the
individual level. These two facts shaped the nature of my interests in how individuals create trust, gain knowledge, and develop legitimacy as precursors to participatory capacity in their neighborhoods. I will return to this point in the concluding chapter.

While there were several Commission cases from which to choose, I chose the two cases for this study based on criteria that each case involve a residential land-use review, include at least one irresolvable issue between the Commission and applicant, and include specific aspects of the literatures underlying this research. I selected Case 1 because the Commission’s outlook regarding resident participation appeared to exemplify Elkin’s (1987) “reason-giving” theory. Reason-giving opens a space, giving one an opportunity to justify one’s statements (also actions and decision) publically to others. Case 1 shows the Commission holding an individual’s statements of fact up to the light of public scrutiny. The Commission’s reason-giving stance required stakeholders, particularly Commission area residents to publically discuss and evaluate the explanations and rationales behind statements. This results in evaluating the truthfulness of statements made to the commission and zoning board, and also suggests that reason-giving can also be a transformative process of human relations. Case 1 shows that reason-giving enabled residents to transform themselves and develop their own participatory voice. Occurring during the same timeframe as the rezoning case I selected for Case 1 were two other rezoning cases and one Board of Zoning Adjustment (BZA) case under Commission review. I did not select either of these rezoning cases because they either lacked some irresolvable issues between the Commission and the applicant or were of a commercial rather than a residential land-use nature. I did not select the BZA case because it pertains to allowing for minor deviations in existing zoning requirements rather than a change in zoning, which can significantly affect the type of land-use and the degree of density.

I selected Case 2 because the Commission’s outlook appeared to exemplify Stone’s “arranging” or “go along to get along” (1989, 192) theory. For the Commission (the Commission Chair in particular) in Case 2, go along to get along meant it was better for the Commission to go along with the proposed plans of the developer rather than oppose him, as the rewards appeared to outweigh the costs. The Commission Chair’s perception
apparently was that the developer would provide additional amenities to the community in exchange for the Commission’s cooperation and approval of the developer’s rezoning application, or would withhold amenities if the Commission did not cooperate. While embracing a go along to get along outlook, the community might reap an increase in amenities, but at a cost of maintaining the participation status quo in the relations between the Commission (including its Commission area residents) and the governing regime. Similar to Case 1 above, there were several other cases under Commission review concurrently with Case 2. These included six rezoning cases, one Council variance, and one demolition permit. I did not select the Council variance case for the same reason I did not select the BZA case above. I also did not select the demolition permit case since it was not a land-use matter per se, nor did it involve controversy between the Commission and the applicant. Four of the six rezoning cases involved commercial uses, and the Commission and applicants resolved all issues to their mutual satisfactions. The remaining two rezoning cases involved residential uses, which the Commission, Commission residents, and the rezoning applicants resolved all issues brought up by the community.

These two cases help to bring out the implications of these two theories for encouraging or discouraging constructive reciprocity, particularly between Commission members, between the Commission and Commission area residents, and between Commission area residents. In addition, I chose to present the case analyses as vignettes; they are stories that provide understanding of the perceived actions or behaviors taking place within a situational context (Barter and Renold, 1999). The vignette form of analytical presentation allows me to tap into the crucial aspects of the reciprocal flows of personal interactions that led to these perceived actions (or inactions) or behaviors.

Lastly, I have altered the names of the people, organizations, and places (except for the City of Columbus and its personnel41) comprising the data of the two cases of this research in order to help protect their identity and confidentially. A list of pseudonyms of

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41 Joan Bates, the City’s liaison to the Commission is the pseudonym I created to aid in protecting the identity of the Commission.
each case is included in the tables below and in Appendix A (Case 1 Narrative) and Appendix B (Case 2 Narrative).

**Internal Contextual Setting to Case 1**

Years before the Case 1 rezoning application came before the Commission for review, an appearance of disorganization, disorder, and a general disregard of its by-laws and procedures plagued the Commission and its Zoning Committee (ZC). This aura of disorder apparently fed many residents’ beliefs that certain Commission members - many of whom sat concurrently on the Commission’s Zoning Committee - “were on the take,” making “backroom deals” with developers and the City for their own personal gains. This appearance of impropriety contributed to a polarizing internal struggle between Commission members in which there were no neutral parties. Several Commission members advocated for Commission reform by making Commission business more consistent and transparent to residents. Other members, however, wanted to keep the status quo.

Ultimately, the advocates for Commission reform prevailed, and consequently the Commission gave the ZC a directive to formalize its review process and procedures. Commission reform also included electing a new Commission Chair whose mandate was to restore residents’ confidence and trust in the Commission as the residents’ lead representative to the City.

The Commission’s election of longtime resident Martin Roundtree was a step toward its goals of changing its public image into being transparent and of working for the interests of the residents. Roundtree was familiar with the area’s social and economic strengths and weaknesses, and the challenges the community faced. The area’s civic leadership also knew Roundtree and respected his opinions and integrity. Not only was

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42 However, in January 2000, the Commission had adopted its Zoning Committee’s Process and Procedures Policy Document as a first step in the Commission’s goal of bringing transparency to its zoning review process, and reestablish resident confidence and trust in the Commission.

43 Author’s personal observations during Commission meetings between 1997 and 1999 in which residents leveled allegations at certain Commission members of corruption and dishonesty.

44 The Zoning Committee Process and Procedures Policy Document (Appendix A.1 Exhibit 8) was the outcome of the Commission’s directive.

45 Personal conversation with Martin Roundtree.
Roundtree connected to the community’s leadership, but he was also connected to the City’s leadership (i.e., Mayor and Council members) through his employment with Columbus Smart Growth Partners\(^ {46}\) - a non-profit development arm of the City\(^ {47}\). The Commission’s installation of Roundtree as Chair was by no means a panacea to the Commission’s image problems, but during Roundtree’s tenure as Commission Chair, he moved the Commission forward toward achieving its goals of administrative transparency and resident advocacy.

Right from the start of his Chairmanship in January 2000, Roundtree set a new direction for the Commission. Roundtree strove to keep the Commission organized in its administrative functions,\(^ {48}\) and opened a direct channel of communication between all Commission members, in particular himself, and residents in a deliberate effort to understand the needs of the community. His mandate was clear, “the Commission exists to serve the needs of its residents.”\(^ {49}\) Roundtree demonstrated this mandate in several ways. First, he asked residents to tell him what they thought were the current major needs of their neighborhoods. He also asked residents to describe to him their vision of the area’s future. Finally, Roundtree strove to raise the community’s consciousness of its rights, and its power to hold the City accountable for not meeting the community’s current needs and future vision\(^ {50}\).

To meet the Commission’s goals of providing transparency and serving the community’s interests, Roundtree’s approach was to engage the Commission and community in conversation, encourage open, honest, deliberative, and constructive dialogue, and help residents build their self-confidence. Thus, Roundtree endeavored to make Commission meetings a safe harbor for open conversation, calming fears of ostracism or retribution for verbalizing unpopular ideas. This was Roundtree’s way of building back residents’ trust in the Commission and in each other. Roundtree saw the


\(^{47}\) The Columbus Dispatch, October 2012. Columbus Business First, September 2012.

\(^{48}\) Most notably in complying with the Commission’s by-laws, maintaining consistent recordation of and approval of Commission minutes, setting up and following the Commission’s agenda, and conducting Commission meetings within the allotted timeframe.

\(^{49}\) Personal notes of January 2000 Commission meeting.

\(^{50}\) January 2000 Commission minutes and personal notes.
potential of the Commission becoming an institutional “shell” ripe for resident appropriation into a trust-building, knowledge-building, and legitimacy-building institution. He tried to make residents feel what each person had to say was important, valid, and legitimate regardless of their social status within the community. He encouraged residents at Commission meetings to share their stories and experiences in order to help them weave together a collective knowledge of their community. He also encouraged residents to probe the rationale of anyone making statements of fact, and of insisting on explanations of the reasons behind such facts. He fostered an attitude among residents that allowed them to see themselves as important, valid, and legitimate, and to believe that together they could organize and mobilize to participate with the City and developers to do those things that were important to the community, or hold the City and developers accountable for not doing what the community needed. It is from this perspective that the Commission and community began its review of the rezoning application that is Case 1 (Summit Communities Incorporated).

To conclude, this case unlike Case 2 that follows, does not draw any of its data from audio recordings, but from information drawn from my interviews, observations, notes, minutes, reports, letters, emails, and newspaper articles. Unfortunately, I did not start audio recording Commission meetings until May 2001. Consequently, I am not able to provide the very fine slices of detailed description for Case 1 as I am for Case 2, but I still provide sufficient details to flesh out evidence necessary to support this research. I was also a non-voting member of the Zoning Committee during the review process of this rezoning application.

**External Contextual Setting to Case 1**

At the beginning of 2000, there was a steady stream of commercial and residential development projects occurring in Columbus, particularly within the Commission’s

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51 Roundtree developed his vision for the Commission without my input or influence, and his trust building strategy dovetailed with mine. In addition, through his official chair position, his reputation within the Commission community, and his charisma Roundtree validated and legitimized trust building in the eyes of Commission members and residents.

52 January through December 2000 Commission Minutes.
geographic boundaries. Although the Commission and its residents were interested in all development projects, they were most concerned about a housing development trend occurring in their area.

Table 6.1
Pseudonyms of People and Organizations Involved in Case 1

<table>
<thead>
<tr>
<th>Pseudonym</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summit Communities Incorporated (SCI)</td>
<td>Rezoning Applicant</td>
</tr>
<tr>
<td>Harold Hancock</td>
<td>Applicant’s Representative</td>
</tr>
<tr>
<td>Glenda Riddle, Investment Management LLC</td>
<td>Representative Support</td>
</tr>
<tr>
<td>Lee Comstock, P.E. LLC</td>
<td>Representative Support</td>
</tr>
<tr>
<td>Bowers, Stu &amp; Gable, Inc. Consulting Eng. LLC</td>
<td>Representative Support</td>
</tr>
<tr>
<td>Commission</td>
<td>Area Commission</td>
</tr>
<tr>
<td>David Henderson</td>
<td>Commission Member</td>
</tr>
<tr>
<td>Rita Jensen</td>
<td>Commission &amp; ZC Member</td>
</tr>
<tr>
<td>Martin Roundtree</td>
<td>Commission Member</td>
</tr>
<tr>
<td>Audrey Summers</td>
<td>Commission Member</td>
</tr>
<tr>
<td>Clarence Watson</td>
<td>Commission &amp; ZC Member</td>
</tr>
<tr>
<td>Kevin Moffet</td>
<td>ZC Member</td>
</tr>
<tr>
<td>Jacob Reynolds</td>
<td>ZC Member</td>
</tr>
<tr>
<td>Jarrod Woods</td>
<td>ZC Member</td>
</tr>
<tr>
<td>Clyde Washington</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Rubin Downs</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Jackie Showers</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Rhonda Johnson</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Percy Washington</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Julia Howard</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Rodney Hardcomb</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Rosa Williams</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Antelope Civic Association</td>
<td>Civic/Neighborhood Group</td>
</tr>
<tr>
<td>Golden Bear Civic Association</td>
<td>Civic/Neighborhood Group</td>
</tr>
<tr>
<td>Sunrise Civic Association</td>
<td>Civic/Neighborhood Group</td>
</tr>
<tr>
<td>Columbus Smart Growth Partners</td>
<td>Development Organization</td>
</tr>
<tr>
<td>Eternal Light CDC</td>
<td>Non-Profit Organization</td>
</tr>
</tbody>
</table>

The Commission’s major concern was about the growing imbalance of multifamily to single-family housing in the area as compared to the City overall. Residents felt that
this over weighting of multifamily housing was disrupting the social networks long
established in the community. There was also recognition among Commission area
residents of a lack of “move-up” housing in the community to provide ownership
opportunities for those with rising incomes. Residents complained to the Commission
that the area’s upwardly mobile would “move out” instead of “moving up” to more
expensive housing within the area; thereby “keeping the poor people poor,” and resulting
in concentrating the poor within the boundaries of the Commission. The predominant
viewpoint resonating throughout the community was that there were already too many
apartments in the area. Residents did not mind having apartments in their area, but they
wanted their “fair share” of single-family houses as well.

Unfortunately, for the Commission, the stream of residential re-zoning applications
was mainly for multifamily housing, specifically tenant-occupied apartments. The target
market of the majority of the multi-family housing developments proposed within the
Commission area was demographically middle-income, with rental price points
established at prevailing market rates. A minority of the proposed multifamily
developments included low-income subsidized apartments. As developer after developer
explained to Commission members and residents at Commission meetings, market
demand was the driving economic force behind apartment development within the
Commission area; that currently the area could only support rental housing price points.
When developers met with the Commission and residents at Commission meetings, they
explained that it was economically infeasible for them to build single-family owner-
occupied detached housing in the Commission area because the price points of such

53 Author’s observation of residents speaking at the Monthly Commission Meetings during the 1999
through 2000 calendar years.
54 Author’s observation of residents speaking at Monthly Commission Meetings during the 1999 through
2000 calendar years.
55 Author’s observation of residents’ complaints at the August 23, 2000 Community Meeting held at the
Hilton Hotel.
56 Author’s observation of opinions expressed by residents attending Monthly Commission Meetings
during the 1999 through 2000 calendar years.
57 Author’s observation of reasons given by developers’ attorneys and other representatives presenting
their individual rezoning development proposals at Monthly Commission Meetings during the 1997
through 2000 calendar years.
housing were beyond the market’s demand for the area at that particular time\textsuperscript{58}. Developers tried to convince the Commission and residents that the “natural flow” of land development in the area was first to build apartments, thereby increasing the area’s property values, followed by development of single-family housing\textsuperscript{59}. When initial apartment development began arriving in the Commission area, the Commission and residents trusted these explanations by developers at face value. That changed when residents perceived the type of residential development coming into their community was exclusively apartment development as compared to similar areas in Columbus that were experiencing a mix of apartment and single-family developments. Consequently, the Commission and residents no longer took developers at face value, which meant they needed to rely on each other to build a collective community knowledge and that meant they needed to work together and trust each other.

There are aspects of historical geography that must be considered in order to gain a better understanding of why apartments were the predominant housing type being built in the Commission area during the late 1990s and early 2000s. Most significant was the impact the U.S. Department of Housing and Urban Development (HUD) programs had on the area during the 1960s. HUDs housing programs during that time transformed a sparsely populated rural and generally White single-family housing community into a magnet for low-income multi-family subsidized housing. During the 1970s HUD ended or significantly scaled back its low-income housing programs, which in turn had a dramatically negative effect on the community’s existing housing stock. Several apartment owners responded by abandoning their properties, leaving third party banks and, in most cases, the Federal government to manage the housing complexes. By the early 1990s twenty-eight percent of the Commission’s housing stock was Federally

\textsuperscript{58} Author’s observation of reasons given by developers’ attorneys and other representatives presenting rezoning development proposals at Monthly Commission Meetings during the 1997 through 2000 calendar years.

\textsuperscript{59} Author’s observation of reasons given by developers’ attorneys and other representatives presenting rezoning development proposals at Monthly Commission Meetings during the 1997 through 2000 calendar years.
subsidized and the community’s demographic composition was comprised mainly of low-income and working-poor.\footnote{Oral history from Clyde Washington, Director of Eternal Light Community Development Corporation and long time Commission area resident.}

By 1998 several thousand market-rate apartment units were either being built or in the planning stages. Table 6.2 shows a comparison of the type of housing built in the Commission area and in Columbus overall from 1990 to 2000. The type of housing that was being built in the Commission area had shifted from predominantly single-family in 1990 to multifamily in 2000. The housing type for the City of Columbus overall had shifted from predominantly single-family in 1990 to a balance of single-family and multifamily in 2000.

**Table 6.2**

**Composition of New Housing Construction**

<table>
<thead>
<tr>
<th></th>
<th>1990</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1-2 Family</td>
<td>Multifamily</td>
</tr>
<tr>
<td></td>
<td>Dwellings</td>
<td>&gt;5 units</td>
</tr>
<tr>
<td>Commission Area</td>
<td>66.6%</td>
<td>27.0%</td>
</tr>
<tr>
<td>City of Columbus</td>
<td>61.5%</td>
<td>28.1%</td>
</tr>
</tbody>
</table>

Source: Columbus Department of Trade and Development

During the late 1990s and into the initial years of the new millennium, spurred by public and private development projects, the Commission found itself inundated with rezoning applications from real estate developers planning to build predominantly non-subsidized market-rate multi-family rental housing in the area. The stress on the Commission from the sheer number of projects being proposed in the area coupled with the type and quality of housing being proposed created a backlash against developers not only from the Commission, but from the residential community the Commission represented. The events comprising Case 1 occurred during this initial community backlash. In addition, at the beginning of this multi-family building boom, the
Commission and its constituents were political and land-use neophytes. The Commission appeared rather naïve about the development process and appeared to lack adequate organizational skills and political sophistication needed to mobilize the community to negotiate with developers and the City.

**Summary Facts of Case 1**

In March of 2000, the Commission’s Zoning Committee (ZC) received a rezoning application from Summit Communities Incorporated (SCI) proposing to build 710 apartments and 140 condominiums, and commercial office space on a total of eighty-eight acres of vacant land (Appendix A.1 Exhibit 1). The ZC met twice with Harold Hancock, a partner of SCI, once on April 20th and again on May 18th. The Commission also met Hancock twice, on May 4th and June 1st. Figure 6.1 provides a graphical timeline of meetings. The ZC had several issues with the proposed development paralleling the community’s concerns (Appendix A.1 Exhibit 2) and sent SCI a list of questions for written response (Appendix A.1 Exhibit 3) to which SCI replied (Appendix A.1 Exhibit 4). Residents from two civic associations adjacent to the proposed development came out in opposition mainly because the proposed development added more apartments to the area, but in addition because the proposed development would likely adversely affect current levels of public services and exacerbate the neighborhood school’s current overcrowding problem (Appendix A.1 Exhibits 5 and 6).

After much dialogue between the Commission, residents, and SCI, the Commission at its June 1st meeting voted 8 to 1 to recommend disapproval of the re-zoning application (Appendix A.1 Exhibit 7). The Commission’s rationale for recommending disapproval of the rezoning application rested on four key areas of the proposed development, which were that the proposed development,

1. Was not in compliance with the Commission’s Area Plan’s recommended density of 6-7 dwelling units per acre
2. Provided inadequate setbacks to adjacent residential properties

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61 Receipt of application verified from May 4, 2000 Commission Zoning Committee report.
3. Created unnecessary traffic congestion due to the close proximity between the existing signaled intersection and the proposed signalization at the northern-most access point of the proposed development.

4. Increased the number and percentage of multi-family residential units in the community well above the percentage of units built in the entire city of Columbus.

![Figure 6.1](image-url)

**Figure 6.1**

**Case 1 2000 Meetings Timeline**

The review of the rezoning application proceeded next to the City’s Development Commission meeting on June 8, 2000, where the Development Commission voted four to...

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62 June 1, 2000 Commission recommendation letter to the City of Columbus Department of Trade and Development (Appendix A.1 Exhibit 7).
zero with one abstention to recommend approval of SCI’s rezoning application. In
addition, City Planning Department staff members at the meeting recommended approval
of the application because the proposed development’s traffic “… corridor has changed
extensively in the last several years” due to the amount and intensity of commercial
development and roadway construction that has occurred63.

However, when SCI’s rezoning application came before City Council at its
September 11, 2000 meeting, City Council tabled the rezoning application indefinitely,
and advised Hancock, SCI’s representative, to go back to the community and work out
the unresolved issues.64 To my knowledge, SCI never re-engaged the Commission or any
resident community group after its August meeting with the community. Subsequently,
on December 4, 2000, City Council, at the request of SCI, took the rezoning application
from the table and voted unanimously (0-7) to disapprove the rezoning application.

Speech Acts Affecting Resident Participation Capacity
The April 20, 2000 Zoning Committee Meeting with the Applicant

The initial meeting between Hancock, the ZC, and residents began badly as
Hancock presented himself to the ZC and residents as arrogant, discourteous, and
disrespectful65; he gave the impression that his only concern was to get his zoning
application passed by City Council. The ZC and residents understood Hancock as telling
them what he was going to build in their community seemingly without regard to what
the community thought about the proposed development and without seeking the
community’s support and approval of the proposed development.66 Hancock’s behavior
pushed the Commission and residents to rely on each other to fight back against the
proposed development. Relying on each other meant that the Commission and residents
needed to trust each other and learn how to work in a collective way to defeat Hancock.

63 City of Columbus Staff Report presented to Development Commission Zoning Meeting on June 8, 2000.
64 From City Clerk’s Floor Action log of the proposed ordinance.
65 Immediately following the ZC meeting, members of the ZC and residents attending the meeting vocally
expressed to each other their anger over Hancock’s disrespectful and offensive monologue by which
they felt he marginalized the views of the ZC and residents regarding their concerns of the potential
negative impacts the proposed development might have on the community.
66 This perception is supported in a letter from one of the civic associations (Appendix A.1 Exhibit 5)
Speech Acts Affecting Trust and Knowledge

Some of the residents in attendance pushed back against Hancock. Golden Bear Civic Association resident Jackie Showers, “[t]here’s already too many apartments in our area. There’s no need for additional apartments. We do not want any more apartments.” Rhonda Johnson, another Golden Bear resident, “[t]he impact of all those apartments will overload our schools and cause overcrowding.” Golden Bear resident, Percy Washington, “the community’s already over-loaded public recreation facilities.” Sunrise Civic Association resident Julia Howard, “[y]ou are proposing too many apartments and too many buildings on too small a lot.”

These residents’ statements not only expressed to Hancock their opposition to his proposed development, but also signaled to the other residents and ZC members in attendance their ‘knowledge’ of their community. These four residents, who represented the members of their civic associations, publicly declared their knowledge of their community. In addition, these four residents explained the reasons behind their opposition to the proposed development. This reason giving increased trust among the residents because it provided clarity about what people were thinking; it made community knowledge more accessible to everyone who was there and it increased the legitimacy of the group’s deliberations because of those things.

Speech Acts Affecting Legitimacy

ZC member Rita Jensen acknowledged and validated the knowledge of these four residents when she stated to Hancock,

I don’t see any benefits your development would provide to the community. It seems your development will be taking benefits from the community and in return putting a greater burden on the community’s existing services such as schools and recreation, and increasing traffic congestion.

67 Washington meant to say that the public recreation facilities were already over-loaded.
Jensen used her positional authority as a ZC member together with the concurrence of the other ZC members and effectively legitimized the residents’ community knowledge claim, and began a Commission legitimation process of resident knowledge of their community to the City.

The public declaration of knowledge by these four residents was, however, a risky endeavor. It was risky from the standpoint that each risked their community reputation and credibility if the public rejected their claim. However, they were able to overcome their risk aversion because of two factors. First, their perception of the magnitude of adverse effects on their neighborhoods was greater than the potential damage to their individual reputations. Second, these residents were also long-time neighbors and friends, and over time they had established a level of confidence, dependability, and trust in each other. Because of the trust they had previously developed, they apparently used that trust to support one another in public when they made their knowledge declarations. No such prior relationship existed between Hancock and the community, which became more problematic due to the manner in which Hancock spoke to the Commission and residents each time they met.

Recognizing residents had many more questions for Hancock than time allowed, ZC Chair Clarence Watson recommended Hancock meet with the Golden Bear and Antelope civic associations outside of and in addition to the regularly scheduled ZC meetings to provide more time for discussion of the issues specific to these two neighborhoods and to try to resolve their issues with SCI. Hancock and the Golden Bear and Antelope residents agreed to meet with each other. However, Hancock did not honor his promise to meet with the civic associations until August; nearly two and one-half months after the Commission voted to disapprove SCI’s rezoning application. The consequence of Hancock’s delay in meeting with the civic associations was mistrust between him and the Commission and residents. The mistrust Hancock created simultaneously generated a greater need in the Commission and residents to trust each other and develop a level of knowledge and legitimacy capable of defeating Hancock’s rezoning application by the time it came before City Council for its decision.

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68 I observed the ZC’s concurrence with Jensen by their head nods of agreement when she spoke.
The brewing animosity between Hancock, ZC members, and residents could simply have been attributable to personality clashes and resulted in the ZC and residents misunderstanding Hancock’s direct and no-nonsense presentation style of getting what he wanted without regard to the community’s concerns. However, the ZC and residents discovered as they continued through the review process that Hancock placed little, if any value, on the concerns or needs expressed by the Commission and the community, and placed little credence on the Commission’s review process. Hancock would continually demonstrate that he was “going through the motions,” that is, appearing before the Commission and asking for its approval as required by the City’s zoning review process, to show City officials that he had worked with the Commission and residents to resolve their concerns. Hancock’s apparent disregard of the value and legitimacy of the Commission’s review process provided a motivational force to the Commission to reinforce their value and legitimacy and collaborate more closely with residents and their neighborhood civic associations.

**The May 4, 2000 Commission Meeting**

**Speech Acts Affecting Trust**

ZC Recording Secretary Kevin Moffet stated to the Commission, the ZC at its last meeting on April 20th recommended to Hancock that he should meet with the Golden Bear and Antelope neighborhoods and try to resolve the residents’ concerns about the proposed development. I asked Hancock, “what is the status regarding meeting with the Golden Bear and Antelope civic associations?” Hancock explained, “we made some phone calls and Julia Howard said she wouldn’t meet with [him].” He added, “to date I have not met with either of the neighborhood groups.” Commission member Jensen indicated no one from SCI had contacted her in her capacity as the secretary of the Golden Bear Civic Association. Commission Chair Roundtree alerted Hancock that Julia Howard was a member of the Sunrise Civic Association and was not the appropriate person to contact regarding meeting with Golden Bear and Antelope. Roundtree announced Hancock now had the appropriate contact persons for both Golden Bear and Antelope civic associations, and encouraged him to meet with these organizations prior to
the May 18 Zoning Committee meeting. Rountree used his positional authority as the Commission chair to reinforce the legitimacy of the civic associations, thus reconfirming and strengthening the trust between the Commission and the civic associations, and building their mutual legitimacy as independent yet socially connected institutions.

This lack of communication between Hancock and the civic associations, regardless of the cause, contributed to suspicions that Hancock placed little value on the Commission’s review process. This also had a chilling effect on the Commission and residents for building trust with Hancock. This growing resident and Commission suspicion of Hancock’s disingenuousness explanation provided part of the conditions that drove residents and the Commission together. Hancock’s behavior drove residents and the Commission together to support each other to build their trust, knowledge, and legitimacy so that they could build an opposition capable of defeating the proposed development. The other part came from the residents’ and Commission’s perception of the genuineness of their explanations, which rang true to them from their knowledge of their community. The genuineness of their explanations provided a condition encouraging trust to develop or strengthen between the Commission and residents, and among residents.

**Speech Acts Affecting Knowledge**

Audience member Rodney Hardcomb stated, “even a few more children would [negatively] impact the immediate schools, which are already at capacity.”

Another audience member Rosa Williams stated, “building one more apartment in this community is one too many.” Williams invited Hancock to visit the area’s schools and see himself how “jammed-packed” they were.

Hardcomb and Williams provide examples of an apparent growing confidence in residents of their knowledge about their community. Their confidence emerged from listening to other residents speaking to each other in public about their community. For residents attending ZC and Commission meetings, this confidence appeared contagious, passing from resident to resident giving them confidence to speak out and believe that
their voices would be heard. These examples indicate the growth of trust among the residents and of their belief in the legitimacy of their views and processes.

**Speech Acts Affecting Legitimacy**

Commission Chair Martin Roundtree asked Hancock if he “considered reducing the number of apartments and increasing the number of condos?” Hancock stated, “the numbers wouldn’t let [him] reduce the density.” Whereas Roundtree was trying to open a dialogue for negotiation between the community and Hancock, Hancock sought to close any possibility for dialogue, let alone negotiation, on this subject to occur. While the economic viability (i.e., “the numbers”) of the proposed development placed constraints on the housing mix and number of units, it was advisable for Hancock to listen to other points of view, which might have suggested a design mix that could have increased the profit margin above that of the originally proposed development. Unfortunately, Hancock did not want to discuss the development’s design with the Commission or the community, which signaled to the Commission and residents that what they thought and what they had to say about the development was unimportant and inconsequential to Hancock. This type of non-detailed verbal explanation continued to shape the community’s perspective of Hancock as a rigid and single-minded individual solely interested in achieving his needs without regard to the community’s needs. This emerging community perspective of Hancock had a galvanizing effect on the Commission and residents and provided an additional incentive for the community to focus its attention on enhancing its legitimacy as a countervailing force to Hancock’s apparent belief that they didn’t matter, and his efforts, whether intentional or unintentional, to delegitimize the Commission and the community.

From the outset, at least from the perspective of many Commission members, Hancock apparently did not place any value on meeting with the Commission or the community – even though the City’s zoning process required rezoning applicants to present their plans to the area commission in which their proposed development is

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69 My conversations with Commission members directly after adjournment of the May 2000 Monthly Commission Meeting.
located and solicit the area commission’s approval recommendation. It appeared from Hancock’s condescending tone to Commission members and residents that he had made up his mind to move his application forward unchanged to City Council for approval without first resolving the concerns expressed by Commission members and residents, or without considering modifying the proposed development plan per the community’s recommendations. Hancock’s behavior provided no space for the Commission or residents to express their knowledge or legitimacy. Consequently, resident members of the Golden Bear civic association began doing some preparatory work in political organizing. They began an “educational” campaign by telephoning residents and “getting the word out” about the proposed development. In this way, Golden Bear residents began disseminating the narrative coming out of the Commission and ZC meetings to a wider Commission area community, which until that time was limited to those attending ZC and Commission meetings. By getting more and more residents to support the narrative Golden Bear residents were laying the groundwork for building their community’s claim of their own legitimacy.

The May 18, 2000 Zoning Committee Meeting

ZC member Rita Jensen commented that Hancock promised at the last (i.e., May 4th) Commission meeting that a traffic study would be ready in ten days, but the ZC had yet to receive a copy. In addition, Hancock had yet to meet with the residents of the Golden Bear and Antelope civic associations outside of ZC or Commission meetings.

Speech Acts Affecting Trust

Jensen, a respected member of the community, asked Hancock when the ZC could expect to receive a copy of the traffic study. Hancock responded, “[a]s soon as I get it I’ll provide you with a copy.” Hancock’s response to Jensen was unprofessional and his tone disrespectful. He conveyed no additional information to Jensen about how much longer

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70 My observation of dialogue and demeanor between developer, Commission members, and residents during the May 2000 Monthly Commission Meeting, which Commission members and residents confirmed to me after the meeting concluded.
it would take before the ZC would receive the traffic study. Jensen’s question was appropriate and reasonable given that the ZC and Commission had a limited amount of time to review the application and vote its recommendation prior to the Development Commission taking up the application and making its recommendation. Through this speech act, Hancock showed the ZC that they could not rely on his promise, and thereby provided more fuel for the ZC to mistrust his promises. In addition, although Hancock did not provide a useful time-frame estimate to the ZC, he did convey his unconcern about the time constraints placed on the ZC to complete its review and keep the application on track to the Development Commission. Hancock’s lack of concern about the ZC’s time constraint demonstrated to the ZC that he did not consider the ZC’s review valid or consequential to his application.

Hancock’s apparent failure to provide the traffic study when he promised did not by itself necessarily damage the condition in which trust could have formed between him, the residents, and the Commission. However, Hancock damaged any trust residents or the Commission had in him by not offering a genuine and credible explanation as to why he was unable to honor his promised timeframe. In fact, Hancock did not offer any explanation, but instead responded in a terse and disrespectful manner to Jensen’s question. Taken together, Hancock’s trust damaging speech acts provided additional motivation to the Commission and residents to work even more closely together to develop a strategy to defeat Hancock. The success of their strategy depended on the Commission and residents cooperating with each other as various aspects of their strategy to defeat Hancock relied on each doing their part. Consequently, trust between the Commission and residents, and among residents increased.

**Speech Acts Affecting Knowledge**

Jensen expressed concern over the proposed residential density of the development. Jensen, “… I still have a problem with your proposed density of 9.6 units because it’s much higher than the 6 to 7 units our Area Plan recommends. 9.6 units per acre would give you 232 more units than the maximum our Area Plan recommends.”
Hancock, “The area plan calls for a density between 8 to 9 units per acre, and we believe the high quality of this development should permit us to have a slightly higher density.”

Hancock presumed in his explanation that the high quality of the proposed development would have permitted SCI to have a slightly higher density. However, prior to presenting SCI’s plan to the community Hancock did not ask the community for permission to have slightly higher density. In fact Hancock was not seeking the community’s permission at all, which can be seen in his response to Commission Chair Roundtree’s question at the May 4th Commission meeting where Roundtree asked Hancock if he would consider reducing the number of apartments and increasing the number of condos. Hancock’s response was that the numbers would not let him reduce the density.

Exerting his positional authority as the ZC Chair Clarence Watson said,

I am concerned about the potential privacy issues of having three story apartments set so close to the existing single-family homes. Residents on Floral Drive would like the setbacks increased from 25 and 50 feet to a setback like the 150 feet you propose for Pine Cone Court. Can’t you increase these setbacks and move the apartments farther away from the single-family homes?

Hancock’s response was that “the twenty-five foot setbacks are required…” and added that he had “exceeded this requirement at several points on the property.” He indicated that he was “proposing more landscaping than is required” at the twenty-five and fifty-foot setbacks to provide additional screening for the residential homes. Hancock also said he would “look into” the site plan to see if it can be modified to increase the setback distances to something more amenable to the residents’ preference.

In his dialogue with Watson, Hancock alluded to the City’s zoning codes as the authority in establishing setback requirements to which Hancock stated that they had exceeded at several points. This was Hancock’s attempt at asserting City code as the source of authoritative knowledge in the matter concerning setbacks while
simultaneously invalidating the community’s knowledge and desires voiced through Watson.

Hancock also sent somewhat of a contradictory signal to the Commission and residents. He indicated to Watson that he would “look into” the site plan to see if the setback distances could be increased to something more amenable to the distances the residents requested. Hancock’s apparent conciliatory response may have been his way of signaling to the Commission and residents that he recognized the community’s knowledge. It could also be that Hancock recognized he might be able to gain resident support by making conciliatory statements and making some minor layout changes to the proposed site plan. Whether Hancock was genuinely conciliatory or not, it was only a small step toward undoing the damage to trust he had inflicted between himself and the Commission and residents.

The perceived intent of Hancock’s speech acts was to invalidate the Commission’s and the ZC’s land use knowledge specifically, and their knowledge pertaining to any aspect of SCI’s proposed development project generally. However, Hancock’s speech acts had quite a contrary effect on the Commission and the ZC as both rallied to each other’s defense and reinforced the validity of each other’s speech acts of knowledge. In their acts of validation, the Commission and ZC also acknowledged each other’s legitimacy, which required a heightened sense of trust between them.

**Speech Acts Affecting Legitimacy**

The ZC was once again running out of time, but not running short of questions to ask Hancock. ZC member Jensen suggested the ZC draft a letter submitting all of its questions and resident’s questions to Hancock for written response. The ZC members unanimously agreed and alerted Hancock to expect its letter within the next two days.

The letter the ZC sent to Hancock requested Hancock to respond in writing and in detail to specific questions, which the ZC (and Commission and residents) would evaluate. The letter represented a concrete proclamation of the Commission’s knowledge and legitimacy. It is significant to note that while the ZC drafted the letter and sent it under the Commission’s letterhead, its contents were the result of collaboration between
the ZC and residents attending the ZC meetings. Residents demonstrated trust in the ZC that it would include the residents’ questions in the letter, and, in addition, actually send the letter to Hancock.

The ZC also presumed its own legitimacy, when it sent its letter to Hancock, though it had no legal force compelling Hancock to respond.\textsuperscript{71} However, by responding and by responding in writing, Hancock not only acknowledged the ZC’s and residents’ knowledge via their questions and requests, but his act of responding also validated the ZC (and Commission) as a legitimate reviewing body. This is one of the few times that his actions directly affected trust, knowledge and legitimacy between the residents and their neighborhood institutions by granting the ZC the legitimate right to ask questions in writing and receive written answers, contributing to the continued development of participatory capacity among the residents.

\textit{The June 1, 2000 Commission Meeting}

ZC Recording Secretary, Kevin Moffet indicated that the ZC had raised several issues with the applicant regarding residential density and buffering, particularly along the northern and western boundaries of the parcel. Moffet stated the ZC had yet to receive a written response from the applicant to the ZC’s May 19, 2000 letter containing 19 questions and requests. Hancock immediately distributed to the Commission copies of SCI’s written responses to the ZC’s letter. The Commission perceived his failure to provide the Commission with advance copy so they could review SCI’s responses prior to the Commission meeting was yet another example of his disregard of the Commission as a valid and legitimate reviewing body. Hancock’s action again provided the impetus for the Commission and ZC to demonstrate their legitimacy as a reviewing body, and in their demonstrative acts, the Commission and ZC enhanced each other’s legitimacies.

\textsuperscript{71} This is a ZC policy. There are no City Codes requiring a rezoning applicant to provide a written response to questions posed by an area commission or one of its committees.
Speech Acts Affecting Trust

Hancock stated that the previous limitation text “erroneously listed the total number of dwelling units at 946. This revised text shows the corrected number at 850 dwelling units.” Hancock indicated that the revised limitation text included “many of the changes the ZC requested.” This included complying with most of the ZC’s requests regarding exterior building materials, and the type of signage the Zoning Committee requested.

Hancock went on to address the ZC’s setback requests in its May 19 letter. Hancock stated, “by changing the building layout it might be possible to move the setback [from 25] to 30 feet.” He also proposed extending the building setback from the proposed “50 to 100 feet” for the apartments at the north end of the property. He indicated that he “flipped” the parking lot to the other side of the apartments “to make that setback work.”

Hancock tried to demonstrate to the Commission that it could rely on his promises, which he backed up with a revised limitation text incorporating the commitments he made at previous ZC and Commission meetings and SCI’s written responses to the ZC letter. Hancock appeared to have earned some level of Commission and residents’ trust based on honoring his promises. However, the trust he earned was such that the Commission and residents knew he would continue pushing the City for approval of the rezoning application against the opposition of residents and the Commission. The community’s perception of how it ‘trusted’ Hancock triggered an alarm that reached from the Commission down to the Golden Bear and Antelope civic associations to mobilize the community against Hancock. The mobilization of the Commission community against Hancock released a communal camaraderie that increased the level of trust between the Commission, civic associations, and residents.

Speech Acts Affecting Knowledge

Hancock felt “overall the community [had] two issues with the proposed development, one, setback, two, density.” In the written response to the ZC’s question about how SCI would comply with the Area Plan’s recommended density of six to seven dwelling units per acre Hancock read, “We are unable to comply with the recommended
six to seven dwelling units per acre residential density. However, we believe there is a
direct relationship between our slightly higher densities and our proposed quality and
design standards.” Hancock explained that his ability to make density changes was
constrained by complying with the changes requested by the ZC and community.
Hancock further justified SCI’s higher proposed densities by asserting, “the Area Plan is
in confusion on the number of units per acre.”

Commission Chair Roundtree used his positional authority to correct Hancock
stating, “the Area Plan states eight to nine dwelling units per acre on the map, but the text
clearly identifies the area within which the proposed development is to be located at six
to seven dwelling units per acre.” Roundtree’s speech act reinforced the validity of the
Commission’s area plan and its credibility as a reliable source of the community’s
knowledge that accurately represented the desires of the Commission and residents.
Consequently, Roundtree’s speech act provided a positive boost in the community’s
confidence of its knowledge.

A final major concern of the ZC and the community involved the “load” the
proposed development would place on the existing public infrastructure. The ZC asked
the applicant in its May 19 letter, “What is the proposed development’s calculated impact
on the following public services and facilities: police service, fire service, paramedic
service, school facilities, and recreation facilities?” Hancock responded, “the City has
determined the public services for fire and police are adequate.”

Long time Antelope resident Rosa Williams and former president of the Antelope
Civic Association read a letter from the Antelope Civic Association opposing the
proposed re-zoning based on the exacerbation the proposed development would have on
the current shortage of public services (fire, police, and EMS) available to neighborhood
residents, increasing current school over-crowding levels, and decreasing student
education quality (Appendix A.1 Exhibit 5). Williams encouraged the Commission to
vote no on the zoning request. Williams’ used her personal authority to enhance the
credibility of the Antelope Civic Association’s claim to community knowledge, and with
her support facilitated the building up of the community’s knowledge.
Speech Acts Affecting Legitimacy

Rhonda Johnson, a resident of the Golden Bear neighborhood, stated, “Sixty-eight percent of the residential development in the Commission area is multifamily compared to forty-two percent for the City overall. The [Commission] area is saturated with apartments.”

Another resident, Rubin Downs, asked the Commission, “What is the flavor from the community on the project?” Commission Chair Roundtree responded, “The community found the commercial and condominiums acceptable, but the apartments are not acceptable. The community has clearly expressed its displeasure and opposition regarding what it believes is an over saturation of apartments in the area.”

While Johnson used the Antelope Civic Association to assert its claim of legitimacy, Roundtree used his position as Commission Chair and delivered an especially powerful message acknowledging and endorsing the community’s legitimacy. These speech acts and SCI’s written responses to the ZC’s letter legitimized the ZC and the community and contributed to the building up of resident legitimacy.

Discussion of the Commission Chair’s Leadership

Commission members elect the Commission chairperson to provide leadership, direction, and purpose to the Commission, and to represent the Commission and area residents in matters involving the City. Election of this person marks his or her importance and reputation in the community and potentially increases it by providing a bully pulpit. Thus, the Chairperson potentially wields a significant level of influence over Commission members and area residents. Because this position can potentially exert so much influence, it is important to recognize that the Commission Chairperson’s character, beliefs, vision, and effectiveness can have a significant influence over other Commission members, and area residents as well. However, we can only begin to understand the Chairperson’s true character, beliefs, and vision when the Chairperson is in the act of doing the Chairperson’s duties in the presence of others.

Commission Chair Roundtree was well aware of the importance and consequences of this public act of doing, and by his actions demonstrated to Commission members and
residents what his intentions were for the community. As described above, Roundtree strove for direct channels of communication between Commission members and residents in order to better understand the needs of the community. He engaged the Commission and residents in conversation, encouraged open and honest deliberative and constructive dialogue, and helped residents build their self-confidence. He tried to make residents feel what they had to say was important, valid, and legitimate. He encouraged - in a manner similar to Elkin’s theory of reason-giving - residents to ask questions and probe the rationale of anyone making statements of fact.

Roundtree facilitated the Commission and residents coming together, teaching each other (i.e., learning from each other) how to participate in a way that had meaning to them, and exercising their own brand of participation when dealing with the City. Commission Chair Roundtree fostered a constructive attitude among residents. This attitude emphasized that residents were important and together they could organize, mobilize, and participate to influence the City’s and developer’s decisions to the benefit of the community, or hold the City and developers accountable for not doing what the community needed.

The manner in which Roundtree led the Commission had a positive effect on the building and strengthening of trust, knowledge, and legitimacy between the Commission and residents, and among residents. When residents approached Commission Chair Roundtree for his advice on what strategy he thought they should utilize in opposing SCI’s proposed development, Roundtree laid out several options. Roundtree asked only of the residents, “What do you want to do?” Roundtree did not tell residents which strategy to select, but rather he told them he would throw his full support and influence behind whatever strategy residents decided to pursue against SCI. Residents ultimately agreed to employ a citywide referendum strategy in the event City Council voted to approve SCI’s rezoning application. However, Council ultimately did not approve the application so the referendum was not needed.
Chapter 7: Case 2 Analysis

Introduction

Case 2 encompassed many meetings over several months. Figure 7.1 provides a graphical timeline of the meetings. To reduce the number of pages comprising this chapter I have moved most of the narrative of Case 2 meetings to Appendix B.

I analyzed this case on a per meeting basis the same as I analyzed Case 1 to provide a heightened awareness of the unfolding of the effects that developed (e.g., trust/mistrust) between the Commission and residents, and among residents.

Figure 7.1
Case 2 Meetings Timeline During 2003-2004
As a matter of disclosure, I was a voting member of the Commission and the co-chair of the Zoning Committee during the entire Commission review process of the rezoning application comprising Case 2. In addition, I have altered the names of the people, organizations, and places (except for the City of Columbus and its personnel) used in this research to help protect confidentially and the individuals’ identities. Table 7.1 lists the pseudonyms I used in this case.

<table>
<thead>
<tr>
<th>Pseudonym</th>
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<tr>
<td>Sunshine Homes</td>
<td>Rezoning Applicant</td>
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<tr>
<td>Kent Miller</td>
<td>Applicant’s Lead Representative</td>
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<td>Dawn Cook</td>
<td>Applicant’s Attorney</td>
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<td>Joan Bates</td>
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<td>Vista View Civic Association</td>
<td>Civic/Neighborhood Group</td>
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72 Joan Bates, the City’s liaison to the Commission is a pseudonym to protect the identity of the Commission.
Internal Contextual Setting to Case 2

On or about December 10, 2003 a member of the Commission’s Zoning Committee\(^{73}\) (ZC) mailed Sunshine Homes (the applicant) a letter containing a list of ten questions that was part of the ZC’s standard operating practice\(^{74}\). The applicant was advised to be prepared to address this list of questions at the upcoming ZC meeting. The purpose of the letter was twofold: First, to provide the applicant with prior written notice of concerns the ZC (on behalf of the community) believed were important or potentially controversial about the proposed rezoning (and its subsequent development project) so that the applicant could prepare to discuss these concerns at the upcoming ZC and Commission meetings. Second, the applicant’s written responses to the ZC’s questions provided a record of evidence that the Commission could use to hold the applicant to his words - in the past applicants made verbal assertions and commitments to the ZC and Commission that were later recanted and left unfulfilled.

On December 11, 2003, the ZC held a special meeting called for organizational purposes\(^{75}\). This meeting predates the ZC’s official receipt of Sunshine Homes’ (the applicant in Case 2) rezoning application, but is significant to understanding the

\(^{73}\) The roster of ZC members in Case 2 were 8 (7 voting members and 1 non-voting member). ZC membership ranges from 3 to 7 voting members and 1 non-voting member; each is appointed by the Commission Chairperson in consultation with Commission members per the Commission Zoning Committee Process and Procedures Policy Document (Appendix B.1 Exhibit 1).

\(^{74}\) See sample letter from Commission Zoning Committee Process and Procedures adopted January 2000 (Appendix B.1 Exhibit 3). Mr. Kevin Moffet, the non-voting member and the Zoning Committee’s Quality Assurance member, mailed the 10 questions to the applicant prior to the Zoning Committee official receipt of the rezoning application from the City Department of Building Services, which was not in keeping with its policy and procedures (VI Zoning Committee Review Procedures C Notification to Applicable Parties (i)). Moffet justified his action to the Zoning Committee as “a matter of expediting the review process.” The letter Moffet sent to the applicant was essentially identical to the sample letter in the ZC’s Process and Procedures document, and while these questions were germane to the proposed rezoning they were not adequately specific. Consequently, 15 additional questions were mailed to the applicant with sufficient time for the applicant to respond prior to the January 20, 2004 Zoning Committee meeting.

\(^{75}\) The election of a new Chairperson and dissemination of ZC procedures, Commission By-Laws, and copies of the City’s zoning code book.
environment within which the ZC (and the Commission) functioned. The ZC had a
dilemma in that it had not yet officially received Sunshine Homes’ rezoning application
from the City’s Department of Development, but the applicant’s representative was
pushing the ZC to begin its review process. ZC members felt they could not begin
reviewing the application without first receiving an official copy from the City. A second
problem emerged for the ZC from the fact that it would not be able to meet its imposed
time requirement of properly notifying property owners if the application was heard at
the ZC’s next scheduled meeting on December 16th. Although a few ZC members
exerted some pressure to start the review process without the official application,
ultimately all ZC members agreed not to permit the applicant to present its application for
rezoning at the December 16th ZC meeting because there was insufficient time to notify
property owners per the ZC’s procedures. Consequently, the ZC notified the applicant
that it would begin its review of the application at its January 20, 2004 meeting.

It is instructive to recognize that the ZC members’ decision not to deviate from their
rules broke from their pre-2000 behavior; where the ZC (and Commission) when faced
with a dilemma would frequently capitulate under pressure. Indeed, the ZC, partly in
response to residents’ complaints in the past that it had “too cozy” a relationship with
developers, developed rules and standards governing itself, thus providing transparency
and accountability of its actions to the community. The ZC members’ unanimous
agreement signaled their public affirmation to uphold the policies and procedures it
adopted in 2000, and consistently apply those rules to its review process. This agreement
demonstrated the trust ZC members had in each other. It also demonstrated the ZC
member’s assertion of its legitimacy as a reviewing body, which it took seriously as its
public charge.

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76 Mr. Moffet stated during the ZC meeting that about a week before this meeting the applicant’s
representative had contacted him and urged him to place the application on the agenda for the next
Zoning Committee meeting.

77 “In no event shall the time period of the applicant’s First Presentation be less than four (4) days from the
mailing date of notices to property owners…” ZC process and procedures document (Appendix B.1
Exhibit 1).
However, the City’s Department of Development \(^{78}\) (DoD) apparently did not take seriously the ZC as a legitimate reviewing body. Indeed, the DoD had exhibited a pattern of providing application documentation to the ZC in an untimely manner \(^{79}\). The DoD’s behavior provided the ZC extra incentive for its members to rely on each other and the support of the Commission for affirmation of its legitimacy.

As of December 11\(^{th}\) the ZC had not yet received an official copy of Sunshine Homes’ rezoning application from the DoD, \(^{80}\) although the DoD received Sunshine Homes’ application on December 2 (7 business days earlier). During the December 11, 2003 ZC meeting ZC Chair Betty Cooper commented, “We can’t be held hostage because of the City[’s tardiness in getting applications to us].” Commission member Rita Jensen added an additional complaint at the Commission’s November 6, 2003 Executive Meeting, “we [ZC] think they’ve dropped the ball”; referring to information frequently missing from application packets DoD provided to the ZC. The speech acts of Cooper and Jensen were typical of speech acts coming from Commission and ZC members, providing reassurance and reinforcement to the Commission and ZC as valid and legitimate institutions serving the community. Speech acts of reassurance and reinforcement increased trust and legitimacy between the Commission and the ZC.

At the end of the December 11, 2003 Zoning Committee meeting, Commission Chair, Woody Barnes, stated, “I am a member of [Good Shepard Church] and I don’t want to have anything to do with this [rezoning application] whatsoever.” Good Shepard Church (Church) was the owner of the largest parcel and a principal of the re-zoning application and proposed housing development. Barnes made this announcement because he apparently believed he might run into perceived or real conflict of interest issues since he was a voting Commission member and a deacon of the Church.

\(^{78}\) The DoD’s title has changed over the years. It was previously was called the Department of Building Services.

\(^{79}\) I observed from 1997 through 2003, the ZC had frequently received applications for rezonings, variances, or demolition permits not sooner than 2 weeks after the City’s paid date stamp on the application (i.e., the date the City accepts an application).

\(^{80}\) On December 11 I visited the City Department of Building Services (now called DoD) and requested an official copy of the Sunshine Homes rezoning application, which he was provided including initial development text (Appendix B.1 Exhibit 2). The City did not provide site plan as referenced in development text.
Moreover, from time to time during the Commission review process, Commission Chair Barnes would reiterate at Commission meetings that he was a member of the Church and therefore would “abstain” when the Commission voted on the application. However, Barnes was involved in the Commission’s review of Sunshine Homes’ proposed development in ways that appeared supportive, sometimes defensive of the proposed development. A consequence of Barnes’ behavior was that it reduced the trust the other Commission members had in him, and negatively affected Pleasant Drive residents’ trust in the Commission and perception as a legitimate institution.

As a final word in this internal context, prior to receiving the applicant’s responses to the ZC’s list of questions, I had a conversation with Tina Murphy, Watershed Coordinator of the Friends of Indigo Stream and its Tributaries (FIST), regarding the proposed rezoning application. Murphy initiated the conversation with me expressing FIST’s concern over the potential negative environmental impacts the proposed development might have on Indigo Stream’s water quality. She also advised me of several wetlands located on the property. Murphy asked me to advocate for the protection of Indigo Stream’s water quality, which I was already prepared to do since I had concerns about negative environmental impacts the proposed development might potentially generate. I communicated Murphy’s concerns and information to the other ZC members at the December 16, 2003 ZC meeting. ZC members agreed that the environmental sensitivity of the property, because of its close proximity to Indigo Stream - the property abutted the stream - was important and should be addressed along with the problems of regular ponding and flooding issues that had historically plagued this particular area. With this in mind, the ZC fully expected the applicant would spend some portion of his presentation on addressing and alleviating the community’s environmental and flood concerns.

81 A vote of “abstention” is not equal to not voting. An abstaining vote arguably is equivalent to voting in the same way as the majority vote.
82 This was a telephone conversation of which I do not have the exact date, but occurred sometime in mid December 2003.
External Contextual Setting to Case 2

After defeating the 2000 re-zoning application described above, the Commission and residents found a level of political self-confidence that they had not previously known. It was the first time, in the community’s collective memory, that residents had actually taken part in a dialogue about land use, which appeared to influence City Council’s decisions. One outgrowth of this newfound self-confidence was the Commission’s perception of itself as being able to negotiate with developers and participate in the crafting of the final development proposal, which was typically attached to the re-zoning application. This is reflected in the Commission’s comprehensive zoning review process, which was put into service in January 2000. In general, developers’ attorneys quickly embraced the Commission’s zoning procedures and review process as it provided them with a consistent set of standards which the Commission would follow in its review process, and predictability in the way the Commission would evaluate the merits of land development (i.e., rezoning) proposals. The Commission’s zoning review process provided developers with a predictable start to finish timetable of the review process. Additionally, through the Commission’s review process developers were able to gauge features of a proposed project that were acceptable and unacceptable to the Commission. Developers could (and often did) eliminate aspects of their development proposals they felt the Commission would oppose. Consequently, developers could focus their work with the Commission in “fine tuning” specific elements of their development proposals instead of having to do a hard sell of the overall project to the Commission and the community.

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83 At least since Autumn of 1997 when I first started working with and observing the Commission area community, which was corroborated by the Commission area residents and current and past commission members.

84 The crafting of the Commission Area Plan in the mid-1990s was the last time the community engaged in a land use dialogue with the City of Columbus that produced a tangible result.

85 Commission Zoning Committee Process and Procedures Policy Document drafted by Commission Zoning Committee (Appendix B.1 Exhibit 1). At about the same time the Commission also published its action plan. The Commission Area Action Plan for 2000, a blueprint identifying resources and recommending pathways for achieving the community’s identified needs.

86 Information provided to author from several land use zoning attorneys working in the Commission area of the City from 2000 through 2003.
From 2000 to the end of 2003, the Commission area experienced rapid growth and development. Although the degree of negotiation and compromise varied from re-zoning application to re-zoning application, overall the Commission was able to negotiate with each developer that came within its geographic boundaries for additional amenities for the benefit of the community. These amenities included, for example, such items as decreased densities, enhanced landscaping and buffering, alternate traffic circulation patterns, higher quality exterior building materials, and increased setback distances.

Through Commission and Zoning Committee meetings, the Commission conveyed its vision to developers. Consequently, developers often agreed to hold building setbacks farther from the street, use exterior building materials generally of brick, restrict the type of signage to monument style, and provide green space and landscaping beyond the City’s minimum.

It could even be argued that the Commission changed the complexion of housing in its area as developers wishing to build in the Commission area switched from proposing apartment developments to single-family housing developments. However, it can also be argued that an oversupply of apartments in the Commission area and in Columbus overall created a glut on the market for this type of product. Decreasing mortgage-financing costs at that time enabled more people to enter the homeowner market, thereby stimulating demand for more single-family housing. By the end of 2003 the Commission was enjoying the type of re-zoning applications it and the community had fought for years to get (i.e., single-family housing).

**Summary Facts of Case 2**

In December 2003 the Commission received a re-zoning application in which Sunshine Homes (applicant) requested to re-zone a vacant parcel off of Pleasant Drive from R (Rural) to PUD-6 (Planned Urban Development at 6 units per acre density) to build 229 single-family houses on approximately 45 acres (Appendix B.1 Exhibit 2). The Commission and community residents expressed concerns regarding the environmental impacts, neighborhood fit, and traffic impacts of the proposed development and communicated these concerns to the applicant’s representatives during six public
meetings stretching over approximately four months. In a vote of 7-0 with 1 abstention, the Commission ultimately voted to recommend disapproval of the rezoning application based upon the above described three issues that remained unresolved.

After the Commission finished its review and voted on its recommendation, the application continued through the review process to the Columbus Development Commission, where at its May 6, 2004 meeting, the Development Commission voted 3-2-1 (1 abstention) to recommend approval of the rezoning application.

On July 19, 2004 City Council, after hearing testimony from those supporting and opposing the application, unanimously approved the re-zoning application without requiring the applicant to make any amendments or changes to its submitted PUD text. Moreover, Council did not address, comment on, or otherwise provide any reasons to the Commission or the public for voting contrary to the Commission’s recommendation to disapprove the re-zoning application, or for Council’s lack of requiring the applicant to modify its PUD text to resolve the community’s concerns.

What follows is my analysis of several spoken performances during the zoning review process that had a significant effect on the emergence of or strengthening of trust, knowledge, and legitimacy between: Commission members, the Commission and Commission area residents, and Commission area residents. As the reader shall see, there are significant consequences to peoples’ speech acts.

**Speech Acts Affecting Resident Participation Capacity**

**The January 20, 2004 Zoning Committee Meeting**

During the ZC meeting, the applicant had its team of representatives focus their presentation on the proposed development plan (i.e., PUD notes). The applicant’s representatives included two attorneys (Kent Miller, the lead attorney, and Dawn Cook), a site/landscape planner (Ted Woods), and Sunshine Homes’ project manager (Tom Springer). The focus of their presentation was about the proposed housing on the site and

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87 ZC meetings of January 20th, February 17th, and March 16th, and Commission meetings of February 5th, March 4th, and April 1st. The Commission also conducted a Special Called meeting on March 11th, without the applicant’s representatives present.

88 Commission Chair Barnes abstained from voting.
the large open space to be dedicated to the City, which they emphasized as “going far beyond” the City’s requirement for parkland dedication.

During their presentation, the representatives made no mention of the existence of wetlands on the parcels, or the proposed plan to fill in the wetlands and a portion of the floodplain. Nor did they present plans to protect the water quality of Indigo Stream or to alleviate the flood proneness of this area.

After the applicant’s representatives had concluded their presentations the ZC candidly expressed their concerns over the proposed PUD notes, which the ZC felt were materially incomplete and lacked sufficient details. The ZC made clear to the applicant’s representatives to be prepared at the next meeting in February to explain in detail how the proposed plan would address the community’s concerns regarding: flood protection, environmental protection, traffic circulation, and landscaping and buffering. The ZC also expressed to the applicant’s representatives that the community would most likely not agree to the current proposed housing design as it was not consistent with the character of the existing housing on Pleasant Drive - the proposed density, lot widths, and exterior housing materials conflicted with the existing neighborhood. Lastly, the ZC indicated to the applicant’s representatives that the community would not be agreeable to the building of houses within the 100-year flood plain. The ZC asked the applicant’s representatives to take back to those who could modify the proposed development plan a request to reconsider increasing housing lot size, and not building within the floodplain. Miller appeared receptive to convey the ZC’s requests to the applicant. During this meeting, the ZC demonstrated to residents attending that it did its ‘homework’ regarding the environmental background of the parcels and identifying resident’s concerns about the proposed development. This had an effect of building up resident trust in the ZC and reinforced resident ZC perceptions of the ZC as a legitimate and knowledgeable institution.

89 Sunshine Homes initial rezoning application and development text (Appendix B.1 Exhibit 2).
90 Neither the January 20, 2004 ZC minutes nor the February 2, 2004 ZC Report referred to by the ZC’s minutes, specifically listed each area the applicant was requested to address. I recorded these specific details in my own notes during the ZC meeting. This was the only ZC meeting during this application’s review I did not audio record.
The February 5, 2004 Commission Meeting

During the February 5th Commission meeting Sunshine Homes’ representative, Miller, and his team made their initial presentation to the Commission of the proposed rezoning and development. In his presentation Miller stated,

One of the main things that we wanted to try to do in this development would be to take special care of the environmental conditions there. We recognize the Stream is a tremendous natural resource for the whole area.

However, Miller did not explain what those special environmental conditions were, nor did he describe how the applicant would take special care of those special environmental conditions.

Speech Acts Affecting Trust

Miller had the opportunity at this Commission meeting to address each of the specific concerns identified by the ZC at its February 17th meeting regarding flood protection, environmental protection, traffic circulation, landscaping and buffering, inconsistent housing design, and building within the 100 year flood plain (lines 250-301 Appendix B), but chose either to gloss over them or not talk about them at all. Instead, Miller chose to focus on the proposed development’s attentiveness to environmental responsibility.

However, the applicant’s representatives provided neither the Commission nor the ZC any commitments either verbally or in writing (i.e., PUD notes) as to how they would “take special care of the environmental conditions” of the parcels and Indigo Stream. When the Commission Chair asked about storm water control, Miller responded with a lot of speech acts, but never answered the question in terms of metrics or standards. Miller’s consistent use of vague responses appeared to the community that “how” flood control and environmental protection were accomplished were beyond the need for
explanation to the community and, consequently, beyond the concern (read participation or involvement) of the area residents who were potentially the most directly affected. Miller’s vague responses gave the community no substance (e.g., standards) to evaluate. That is, in the community’s view, they had no way to evaluate whether the “how” of the applicant’s flood control or environmental protection plan was adequate or not. Commission and ZC members perceived Miller’s intent as an affront to their knowledge and their capacity to understand complex water regulations. This affected the members’ relationships with each other by pushing them to more intensely support and trust the validity of their knowledge.

**Speech Acts Affecting Knowledge**

Miller’s answers communicated to the community that they should put their trust in the professionals who are the “experts” and whose jobs are to figure out the “how” of flood control and environmental protection. The implication of Miller’s speech acts was that professionals possessed the expert knowledge, and this was superior to community’s knowledge of flood control and environmental protection. The superiority of the professionals’ knowledge implied it was a valid and legitimate knowledge and, by comparison, the community’s knowledge was invalid and illegitimate. These efforts to diminish the value of community knowledge and legitimacy were not successful as the community resisted Miller’s paternalistic assurances, becoming more suspicious of his intent with each succeeding meeting.

**Speech Acts Affecting Legitimacy**

When Miller spoke about the matter of traffic he stated, “we will be in the process of spending time reviewing it with the City of Columbus, in fact Patti Austin is the point person that we’re working with on that. We also, of course, we’ll sit down with the

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91 This was a sentiment expressed to me by several Commission members, ZC members, and residents after the February 5th Commission meeting.

92 This suspicion persisted and became more pronounced as the zoning review process proceeded; as those who had expressed such sentiment inside the meeting became more vocal, and those who had expressed such sentiment to me outside the meeting began to voice their concerns publically inside the meetings.
Division of Safety…” and “… we have already begun discussions with the church to see if this needs [sic] modified….” Miller made no mention of including the Commission or ZC in the traffic and safety review process; nor did he invite the Commission or ZC to join in with them and the City and participate in the traffic and safety review process even after the ZC brought up traffic as one of several specific concerns of the community. Miller’s non-inclusion of the community regarding traffic review makes it appear as if he did not consider the Commission or the community to have any legitimate claim to be included in the traffic review conversation with the applicant and City, although the Church, on the other hand, did. The effect Miller’s speech acts had on the ZC was consequential. The ZC suggested I contact Austin to ascertain whether she was willing to permit the Commission to participate in the traffic dialogue concerning the proposed development. The ZC asked me to contact Austin because Austin and I knew each other from conversations about traffic related issues of prior projects. The ZC’s act of reaching out to Austin was its way of exercising the power of its legitimacy. The act of reaching out provided the ZC with an increased confidence of its legitimacy.

**The February 17, 2004 Zoning Committee Meeting**

The Zoning Committee met with the applicant’s representatives for a second time and they discussed in greater detail how the applicant would resolve the Commission’s and community’s concerns regarding water quality protection, wetland identification and preservation, flood control, and the proposed development’s fit with the existing character of the area (lines 311-442 Appendix B).

**Speech Acts Affecting Knowledge**

I expressed my concerns over the increased flood potential the proposed flood plain filling may cause because the applicant’s representatives did not identify nor did they address during any in the previous two meetings. Miller attacked me verbally and this was an attempt to intimidate a ZC member into silence by implying that I was rambling and taking up too much time. Miller’s voice stiffened, “If you don’t build in the floodplain, then there’s no development, period. [T]here is no building here period
unless we follow the standards. We cannot go forward and build without following those rules.”

Miller was referring to the State and Federal governments’ engineers who, Miller implied, establish the science behind the standards and rules for flood plain filling. Judging from their body languages, most of the ZC members did not accept Miller’s deflection to rules and regulations over my concern of filling the floodplain. The impact of Miller’s words further convinced the ZC that they were on the right track of flushing out an issue and needed to put pressure on Miller to answer the question they asked. Miller’s speech act provided increased reinforcement to the ZC’s belief in its own knowledge.

**Speech Acts Affecting Legitimacy**

Miller asked the ZC to rely on the professional expertise of engineers whose training and jobs were to evaluate the impacts of floodplain filling, and to rely on the judgments of their elected leaders, who know what is best for their community. In other words, Miller was attempting to convince the ZC that the professionals and elected officials know what is best for the project and for the residents. The effect of Miller’s speech acts was that the ZC’s knowledge was less valid or invalid and less legitimate or illegitimate, and therefore should not be trusted. The ZC perceived Miller’s speech acts as attacks on its knowledge and credibility, and it responded defensively by reinforcing and supporting its reputation as a credible and legitimate community institution.

**Speech Acts Affecting Trust**

The ZC members kept probing the representatives for clarification of the proposed planned development. As a result, the representatives acknowledged the existence of wetlands on the parcels, and acknowledged that the proposed development plan intended to build houses within the flood plain fringe. These two (reluctant) admissions by the applicant’s representatives opened the way for the ZC, and ultimately the Commission, to consider a basic question regarding the appropriateness of developing the site. Thus, the
ZC and the Commission continued to fight for the primacy of their knowledge and the legitimacy of their concerns.

It was no longer a matter of the ZC reviewing the proposed development plan and recommending some minor modifications to it to ensure the proposed development fit with the area. Rather, it widened the conversation to consider a larger question of whether the proposed development was appropriate in the first place in light of the parcels’ environmental sensitivity and flood proneness.

Miller and his team tried hard to avoid having this conversation with the Commission because it would bring into question the very basis (read the quantity of houses) of the proposed development. Having this conversation could force the representatives to explain the financial and economic rationale behind this particular design as opposed to the ZC’s suggested modified design (i.e., not building in the floodplain). Consequently, such a conversation would lay bare the true intent of the proposed design, which was to build the maximum number of housing units to maximize the development’s profit. Miller could have told the ZC the actual reason behind the number of proposed housing units, but instead he constructed an explanation reasoned on the environmental and flood protective design of the development that would benefit the community. Miller attempted to diminish the residents’ trust in their own institutions by invalidating their institution’s knowledge and legitimacy. Miller’s speech acts had the reverse effect on the Community. The Commission, ZC, and residents fought back; and in the act of fighting back, they strengthened their trust in each other.

**The March 4, 2004 Commission Executive Meeting**

Immediately preceding each monthly Commission meeting the Commission convenes its Executive meeting. One of the main functions of the meeting was for Commission members and Committee Chairs to discuss and work through issues in order to project a Commission image of professionalism, organization, and solidarity to the public at the Commission’s monthly meeting. The community’s concerns over Sunshine Homes’ proposed development was the primary topic of discussion at this meeting.
Speech Acts Affecting Trust and Knowledge

Two important developments came out of the Commission’s Executive meeting that captured the Commission members’ attention for the remainder of the review process of the proposed development. First, both ZC Chair Cooper and Commission member Jones warned the Commission about Miller’s true intentions. They cautioned the other Commission members not to believe Miller’s pretenses because he was “playing us” and not genuinely working with the community in resolving its concerns. Thus, these speech acts by these Commission and ZC members brought out into public what had until that point been kept to oneself or communicated through innuendo. The effect these speech acts had on the Commission and ZC members was to open a dialogue about how they felt about Miller’s behavior, and this increased the level of trust they had for each other.

Second, the majority of the Commission members present (4 of 7) and the ZC Chair expressed outright opposition to the proposed development as currently submitted, specifically in the areas of lot size, house square footage, and the total number of houses proposed (lines 483-528 Appendix B). Although the other three Commission members did not express a vocal opposition, neither did they express disagreement to the four vocal Commission members over the aspects of the proposed development those members opposed. Nor was it the case that the vocal Commission members intimidated the non-vocal members. The case was that the non-vocal members (save Barnes) were also opposed to the same aspects of the proposed development lined out by the vocal members, but they simply expressed their opposition more modestly. The discussion among Commission members of their oppositions of the proposed develop had a positive effect of increasing and reinforcing Commission knowledge.

The March 4, 2004 Commission Meeting

The Commission spent its time with the applicant’s representatives discussing the proposed development’s internal street width, the proposed private streets; the proposed water quality/storm water system of the development; and the size and design of the proposed housing.
Speech Acts Affecting Trust

Commission member Jones asked, “Did you take a survey of the neighborhood…. Did you talk with the neighbors or anything like that, take a survey with [sic] the neighborhood and tell them about what you’re doing …? How did they accept it?” Miller responded, “No, no, absolutely not. We did not. You asked if we talked to neighbors and one of them was Reverend [Jefferson]….” The perceived intent of Jones’ speech act was to demonstrate to residents that he was representing their interests and that had a positive effect on the level of trust between the Commission and residents.

Speech Acts Affecting Knowledge

I asked Miller for clarification regarding the storm-water detention pond, “In our zoning committee meeting on February 17th you referred to it as an active wetland.” Miller, I don’t think I used … that word, that certainly would be a layman’s use of that word. I know that it would be wet in the sense that it’s a ponding area….” I interrupted Miller,

… we talked about a wetland, and your engineers talked about a wetland. [y]ou all were here [referring to Sunshine Homes’ representatives] all of you. This was [described as] an active wetland, it was proposed as an active wetland. This is exactly what you said I went through the recording, I recorded the whole meeting…

Miller responded, “That’s good.” I responded, “That is good because … I need to hold you to what you said. This is what you said….” The intent of my speech acts was to bring out Miller’s persistent tendency to make statements of fact about the proposed development at one meeting only to make contradictory statements at other meetings. Miller’s statements in this regard led to confusion rather than clarification about aspects of the proposed development the Commission wanted answered. The effect of my speech acts provided reinforcement and confidence in the Commission’s knowledge.

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93 The Pastor represents one of the principal landowners of the proposed development.
Speech Acts Affecting Legitimacy

Commission member Jones, an outspoken Commission member, spoke first about his concern regarding security and personal safety of residents who would live within the proposed development, and particularly focused on alley security and the type of lighting illuminating the alleyways. Jones was beside himself, as it appeared he had reached the limits of his patience with the representatives. He clenched his jaw as he spoke in an angry tight voice, pointing and shaking his finger at the representatives, “We also talked when you were here last time about the type of lighting you’ll put on the garage… you say you’re going to look into that, but you never commit to it. [Y]ou said you were going to look into it, and all you did was pass [it] by.” Jones’ speech acts conveyed his conviction in the validity and legitimacy of the Commission as a reviewing body. The effect of his speech acts was that it strengthened the Commission’s confidence in its legitimacy.

The March 11, 2004 Special Called Commission Meeting

The purpose of this special Commission meeting was to develop a set of written questions for the applicant to respond to in writing. The Commission’s list of questions grew from an original and generic set of ten questions in its December 10, 2003 letter to the applicant (Appendix B.1 Exhibit 5) to an additional fifteen more specific questions in its January 2, 2004 letter (Appendix B.1 Exhibit 5) to a total of forty-six very specific questions in the current set. The number of written questions asked by the Commission or the ZC was unprecedented. However, the Commission’s questions were in direct response to the representatives’ unprecedented behaviors toward the Commission and the community.

I reviewed the Commission’s records from 1998 through 2003 and found the typical number of written questions posed to rezoning applicants were between ten to fifteen questions.
Speech Acts Affecting knowledge and legitimacy

The March 4\textsuperscript{th} Commission meeting was a turning point for the Commission, because during that meeting Commission members and residents - who faithfully attended previous meetings related to this rezoning application - understood they could not rely on the oral statements made by the representatives in prior meetings. This understanding became even more apparent when at subsequent meetings representatives contradicted their own statements from previous meetings, or said they never made those statements, or twisted what they had said into meaning something different.

The Commission sought to end the ambiguity in the representatives’ responses by requiring the applicant’s representative to provide detailed written responses to very specific questions. Most of the Commission’s forty-six questions were not new and connected back to the previous Commission questions regarding the physical aspects of the development, but in much more precise terms. There were, however, another set of questions which were new and concerned not only the initial affordability of the proposed housing, but also the additional and longer term costs of private infrastructure maintenance, repair, and replacement (e.g., street repair and replacement). The act of producing a list of questions in which the applicant answered had an effect of increasing the legitimacy of the Commission as an institution. The Commission’s list of questions also symbolized its knowledge about the proposed development and the community and had an effect of strengthening the Commission’s confidence in its knowledge.

The April 1, 2004 Commission Executive Committee Meeting

The April 1\textsuperscript{st} Commission executive meeting was qualitatively different from the previous month’s meeting of March 4\textsuperscript{th}. (lines 1831-2241 Appendix B) First, Commission Chair Barnes initially presided over the meeting with apparently little regard that Commission members discuss the issues in an organized and reasoned fashion. He allowed Commission members to vent their frustrations in unfocused diatribes and vacillate from issue to issue rather than reign in Commission members, and instruct then to proceed in an orderly review and discussion of the merits of the applicant’s responses to the Commission’s forty-six questions. Second, the Commission Chair appeared to
coerce Commission members, particularly female members, into silence or attempt to discredit viewpoints critical of the proposed development. Third, the Commission Chair appeared to attempt to influence Commission members to give up their opposition to the proposed development because City approval was inevitable.

Speech Acts Affecting Trust and Legitimacy

Barnes’s interruption and accompanying facial expressions at Commission member Jensen as she was expressing her reservations about the proposed storm water control system communicated an unmistakable innuendo to her that she had not “earned the right” to speak on the proposed development because she had not attended the previous Commission meetings and participated in the review process\(^{95}\) (lines 1861-1960 Appendix B). Therefore, his implication was that she was neither knowledgeable of the discussions that took place between the applicant’s representatives and the Commission and ZC regarding the same issues she was bringing up at this meeting or had a legitimate claim to express her concerns because she had not attended the meetings. Barnes’s action had a chilling effect on Commission members during that meeting. Not only did Barne’s actions have the effect of reducing the Commission’s sense of legitimacy, but his actions also diminished the level of trust between Commission members and Barnes.

Barnes used his position as Commission chair to express his fatalistic attitude regarding the proposed rezoning application, with an implied prediction that City Council would ultimately approve the rezoning application, and the Commission needed to face that fact and accept it (lines 2153-2165 Appendix B). Barnes’ speech acts had an effect of reducing the trust the Commission members had in him and increasing the amount of trust they had in each other. His speech acts had a negative effect on the residents living in the Pleasant Drive neighborhood, where they lost trust in the Commission as a legitimate institution working for the residents.

\(^{95}\) The reason for her absence was due to a serious health condition with which she had been struggling.
Speech Acts Affecting Trust and Knowledge

Commission Chair Barnes assumed the role of advocate for the development by trying to answer questions and, although he was ‘guessing’, the role of expert as well (lines 1896-1935 Appendix B). In doing so, he attempted to invalidate Commission member Jensen’s concerns and diminish her credibility by implying that the professionals and experts (i.e., Corps of Engineers and EPA) possess the “correct” knowledge as compared to Jensen’s, and further assumed, any engineering performed must follow specifications that would minimize the proposed development’s flood potential. Barnes’ speech acts attempted to show that Jensen’s knowledge was faulty and her legitimacy low, and therefore she could not be trusted.

Although Jensen did not possess the technical expertise necessary to scientifically model the flood potential of the proposed development and develop an engineered solution, she did possess decades of experience living in the area, which provided her with a unique knowledge of the area’s response to various actual rainfall events. This knowledge therefore qualified Jensen to evaluate the proposed vegetated storm water basin according to the knowledge and experience she possessed of the area regarding flooding. Based on her experiences about Indigo Stream’s water level changes during various rainfall events, she was correct to express concern that the proposed position of the vegetated storm water basin put it in jeopardy of compromise during even minor rainfall events. Jensen was able to neutralize Barnes’ attempt to discredit her due to her impeccable reputation in the community. Barnes’ attack on Jensen’s credibility only made Jensen’s speech acts all the more credible and legitimate to the Commission and residents. Jensen’s speech acts had a strengthening effect on the Commission’s trust and knowledge of itself.

Speech Acts Affecting Trust

Barnes frequently volunteered explanations and to some extent justifications in an attempt to resolve Commission concerns of potential adverse impacts caused by the applicant’s proposed development. Barnes also appeared to use several techniques - coercion, attack on credibility, fatalism - on Commission members in an attempt to
compel support of the proposed development or to silence dissenting Commission voices. His techniques had no apparent effect on the Commission’s and the ZC’s trust, knowledge, and legitimacy.

*The April 1, 2004 Commission Meeting*

The Commission took up the matter of the Sunshine Homes’ rezoning application a final time at this meeting. The Commission’s experience during this review process eroded the intra-trust relationship that had developed between Commission members from years of working together on the Commission. The Commission Chair’s actions during Commission meetings had contributed to that erosion of trust.

*Speech Acts Affecting Trust*

ZC Chair Cooper tried to show Commission members that the Commission could not trust the representatives’ verbal promises (lines 2574-2593 Appendix B). At prior meetings, the Commission and ZC had thought they had resolved some of their issues with Miller and his associates, with Miller agreeing to include modified or additional texts in a revised development document. However, the modifications or additional texts were not included in the revised text presented to the Commission at the meeting. Attorney Miller’s typical explanation for omissions was due to the overwhelming number of Commission questions directed at him, which inadvertently caused him to omit his promised modifications or inclusion of additional texts in a revised development text. Cooper’s speech acts strengthened trust among Commission members and contributed to an increased confidence and reliance in itself as a legitimate institution.

However, there appeared a growing feeling of anxiety and helplessness from many in the audience that they would not have a chance to express their concerns before the Commission voted on the proposed rezoning. Commission Chair Barnes compounded the audience’s anxiety by indicating the meeting needed to end in the next five minutes (lines 3113-3115 Appendix B). Barnes could have eased the audience’s anxiety by reassuring them that everyone would have a chance to speak; and if time ran out, he would call another Commission meeting to provide everyone a chance to speak prior to
any action the Commission would take. Instead, Barnes’ speech act fueled the residents’ fear that they would not have an opportunity to speak and express their thoughts about the proposed development. Barnes’ speech act had an effect of reducing the trust residents had in the Commission.

Speech Acts Affecting Legitimacy

Commission Chair Barnes interrupted Tina Murphy, FIST’s representative, while she was presenting several of FIST’s environment concerns about the proposed development. Barnes had frequently interrupted dissenting speakers during this and prior Commission meetings apparently to discredit their concerns or oppositions against the proposed development (this after reminding the Commission that the discussion should be civil). In addition, Barnes interrupted female speakers roughly twice as often as he did male speakers, and this suggested a gender bias against females with respect to equality and credibility in participating in the review process. Barnes’ interruptions had an effect of stopping or silencing a speaker from completing their speech acts, and this appeared to diminish the speaker’s legitimacy and the value of what they said.

Second, Commission Chair Barnes’s role was not to correct the speaker. Rebuttal belonged to and was the responsibility of the applicant’s representative, but only when it was the representative’s turn to respond, and if he so chose. At different times, Barnes appeared to answer for the applicant rather than allowing the applicant answer for himself (lines 2735-2749, 3105-3107, 3116-3133 Appendix B). Barnes’ speech acts not only appeared to defend the applicant’s proposed development, but also attempted to take away the Commission’s legitimacy. Barnes’ speech acts had little effect on the Commission, but diminished its legitimacy as perceived by the residents attending the meeting, especially the Pleasant Drive residents who were potentially the most directly impacted by the proposed development.

Discussion of Commission Chair Leadership

Similar to Case 1, Commission members elected a Commission Chairperson to provide leadership, direction, and purpose to the Commission, and to represent the
Commission and area residents in matters involving the City. I indicated in Case 1 the Commission Chairperson potentially wields a significant level of influence over Commission members and area residents, and that it is important to recognize as well the significant influence the Chairperson’s character, beliefs, and vision can have over other Commission members and area residents. Woody Barnes, the Chairperson in Case 2, had a similar potential to exert his influence over Commission members and residents. Recall in Case 1 in which I stated we can only begin to understand the Chairperson’s true character, beliefs, and vision when the Chairperson is in the act of doing the Chairperson’s duties in the presence of others. This understanding also emerged from the Chairperson’s acts of doing in Case 2.

Commission Chair Barnes publicly stated he did not, “want to have anything to do with this [rezoning application] whatsoever,” and would “abstain” from voting on the proposed rezoning application. Barnes’ announcements acknowledge his apparent conflict of interest as a voting Commission member and as a deacon of the church who was a principal of the re-zoning application. Although Barnes’ provided assurances to the community by declaring his intent to prohibit himself from involvement in the Commission’s review process of the re-zoning application, he was deeply involved and in highly consequential ways as described above demonstrating his possible intent to facilitate the approval of the re-zoning application. Barnes’ behavior had a much greater negative impact on the residents than the Commission regarding previously learned participation skills.

Case 1 described many dialogic interactions from which the Commission and residents learned what it meant to participate and how to participate with each other, with the developer, and with the City. Commission members and residents learned to trust one another or build up the level of trust they already had for each other. Residents’ trust in each other supported the legitimation of their socially shared knowledge, thereby instilling them with a confidence in knowing what they wanted, which residents articulated into a particular form of participation capacity meaningful to them. When the Sunshine Homes rezoning application described in Case 2 came before the community,
the social and political skills the Commission and residents had previously acquired in their experiences with Case 1 were in jeopardy of being subverted or lost altogether.

During the Commission’s review of Sunshine Homes’ (Case 2) rezoning application, Commission members Rita Jensen and David Henderson were the only Commission members who had also been on the Commission during its review of SCI’s (Case 1) rezoning application. They, along with me and other residents who were also present during the Commission’s review process of SCI’s application witnessed and participated in the community’s collective memory (i.e., the unwritten experiences and knowledge base); and therefore able to pass this historical link on to the new Commission members and residents. In addition to passing on the community’s collective memory, Commission members Jensen and Henderson could also pass on to the new Commission members and residents the skills the community learned during this experience with SCI - how the community understood participation and how the community put that understanding into practice.

Unfortunately, due to severe health issues Commission member Jensen missed most of the Commission meetings. This left only Commission members Henderson and Modula to counter Barnes’ assertions of the inevitability of Council approving Sunshine Homes’ rezoning application. However, Barnes was able to distract and confuse Commission members into believing that they could do nothing more to oppose Sunshine Homes’ rezoning application other than voting to recommend disapproval. Barnes’ speech acts had an effect of diminishing the Commission’s perceived legitimacy of itself and its confidence of its knowledge about what it could do beyond voting to recommend disapproval of the rezoning application.

Unfortunately, Barnes’ viewpoint spilled over to residents living on Pleasant Drive and directly affected by the proposed development. Shortly after the Commission’s disapproval vote, I contacted Karl Meeks and Kelly Trace, two of Pleasant Drive’s most vocal residents opposing the proposed development. I offered to assist them if they were interested in organizing a referendum petition drive in their neighborhood in the event City Council approved Sunshine Homes’ rezoning application. Both expressed their resignation to accept whatever Council decided even if that meant Council approving the
rezoning. Both felt their neighbors would not be interested in moving forward with a referendum. Council did approve Sunshine Home’s rezoning application and no referendum or other political opposition occurred.
Chapter 8: Discussion, Conclusion, and Recommendations

Introduction

The purpose of this dissertation is to understand how residents build a capacity, or conversely, are prevented from building a capacity to participate in city land-use decisions that have an effect on their neighborhoods. My concern is specifically about understanding the effect(s) a speaker’s speech acts have on the development or diminution of direct constructive reciprocity, specifically trust, knowledge, and legitimacy between residents, the Commission, and the ZC, as it relates to building resident participation. It would therefore be a mistake to conclude that the outcome of Case 1 provided an example of resident participation capacity because residents influenced Council to side with the Commission’s disapproval recommendation or that Case 2 provided an example of a lack of resident participation capacity because Council voted contrary to the Commission’s recommendation. Indeed, resident influence on Council’s decision outcome has little bearing on the potentiality of building participation capacity. What is critically important to participation capacity, however, is residents’ potential for developing civic and leadership skill sets (i.e., capacities).

Recall in Chapter 3, civic capacity was defined as a capability enabling people to unite. Plurality, reciprocity, and trust (Arendt 1998; Gutmann 2005; Kweit and Kweit 2007; Crick 1999; Taylor and McGlynn 2009) constitute the foundational elements of this capability, which connects one human to another. Humans connect to each other and learn from each other through acts of exchange. These acts of exchange (i.e., reciprocity), if constructive, can foster trust, knowledge, and legitimacy between
people. Trust, knowledge, and legitimacy become the common threads uniting people together.

Embedded in this potential emerging civic capacity is also a potential for leadership capacity to emerge. Leadership capacity was defined as “the interaction among members of a group that initiates and maintains improved expectations and the competence of the group to solve problems or to attain goals” (Bass 1990, 20). If we also understand leadership as a relation (Locke et al 1991, 2), then this aspect adds additional reinforcing connectedness between people (i.e., a relationship) that binds them together.

Finally, there needs to be something that places people into motion (i.e., action) so that their capacities can emerge, grow, and develop. Elkin alluded to the institution as the motion that helps form the citizenry. However, we must also not forget that the practices and actions of the citizenry help form the institution (Knight 1992). The institution can provide the environmental conditions for civic and leadership capacity to develop, but only if the institution itself possesses appropriate conditions, which Gualini explains as the “social mechanisms which nurture and sustain new forms of collective action” (2002, 35). The social mechanisms are themselves the seeds of civic and leadership capacity. Reciprocity is the most central and basic social mechanism. Constructive reciprocity provides the motion for Commission residents to learn and potentially develop their own skill sets of civic and leadership capacity, and lays the basis for participation capacity to emerge.

Viewing the two cases from this perspective, the examination of the cases centers on whether residents developed their civic and leadership skill sets necessary for them to develop their participation capacity. In this regard, Case 1 described the circumstances and conditions that facilitated residents in learning and developing these skill sets, while Case 2 described the circumstances and conditions that impeded residents’ from learning and developing these skill sets. Before discussing the applicability these two cases have

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96 It may also sometimes be the case that outsiders in acting destructively can actually be harnessed by residents and utilized as an impetus for building or increasing trust, knowledge, and legitimacy between residents, but that is beyond the scope of this research.
on the research questions, I first want to describe the general commonalities and differences of the two cases.

**Commonalities and Differences of Cases**

Here I discuss the commonalities and differences of the two cases from the perspective of each type of participant.

**Commission Membership**

**Commonalities:**

The membership comprising the Commission changed from Case 1 to Case 2, but the socio-economic, racial, age and gender make-up of the Commission remained relevantly unchanged.

**Differences:**

I was a member of the Zoning Committee during Case 1 and a member of both the Commission and Zoning Committee during Case 2. Commission member Rita Jensen was an outspoken and tenacious advocate for the Commission community and was a Commission member during both cases. However, Jensen became afflicted with a serious health issue during the Commission’s review of Case 2. She was therefore not able to attend the majority of meetings and her constituents missed the motivation and courage her presence and speech acts brought to them. There was less inclination to stand up for the community when dealing with the attorney Kent Miller at Commission meetings than there had been to deal with Developer Hancock in the first case.

**Commission Chair Leadership**

**Commonalities:**

The leadership comprising the Commission changed from Case 1 to Case 2, but the proportional socio-economic, racial, and gender make-up of the Commission remained relevantly unchanged.
Differences:
The behavior of the Commission Chair in Case 1, Martin Roundtree, promoted open and honest dialogue, and encouraged residents to ask questions and probe the rationale of anyone making statements of fact. Roundtree facilitated a coming together of Commission and residents, fostering a “can do” attitude in residents to do what the community needed through his speech acts and his encouragement of others’ speech acts. Roundtree strove to raise the community’s consciousness of its rights, and its power to hold the City accountable for not meeting the community’s current needs and future vision. Roundtree did not tell residents which strategy to select, but rather he told them he would throw his full support and influence behind whatever strategy residents decided to pursue against SCI. During Roundtree’s tenure, the Commission appeared to be transforming from an advisory body of the City to an actual participant in deciding City land-use matters.

The behavior of the Commission Chair in Case 2, Woody Barnes, projected a fatalistic attitude of the inevitability and finality of City Council’s decision. Barnes did not ask the community what it wanted to do to influence Council’s decision, or throw his support behind the community. Barnes, instead, told the community what the outcome was going to be, and that the community could do nothing to change Council’s decision. Following a “go along to get along” (Stone 1989) creed, Barnes encouraged the Commission and community to take whatever amenities the applicant offered (i.e., satisficing) without regard to fulfilling the needs of the community.

Commission Area Residents
Commonalities:
While each of the cases affected different Commission neighborhoods, the socio-economic and racial characteristics of the neighborhoods are similar. Residents from the neighborhoods directly affected by each of the cases had similar turn out during the ZC and Commission meetings. The amount of resident emotional opposition appeared similar in each case.
Differences:

The residents of Golden Bear and Antelope Civic Associations in Case 1 live in subdivision developments, which are spaced relatively close together. The residents know the people on their streets, and they practiced speech acts with each other frequently, increasing their trust, knowledge and legitimacy on an everyday basis. The civic associations are well organized, have two residents who are Commission members representing these neighborhoods, and have experienced civic leaders running the civic association’s operations. These residents perceive the rezoning application of Case 1 as an imminent and real threat to their neighborhoods.

The residents directly affected by the rezoning in Case 2 live in a sparsely populated section of the Commission area where residences are widely separated due to large lot widths. Residents do not readily know their neighbors, and communication between neighbors is infrequent. Thus they have not developed the practice of speech acts with each other and have not had the opportunity to develop trust, knowledge and legitimacy among themselves. Perhaps this made them more likely to be affected by the Commission leadership’s speech acts, though this research does not address that issue. These residents are not organized, nor do they have a civic association or any other type of organized group that can collectively represent residents’ interests or concerns. These residents have no designated Commission member to represent their specific interests. These residents perceive the rezoning application of Case 2 as potential threat to their neighborhood.

Rezoning Applicants

Commonalities:

The applicant’s representatives in Case 1 and Case 2 showed several similar behaviors. Both showed non-negotiability when it came to making alterations of substance - reducing the number of total housing units. Both representatives conceded to the Commission and agreed to modify their developments, but their modifications involved only superficial aspects of their developments. By their behaviors, both representatives succeeded in alienating the Commission and residents. Finally, both
representatives subscribed to the superiority of objective knowledge over people’s knowledge, and neither regarded the Commission’s review and recommendation as valid or legitimate. Consequently, both representatives felt they could ignore the Commission and residents’ concerns with impunity.

**Differences:**

Harold Hancock’s alienation of Commission and residents in Case 1 was different from Kent Miller’s in Case 2. First, it appears that Hancock failed to include the text he promised to the Commission, regarding increasing the building setbacks along the northern and southern parcel boundaries. However, he may not have taken the trouble to physically change the text after the Commission at its June 1st meeting voted down his application. Indeed, other than this one incident, Hancock spoke plainly and honestly to the Commission and residents about his development plans. In fact, it was Hancock’s abrasive tone and his discourteous and disrespectful treatment of Commission members and residents that alienated the community. In addition, Hancock was proposing to build over 700 apartments, which was a serious drawback to and rallying cry for the Commission community.

Kent Miller’s alienation in Case 2 was different. Miller employed strategies ranging from acting confused and unprepared to discuss the ZC’s concerns to semantical trickery, ambivalent non-answers, and withholding or delaying pertinent documentation requested by the ZC or Commission. Miller also presented himself to the Commission in the guise that he was receptive and amenable to Commission requests for modifications of the development text, but this in fact turned out to be another of his ruses. By his actions, the Commission and residents came to realize that Miller placed no value on their concerns and requests. This realization came gradually and the proposed development included single family, owner occupied unit so the no strong opposition occurred from the beginning.
What the Cases Tell Us About Developing Participation Capacity

This research is concerned with understanding how an act of dialogue builds up or tears down trust, knowledge, and legitimacy, which I have argued are fundamental elements in the development of participation capacity. Thus the developers’ and City representatives’ actions only mattered insofar as they affected the development of trust, knowledge and legitimacy among the residents and between the residents, the Commission and the ZC.

Building trust is one of the first steps towards building participation capacity, because it provides a shared and common experience that can lead to the formation of an initial bond between residents (or strengthen their existing bonds). The bond of trust developed between residents through their shared and common experiences they can use to build a common knowledge. Civic leadership can harness this bond and direct this community-based resource into a civic purpose, which can enable residents to move up along the rungs of Arnstein’s participation ladder towards an “authentic participation.97”

Speech Acts and Their Effects

Austin (1975) argued that people do more than communicate information when they speak, they are not merely “saying something but doing something” with their words. That is their spoken words have an effect on those who hear them and influence how listeners understand and then respond to the words they hear. The cases of this research have enabled me to identify three characteristics of speech acts that are consequential to building up or tearing down trust, knowledge, or legitimacy between residents (Table 8.1. This list is not intended to be exhaustive. It includes characteristics of particular importance to this analysis.). The three characteristics include Tone, Authenticity, and Authority. I have separated these speech acts characteristics to facilitate my analysis, but

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97 Authentic participation understood as action and reflection or praxis (Freire 1970, 66), and similarly as a rung of citizen power on Arnstein’s ladder of citizen participation, (Arnstein 1969, 242).
Table 8.1: Characterization of Speech Acts and Their Effects

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<thead>
<tr>
<th>Speech Act Characteristic</th>
<th>Perceived Intent</th>
<th>Categories of Perceived Effects</th>
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<tbody>
<tr>
<td><strong>Tone</strong></td>
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<td></td>
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<tr>
<td>Welcoming</td>
<td>Positive</td>
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<tr>
<td>Conciliatory</td>
<td>Positive</td>
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<tr>
<td>Defiant</td>
<td>Positive or Negative</td>
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<tr>
<td>Paternalistic</td>
<td>Negative</td>
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<td><strong>Authenticity</strong></td>
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<tr>
<td>Credible</td>
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<td>Coercive</td>
<td>Negative</td>
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<tr>
<td>Fatalistic</td>
<td>Negative</td>
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<tr>
<td>Discrediting</td>
<td>Negative</td>
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<td><strong>Authority</strong></td>
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<tr>
<td>Positional</td>
<td>Positive or Negative</td>
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<tr>
<td>Personal</td>
<td>Positive or Negative</td>
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they are not mutually exclusive and can have reinforcing or canceling effects on each other. As I discuss the effects of each speech act characteristic below, the reader should understand that the conclusions I draw about these effects on trust, unless otherwise noted, are equally applicable to knowledge and legitimacy as well.

**Tone**

Tone is the first characteristic in Table 8.1 and I identified four different tones in speech acts that had an effect on resident trust. Similar to the other three characteristics, tone was a common thread running through both cases. The four tones of speech acts included: Welcoming, Conciliatory, Defiant, and Paternalistic. I discovered that a speaker’s use of a particular tone or tones during Commission meetings affected the building up or tearing down of trust between residents.

**Welcoming**

Commission Chair Roundtree (Case 1) exhibited a welcoming tone to residents, the applicant’s representatives, and other stakeholders wanting to participate in the Commission’s review process of SCI’s rezoning application. A welcoming tone signaled
to residents and other participants their right to participate and speak their minds without fear of retaliation from others. Thus, Roundtree’s act of welcoming created an inclusionary environment, and provided encouragement and support to residents to participate in the Commission’s review process. Consequently, a welcoming tone had a positive effect on the building or strengthening of trust between residents and between residents and Commission members.

**Conciliatory**

Conciliatoriness was a second aspect of the tone of some of the speech acts I observed in both cases. SCI’s Hancock (Case 1) expressed a conciliatory tone to the Commission and residents when he said he would “look into” increasing the proposed setback distances to something more amenable to the residents’ preference (lines 209-211 Exhibit A). Miller (Case 2), Sunshine Homes’ representative, also struck a conciliatory tone when at the January 20th 2004 ZC meeting he appeared receptive to the ZC’s request of increasing housing lot size and not building within the floodplain (line 92-95 Appendix B). Hancock’s and Miller’s conciliatory tones led the Commission and residents to perceive that each representative’s intention was to work with the community. The Commission and residents understood working with the community to mean that the applicant and the community would negotiate and make compromises to achieve a mutually acceptable resolution to the community’s concerns about the proposed development. The Commission and residents perceived the applicants’ conciliatory tone as an acknowledgment of the value of their participation. Therefore, a conciliatory tone had a positive effect, at least initially, on the building or strengthening of trust between the residents and Commission members.

**Defiant**

Defiance was a third possible tone of the speech acts I observed in both cases. The effect of the speaker’s defiant tone on resident trust was either positive or negative based on the identity of the speaker. In Case 1 Hancock expressed in a defiant tone, “the numbers wouldn’t let [him] reduce the density” when he responded to Chairman
Rountree’s question about modifying the quantity of apartments and condominiums (lines 157-159 Appendix A). Miller, in Case 2, expressed a similar defiant tone at the February 17th ZC meeting when he said, “If you don’t build in the floodplain, then there’s no development, period.” The defiant tones of both representatives simultaneously pushed the Commission and residents farther away from trusting them and pulled the Commission and residents closer together fostering more support and trust in each other. However, when Commission member Bob Jones (Case 2) expressed his frustration to Miller about the unresolved alley lighting issue, “you say you’re going to look into that, but you never commit to it. [Y]ou said you were going to look into it, and all you did was pass [it] by” (lines 656-664 Appendix B), Jones’ also expressed a defiant tone that he would not relent to Miller on this issue until it was resolved. Jones’ tone had a positive effect on the Commission and residents because his defiance to Miller gave them something to rally around, thus providing additional support and reinforcement to residents to depend and trust each other.

**Paternalistic**

Paternalism was the fourth type of speech act I observed in both cases. The effect of the speaker’s paternalistic tone on resident trust was negative. Throughout the Commission’s review of SCI’s proposed development (Case 1), Hancock had acted toward residents and the Commission not only in a condescending manner, but also in a paternalistic one. His tone was that he knew what was best for the community and that the Commission and residents should approve his proposed plan and let him get on with building it. Near the end of the Commission’s review process Hancock’s paternalistic treatment of the residents came to a boiling point when Commission member and long-time Golden Bear resident, Rita Jensen, expressed her frustration. Hancock “didn’t come here to work out the issues. He came here to tell us the same things he told us at the June [Commission] meeting. He thinks he can do whatever he wants in this community” (lines 465-468 Appendix A). The effect of Hancock’s paternalistic tone alienated the residents by treating them like children and denying them the recognition they deserved, that they could decide for themselves what was best for them. Not surprisingly any trust
between Hancock and the residents evaporated, but drew residents and the Commission closer together. Indeed, the paternalism Hancock leveled toward the residents and the Commission galvanized them to respond in an even more determined unified voice, which further strengthened the trust between residents.

During the interactive portion of the March 4, 2004 Commission meeting (Case 2) where members of the audience could address the Commission, Pastor Jefferson made a suggestion in reference to what appeared to him as an unorganized litany of questions Commission members were asking the applicant’s representative. “Wouldn’t it be very professional if you would put it in a bullet point format and then have them answer those questions. To just throw hodgepodge questions out that’s up in the air doesn’t help, doesn’t help you, doesn’t help him” (lines 1050-1054 Appendix B). Perhaps it was the nature of being a clergyman that Pastor Jefferson expressed a paternalistic tone. However, beyond that, Jefferson publically criticized the Commission for not being “professional” or thoughtful about its questions to the applicant’s representatives. Then Jefferson offered the Commission his solution for its ineptness. “What does it take to … put those questions in a bullet point format, give it to him; discuss if you have to have another meeting, and give it to him; and at the next meeting we clear all those things” (line 1054-1057 Appendix B). Jefferson, in effect, publically scolded and disciplined the Commission, and then showed them how to do their jobs correctly. While Jefferson’s suggestion to the Commission of submitting a written set of questions to the applicant was sound - the ZC had been doing this since December - his paternalistic tone and public berating of Commission members failed to make them obedient to him. Instead, Commission members used their public humiliation as a learning experience to better prepare to respond to attacks on their competency as Commission members. Jefferson’s paternalistic tone further motivated the Commission to support each and present a more unified front in public. It may, however, have contributed to a feeling among residents of the affected areas that the Commission wasn’t professional and perhaps didn’t represent them well. This would increase their sense of trust in the Commission along with their faith in its knowledge and legitimacy.
**Authenticity**

Authenticity is a second characteristic and I identified four ways in which it appeared in speech acts that had an effect on resident trust. The speech acts include: Credible, Coercive, Fatalistic, and Discrediting. Examples of authenticity also appear in both cases and had an effect on the trust the residents developed among themselves and with their institutions.

**Credible**

In both of the cases I found that when residents perceived the promises or explanations they heard to be credible it had an effect of potentially building or strengthening trust. However, I must add some qualifications to the residents’ perceived credibility of the speaker as it did not automatically generate trust between speaker and listener. First, residents tested whether the speaker’s promises were credible by determining whether the speaker honored his promises. When residents perceived the speaker did not honor his promise, such as Miller’s promise of providing the ZC with a traffic report by its February 17th meeting (lines 302-304, 1011-1016 Appendix B), the residents and the Commission perceived Miller’s promise as not credible and the resultant effect on trust between Miller and the residents and the Commission was negative. This negative effect, however, provided motivation to the residents and the Commission to support each other even more and had a positive and enhancing effect on resident trust.

However, when residents perceived the speaker honoring his promise as Hancock did (Case 1) by moving SCI’s application forward to the development Commission, and then to City Council with unresolved community issues with the proposed development, the Commission and residents perceived Hancock’s promise as credible, but the resultant effect on trust between Hancock and the Commission and residents was also negative. The reason why the effect on trust was negative was that the Commission and residents perceived this form of ‘trust’ was unauthentic because even though Hancock would honor his promise, his action would negatively impact the residents. The negative effect
Hancock generate simultaneously motivated the Commission and residents to increase their support and trust in each other.

On the other hand, Commission member Rita Jensen’s promise, “[Hancock] thinks he can do whatever he wants in this community. Well, I’ve got news for him… he’s in for a fight” (lines 466-469 Appendix A) was perceived by the Commission and residents as credible and it had a positive effect on building or strengthening trust between residents and between the Commission and the residents. Jensen’s fighting speech act is also encompasses a defiant tone characteristic. This is an example of the reinforcing or canceling effects these characteristics can have on each other. Jensen honored her promise to fight the proposed development by leading a referendum campaign in the event City Council approved SCI’s proposed development. The positive effect on resident trust came from residents perceiving a member of their community’s promise to fight for her community not only as credible, but also authentic to the needs of the community.

The credibility of a speaker’s explanations also had an effect on resident trust. Residents perceived a speaker’s explanation credible when the explanation made sense to them and was not in conflict with their own experiences. In Case 1, Hancock responded to Commission Chair Roundtree’s question regarding reducing the number of apartments and increasing the number of condos by stating that “the numbers wouldn’t let [him] reduce the density” (lines 157-159 Appendix A). Hancock explained that his ability to make density changes was constrained by complying with the changes requested by the ZC and the community (lines 342-345 Appendix A). However, the credibility of Hancock’s explanation did not ring true with residents because many of them had complained about the density of the proposed development prior to the requests made by the ZC or the community (lines 77-82 Appendix A). Again, Hancock’s speech acts generated a negative effect on trust between him and the Commission and residents. This negative effect, similar to the negative effect Hancock generated in his promises, provided the motivational force to the Commission and residents to rely on and trust each other to defeat Hancock’s proposed development.
Miller’s (Case 2) credibility was challenged when he initially presented to the Commission Sunshine Homes’ commitment to “take special care of the environmental conditions there” (lines 232-235 Appendix B). However, he later acknowledged Sunshine Homes’ planned to destroy three wetlands located on the property (lines 334-339 Appendix B) and fill a portion of the flood plain on the property so that houses could be built (lines 347-351 Appendix B). Miller’s initial statement of caring for the environmental conditions contradicted his later acknowledgment of plans to destroy some of the environmental conditions, which led the Commission and residents to seriously doubt the credibility of any statements Miller made. Miller’s speech acts pushed the Commission and residents to rely on and trust each other more through their collective judging of the credibility of explanations given by those outside the community.

Ted Woods (Case 2) presented the design of the proposed development to the Commission and explained that the development would “blend into this area” (lines 246-249 Appendix B). I countered Woods claim with visual evidence of images of housing along Pleasant Drive (lines 396-403, Appendix B) and showed that Sunshine Homes proposed to build an urban housing development in a suburban area, which would not “blend into” but conflict with the existing character of the area. I utilized the visual imagery of the existing housing landscape to help the Commission and residents recognize their community so they could more easily evaluate the credibility of my explanations compared to their own experiences and knowledge of the area. Showing recognizable images was a powerful tool that helped the Commission and residents perceive my explanation as authentic and credible. The use of imagery also facilitated a tangible connection between residents that this was their community, which had a positive effect on the building or strengthening of resident trust.

\textit{Coercive}

Coerciveness was another type of speech act of the authenticity characteristic I observed in Case2 but not in Case 1 and its effect on resident trust was always negative. Coercion took many forms in Case 2. For example, Pastor Jefferson remarked at the March 4, 2004 Commission meeting, “[t]his building that you’re sitting in, I’m the Chair”
Jefferson was reminding the Commission that they were obliged to him for providing a place for the Commission to conduct its meetings. Because the Commission was obliged to Jefferson it should not oppose Sunshine Homes’ rezoning application as that was tantamount to opposing Jefferson, the Church, and the need to provide more affordable housing in the community.

Jefferson’s attempt at coercing the Commission into paying its obligation to the pastor by supporting Sunshine Homes’ proposed development was met by a respectful yet unwavering resistance from the Commission. Their resistance to the pastor further galvanized them against the effects of coercion and made them rely and support and trust one another even more in the face of such a powerful stakeholder. Simultaneously, though, the Pastors’ speech acts may have decreased residents’ faith in the Commission and themselves.

Coercive speech acts came not only from without the Commission, but from within it as well. Commission Chair Barnes used a coercive act of interrupting Commission members, residents, and other speakers when they had the floor and were speaking critically about or opposing Sunshine Homes’ application. Chair Barnes would attempt to silence the speaker either by responding in defense of Sunshine Homes or turning the floor over to one of the applicant’s representatives for response. The effect of Barnes coercive acts was that it created tension between him and Commission members to the point that they lost trust in Barnes, but not in each other.

Fatalistic

A third authenticity characteristic I observed was the fatalistic speech act. I observed this type of speech act only in Case 2 and only from the Commission chair. It had a negative effect on the building up or strengthening of resident trust. At the April 1, 2004 Commission Executive Committee meeting Commission Chair Barnes made his fatalistic thoughts known to the other Commission members. “If they’re [applicant] going before the Development Commission, there is probably no doubt in the world that the City is not going to, that the City will approve them to build down there [i.e., in the floodplain fringe].” Commission member Jensen responded, “I don’t know.” Barnes,
“They will. There’s no doubt in my mind that the City is going to allow them to build there. No doubt” (lines 2154-2167 Appendix B). Barnes’ fatalistic speech act tried to convince the other Commission members what the outcome was going to be and there was essentially nothing left for the community to do to influence Council’s decision. The Commission members recoiled from Barnes’ fatalism, which provided them an additional strength to support and trust each other and work in the interest of their community, and not cave in to Barnes’ pressure. The Commission’s solidarity was evident in their vote of seven to zero to disapprove Sunshine Homes’ rezoning application (lines 2253-2254 Appendix B). Indeed, Barnes’ fatalism appeared to strengthen the trust between the Commission members.

**Discrediting**

A fourth type of speech act I observed in the authenticity characteristic was a discrediting speech act. I observed this type of speech act only in Case 2, which had a negative effect on the building up or strengthening of resident trust. I observed three incidences in which Commission Chair Barnes attempted to discredit a speaker’s assertion. The first occurred during the March 4, 2004 Commission meeting when an unidentified man from the audience claimed that the land Sunshine Homes’ planned to build houses on flooded every spring. “I used to go through that whole, every bit of that in a motor boat. Every acre, every bit of that is all underwater, every bit; and it’s still underwater.” Barnes challenged the validity of the man’s claim, “When was the last time you did that?” (lines 947-957 Appendix B). Another instance occurred during the April 1, 2004 Commission meeting when I was speaking to a Sunshine Homes’ representative and making a comparison about the placement of the utility boxes on their proposed small lots compared to a box location on a traditional sized lot where the location of “the utility easements, it’s a lot farther away so it’s a lot less conspicuous. People … can plant their trees or whatever. You really can’t plant anything around these particular boxes because there’s really no space to plant anything around.” Barnes interrupted, I have a friend that lives in [Walnut Station], and those things are right next to the houses, you know, almost out in front. And they have all the plants and vegetation around it and
you really don’t notice them, OK (lines 2736-2750 Appendix B). The third instance also occurred during the April 1\textsuperscript{st} Commission meeting while Tina Murphy was presenting FIST’s four recommendations to the Commission, “Right now [the] floodplain is going to be filled as this development now stands proposed. And we know that’s a potentially a hazard in terms of downstream flooding....” Barnes interrupted, “But the floodplain is not going to be filled. They are not filling the floodplain” (lines 3117-3134 Appendix B).

In each instance Barnes went beyond his function of presiding over the Commission meeting and made speech acts with the sole perceived intent to quell dissent and discredit speakers who made critical statements of Sunshine Homes’ proposed development. Barnes’ attempt to quell Commission member and resident opposition was unsuccessful and instead provided opponents to the proposed development an additional reason to increase their opposition, which added to the strengthening of resident trust.

\textit{Authority}

Authority is a third characteristic associated with speech acts and positional and personal authority are two important types that had an effect on resident trust, and was a common thread running through both of the cases. I observed that the particular type of authority a speaker used had an effect on the building up or tearing down of trust between residents. In addition, who the speaker was in relation to the listener also influenced whether an authoritative speech act had a positive or negative effect on resident trust.

\textit{Case 1: Positional}

Positional authority is authority awarded to an individual (or group) within the hierarchy of the existing social structure. For example, Commission Chair Rountree obtained his position and the authority attached to that position by being elected by the Commission members.

Rita Jensen and Martin Roundtree were two individuals in Case 1 who utilized their positional authority most effectively to influence the other Commission members and residents evaluating SCI’s proposed development.
Jensen’s positional authority was likely greater than anyone’s in the Commission community because her authority came from many sources. She was a Commission member, a ZC member, and the secretary of the Golden Bear civic association. Jensen utilized her various positions to connect the Golden Bear Civic Association and neighborhood residents to the Commission and ZC. As secretary of the Golden Bear Civic Association, Jensen controlled the flow, content, and perceived importance of information between her civic association and Commission. She used her position to mobilize her neighbors and the greater Commission community into a politically potent opposition against SCI’s proposed development. Jensen’s motivation to take a leading role in reviewing SCI’s application was partly due to the responsibilities of her positions and partly due to her personal concern as one of the residents most directly impacted by SCI’s proposed development. Jensen’s work in developing a seamless two-way information and communication conduit between the Commission, her civic association, and neighborhood residents had a positive effect on resident trust.

An example of Jensen’s positional authority was evident at the first meeting between the ZC and Hancock on April 20, 2000. Jensen said,

> I don’t see any benefits your development would provide to the community. It seems your development will be taking benefits from the community and in return putting a greater burden on the community’s existing services such as schools and recreation, and increasing traffic congestion (lines 83-86 Appendix A).

There is no stronger example of Jensen stating explicitly the community’s assessment of the proposed development to Hancock. Jensen understood the ‘heartbeat’ of the Commission community. Her statement, although brief, succinctly expressed the views of her neighbors, her civic association, and the greater Commission community. Knowing the Commission and residents well, and expressing the community’s perspective to Hancock helped strengthen Jensen’s existing trust relations with her neighbors and to build new ones with residents outside her neighborhood.
Another example of Jensen demonstrating her positional authority came at the May 18, 2000 ZC meeting where she was critical of SCI’s proposed density. “… I still have a problem with your proposed density of 9.6 units because it’s much higher than the 6 to 7 units our Area Plan recommends. 9.6 units per acre would give you 232 more units than the maximum our Area Plan recommends” (lines 241-245 Appendix A). Jensen used her ZC position to represent her and her neighbor’s positions that the proposed density was unacceptable. Jensen’s action of standing up to Hancock and explaining to him the reasons she believed the proposed development was unacceptable demonstrated to her neighbors and other residents opposed to the project that she represented their interests. Her speech acts had a positive effect in orders of magnitude on the building or strengthening of resident trust.

A final example came at the May 18th ZC meeting when Jensen took command of the ZC when she suggested that the ZC send a letter to Hancock requesting written responses to the community’s questions. The ZC members unanimously agreed, and with that they acknowledged her leadership and trusted the direction she would take the ZC.

Martin Roundtree also had great positional authority because his came from several different sources. Roundtree had positional authority from within the Commission community because he was the Commission Chair, and he was also the Commission’s Antelope District Representative, which gave him access to the leadership of the Antelope Civic Association. In addition, Roundtree had positional authority from outside the Commission community as an executive of Columbus Smart Growth Partners, a non-profit development arm of the City. Consequently, Roundtree not only had access to social networks within the Commission community, but he also had access to social networks extending to the City Hall. This special situation of Roundtree’s positional authority allowed him an opportunity to act as a communication bridge between the Commission and City to build or strengthen resident trust.

Commission Chair Roundtree demonstrated several times during the June 1, 2000 Commission meeting the significance of his positional authority. At the meeting Hancock attempted to discredit the Commission’s area plan by showing the contradictions in the area plan regarding residential density levels. Roundtree exerted his
authority and corrected Hancock stating, “… the text clearly identifies the area within which the proposed development is to be located at six to seven dwelling units per acre” (lines 347-349 Appendix A). At the end of all discussion on the proposed development Commission Chair Roundtree commented, “The community found the commercial and condominiums acceptable, but the apartments are not acceptable” (lines 398-399 Appendix A). “The community has clearly expressed its displeasure and opposition regarding what it believes is an over saturation of apartments in the area” (lines 425-427 Appendix A). These statements spoken by the Commission chair effectively endorsed the residents’ opposition to the proposed development, and signaled Roundtree was throwing his support as Commission chair behind the residents. After Roundtree spoke there was no longer any possibility the Commission would vote to recommend approval of the proposed development. Roundtree had publically announced the community’s solidarity. As a result, residents perceived Roundtree was working for their interests and this contributed to an increase in the level of resident trust.

Lastly, Roundtree presided over Commission meetings promoting a positive and constructive communicative environment by welcoming people with differing viewpoints to speak about their concerns without fear of retribution to their social standings within the community. The welcoming and inclusive participative ambiance Roundtree created during Commission meetings positively affected resident trust.

**Case 2: Positional**
There were five individuals including myself in Case 2 who utilized their positional authorities to influence resident trust (Table 8.2).

Woody Barnes held the highest positional authority in the Commission because he was the Commission chair, but his influence on resident trust was different than it was on Commission and ZC members. As the Commission chair, Barnes had the authority to set the Commission’s agenda and preside over its meetings. He was able to control the topics for discussion, direct the content of discussion, and the amount of speaker time.
Barnes used his position to allow the Commission’s review process to run in a haphazard manner that took time away from a more efficient and thorough examination of the proposed development.

**Table 8.2: Ranking of Positional Authority of Individuals in Case 2**

<table>
<thead>
<tr>
<th>Name</th>
<th>Function</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Woody Barnes</td>
<td>Commission Chair</td>
<td>1</td>
</tr>
<tr>
<td>Betty Cooper</td>
<td>ZC Chair</td>
<td>2</td>
</tr>
<tr>
<td>Rita Jensen</td>
<td>Commission member</td>
<td>2</td>
</tr>
<tr>
<td>Bob Jones</td>
<td>Commission member &amp; ZC member</td>
<td>2</td>
</tr>
<tr>
<td>Michael Modula</td>
<td>Commission member &amp; ZC member</td>
<td>3</td>
</tr>
</tbody>
</table>

Barnes also used his position to express his fatalistic attitude regarding the inevitability of City Council approving the rezoning application, and the Commission needed to face that fact and accept it that “there is probably no doubt in the world that the City … will approve them to build down there [i.e., in the floodplain fringe].” (lines 2153-2156 Appendix B).

Barnes used his positional authority to quell opposition to the proposed development. For example, Barnes said, “You should have been there you know” to Commission member Jensen in an attempt to humiliate her into silence for not attending the bulk of Commission meetings. Or his attempt at the March 4, 2004 Commission meeting to discredit a resident’s claim that the proposed development site floods every spring so much that he took “a motor boat on it” (lines 946-951 Appendix B). Barnes’ response was, “When was the last time you did that?” (line 955 Appendix B).

Finally, Barnes used his positional authority to try to force the other Commission members and residents to accept his conclusion regarding floodplain filling and eliminate it as an issue the community wanted the applicant’s representatives to address. He said floodplain filling was “acceptable with the City of Columbus” (lines 1184-1186 Appendix B).
Using his positional authority in the manner described above Barnes had an effect opposite to what he wanted on both the other Commission members and the ZC. In response to Barnes’ attacks Commission and ZC members increased their support of each other. Thus, Barnes’ actions motivated Commission and ZC members to have a greater amount of trust in each other.

However, the way in which Barnes used his positional authority had a negative effect on residents. Although the Commission had voted to recommend disapproval of the Sunshine Homes’ application, Barnes neither mobilized the Commission or the community to prepare a response in the event City Council approved the application. One reason for his lack of mobilization can be attributed to Barnes’ support for the proposed development, which made him less inclined to suggest or support a political opposition campaign. Another reason stems from the lack of communication continuity between the Commission and the residents living on Pleasant Drive. Unlike Case 1 the residents of Pleasant Drive did not have formal Commission representation by a district representative. Nor did the residents have a civic association or other organization that could organize residents and help them to politically mobilize. A consequence of this lack of social infrastructure connecting residents to the Commission was that residents perceived the Commission as not wanting to help them and that had a negative effect on resident trust.

ZC Chair Betty Cooper and Commission members Rita Jensen and Bob Jones had positional authorities of about equivalent magnitudes and that had a positive effect on resident trust, but only while residents attended the Commission and ZC meetings.

For example, Cooper verbalized what other Commission members were thinking about Miller, the applicant’s representative, when she said, “…we’ve just had a lot of issues with this gentleman …. He’s … gonna act like he doesn’t know what to do. So, I think that he’s really playing us…” (lines 492-498 Appendix B). Cooper used her positional authority as ZC Chair to gauge each Commission member’s response to her speech acts, and then used their responses of support to build trust.

Commission member Jensen used her positional authority in two ways. First, she tried generating unity among the other Commission members by questioning Miller’s
strategy. For example, Jenson expressed to the Commission her concern that “I don’t think [Miller] really answered any of the [Commission’s] questions. To me, he was just answering the questions generically. He wasn’t really getting into the meat of it, and giving what you’re asking” (lines 1860-1866 Appendix B). Jensen was reminding the Commission of their right to expect Miller to provide them with sufficiently detailed responses that satisfactorily answered their questions, or hold him accountable to provide responses to their satisfaction. Jensen was also reminding Commission members of the trust they already had in each other.

The second way Jensen used her positional authority was to counterbalance Barnes’ use of his positional authority to convince the Commission and residents about the futility of expending additional effort opposing the proposed development since City Council would inevitably approve it. Jensen’s response was, “We need to be at that Development Committee so that we can have three speakers up there to voice our concerns, if we had concerns…” (lines 2159-2161 Appendix B). Jensen was trying to hold together the Commission’s and residents’ political solidarity despite Barnes’ fatalism, and her speech act had a positive effect on resident trust. However, as I described above, the Pleasant Drive residents lacked a social infrastructure connecting them to the Commission and help them extend the resident trust developed at Commission and ZC meetings into their neighborhood. Although Jensen was not a resident of the Pleasant Drive neighborhood, she still threw her support and energy behind the Pleasant Drive residents. Unfortunately, there was nowhere outside of the Commission or the ZC for Jensen to go to help the Pleasant Drive residents organize themselves and build or strengthen their own ‘trust capital.’ Consequently, Jensen’s positional authority had no effective impact on resident trust outside of Commission or ZC meetings.

The effect on resident trust by Commission member Bob Jones’ positional authority was similar to Jensen’s. I placed myself in the third position in the ordering of positional authority. My positional authority came from being a Commission member and ZC member. Similar to the other Commission and ZC members I held an evaluative position with voting (i.e., recommending vote) authority. However, I concentrated my positional
authority on building participant dialogue, and building understanding through information sharing. I tried to accomplish the first aspect of building dialogue by asking questions. I asked questions from Commission, ZC members, residents, and other stakeholders about how they felt about the proposed development, and what were their concerns or suggestions. I utilized their responses to develop a series of questions to ask Miller at our ZC and Commission meetings. My intent was to use my positional authority to enter into a dialogue with Sunshine Homes’ representatives where my speech acts were instantly recognizable by residents and other stakeholders as their questions or concerns or suggestions. In this way I tried to demonstrate to the Commission community that my speech acts were communicating their voices. The second aspect I used my positional authority was building understanding through information sharing. I accomplished this simply by providing anyone requesting information pertaining to the Commission or Commission related business (not restricted by law) a hard copy of the information requested in a timely manner. The manner in which I used my positional authority had a positive effect on resident trust, but again, was limited to the spaces of Commission and ZC meetings.

Case 1: Personal

Personal authority is authority based on the standing an individual has with others because of their character, reputation, experience, and treatment of others. It is an authority that is earned not awarded.

There were seven residents including myself (Table 8.3) in Case 1 who utilized their personal authorities most effectively to influence the other Commission members’ and residents’ perspectives of SCI’s proposed development.

The extent of the influences Martin Roundtree and Rita Jensen had on residents from their positional authorities described above is directly related to the amount of personal authority they developed over years of living and interacting with their neighbors and other residents and local organizations. Both Rountree and Jensen earned their personal authorities by their acts of good works - service to their neighborhoods, churches, schools, and the greater Commission community (e.g., Commission, civic
association, recreational center, etc.) - their depth of community knowledge, their reputations of integrity, and their wisdom residents sought out. All of these attributes Rountree and Jensen possessed afforded them the community’s respect, and when either spoke about an issue their views carried substantial weight and residents trusted them.

Table 8.3: Ranking of Personal Authority of Individuals in Case 1

<table>
<thead>
<tr>
<th>Name</th>
<th>Function</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Martin Roundtree</td>
<td>Commission Chair &amp; District Rep</td>
<td>1</td>
</tr>
<tr>
<td>Rita Jensen</td>
<td>Commission/ZC member &amp; CA* secretary</td>
<td>2</td>
</tr>
<tr>
<td>Rosa Williams</td>
<td>Resident &amp; former CA** president</td>
<td>3</td>
</tr>
<tr>
<td>Julia Howard</td>
<td>Resident</td>
<td>4</td>
</tr>
<tr>
<td>Jackie Showers</td>
<td>Resident</td>
<td>4</td>
</tr>
<tr>
<td>Rhonda Johnson</td>
<td>Resident</td>
<td>4</td>
</tr>
<tr>
<td>Michael Modula</td>
<td>Commission &amp; ZC Intern</td>
<td>5</td>
</tr>
</tbody>
</table>

* Golden Bear Civic Association
** Antelope Civic Association

The amount of influence Rosa Williams’ personal authority had on residents was substantial, and though less than Roundtree’s or Jensen’s it was more than the other three residents listed in Table 8.3. Williams, similar to Roundtree and Jensen, also lived and worked in the Commission community for many years and had been active doing community service. However, Williams retired from the active side of community service about two years prior to Case 1. When requested she provides counsel to her civic association or to the Commission. Consequently, residents value and trust Williams’ views and advice. It was no wonder why Williams read the Antelope Civic Association’s letter opposing SCI’s proposed development at the June 1, 2000 Commission meeting. Her presence and reading of the letter symbolized her support and validation of the civic association’s reasons it opposed the proposed development. Williams used her personal authority to increase and extend resident trust beyond the
neighborhoods comprising the Antelope Civic Association to residents of the larger Commission community.

Julia Howard, Jackie Showers, and Rhonda Johnson were long-time residents and had well established social networks within their respective neighborhoods. However, they did not have the level of community service experience as the individuals described previously. Consequently, the amount of influence Howard, Showers, and Johnson exerted over the Commission and residents was less than any of the individuals discussed above, but this is not the same as saying they had no influence. The level of their influence was akin to a supporting role rather than the leading roles of Roundtree, Jensen, or Williams. Compared to each other the personal authorities of Howard, Showers, and Johnson were nearly equal in their influence on the Commission and residents. When Howard said, “[y]ou are proposing too many apartments and too many buildings on too small a lot” (lines 81-82 Appendix A) or Showers said, “[t]here’s already too many apartments in our area. We do not want any more apartments” (line 75-46 Appendix A) or when Johnson said, “[t]he impact of all those apartments will overload our schools and cause overcrowding” (line 76-78 Appendix A) they were providing additional representation and support to the residents’ opposition to the proposed development. In addition, each of Howard’s, Showers’, and Johnson’s speech acts supported the other, and this support allowed residents to perceive their speech acts in an accumulative manner. It was as if the whole community opposed the proposed development. Consequently, this perception contributed to an increase in resident trust.

The amount of influence my personal authority had on resident trust was nominal because it was indirect and through the trust I developed with ZC and Commission members. My personal authority also was less because I did not live in any Commission neighborhood. I earned my personal authority with the ZC and Commission members by providing them information they requested and that they perceived as credible and valuable to them to do their ZC and Commission business.
**Case 2: Personal**

There were five individuals including myself in Case 2 who utilized their personal authorities to influence resident trust (Table 8.4).

**Table 8.4: Ranking of Personal Authority of Individuals in Case 2**

<table>
<thead>
<tr>
<th>Name</th>
<th>Function</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Betty Cooper</td>
<td>ZC Chair</td>
<td>1</td>
</tr>
<tr>
<td>Rita Jensen</td>
<td>Commission member</td>
<td>1</td>
</tr>
<tr>
<td>Michael Modula</td>
<td>Commission member &amp; ZC member</td>
<td>2</td>
</tr>
<tr>
<td>Roy Dent</td>
<td>Resident</td>
<td>3</td>
</tr>
<tr>
<td>Kelly Trace</td>
<td>Resident</td>
<td>3</td>
</tr>
</tbody>
</table>

Both Betty Cooper and Rita Jensen were long-time residents of their respective neighborhoods within the Commission area and were well known to most residents as women committed to community service, Jensen committed to civic good works (described above) and Cooper committed to promoting education excellence of neighborhood youth. Cooper and Jensen both belonged to and were active in their respective neighborhood civic associations and had reputations of high integrity, treating people fairly, and putting community interests above all else. Cooper and Jensen not only understood the specific needs of their respective neighborhoods, but also the needs of the larger Commission community generally. Consequently, residents listened when either Cooper or Jensen gave their view points on community related matters. The personal authorities of Cooper and Jensen had a positive effect on resident trust, but it did not extend beyond Commission or ZC meetings to the Pleasant Drive neighborhood. A reason why the building or strengthening of resident trust did not extend to the Pleasant Drive neighborhood was due to that neighborhood’s lack of having a social infrastructure in place that could receive the trust building effects of the speech acts occurring at the Commission or ZC meetings.
I earned a level of personal authority as I described in Case 1 above by providing Commission and community related information to Commission members, residents, and other stakeholders. To provide information implies that I had to collect information from somewhere or from someone. Collecting information from an individual or providing information to an individual became my starting point to establishing a relationship with that individual. During Case 2 I continued to build up my personal authority by establishing relationships with managers of the City’s parks and recreation and traffic and engineering departments, and then sharing these social networks with Commission and ZC members. I also continued to establish and build relationships with Commission members, ZC members, and residents based on a shared belief of working in the community’s interest. The culmination of my efforts came during the April 1, 2004 Commission meeting when Jensen and Cooper both asked me to make a recommendation to the Commission regarding Sunshine Homes’ rezoning application. Their request signaled to the rest of the Commission and residents at the meeting that they valued my viewpoint. After I explained that I couldn’t support the proposed development because the applicant had not resolved the residents’ concerns, the Commission voted unanimously (save Barnes’ abstention) to disapprove Sunshine Homes’ application. My personal authority had increased to a level that it had a positive effect on resident trust because I had earned a reputation in the Commission community as a person who united residents by building relationships through dialogue and information sharing. Once again resident trust was unable to extend past Commission meetings and ZC meetings and flow to the Pleasant Drive neighborhood because that neighborhood lacked the institutions that could provide a place where resident trust could root itself and grow.

The personal authorities of residents Roy Dent and Kelly Trace are taken together because they are comparatively similar. Both Dent and Trace are long-time residents of the Pleasant Drive neighborhood that Sunshine Homes proposed to build its development. They both spoke passionately about their neighborhood. Trace, I’ve lived there all my life; my parents have lived there. Please take into consideration and let these people have their, the quality of life still” (lines 3045-3057 Appendix B). “We have not been considered” (line 3091 Appendix B). Dent, “[T]hey’re going right ahead and pushing
this thing forward. I just think it’s, it’s very unfair… I hope that the [Commission] will, you know, stand up …. (lines 2993-3039 Appendix B). The emotion contained in the speech acts of these two Pleasant Drive residents resonated with the Commission and captured the essence of the Commission’s frustration in dealing with Miller. Dent’s and Trace’s words revealed a pureness and honesty that had a positive effect on resident trust during the Commission meeting, but did not carry over to their neighborhood.

**Answering the Research Questions**

**Question 1:** What effect does the building up or tearing down of residents’ trust have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?

**Generalization:**

Reciprocal communicative exchanges that build or strengthen relations of trust between individuals or groups provide a preparatory environment for the development of a collective capacity to participate. Building or strengthening relations of trust is one of the skills residents must learn, and then use to unite people.

**Case 1:** Provided a story of building trust among residents, galvanized together by an imminent threat of the proposed plan to build hundreds of apartments that residents perceived would encroach upon and adversely affect the quality of their neighborhoods. Residents presented themselves to each other (plurality) at Commission and civic association meetings (places), which provided safe places (spaces) in which residents engaged in conversation and expressed opinions to the Commission, to the applicant, and to each other. In their conversations and in their discussions with the developer, residents learned that they could trust each other - they could see and hear each other, they could check the knowledge of their neighbors against their own and they had the explicit support of their leadership to explain their positions. This provided them confirmation that they could rely on one another. From this emerging trusting, residents began building solidarity against the proposed development. The actions of the Commission, the ZC, and civic associations also helped build trust between the residents and those
groups as the residents could see that promises were kept, they were encouraged to state their views and the institutions were holding the developer to his promises.

The building of trust between residents in Case 1 was facilitated because they had the additional benefit that they already knew each as neighbors, and spoke frequently with each other about matters beyond this one threat. These residents had established relationships with each other based on shared experiences, rather than based solely on this particular threat to their neighborhoods. The building of trust among the residents was a necessary skill set in their ability to develop a collective capacity to participate in the City’s land-use decision-making. This was further facilitated by the leadership of the Commission and the ZC.

**Case 2:** Also provided a story of trust building among residents, based on a potential threat of a proposed development altering their neighborhood character from suburban to urban, and creating additional traffic congestion. Unlike the residents in Case 1, these residents had a more difficult time building trust, and the trust they built was weak and did not develop into resident solidarity against the proposed development. There are several contributing impediments that explain this weak level of resident trust. First, these residents did not know each other to the extent residents in Case 1 did. Unlike the close fitting small parcel layouts of the subdivisions where Case 1 residents lived, Case 2 residents lived in a rural-like setting. Parcels were large, residents spread out, and the neighborhood sparsely populated. The separation of neighbors by physical distance hindered frequent neighbor contact, thus they had no practice in building trust through speech acts.

Second, the residents in Case 2 were unorganized; they had no civic association, no homeowners group, or any kind of neighborhood organization where they could meet and talk about matters related and unrelated to their neighborhood. Consequently, the Commission and ZC meetings were the only forums where residents could go to express themselves.

Third, the subtlety of the developer’s representative gave these residents less motivation to speak out and a less clear-cut opponent to rally against.
Fourth, unlike Case 1, Commission Chair Barnes used his leadership position to emphasize his own views and encourage the Commission to accept the proposed development. Consequently, Barnes generated a negative effect on trust between and among the Commission, the residents, and the ZC. Barnes’ speech acts indicating that residents were wrong had a withering effect on residents’ abilities to push forward for what they believed in and connect with other residents who had similar beliefs. His speech acts diminished trust in oneself and in one’s neighbors. These destructive speech acts, particularly on the part of a leader, tended to hinder or tear down the building of trust between residents, and consequently diminished or obstructed the residents’ ability to develop a collective capacity to participate in the City’s land-use decision-making.

Question 2: What effect does the building up or tearing down of residents’ common knowledge have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?

Generalization:
Reciprocal communicative exchanges that build or strengthen residents’ knowledge base provide a preparatory environment for the development of a collective capacity to participate. Building or strengthening residents’ knowledge base supports residents’ confidence, provides additional cohesion with other neighborhood residents, and promotes resident self-determination in knowing what’s best for their community. Exchanges that prohibit, suppress, or invalidate a building of or a strengthening of a residents’ knowledge base tend to obstruct or diminish an environment in which a collective capacity to participate can develop.

Case 1: The residents knew what they wanted for their neighborhood and for their community and knew what they did not want. The applicant’s representative did not directly challenge resident knowledge. Instead, he simply ignored it and attempted to use zoning laws and private property rights to convince Council to approve the rezoning application. Hancock’s blunt actions gave residents clear rallying ground. Leadership
that asked what people wanted and encouraged them to make statements and take action also helped.

**Case 2:** The residents, similar to Case 1, knew what they wanted and did not want in their neighborhood. In their frustration that the applicant’s representative did not apparently understand their concerns, residents and the Commission integrated objective data into their subjective knowledge to better communicate their arguments against the proposed development to the applicant’s representative. They supplemented their common knowledge with a more objective-based language in their dialogues with the applicant’s representative to help the representative better understand the residents’ and the Commission’s issues. This is akin to Healey’s (1992) assertion that participation can be achieved by providing the “better argument” (244).

The Commission’s “better argument” was irrelevant to the developer and did not convince Council to side with the community. The Commission’s and residents’ attempt to shape their common knowledge into the more objectified “mainstream” form of dominant knowledge was misplaced, but should not be misconstrued. The Commission and residents tried reshaping their knowledge into a form of communication that was more easily understandable for the applicant’s representative. It was not an attempt to change their knowledge but rather to make it understandable to those outside the community (i.e., applicant, City Council).

**Question 3:** What effect does the building up or tearing down of residents’ legitimacy/legitimation have on their ability to develop a collective capacity to participate in the City’s land-use decision-making?

**Generalization:**

Reciprocal communicative exchanges that build or strengthen residents’ legitimacy provide a preparatory environment for the development of a collective capacity to participate. Building or strengthening residents’ legitimacy is essential to building or strengthening resident trust and resident knowledge. Building or strengthening resident
legitimacy provides a recognition and validation that residents are important and are valued by the larger community. Exchanges that impede or invalidate a building of or strengthening of residents’ legitimacy tend to obstruct or diminish an environment in which a collective capacity to participate can develop.

**Case 1:** The residents believed they had a stake in what occurred in their neighborhood, but did not know how to go about fighting the applicant’s proposed development, which they believed would be detrimental to their neighborhood. The residents were not secure in knowing the legitimacy of their arguments against the proposed development until Commission Chair Roundtree facilitated a Commission environment that supported and encouraged resident participation in discussing and refining their arguments through dialogue until they established confidence in their legitimacy. At this point they were so knowledgeable and confident in their legitimacy that they were willing to force a referendum.

**Case 2:** From the start of the Commission’s review of the rezoning application, residents were de-legitimized. The Commission Chair played a significant role in the de-legitimizing resident’s concerns about and opposition to the proposed development. The Commission Chair used his position to disrespect and discredit arguments against the proposed development, advocated in support of the development project, defended the development project for the applicant, and continually reiterated to the community the inevitability of City Council approving the development.

Although the Commission retained confidence in its legitimate right to reject the proposal, the residents most affected were unable to overcome the dual issues of little internal trust among themselves and the belittling, fatalistic attitude of the Commission chair.
Question 4: What effect does a Commission Chair’s “reason giving” leadership style have on residents’ ability to develop a collective capacity to participate in the City’s land-use decision-making?

Generalization:

A “reason-giving” leadership style supported, encouraged, and nurtured a particular type of speech act that provided an environment for residents to build or strengthen their trust in each other, which also supported an environment for residents to develop a collective capacity to participate. Reason-giving not only provided a transparency in statements made, but went much further by allowing residents to question and examine the reason giver’s reasoning, and for residents to offer their perspectives and the reasons behind their suggested changes. A reason-giving leadership style by its nature is inclusive of all perspectives and knowledge bases, with the sole requirement that statements made must include the reasons behind those statements. The speech act of reason-giving is a knowledge validating and legitimizing social process.

The evidence of these cases indicates that leadership had a more significant influence on residents’ ability to develop a collective capacity to participate in the City’s land-use decision-making than I originally expected. In Case 1, Commission Chair Roundtree, through his speech acts, made residents feel what they had to say was important, valid, and legitimate. That is, he helped build trust, knowledge and legitimacy through his speech acts. In a manner similar to Elkin’s theory of reason-giving (1987) Roundtree encouraged residents to ask questions and probe the rationale of anyone making statements of fact. Roundtree facilitated a coming together of the Commission and residents to teach to each other and learn from each other how to participate in a way that had meaning to them. He facilitated their ability to exercise their own brand of participation when dealing with the City. Commission Chair Roundtree fostered a positive attitude in residents; showed them that residents were important and could organize, mobilize, and participate to influence City Council’s decisions to the benefit of the community. Roundtree strove to raise the community’s consciousness of its rights, and its power to hold the City accountable for not meeting the community’s current needs.
and future vision. During Roundtree’s tenure, the Commission appeared to be transforming from an advisory body of the City (i.e., Arnstein’s consultation or tokenism) to an actual participant in deciding City land-use matters.

Question 5: What effect does a Commission Chair’s “go along to get along” leadership style have on residents’ ability to develop a collective capacity to participate in the City’s land-use decision-making?

Generalization:

A “go along to get along” leadership style promotes self-interested behavior and the status quo. Although this type of leadership style may promote transparency, it is a transparency with limited public interaction, and a limited possibility for change. A go along to get along leadership style diminished residents’ ability to develop a collective capacity to participate as it tended to privilege the dominant knowledge and shut out alternate forms of knowledge (e.g., experiential, subjective). This type of leadership style tended to create an environment that discouraged residents from building trust relationships, while making the source of their knowledge and legitimacy dependent from without.

In Case 2, Commission Chair Barnes’ speech acts fostered a fatalistic attitude about the inevitability of City Council deciding contrary to the Commission’s recommendation, and the Commission and the community should take what was offered by the applicant; a go along to get along attitude (Stone 1989). Instead of asking the community what it wanted to do to influence Council’s decision, and supporting the community, Barnes told the community what the outcome was going to be and that there was essentially nothing left for the community to do to influence Council’s decision. This had the effect of diminishing the development of trust, knowledge and legitimacy among the residents and between them and their commission and CZ.

One consequence of Commission Chair Barnes’ leadership style emerged after City Council voted to approve Sunshine Homes’ rezoning application. The Pleasant Drive
residents apparently believed what Barnes had said about the inevitability of the outcome, and questioned whether further opposition to the proposed development was worthwhile. They apparently convinced themselves that the struggle was pointless and they should accept whatever Council decided. This outcome was confirmed to me by Karl Meeks and Kelly Trace, two of Pleasant Drive’s most vocal residents opposing the proposed development. In addition, these neighborhoods’ lack of neighborhood organization and social infrastructure gave them no other leaders to fall back on or listen to. Their inability to fully trust the CZ and Commission (due in large part to Barne’s leadership style and the lack of representatives specifically from their neighborhoods) gave them nowhere to turn. Consequently, the residents showed no interest in organizing their neighbors and preparing for a referendum petition drive in the event City Council approved rezoning application.

Question 6: What broader lessons do these understandings hold for other citizen organizations?

Generalization:

The consequences of dialogic reciprocal exchanges that tear down trust, knowledge, and legitimacy contribute to a loss of or diminishing of the community’s learned participation skills and less ability to build those skills. It is imperative that communities share and teach their participation skills to their residents. It is also important that a community pass on its collective memory and learned skills to each succeeding generation of civic leaders and residents so that the community can perpetually reproduce its participation capacity. In particular, the style of leadership practiced in the community is crucial.

Participation capacity need not and should not be based on case-by-case conflict. This places participation capacity at risk each time a conflict arises. A better basis upon which participation capacity may be built is on the resident’s common aspirations and
their direct constructive reciprocal exchanges. Therefore these exchanges must be encouraged and practiced. Good leadership is an important component of this as is developing trust in one’s fellow citizens along the way.

The main differences between Case 1 and Case 2 involve the preexisting social infrastructure among the residents, the opponent’s behavior and the attitude of the leadership. Case 1 started with neighbors who knew each other and had communicated often so they were accustomed to the kinds of speech acts that build trust, knowledge and legitimacy. They were faced with a blunt opponent who made little effort to placate them and thus encouraged strong opposition. Finally the Commission chair in Case 1 encouraged speech acts of explanations, required promises from the developer and tried to make sure those promises were fulfilled, and made and kept promises himself. These factors, all related to speech acts building trust, knowledge and legitimacy, were powerful factors in building participatory capacity.

Case 2’s opposition started from a weaker base because the residents most involved had not developed the social infrastructure that repeated speech acts allowed in Case 1. In Case 2 the opponent was more subtle. He used his speech acts to repeat rather than explain, and undermined activism by not giving the community a clear rallying point. Finally the leadership of the Commission in Case 2 had divided loyalties, and tried to convince residents that there was no point in fighting the developer. So Case 2 suffered from a weak base to start with, no clear rallying cry, and leadership that undermined its concerns. In Case 2, the conditions and speech acts to the detriment of trust, knowledge and legitimacy were far more powerful than those building it.

**Conclusion**

This study’s purpose was to understand how residents build a capacity, or conversely, are prevented from building a capacity to participate in city land-use decisions that have an effect on their neighborhoods. The focus was on the impact of speech acts on the development of trust, knowledge, and legitimacy among neighborhood residents and between them and the Commission and ZC. We have achieved that and have learned civic capacity connects one human to another. Humans connect to each
other and learn from each other through acts of exchange. Constructive acts of exchange can foster or strengthen trust, knowledge, and legitimacy between people (speech acts). In some cases (e.g., the developer in case 1) destructive speech acts can push people into a position that strengthens their trust, knowledge, and legitimacy. Conversely, destructive acts of exchange can convince people that they have no knowledge or legitimacy and can limit the trust that they build with each other.

We have also learned that the speech acts of leaders (both those who hold positional authority and those who hold personal authority) are particularly important. Leadership capacity is necessary to increase connectedness between people, and provides civic purpose and direction by increasing trust, knowledge, and legitimacy among the residents.

Neighborhood institutions (e.g. the area commission, civic associations, and other neighborhood organizations) are also significant because they provide the environmental spaces and conditions for trust, knowledge, and legitimacy to develop. We have learned that the lack of this infrastructure can be a significant impediment to the development of civic capacity.

The area commission, we learned, is particularly important because it provides a pre-existing institutional “shell” for resident appropriation into a trust-building, knowledge-building, and legitimacy-building institution that can develop or strengthen participation capacity. However it cannot accomplish this without other social infrastructure and without leadership that supports the development of trust, knowledge, and legitimacy among the residents (rather than the leaders assuming that they have knowledge and legitimacy and residents do not). Part of that social infrastructure comes from smaller social institutions, such as civic associations. However, there must be a communicative conduit connecting the area commission to the civic associations, and the communication must be bi-directional, trust-building, knowledge-building, legitimacy-building, and representative of residents’ needs and aspirations. Another part of that social infrastructure comes from the individual residents themselves. Residents must want to participate, have a reason to participate or they won’t. Developers can motivate residents to participate because of the perceived threat the developer brings. Yet when
the threat passes so too does resident interest in participating. That is where social learning becomes important. Residents must be socially educated to participate not only when there are threats to the community, but especially when there are no threats to the community. Thus, social learning instills a value in residents of wanting to do community service.

The two cases that comprised this research illuminate the importance of building trust between residents as one of the first steps towards building participation capacity, because trust provided a shared and common experience that could lead to the formation of an initial bond between residents (or strengthen their existing bonds). Residents could use that bond of trust they developed to build and share community knowledge. Sharing knowledge matters because residents need to come to a common understanding of their knowledge and because the speech act of sharing knowledge builds trust and legitimacy. Civic leadership is also necessary to encourage this bond and harness residents’ knowledge toward a deliberate civic purpose, enabling residents to move up the rungs of Arnstein’s participation ladder towards an “authentic participation”. The analyses and conclusions of the research lead to the following recommendations.

**Recommendations to Neighborhood Organizations**

I provide the following recommendations specifically for neighborhood organizations (area commissions, civic associations, etc.):

*Leadership*

Identify leaders that embrace a reason-giving philosophical approach to building and supporting resident participation capacity by encouraging speech acts of explanation and making/keeping promises.

*Education*

Develop trust building, communication building, and leader building education programs for residents. Consider collaborating and co-developing civic and leadership curricula with local schools and faith-based organizations. Establish clear expectations of
the command structure, purpose, objectives, and goals of such programs so not to create conflicting loyalties or cross-competing goals of partnering organizations. Neighborhood organizations benefit from helping to increase resident participation capacity because they can help shape training so that residents can be more informed about city policy, what arguments are likely to be effective, and ones that are a waste of time and effort. Education about how to develop constructive dialogues and discussions (speech acts) is essential.

**Community Service**

Develop community service projects for all ages. Collaborate with local schools to co-develop community service projects for high school juniors and seniors that are integrated to the community’s area commission. This service would have the additional benefit of helping people practice their speech acts in the community, establish or expand their social networks, and serve as a resource pool for up and coming community leaders.

**Civic Development**

Establish an organization (like the local neighborhood groups in Case 1) within the community that instills civic development of trust, knowledge, and legitimacy through actual neighborhood work projects. Faith-based organizations have shown keen interest in doing this, but need neighborhood leadership to initiate and take ownership of it. It is important to be aware that each different type of group has its own goals and priorities. Therefore, it is important to recognize that neighborhood organizations and faith based groups, for example may not have the same goals in mind. Constructive speech acts would help all members of the community come to clear understandings about each other and help to overcome this issue. Finally, an essential aspect of civic development is respect. Respect can be performed in many ways, for example, by speaking respectfully through the use of positive speech acts. Keeping one’s promises and providing clear reasons that support one’s statements of fact. Listening with respect, which perhaps, is the most important act of respect one can give to another.
The work to implement the above recommendations would necessarily reside in the neighborhoods. Local faith-based organizations and other civic-minded organizations have shown an interest in assisting residents, which could significantly decrease the residents’ burden of implementing these recommendations so long as everyone agrees on the goals and purposes.

**Study Transferability (Generalizability)**

This study has limitations that have a bearing on its transferability. These limitations involve the research instrument, namely me. First, the data I reported on in this research were filtered through my experiences and perceptions. My belief that social change needs to start with the individual colored my perceptions, which attracted me to the neighborhood scale where I focused my work on neighborhood networks and institutions. Though I made every effort to identify and account for my bias (detailed in Chapter 4) as I analyzed the data, there is no doubt that my emphasis on neighborhoods and individual action colored how I structured my research and the conclusions I reached. A different researcher could have looked at the data differently, particularly if they wanted to examine other aspects of social relations, such as the behavior of faith based organizations, or the structural power imbalance between developers and neighborhood organizations.

Secondly, I described the possibility that my behavior of asking questions in public for residents likely had a nominal influence on residents emulating my behavior. I made this statement because Commission Chair Roundtree used his positional authority as Commission Chair to present a similar behavior that was much more visible and influential on residents than mine. Roundtree’s influence on residents from his personal authority was far superior to mine. Roundtree grew up in the Commission community and it took him decades to develop the breadth and depth of personal relationships underpinning his personal authority.

However, I realize that my interrogatory style of asking questions, the subject matter of the questions I asked, and being a Commission member and a Zoning Committee member potentially had significant impacts on the transferability of this
research. If an attempt is made to replicate this research, the researcher will need proficiency in skills of communication, negotiation, and leadership, and to be in a position to access and be a part of the community’s dialogue. In addition, my personality characteristics may have influenced some Commission and ZC members and residents to defer to me on several occasions to take the lead inquiring role, which may also interfere with the transferability of this research. However, it must be remembered this was a participatory action research (PAR). The primary purpose of PAR research “is not merely to describe and interpret social reality, but to radically change it” (Maguire 1997, 28).

**Research Contribution**

This work begins to get at the “how” of resident participation. This research adds to our understanding by examining speech acts that build or diminish the reciprocal precursors of trust, knowledge, and legitimacy that can prepare or obstruct conditions for participation to occur. It takes a step forward by describing how residents can move between the rungs of Arnstein’s participation ladder: by indentifying the speech acts that help build concrete skills in building trust, knowledge, and legitimacy that residents need to build or strengthen their capacity to participate. It stresses the crucial nature of the exchange between residents rather than building capacity within each resident. Residents must engage in reciprocal speech acts to build trust, knowledge, and legitimacy among themselves not as individual attributes. This joint set of skills allows the development of participatory capacity and the opportunity to affect their neighborhoods’ futures.

**Suggestions for Future Research**

While I was conducting this study, I made some discoveries that should be beneficial to future research of this type. My first discovery relates to making the job of the future researcher less burdensome. Initially, my research grew out of what I was observing on the ground as an area commission intern, which was substantially prior to deciding that this data would become the core of my research. Much later, I decided the area commission would make an excellent case study for my dissertation about resident
participation. I had data, but I didn’t know whether I had the right data to answer my research question. While in the field collecting data I neither had a sufficient theoretical grasp on the phenomenon I was observing, nor was I aware that what I was observing would eventually become the data for my dissertation research. This necessitated me to search the literatures for a theory or theories that matched as closely as possible the data I had been observing. It would have been much easier and more efficient if I had at least a basic theory of the phenomenon I was observing, thereby allowing me to refine and modify the theory as I probed deeper into my research. This would have allowed me to narrow and focus on specific data and ignore superfluous data. I suggest those wanting to follow this research and its approach become familiar with the theoretical perspectives of participation, to facilitate identifying and understanding the phenomenon being observed.

Another discovery I made during this research was that the role leadership plays in constructing or destroying participation is far more extensive and complex than I realized. Research into the conditions under which neighborhood leadership develops or is kept from developing, the formation of its values, how it governs (i.e., its rules of participation), and the ramifications of professionalizing leadership appear to be the next steps to take.

Finally, I discovered during this research that the City’s bureaucracy could significantly affect residents’ participation capacity. I found some City departments were accessible and accommodating to residents, while others were secretive and non-responsive. It might be fruitful for future research to study the impacts of a city’s bureaucracy on residents’ ability to build or strengthen their participation capacity.

**Concluding Remarks**

The goal of this dissertation was to describe how residents build a capacity, or conversely, are prevented from building a capacity to participate in city land-use decisions that affect their neighborhoods. The importance of the speech acts of making promises and giving explanations and their impact on trust, legitimacy, and knowledge have been demonstrated by the two case studies in this dissertation. The importance of
social infrastructure and the very important role of neighborhood leadership have also been shown. For residents to be able to develop their participatory capacity and have an impact on the future of their own communities it is important to build up rather than tear down trust, knowledge, and legitimacy among themselves and this can only be accomplished through constructive reciprocal exchanges in which the speech act is at its center. Consequently, residents must talk to each other as a first step toward authentic participation in decisions that affect their neighborhoods.
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Appendix A: Case 1 Narrative
### Appendix A

**Case 1 Narrative**

**Table 1**

Pseudonyms of People and Organizations Involved in Case 1 Research

<table>
<thead>
<tr>
<th>Pseudonym</th>
<th>Function</th>
</tr>
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<tbody>
<tr>
<td>Summit Communities Incorporated (SCI)</td>
<td>Rezoning Applicant</td>
</tr>
<tr>
<td>Harold Hancock</td>
<td>Applicant’s Representative</td>
</tr>
<tr>
<td>Glenda Riddle, Investment Management LLC</td>
<td>Representative Support</td>
</tr>
<tr>
<td>Lee Comstock, P.E. LLC</td>
<td>Representative Support</td>
</tr>
<tr>
<td>Bowers, Stu &amp; Gable, Inc. Consulting Eng. LLC</td>
<td>Representative Support</td>
</tr>
<tr>
<td>Commission</td>
<td>Area Commission</td>
</tr>
<tr>
<td>David Henderson</td>
<td>Commission Member</td>
</tr>
<tr>
<td>Rita Jensen</td>
<td>Commission &amp; ZC Member</td>
</tr>
<tr>
<td>Martin Roundtree</td>
<td>Commission Member</td>
</tr>
<tr>
<td>Audrey Summers</td>
<td>Commission Member</td>
</tr>
<tr>
<td>Clarence Watson</td>
<td>Commission &amp; ZC Member</td>
</tr>
<tr>
<td>Kevin Moffet</td>
<td>ZC Member</td>
</tr>
<tr>
<td>Jacob Reynolds</td>
<td>ZC Member</td>
</tr>
<tr>
<td>Jarrod Woods</td>
<td>ZC Member</td>
</tr>
<tr>
<td>Clyde Washington</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Rubin Downs</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Jackie Showers</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Rhonda Johnson</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Percy Washington</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Julia Howard</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Rodney Hardcomb</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Rosa Williams</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Antelope Civic Association</td>
<td>Civic/Neighborhood Group</td>
</tr>
<tr>
<td>Golden Bear Civic Association</td>
<td>Civic/Neighborhood Group</td>
</tr>
<tr>
<td>Sunrise Civic Association</td>
<td>Civic/Neighborhood Group</td>
</tr>
<tr>
<td>Columbus Smart Growth Partners</td>
<td>Development Organization</td>
</tr>
<tr>
<td>Eternal Light CDC</td>
<td>Non-Profit Organization</td>
</tr>
</tbody>
</table>
The ZC’s initial meeting with SCI (i.e., the applicant) occurred on April 20, 2000. There were twenty-seven residents present at the meeting, primarily from the Golden Bear and Antelope neighborhoods, which are two single-family neighborhoods abutting the site of the proposed development. Harold Hancock, a partner of SCI presented the proposed development plan to the ZC. It consisted of 710 apartments, 140 condominiums, and approximately 300,000 square feet of

98 Information obtained from April 20, 2000 ZC meeting sign in sheet.
office space\textsuperscript{99} on 88 acres of vacant land (Appendix A.1 Exhibit 1). Hancock exuded an aura of being a no-nonsense, hard-driving, matter-of-fact businessman and he appeared annoyed and inconvenienced in having to present SCI’s proposed plan to the ZC and residents. As Hancock made his presentation, his demeanor was strikingly condescending and his tone abrasive. He came across to the ZC and residents not as seeking the community’s approval and support of the proposed plan, but instead of telling the ZC and residents what he was going to build on in their community with or without the community’s support\textsuperscript{100}.

The ZC expressed to Hancock their concerns about the commercial portion of the proposed development regarding the potential for traffic congestion. They also raised a design issue about a proposed new street that might create a traffic safety hazard and circulation impingement. These issues, the ZC believed, could be resolved amicably by working with Hancock in suggesting minor redesign changes of the internal traffic system.

However, the ZC and residents were gravely concerned about the multi-family units SCI was proposing to build. Residents at the meeting were unanimous in their opposition to the proposed apartment portion of the development. Residents at the meeting wanted to make two points clear to both Hancock and the ZC. First, residents wanted to impress upon Hancock their commitment and tenacity in opposing the proposed apartment development. Second, residents wanted the ZC to understand the reasons behind the residents’ opposition to the proposed apartment development.

Representing the residents of the Golden Bear Civic Association, long time resident Jackie Showers stated, “[t]here’s already too many apartments in our area. There’s no need for additional apartments. We do not want any more apartments.” Rhonda Johnson, another Golden Bear resident added, “[t]he impact

\textsuperscript{99} Square footage of office space estimated from applicant’s 7/14/2000 Concept Plan.

\textsuperscript{100} Immediately following the ZC meeting, members of the ZC and residents attending the meeting vocally expressed to each other their anger over Hancock’s disrespectful and offensive monologue by which he marginalized the views of the ZC and residents regarding their concerns of the potential negative impacts the proposed development might have on the community.
of all those apartments will overload our schools and cause overcrowding.”
Finally, Golden Bear resident, Percy Washington, echoed a similar concern
regarding the additional negative impact of adding 850 multi-family units on “the
community’s already over-loaded public recreation facilities.” Julia Howard, a
Sunrise Civic Association neighborhood resident stated, “[y]ou are proposing too
many apartments and too many buildings on too small a lot.” Finally, ZC
member Rita Jensen stated, “I don’t see any benefits your development would
provide to the community. It seems your development will be taking benefits
from the community and in return putting a greater burden on the community’s
existing services such as schools and recreation, and increasing traffic
congestion.”

The meeting was nearly out of time when ZC Chair Clarence Watson
acknowledged there were several unaddressed and unresolved issues. ZC Chair
Watson recommended Hancock meet with the Golden Bear and Antelope
neighborhood groups outside of and in addition to the regularly scheduled ZC
meetings to provide more time for discussion of the issues specific to these two
neighborhoods and to try to resolve their issues with SCI. Hancock and the
Golden Bear and Antelope residents agreed to meet with each other.

The May 4, 2000 Commission Meeting
There were forty-seven residents and other stakeholders in attendance at this
meeting. Kevin Moffet, the ZC’s Recording Secretary, introduced SCI’s rezoning
application. Moffet indicated that this was the first reading by the Commission of
this application. Moffet presented the following ZC report indicating that SCI
proposes to develop suburban office buildings …, and … condominiums and apartments… to permit a
maximum residential density of up to 10.7
dwellings units per acre…. The following issues
were identified by Zoning Committee members and
area residents:
Residents do not want additional apartments in the area.

There is no need/demand for additional multi-family units/apartments in the area.

The impact on [public] schools will overload existing facilities.

The impact on [public] recreation will overload existing facilities.

The number of structures pursuant to full build-out of the development.

The number of apartment units, size of individual units & number of bedrooms.

Access into and out of the development.

Lastly, Moffet indicated that the ZC recommended to Hancock that he should meet with the Golden Bear and Antelope neighborhoods and try to resolve residents’ concerns about the proposed development.

The ZC concurred with the residents’ opposition to the proposed building of additional apartments in the community based on the view that the area was currently oversaturated with apartments as compared to single-family housing. The ZC also raised several additional concerns focusing on: whether there was sufficient demand to warrant building additional multi-family units in the area; whether the overall density and intensity of the proposed development would overwhelm the existing public infrastructures (e.g., schools and recreation facilities); and the potential traffic congestion and safety impacts created by the proposed development.

The Commission then permitted Harold Hancock to make his presentation of the proposed development. Hancock distributed several documents to the Commission, which included the proposed development’s Limitation Text, a

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concept plan, building elevations, the Canterbury Lane development plan, and a consulting engineer’s letter about the proposed development’s stormwater impact. Hancock summarized the central aspects of the proposed development to the Commission.

In addition, Hancock addressed some of the public opposition to the proposed development that was expressed at the April 20th ZC meeting. Hancock indicated that a traffic study would be complete “within the next ten days” to address residents’ concerns about increased traffic congestion, the location of the two access points from Canterbury Lane and their proximity to existing intersection spacing, and a need for signalization. Hancock agreed to participate in the cost to provide signalization if it were warranted. The proposed development would include seventy-two ranch-style condominium units with brick and cedar exteriors that would act as a buffer to the existing single-family homes at the parcel’s northern boundary. Hancock indicated that he anticipated purchasers of these condominiums would be young professionals or empty nesters and that there would be 142 units in total for sale. The proposed development also included building three-story apartment complexes along the southern portion of the property, totaling 270 units. Apartment residents would enjoy the recreational benefits of a swimming pool and other proposed amenities. In his description, however, Hancock accounted for less than half (412 of the 850) of the multi-family units comprising the total residential portion of the proposed development. The majority of the remaining 438 apartments that Hancock did not talk about would be in the form of three-story complexes.

Commission member Rita Jensen asked Hancock if families were anticipated to move into the multi-family units?

Hancock indicated that his “historical facts showed that the owner’s profile suggested very few, if any, children.”

Commission Chair Martin Roundtree asked Hancock if he “considered reducing the number of apartments and increasing the number of condos?”

Hancock stated, “the numbers wouldn’t let [him] reduce the density.”
During the Commission meeting residents who lived closest to the proposed development, especially those residents of the Golden Bear neighborhood, expressed their concerns about the type and density of the residential portion of the proposed development\(^{102}\). These residents made it abundantly clear that they did not want any more apartments built in the area.

Audience member Rodney Hardcomb stated, “even a few more children would [negatively] impact the immediate schools, which are already at capacity.”

Audience member Rosa Williams stated, “building one more apartment in this community is one too many.” Williams expressed concern over the community’s schools, and the low student test scores; and felt that the proposed development would attract families with children and place additional burdens on the schools. Williams invited Hancock to visit the area’s schools and see himself how “jammed-packed” they are.

Commission intern Michael Modula asked Hancock, “what is the status regarding meeting with the Golden Bear and Antelope civic associations?” Hancock responded, “we made some phone calls and Julia Howard said she wouldn’t meet with [him].” Hancock added, “to date I have not met with either of the neighborhood groups.”

Commission member Jensen indicated no one from SCI had contacted her in her capacity as the secretary of the Golden Bear Civic Association.

Commission Chair Roundtree alerted Hancock that Julia Howard is a member of the Sunrise Civic Association and was not the appropriate person to contact regarding meeting with Golden Bear and Antelope. Commission Chair Roundtree announced Hancock now had the appropriate contact persons for both Golden Bear and Antelope civic associations, and encouraged him to meet with these organizations prior to the May 18 Zoning Committee meeting.

\(^{102}\) Testimony given by residents attending May 2000 monthly Commission meeting.
The May 18, 2000 Zoning Committee Meeting

There were twenty-four residents present at the May 18th ZC meeting, most of whom were from the Golden Bear and Antelope neighborhoods. Hancock had not yet met with residents of the Golden Bear and Antelope neighborhoods outside of ZC or Commission meetings. The ZC had several questions remaining from the last ZC meeting about the proposed development that they wanted Hancock to address. ZC member Jarrod Woods commented that “the majority of the apartment buildings SCI is proposing to build are three stories in height.” Woods went on to express his concern, that “allowing three story apartments is inconsistent with the current two story apartment heights [within the Commission area.” ZC Chair Clarence Watson added,

I am concerned about the potential privacy issues of having three story apartments set so close to the existing single-family homes. Residents on Floral Drive would like the setbacks increased from 25 and 50 feet to a setback like the 150 feet you propose for Pine Cone Court. Can’t you increase these setbacks and move the apartments farther away from the single-family homes?

Hancock responded “the twenty-five foot setbacks are required…”, and added that he had “exceeded this requirement at several points on the property.” He indicated that he was “proposing more landscaping than is required” at the twenty-five and fifty-foot setbacks to provide additional screening for the residential homes. Hancock indicated that he would “look into” the site plan to see if it can be modified to increase these setback distances to something more amenable to the residents’ preference.

ZC member Rita Jensen indicated she had two major concerns, traffic and density, about the proposed development. Regarding traffic, Jensen commented that Hancock promised at the last (i.e., May 4th) Commission meeting a traffic study would be ready in ten days, but the ZC had yet to receive a copy. Jensen

103 Information obtained from May 18, 2000 ZC meeting sign in sheet.
asked Hancock when the ZC could expect to receive a copy of the study. Hancock responded, “[a]s soon as I get it I’ll provide you with a copy.”

ZC member Jensen continued and expressed her second concern about the proposed residential density of the development. “How did you calculate the 9.65 density?”

Hancock responded, “[b]y dividing the total number of residential units, 850 units, by the total acreage of the development.”

ZC member Jensen responded,

Yes, I see, but in your limitation text it states, ‘The overall subarea density shall not exceed 946 dwelling units’, which when I divide that number by the 88 plus acres comes out to a density of 10.7 units per acre. So, it seems your proposed density can be from 9.6 to 10.7 units per acre. Can you …

Hancock interrupted,

That’s a typo. We are proposing to build a total of 850 units. If you look at a, b, c, and d under number one you will see that we specified the total number of dwelling units. Condominium Village A has a total of 72 units, Village Bs total is 68, the Multi-Family Village A has a total of 270, and B has a total of 440 units. If you add them up it comes out to 850 total units, not 946. 946 was a typo.

ZC member Jensen, undeterred by Hancock’s disrespectful tone, continued,

Thank you for the clarification. However, I still have a problem with your proposed density of 9.6 units because it’s much higher than the 6 to 7 units our Area Plan recommends. 9.6 units per acre would give you 232 more units than the maximum our Area Plan recommends.

Hancock responded, “The area plan calls for a density between 8 to 9 units per acre, and we believe the high quality of this development should permit us to have a slightly higher density.”
ZC member Jensen, “Another problem I have is with building the residential units on 66 acres instead of the total 88 acres, because you’re using the other 22 acres for office space. This will really make the residential units look all crammed together.”

Hancock responded, “We disagree. We have spent a considerable amount of time designing this development to give it an open-air feel with pedestrian corridors and green spaces. And … the development isn’t viable without the commercial portion.”

ZC member Jacob Reynolds expressed concerns over some of the exterior building materials allowed in the proposed limitation text for the commercial buildings.

We have had several residents requesting, which I quite agree, you remove architectural pre-cast concrete as an allowable exterior material unless it’s covered by one of the listed veneers in the Building Design section of Subarea A. We also request you change the sentence in number six to state all exterior sides of commercial buildings need to be finished in one of the listed veneers. Bare concrete or painted concrete are not allowed.

Hancock responded, “We can agree to those changes.”

ZC member Jacob Reynolds also had concerns over some of the exterior building materials allowed in the proposed limitation text for apartments.

It seems every time developers come into our community they only can do vinyl siding on apartments. The community has had it with vinyl siding and would like developers to start providing more aesthetically pleasing exterior materials. The community requests you delete vinyl as an allowable exterior building material for apartments in the Building Design section of Subarea B.
Hancock responded, “Vinyl is an extremely durable and economical exterior building material that should be left in the [limitation] text as an optional building material.”

The ZC was once again running out of time, but not running short of questions to ask Hancock. ZC member Jensen suggested the ZC draft a letter submitting all of its questions and resident’s questions to Hancock for written response. The ZC members unanimously agreed and alerted Hancock to expect its letter within the next two days (Appendix A.1 Exhibit 3).

The June 1, 2000 Commission Meeting

There were twenty-nine residents and other stakeholders (i.e., faith-based, community development, and recreational organizations) in attendance at this meeting, which lasted nearly two and one-half hours. The majority of the meeting time was devoted to SCI’s proposed rezoning and development plan about which extensive dialogue occurred between Commission members, Hancock, and audience members.

ZC Recording Secretary, Kevin Moffet introduced SCI’s rezoning application and made a summary presentation of the application and proposed development. Moffet indicated the Commission’s land use plan (Plan) “recommends low-density residential development.” However, he added that the Plan’s meaning of low-density “is ambiguous,” because the Plan “indicates in one section 8 to 9 dwelling units per acre, in another section indicates 6 to 7 dwelling units per acre, and in another indicates 11 to 12 dwelling units per acre.” Moffet also stated SCI’s proposed “development is a wrap-around of existing residential development,” which is “somewhat inconsistent with the … Plan.”

Referring to the ZC’s letter dated May 19, 2000 (Appendix A.1 Exhibit 3), Moffet indicated that the ZC raised several issues with the applicant, particularly regarding residential density and buffering, and particularly along the northern and western boundaries of the parcel. Moffet indicated the ZC had yet to receive a written response from the applicant.
Harold Hancock, agent for applicant, distributed to Commission members copies of SCI’s written responses to the ZC’s May 19, 2000 letter. Hancock also distributed copies of SCI’s revised limitation text. Hancock stated that the previous limitation text “erroneously listed the total number of dwelling units at 946. This revised text shows the corrected number at 850 dwelling units.”

Hancock indicated that the revised limitation text included “many of the changes the ZC requested.” Regarding the exteriors of the proposed commercial buildings, Hancock indicated the text was modified to read, “building materials shall apply to all exterior sides of the buildings.”

Intern Michael Modula alerted the Commission that, Mr. [Hancock] has not fully complied with the Zoning Committee’s request regarding exterior building materials. The Zoning Committee indicated that acceptable exterior building materials include brick, stone veneer - including limestone and synthetic stone, stucco, and wood. The revised limitation text provided by Mr. [Hancock] included the additional material of architectural pre-cast concrete.

Commission Chair Roundtree asked Hancock if Modula was correct. Hancock acknowledged Modula was correct, however, “the pre-cast item can be negotiated.”

Hancock also stated he would “not eliminate vinyl siding as an exterior building material” option of the proposed residential buildings as requested by the ZC and community. “[V]inyl is an extremely durable material offering long life.”

Hancock indicated that another concern the ZC had was about the type of signage the development would use. He indicated that the development would use non-internally illuminated ground mounted monument signs per the Zoning Committee’s request.

Rounding out his presentation, but downplaying its significance, Hancock stated that he felt “overall the community has two issues with the proposed development, one, setback, two, density.”
Hancock read one of the ZC’s questions, “How do you propose to comply with the … Area Plan’s recommended six to seven dwelling units per acre residential density?” Hancock read SCI’s written response, “We are unable to comply with the recommended six to seven dwelling units per acre residential density. However, we believe there is a direct relationship between our slightly higher densities and our proposed quality and design standards.” Hancock explained that his ability to make density changes was constrained by complying with the changes requested by the ZC and the community. Hancock further justified the higher proposed densities by asserting, “the Area Plan is in confusion on the number of units per acre.”

Commission Chair Roundtree attempted to correct Hancock stating, “the Area Plan states eight to nine dwelling units per acre on the map, but the text clearly identifies the area within which the proposed development is to be located at six to seven dwelling units per acre.”

Ignoring the Commission Chair’s specificity to density described in the Area Plan, Hancock went on to address one of the ZC’s setback concerns in its May 19 letter in which the ZC expressed the community’s preference, “that the northern building setback (paralleling Floral Drive) be increased from the proposed 25 foot and 50 foot setbacks to 150 foot setback.” Hancock read SCI’s response, “A 25 foot building setback is required. We have exceeded this requirement in most cases, ….” Hancock indicated, “by changing the building layout it might be possible to move the setback to 30 feet.” He also proposed extending the building setback from the proposed 50 to 100 feet for the apartments at the north end of the property (facing Floral Drive). He indicated that he “flipped” the parking lot to the other side of the apartments “to make that setback work.”

Hancock addressed another of the community’s setback concerns expressed in the ZC’s May 19 letter, “The community prefers that the southern building setback (paralleling Swarthmore Way) be increased from the proposed 25 foot and 50 foot setbacks to 150 foot setback.” Hancock reiterated that SCI’s
proposed development plan had exceeded this requirement in most cases, and he
was unable to change this setback for the condominiums at the property’s
southern boundary. He did acknowledge that he had extended the building
setback from 50 to 100 feet for the apartments at the property’s southern
boundary.

However, an examination of SCI’s July 14, 2000 revised limitation text
presented to City Council for approval did not contain the commitments Hancock
promised to the Commission of 100 foot apartment building setback along the
northern and southern boundaries.

Hancock stated that he submitted a traffic study to the Commission Chair.
Hancock indicated SCI would install traffic signals at the entry intersection (the
northern-most entry point of the parcel on Canterbury Lane) when traffic
increases to a level warranting signalization. Hancock also stated that “the
applicant would pay for the installation of the signal(s) and twenty-five percent of
the maintenance cost.”

A final major concern of the ZC and the community involved the “load” the
proposed development would place on the existing public infrastructure. The ZC
asked the applicant in its May 19 letter, “What is the proposed development’s
calculated impact on the following public services and facilities: police service,
fire service, paramedic service, school facilities, and recreation facilities?”
Hancock indicated that “each section of the development has its own recreation
facilities”, and “the City has determined the public services for fire and police are
adequate.” Hancock added, reading from the written response to the question,
“That it should be noted that taxes will be paid by future tenants, businesses, and
property owners to help offset these impacts.” Clearly agitated, Hancock
reiterated to the Commission that he had previously addressed these issues at the
last ZC meeting. Hancock, openly angry, stated he had “no control over the
education issues” the community had brought forward.

Audience member Rhonda Johnson read aloud a letter to the Commission
from the Golden Bear Civic Association with an attached resident petition
opposing the proposed development (Appendix A.1 Exhibit 6). Rhonda Johnson stated, “Sixty-eight percent of the residential development in the Commission area is multifamily compared to forty-two percent for the City overall. The [Commission] area is saturated with apartments.” Rhonda Johnson emphasized that the Commission’s Area Plan recommends low-density residential.

Audience member Rubin Downs asked the Commission, “What is the flavor from the community on the project?”

Commission Chair Roundtree responded, “The community found the commercial and condominiums acceptable, but the apartments are not acceptable.”

ZC Recording Secretary Kevin Moffet commented, “I am under the impression the community does not support the proposed development. The Zoning Committee did not make a recommendation regarding this zoning application, but has referred the recommendation to the full Commission.”

Audience member Rosa Williams read aloud a letter from the Antelope Civic Association opposing the proposed re-zoning based on the exacerbation the proposed development would have on the current shortage of public services (fire, police, and EMS) available to neighborhood residents, increasing current school over-crowding levels, and decreasing student education quality (Appendix A.1 Exhibit 5). Williams encouraged the Commission to vote no on the zoning request.

Commission member David Henderson motioned, seconded by Commission member Audrey Summers to approve the applicant’s zoning request with the condition that the revisions made tonight be included in the latest version of the limitation text (dated June 1, 2000). Motion failed (1-for, 8-against, 0-abstention).104

Commission Chair Roundtree indicated that the Commission voted to recommend disapproval of the applicant’s re-zoning request on the following bases:

104 June 1, 2000 Commission Minutes.
1. The proposed development exceeds the Area Plan’s recommended density of no greater than six to seven dwelling units per acre.

2. The proposed development creates inadequate setback distances to adjacent residential properties.

3. The proposed development creates unnecessary traffic congestion due to the close proximity between the existing signaled intersection at Lincoln Avenue and Canterbury Lane and the proposed signalization of Canterbury Lane at the northern-most access point of the proposed development.\(^{105}\)

In addition, Commission Chair Roundtree, stated “The community has clearly expressed its displeasure and opposition regarding what it believes is an over saturation of apartments in the area.”

**The August Meeting Between Residents and SCI**

On August 23, 2000, SCI met with Commission area residents at the Hilton Hotel. The purpose of the meeting was to try to resolve issues residents had with the proposed development. The Commission and ZC were not invited, and if Commission or ZC members attended, it was as residents. Residents who attended the meeting indicated that the meeting was a failure, “a waste of time.” The frustration in long-time Golden Bear resident, Rita Jensen’s voice was undeniable, “Harold [Hancock] didn’t work with us. He didn’t come here to work out the issues. He came here to tell us the same things he told us at the June [Commission] meeting. He thinks he can do whatever he wants in this community. Well, I’ve got news for him… he’s in for a fight.”\(^{106}\)

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\(^{105}\) Specific and more detailed language is contained in the Commission’s recommendation letter to the City of Columbus Department of Trade and Development (Appendix A.1 Exhibit 7).

\(^{106}\) Author’s observation of residents’ complaints at the August 23, 2000 Community Meeting held at the Hilton Hotel.
The Months September to December 2000

From September through December of 2000 this re-zoning application became a political hot potato. City Council appeared not to want to engage with the project because it did not want to have a confrontation with the Commission area community. The apparent problem City Council was struggling with was, on the one hand, what the developer was requesting in his re-zoning application was legal and within the scope of the City’s zoning ordinances, and thereby his application should be approved. On the other hand, the Commission and the community had made a compelling argument against the rezoning application, and thereby City Council should disapprove SCI’s application. Council temporarily sidestep deciding the matter at its September 11th meeting by tabling SCI’s application and advising Hancock to go back and work out the unresolved issues with the community.

Compounding the political complexities for Council were two additional potentialities. Hancock apparently warned certain Council members that the application should be approved and if not he was more than willing to sue the City and let the court decide the outcome. During this same time, Commission area residents were not sitting idle, letting the issue linger, or waiting for City Council to put the issue back on the table and make its decision. Spearheaded by the Commission, residents began mobilizing registered voters to start the referendum process in the event City Council voted to approve the re-zoning application. Both Commission members and residents were very vocal about how serious they were about defeating this particular application and the length they would go to accomplish this task. The Commission’s strategy as explained to me by several Commission members was “to get the word out to City Council” that the Commission had the full support of the Commission area community and

\[^{107}\text{Information provided the author by Martin Roundtree who had access to a City Council member.}\]
\[^{108}\text{Information provided the author by Martin Roundtree who had access to a City Council member.}\]
\[^{109}\text{Author’s observation of Commission members’ pronouncements at Meetings Commission and community residents’ involvement during the Summer of 2000.}\]
was ready “to play hard ball” with City Council. City Council apparently began
to recognize the Commission was moving forward with the referendum, which
forced Council to take the issue up again in December and make a decision\(^{110}\). As
a former Commission member put it,

> You know, on the surface, residential could have
> been a good use for it, but the community and the
> area commission decided it wasn’t in the best
> interest of the residents that are immediately near it.
> So we fought very hard and focused our opinion on
> the legal issues and we were successful, and the
> developer went away.

A plausible reason Council took up the issue particularly in December was
that 2001 was an election year for several Council members.\(^ {111}\) It is also plausible
that these Council members did not want the publicity of a referendum to be a
distraction to their reelection campaigns, or run the risk of a potentially divisive
referendum to reflect negatively on them and jeopardize their chances of
reelection success. Equally importantly, Council as a governing body would not
want to have their decision overturned by a successful referendum because it
would appear to make the entire Council look ineffective and encourage more
people to try to govern by referendum, which again could jeopardize the
incumbents’ chances of reelection\(^ {112}\). Therefore, in December 2000, at the
request of Hancock, Council put SCI’s application back on the table and voted
unanimously to disapprove the re-zoning application. The consequences of
Council’s action were that the Commission ended its referendum drive and no
lawsuit ever materialized from Hancock.

In this particular case, it appeared the Commission and residents mobilized
into a politically effective opposition force against any Council member in favor

\(^{110}\) Information provided the author by Martin Roundtree who had access to a City Councilmember.

\(^{111}\) Council members Maryellen O’Shaughnessy, Kevin Boyce, and Rich Sensenbrenner. Franklin County Board of Elections 2001 General Election Results.

\(^{112}\) Information provided the author by Martin Roundtree who had access to a City Councilmember.
of approving SCI’s re-zoning application. While the purpose of this dissertation is to understand how residents build participation capacity through their dialogic interactions with others, and not about measuring the political effectiveness of resident participation, I don’t want to lead the reader into believing that the Commission and residents were politically effective in and of themselves. Therefore, I am providing the following caveat of other plausible factors that may have contributed to Council’s disapproval of SCI’s application.

Hancock, the agent for the developer of this particular re-zoning application had been to City Council several times previously for other re-zoning applications and had apparently developed a reputation with Council that he was somewhat less than amicable. To be sure, some on Council felt he was not worth Council having a “knock down drag out fight with the community” over this application. Moreover, while this re-zoning application was still at the area commission-level review process, some Commission area residents and Council members were aware of an interest another developer had in developing a commercial center with the same land Hancock wanted to develop. However, this other developer apparently would not or could not proceed in any official manner (i.e., submitting a re-zoning application) since the land was currently under option to buy by SCI whose application was currently under review.

It can be argued that the community’s referendum efforts actually did not provide it with the political leverage necessary to influence City Council to vote to disapprove the re-zoning application, since Council had another developer showing interest in the parcel with a product the community would likely support, and would also bring in potentially greater tax revenue to the City. In addition, Council’s decision to disapprove the re-zoning application brought about calculated consequences that were both politically and economically acceptable to Council. A first consequence is a restoration or reaffirmation of responsiveness

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113 Information provided the author by Martin Roundtree who had access to a City Councilmember.
114 Information provided the author by informants that had access to City Council members and a local developer.
of the incumbent Council members to their constituents, and the Commission and residents appear as winners. A second consequence is that the defeat of the rezoning application cleared the way for a development project with a greater tax revenue generating potential than was previously considered, and which had the added benefit of not only being supported by the Commission area community but also endorsed by the community. A third consequence is that the pro-development perspective of the City was left undisturbed, thus remaining outside conscious recognition and consideration by the Commission or the community. Therefore, the question of whether development should or should not occur in the first place is suppressed, and supplanted with, What is the “correct” type of development that should take place in a particular location?
Appendix A.1
Exhibit 1
Initial Development Text Submitted to Commission*

ROAD DEVELOPMENT PLAN
L-ARO LIMITATION TEXT

PROPOSED DISTRICT:
PROPERTY ADDRESS:
OWNER:
APPLICANT:
DATE OF TEXT:
APPLICATION NUMBER:

L-ARO 0000 ROAD

May 3, 2000

I. INTRODUCTION
The proposed rezoning would develop approximately 88.4 acres of land located on the west side of ___________ Road, directly north of ___________ Road. The site is within the Low-Density land use designation (as identified in the __ Area Plan prepared for the City of Columbus in ________). The applicant proposes to develop suburban office buildings in the central portion of the site closest to _______ Road, and low-medium density condominiums and apartments on the remainder of the site. The applicant proposes to rezone the property to permit a maximum residential density of up to 9.65 dwellings units per acre for the entire area under the L-ARO (Apartment Office District) zoning classification. The site has been broken into two areas, an area for office building and an area for multi-family residential uses. These two areas will be referred to as Subarea ‘A’ and Subarea ‘B’ hereafter.

II. SUBAREA A (22.5 acres, Planned Office Commercial)

(A) Permitted Uses: The permitted uses shall be those uses permitted in the ARO apartment/office district as provided in Title 33, Columbus City Codes, except as prohibited in Section II(B) and as restricted in Section II(C) below.

(B) Prohibited Uses: The following uses shall be prohibited: Multi family dwellings; Adult bookstore, adult motion picture theatre or adults only entertainment; billboards, off premise graphics except for, from time to time, temporary graphics setback at least 15’ from the public right-of-way line and not exceeding 48 square feet in size and 8 feet in height for periods not to exceed two (2) months each; water supply reservoirs, well, water tower or filter bed; rooming house or shared living facility or the leasing or renting of rooms limited according to CC 3333.07.

(C) Restricted Uses:

(D) Development Standards: Except as otherwise specified, the site shall be developed in accordance with the accompanying Development Plan, Landscape Plan, Architectural Elevations, this written Limitation Text and the development standards contained in section 3333.4 ARO Area District Requirements. The Development Plan, Landscape Plan, and Architectural Elevations shall be applicable to all allowable uses and is made part of this Limitation Text as if fully written herein. Minor adjustments can be made due to engineering considerations if the same is approved by the Development Regulations Division Administrator. In addition, the following limitations apply.

Density, Height & Setbacks
1) No building shall be erected, altered, placed or permitted to remain on this property other than office buildings not to exceed fifty-five (55) feet in height.

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2) Setbacks along [redacted] Road shall be twenty-five (25) feet minimum for buildings and twenty-five (25) feet minimum for paving & parking.
3) Setbacks along Boulevard entry road shall be ten (10) feet minimum for buildings and twenty-five (25) feet minimum for paving & parking.
4) All perimeter setbacks shall be a minimum of twenty-five (25) feet.

Traffic, Access & Parking
1) All access points shall be in accordance with the review and approval of the City of Columbus Division of Traffic and Parking.
2) There shall be one full access point and two (2) right turn in/out only access points along [redacted] Road.
3) The main access to the site shall be provided by a 100' public right-of-way boulevard entry road that terminates onto a signature office building on a public “loop road” street with a 50' right-of-way.
4) The exact location of the main entry road shall be selected in order to optimize spacing for a signalized intersection north of [redacted] Road.
5) No parking shall be allowed on the main boulevard road.
6) Intersections & median cuts along boulevard road shall be spaced at intervals as shown on the Development Plan.

Landscaping, Buffering & Open Space:
1) The Applicant/Developer shall expend best efforts to preserve the existing trees located within the site.
2) Street trees shall be planted along the Boulevard entry road at a maximum of forty (40) feet on center, and the medians shall be landscaped with combinations of sod, low shrubs, ornamental grasses, annuals and perennials.
3) Street trees shall be planted along the Loop Road at a maximum of fifty (50) feet on center.
4) In areas adjacent to existing or proposed residential dwellings, landscaping shall be installed in the required minimum twenty-five (25) foot perimeter setback of the site to augment existing trees where applicable, and shall provide seventy five percent (75%) opacity. Landscaping shall be a mixture of evergreen trees, deciduous trees and shrubs consisting of the following: Red Maple, Linden, River Birch, Crabapple, Washington Hawthorne, Colorado Spruce, Burning Bush, Viburnum, Sweetspire, Dense Yew, Hick's Yew and a variety of perennials and annuals. Trees shall be a minimum of five (5) feet in height at installation.
5) Views into parking areas from [redacted] Road and the Boulevard entry road shall be screened with a landscape treatment that provides seventy five percent (75%) opacity. Landscape treatment may consist of moundings, deciduous and/or evergreen shrubs, masonry walls, columns or combinations thereof. Fencing is not permitted. A minimum screen height of thirty (30) inches, as measured from the finished elevation of the parking area to be screened must be maintained.
6) A minimum of 1 tree per 10 spaces will be provided in parking lots for shade and aesthetics.

Building Design:
1. Buildings should have architectural features, finishes, and patterns that provide visual interest, contribute to a pedestrian scale, and recognize local as well as community wide character.
2. Building facades should incorporate a repeating pattern that includes color, texture, and material change.
3. Expression of architectural or structural bay through a change in plane is recommended. Recommended expressions include offsets, reveals, and recessed flat arches.
4. Facades should be articulated to provide visual interest that will be consistent with the Development's identity, character, and scale. The intent is to encourage development incorporating high quality materials and a pedestrian friendly scale so as to contribute to and identify an overall theme.

5. Entryway design elements and variations should give orientation and aesthetically pleasing character and pedestrian scale to the building. Each principle building should have a highly visible customer entrance featuring architectural elements which may include the following:
   a.) Overhangs
   b.) Recesses and projections
   c.) Verandas
   d.) Arches
   e.) Landscaped areas with places for pedestrian seating
   f.) Architectural details such as tile work and moldings which are integrated into the building structure and design
   g.) Peaked roof form
   h.) Tower elements
   i.) Canopies or porticos
   j.) Night lighting

6. Brick, stone veneer (including limestone and synthetic stone), architectural pre cast concrete, stucco and wood are acceptable siding materials for both office and commercial uses. Rear facades of office uses may incorporate architecturally unified standard concrete masonry units, or pre-engineered building systems painted to match the rest of the building.

7. Variation in rooflines should be used to reduce the mass and add interest to large buildings. Roof features should complement the character of adjoining buildings/developments where applicable. All roof top mechanical equipment must not be visible from any public roads.

Dumpsters, Lighting & Outdoor Display Areas:
1. All waste and refuse shall be containerized and fully screened from view by a solid wall, mounding, plantings and/or fence.
2. The height of the proposed screening shall exceed the height of any container by at least one foot. All loading and service areas shall be screened from all streets and adjacent residential areas by walls, fences or shrubbery at least 6 feet in height.
3. No materials supplies, equipment of products shall be stored or permitted to remain on any portion of the parcel outside the permitted structure.
4. All parking lot lighting shall be provided by black or bronze colored aluminum or steel cut off type fixtures, thirty-five (35) foot height maximum with illumination levels appropriate to provide security and safety in all areas.
5. Landscape and building accent lighting is permitted, however all such illumination must be from concealed sources. All lighting shall be arranged to reflect light away from any street or adjacent property; direct or indirect glare into eyes of motorists or pedestrians shall be prohibited.

Graphics:
1) Permanent project identification graphics shall be located at the Boulevard entry road entrance to this development. Placement of an entry feature in the boulevard island, masonry walls and/or columns and wrought iron gates on each side of the entrance drive (or any similar architectural or landscaping features) may be used.
2) Directional signage will be used within the development as well, and shall conform to City of Columbus standards.
Variance Requested: Reduction of building setback on Boulevard entry road from twenty-five (25) feet to ten (10) feet in order to create a more urban streetscape environment.

Miscellaneous Commitments:

1) The Applicant/Developer shall comply with the City of Columbus' requirements regarding storm water runoff and sanitary sewers.
2) All utility lines for this development shall be installed underground.

III. SUBAREA B (46.9 acres, Multi-Family Residential)

(A) Permitted Uses: The permitted uses shall be those uses permitted in the ARO apartment/office district as provided in Title 33, Columbus City Codes, except as prohibited in Section II (B) and as restricted in Section III(C) below.

(B) Prohibited Uses: The following uses shall be prohibited: office buildings; art studios; banks; ecclesiastical eleemosynary or philanthropic uses; school, as defined in Chapter 3303, CC; public library; public museum; telephone exchange with concealed substation; public or private hospital, infirmary or sanitarium; water supply reservoirs, well, water tower or filter bed.

(C) Restricted Uses:

(D) Development Standards: Except as otherwise specified, the site shall be developed in accordance with the accompanying Development Plan, Landscape Plan, Architectural Elevations, this written Limitation Text and the development standards contained in section 3333.4 ARO Area District Requirements. The Development Plan, Landscape Plan, and Architectural Elevations shall be applicable to all allowable uses and is made part of this Limitation Text as if fully written herein. Minor adjustments can be made due to engineering considerations if the same is approved by the Development Regulations Division Administrator. In addition, the following limitations apply.

Density, Height & Setbacks

1) The overall subarea density shall not exceed 946 dwelling units. The density has been distributed in such a way as to minimize the impacts on adjacent residential properties as follows:
   a) Condominium Village A - density shall not exceed 72 dwelling units.
   b) Condominium Village B - density shall not exceed 68 dwelling units.
   c) Multi-family Village A - density shall not exceed 270 dwelling units.
   d) Multi-family Village B - density shall not exceed 440 dwelling units.

2) No building shall be erected, altered, placed or permitted to remain in Subarea B other than multi-family buildings not to exceed 3 stories in height. Building height limitations have been adjusted throughout Subarea B in such a way as to minimize the impacts on adjacent residential properties as follows:
   a) Condominium Village A - building height shall not exceed 1-½ stories.
   b) Condominium Village B - building height shall not exceed 1-½ stories.
   c) Multi-family Village B - building height shall not exceed 2 stories along northern and western perimeters that abut SF residential (as shown on Development Plan).
3) All perimeter building and parking setbacks shall be a minimum of twenty-five (25) feet. Building setbacks at perimeters have been adjusted throughout Subarea B in such a way as to minimize the impacts on adjacent residential properties as follows:
   a) Multi-family Village B- building & parking setback along southern boundary shall be fifty (50) feet; building & parking setback along western boundary (adjacent to S' residential) shall be one hundred fifty (150) feet.
   b) Multi-family Village A- parking setback along northern boundary shall be fifty (50) feet; building setback along northern boundary shall be fifty (50) feet.

Traffic, Access & Parking
1) All access points shall be in accordance with the review and approval of the City of Columbus Division of Traffic and Parking.
2) Access to all multi-family sites shall be of new Boulevard Street or new Loop Road.
3) No access shall be permitted from the development to either Street or Drive.
4) Condominium Village B can accommodate an emergency access to Road if required by City of Columbus Fire Safety Division.
5) All parking in Subarea B shall meet or exceed the standards established in chapter 3.342 of the Columbus zoning code.

Landscaping, Buffering & Open Space:
(1) The Applicant/Developer shall expend best efforts to preserve the existing trees located within the site.
(2) Street trees shall be planted along the Boulevard entry road at a maximum of forty (40) feet on center, and the median shall be landscaped with combinations of sod, low shrubs, ornamental grasses, annuals and perennials.
(3) Except where contiguous to office sites in Subarea A, landscaping shall be installed along the required minimum twenty-five (25) foot perimeter setback of the site to augment existing trees where applicable, and shall provide seventy five percent (75%) opacity. Landscaping shall be a mixture of evergreen trees, deciduous trees and shrubs consisting of the following: Red Maple, Linden, River Birch, Crabapple, Washington Hawthorne, Colorado Spruce, Burning Bush, Viburnum, Sweetspire, Dense Yew, Hick's Yew and a variety of perennials and annuals. Trees shall be a minimum of five (5) feet in height at installation.
(4) A 150' building and parking setback (so-build zone) has been established for the western-most portion of Multi-family Village B in order to preserve a large portion of the existing woods in this area.
7) Existing tree rows adjacent to Subarea B will be preserved as possible between the proposed and existing residential uses. These tree rows will be augmented with additional evergreen and deciduous trees and shrubs such as, Red Maple, River Birch, Crabapple, White Pine, Colorado Spruce, Burning Bush, Viburnum and Dense Yew. Trees shall be a minimum of five (5) feet in height at installation.
8) A minimum of 1 tree per 10 spaces will be provided in parking lots for shade and aesthetics.

Building Design:
1) All condominium dwellings shall have at least a two-car attached garage.
2) The main exterior building materials for the condominiums shall be wood siding, brick or a combination thereof. Vinyl shall be permitted as a building material for the construction of gutters, downspouts, soffits and facia pieces.
3) The main exterior building materials for all apartment dwellings shall be vinyl, brick, wood trim, stone veneer (including limestone and synthetic stone) or a combination thereof.
4) Applicant/Developer may enclose screened porches or add a patio enclosure into additional living quarters within the condominium development.

5) Each apartment or condominium community may contain a community center/pool or cabana/pool to provide for the recreational needs of the residents of each community.

**Dumpsters, Lighting & Mailboxes:**

1) In the apartment areas, all waste and refuse shall be containerized and fully screened from view by a solid wall, mounding, plantings and/or fence.

2) The height of the proposed screening shall exceed the height of any container by at least one foot.

3) In condominium areas, a private contractor who will be hired by the Condominium Association will provide Trash pickup. No centralized trash dumpsters will be used.

4) Main entry feature signage shall be landscaped and lit with concealed uplights.

5) Lighting poles shall be lantern fixture types. All lighting poles, signs, frames, poles and/or supports shall be uniform and be either black or dark bronze in color. No pole lighting standards shall exceed a total of sixteen (16) feet in height.

6) Centralized mailboxes shall be provided by the Applicant/Developer in accordance with the U.S. Postmaster’s regulations.

**Graphics:**

1) Permanent project identification graphics shall be located at the entrance to each multi-family development. Placement of a low sign and/or gatehouse in a median, masonry walls and/or columns and wrought iron gates on each side of the entrance drive (or any similar architectural or landscaping features) may be used.

2) Directional signage will be used within the development as well, and shall conform to City of Columbus standards.

3) All signage shall conform to the City of Columbus Graphics Code.

**Variances Requested:** note

**Miscellaneous Commitments:**

1) The Applicant/Developer shall comply with the City of Columbus’ requirements regarding storm water runoff and sanitary sewers.

6) All utility lines for this development shall be installed underground.

*The undersigned, being the Owners of the subject property or the applicant in the subject rezoning application, and through their authorized representatives, do hereby agree for themselves, their heirs, successors and assigns, to abide by the above restrictions, conditions, and commitments regarding development of the subject property, and for such purpose state they fully understand and acknowledge that none of the foregoing restrictions, conditions, or commitments shall in any manner act to negate, nullify, alter or modify any more restrictive provision of the Columbus City Codes.*

Signature: __________________________
Exhibit 2
May 4, 2000 Zoning Committee Report*

5. Rezoning Application Case No: Z00-00: First hearing by the Commission on May 4, 2000, 7-00 P.M., at [Redacted] Elementary School, [Redacted] Ave. Application filed on March 2, 2000 -- Mailed to [Redacted] on March 3, 2000, Received by [Redacted] on 3-7-00

Applicant: [Redacted] Inc.
Location: 88.4 Acres on West Side of [Redacted] Road
Property Owner:
Agents:

Request:
The applicant is requesting that zoning for this 88.4 acre site be changed from R-1, Residential District, to L-ARO, Apartment Office District. The applicant proposes to develop suburban office buildings in the center portion of the site closest to [Redacted] Road, and low-medium density condominiums and apartments on the remainder of the site. The applicant proposes to rezone the property to permit a maximum residential density of up to 10.7 dwellings units per acres for the entire area under the L-ARO zoning area.

Background:
This site abuts the [Redacted] on the north (single-family homes) and the [Redacted] on the south (single-family homes). Property east of [Redacted] Road is largely commercial or zoned for commercial development.

Consideration:
The Zoning Committee has focused review of this application on compliance with [Redacted] 10 strategies for rezoning and the [Redacted] Land use Plan. The first hearing by the Zoning Committee was on April 20, 2000. The following issues were identified by Zoning Committee members and area residents:

1. The number of structures pursuant to full build-out of the development.
2. The range of developers/owners involved in the development.
3. The range of condo units for rent and for sale.
4. There is no need/demand for additional multi-family units/apartments in the area.
5. Residents do not want additional apartments in the area.
6. The number of apartment units, size of individual units & number of bedrooms.
7. The impact on schools will overload existing facilities.
8. The same as for #7 with respect to recreation.
9. Access into and out of the development.
10. Other meetings as arranged, specifically with the communities of [Redacted] and [Redacted]

INQUIRES TO: [Redacted] [Redacted], Zoning Committee Chair

* Confidential and personally identifiable information redacted from document.
Exhibit 3
Zoning Committee Questions to Applicant*

May 19, 2000

Subject: Zoning Application # Z00--

Dear Mr.: [Name]

The ____________________________________________ Area Commission Zoning Committee has instructed me to prepare a list of questions and/or statements that emerged from last night's Zoning Committee meeting regarding the above referenced zoning application, which you agreed to provide responses.

1. Please identify the number of stories for each building.
2. The community prefers that the northern building setback (paralleling [Drive]) be increased from the proposed 25' and 50' setbacks to 150' setback.
3. Regarding Limitation Text: Subarea A - Building Design item 5 (page 3). The Zoning Committee requests that entryway design features be clearly defined to match the architectural style of [Address].
4. Regarding Limitation Text: Subarea A - Building Design item 6 (page 3). The Zoning Committee requests that the existing text be replaced with the following text: Brick, stone veneer (including limestone and synthetic stone), stucco, and wood are acceptable siding materials for both office and commercial uses and shall apply to all exterior sides.
5. What is your anticipated build out time-line? Please describe the order of your build out (e.g., apartments first, then condos, etc.).
6. What assurances can you provide the community that all phases of your proposed development will be built?
7. The community prefers that the southern building setback (paralleling [Road]) be increased from the proposed 25' and 50' setbacks to 150' setback.
8. Have you built office space in the City of Columbus?
9. Regarding Limitation Text: Subarea A - Graphics item 1 (page 3). The Zoning Committee requests that clearly defined design standards be included specifying non-internally illuminated ground mounted monument sign.
10. Please identify the number of one, two, and three bedroom condominium units currently proposed, the respective square footage, the respective anticipated sales price.
11. Please identify the number of one, two, and three bedroom apartment units currently proposed, the respective square footage, the respective anticipated rental amount.

* Confidential and personally identifiable information redacted from document.
12. Please provide a market profile of the buyers of your proposed condominium units.
13. Please provide a market profile of the tenants of your proposed apartment units.
14. Please provide a market profile of the tenant mix of your proposed office space.
15. Please provide your plan on how you propose to meet the City of Columbus requirements for storm water runoff and sanitary sewers.
16. How do you propose to comply with the Area Plan's recommended 6 to 7 dwelling units per acre residential density?
17. Regarding Limitation Text: Subarea B - Building Design item 3 (page 5). The community prefers that vinyl be deleted as an exterior building material choice.
18. Please provide the traffic study for the proposed development.
19. What is the proposed development's calculated impact on the following public services and facilities: police service, fire service, paramedic service, school facilities, and recreation facilities?

Please send your written responses to:

Zoning Committee Secretary

If you have further questions, please do not hesitate to call me at (614) 123-4567.

Sincerely,

Michael Modula
Area Commission Intern
Exhibit 4
Applicant’s Response to Zoning Committee Questions*

**AREA COMMISSION**

RESPONSE TO LETTER DATED MAY 19, 2000 – Zoning Application #Z00-

June 1, 2000

1. Please identify the number of stories for each building.

   Please see development plan, which indicates the number of stories for each building.

2. The community prefers that the northern building setback (paralleling [redacted]) be increased from the proposed 25’ and 30’ setbacks to 150’ setback.

   A 25’ building setback is required. We have exceeded this requirement in most cases, and have also tried to orient buildings to minimize the impact on neighbors. In addition, we have studied alternate layouts to explore increasing setbacks (please see development plan overlay).

3. Regarding Limitation Text: Subarea A – Building Design item 5 (page 3). The Zoning Committee requests that entryway design features be clearly defined to match the architectural style of [redacted].

   The planning and design reflects a more traditional approach, in keeping with the architectural theme established by [redacted]. Please see rendering of proposed entryway design features. Please see attached revised Limitation Text, with changes highlighted. [Note: The portion of text referenced in item #3 refers to Building Design. See Graphics, items 2 and 3.]

   Revised Limitation Text: Subarea A – Graphics now includes the following additional items:

   2) A project identification monument shall be designed to fit into the main project entry that will identify the entire development and help to establish an identity and architectural theme to the development.

   3) The architectural theme of the project entryway will be complementary and compatible with the established imagery of the overall [redacted] architectural theme.

4. Regarding Limitation Text: Subarea A – Building Design item 6 (page 3). The Zoning Committee requests that the existing text be replaced with the following text: Brick, stone veneer (including limestone and synthetic stone), stucco, and wood are acceptable siding materials for both office and commercial uses and shall apply to all exterior sides.

* Confidential and personally identifiable information redacted from document.
Revised Limitation Text: Subarea A – Building Design item 6 regarding building exterior for office and commercial uses now includes the following additional sentence: “Building materials shall apply to all exterior sides of the building.”

5. What is your anticipated build out time-line? Please describe the order of your build out (e.g., apartments first, then condos, etc.).

Phase I – Loop road, Condominium Site A, start northern half of the garden units
Phase II – Condominium Site B, start southern half of the garden units
Phase III – Premier apartments
Market and develop office site throughout Phases I, II, III

6. What assurances can you provide the community that all phases of your proposed development will be built?

[Redacted] does not typically “land bank” property. We intend to build out the project as quickly as possible, but this depends on market conditions.

7. The community prefers that the southern building setback (paralleling [Redacted] Road) be increased from the proposed 25’ and 50’ setbacks to 150’ setback.

Please refer to item #2, above (please see development plan overlay).

8. Have you built office space in the City of Columbus?

Yes, at [Redacted]; also joint ventures with [Redacted] at [Redacted] and with [Redacted] in [Redacted], for example.

9. Regarding Limitation Text: Subarea A – Graphics item 1 (page 3). The Zoning Committee requests that clearly defined design standards be included specifying non-externally illuminated ground mounted monument sign.

Please see attached revised Limitation Text: Subarea A – Graphics item 1 regarding non-externally illuminated ground mounted monument sign. Please see attached photographs of sample street signs.

Revised Limitation Text: Subarea A – Graphics now includes the following additional item:

4) All signage used will be non-externally illuminated.
10. Please identify the number of one, two, and three bedroom condominium units currently proposed, the respective square footage, the respective anticipated sales price.

Please see attached listing of projected square footage per proposed unit type. We do not propose any one-bedroom condominiums. We propose approximately 18% two-bedroom units and 82% three-bedroom units. The anticipated sales prices range from $125,000 to $155,000.

11. Please identify the number of one, two, and three bedroom apartment units currently proposed, the respective square footage, the respective anticipated rental amount.

Please see attached listing of projected square footage per proposed unit type and the respective anticipated rental amount.

12. Please provide a market profile of the buyers of your proposed condominium units.

Please see attached letter dated May 4, 2000 from Property Management, Inc. regarding market profile of condominium buyers.

13. Please provide a market profile of the tenants of your proposed apartment units.

Please see attached Resident Demographic reports regarding market profile of existing apartment residents. We anticipate the market profile of residents for the proposed apartment units to be similar.

14. Please provide a market profile of the tenant mix of your proposed office space.

The typical tenants of the proposed office space is non-industrial, service-oriented businesses such as insurance, real estate, and sales.

15. Please provide your plan on how you propose to meet the City of Columbus requirements for storm water runoff and sanitary sewers.

Please see attached letter dated April 19, 2000 regarding the drainage impacts on this site. Please see exhibit(s) illustrating the proposed storm, sanitary, and water layouts for the site.

16. How do you propose to comply with the Area Plan's recommended 6 to 7 dwelling units per acre residential density?

We are unable to comply with the recommended 6 to 7 dwelling units per acre residential density. However, we believe there is a direct relationship between our slightly higher densities and our proposed quality and design standards.
17. **Regarding Limitation Test: Subarea B – Building Design item 3 (page 5).** The community prefers that vinyl be deleted as an exterior building material choice.

We request that vinyl remain as an exterior building material choice. This is especially important for long-term maintenance of apartment communities.

18. **Please provide the traffic study for the proposed development.**

Traffic study provided for the [City Name] Area Commission.

19. **What is the proposed development’s calculated impact on the following public services and facilities: police service, fire service, paramedic service, school facilities, and recreation facilities?**

Please refer to City Staff regarding these issues. It should be noted that taxes will be paid by future tenants, businesses and property owners to help offset these impacts.
June 1, 2000

Civic Association of Columbus

Dear Members of the Civic Association:

This letter is regarding the rezoning application Z00- for is seeking to rezone 88.4 acres to build 710 apartments and 140 condominiums off of Road. I strongly urge each of you to vote No on this rezoning request. The residents in the affected communities have repeatedly voiced their opposition to this request at every meeting with this applicant. The major concerns of the residents is that the already shortage of public services will definitely become worse. It is our understanding that is a part of the 2300 apartments being developed on just south of Furthermore, it is our understanding that the same fire, police, and emergency services for this area will service these 2300 apartments as well as any future development. In addition, children living in these 2300 apartments will attend Elementary, which is currently over capacity.

The property that is seeking to rezone is in the Elementary School district. is the most overcrowded of all the schools in this area. is almost 200 students overpopulated. Bringing in 710 apartments to house students who will attend will make a bad situation unbearable. Mr., a representative, told residents last evening that this situation is not his concern. He said the city’s zoning staff should be looking at this. We as a community must look at this situation seriously because it is our children and our quality of life that will be affected. In addition to the school crisis we are facing, we are concerned about the response time from fire, police, and emergency medical services. We are talking about adding a total of 3000 apartments within a one-mile radius on There are apartments under construction at and there are recently constructed apartments on Road. We feel that this rezoning without increasing public services can be catastrophic for our residents in many situations.

has met with residents on several occasions. However, they have not tried to negotiate, compromise, or provide possible solutions regarding our concerns. also reiterated to our group on April 20, 2000, that this was his plan and he intended to pursue it in its present form. also told our group last evening that his indications from the city’s zoning staff department is that he will get approval. Regardless of whether or not city staff feels this rezoning should be approved, as a community we have serious concerns about adding this large number of apartments. We sincerely ask that you do what the residents are asking and that is to vote No on this rezoning application.

Sincerely,

The Civic Association

President

Development Chair

* Confidential and personally identifiable information redacted from document.
Exhibit 6
Civic Association’s Petition Letter of Opposition*

CIVIC ASSOCIATION, INC.

June 1, 2000

Development Zoning Committee Members:

We, the residents of [redacted], have attended many meetings of the [redacted] Area Commission and the Zoning Committee at which the developers, [redacted], have presented their plan for developing the 88.4 acres located on the West side of [redacted] Road and directly North of [redacted] Road.

[redacted] is requesting a rezoning of this land from R-1 (residential), to L-ARO, (Apartment Office District) (application case # Z00-[]).

The residents of our community take issue with a large number of items in the [redacted] plan. We feel that this [redacted] area has been INUNDATED with apartments far beyond any other area in Columbus. As you can see on attachments 1 and 2 provided by the Economic Development and Planning Services of the Columbus Department of Trade and Development, since 1990, multi-family development has accounted for 68.7% of the residential construction in the [redacted] area as compared to 48.6% in the entire city of Columbus.

Traffic in the area has increased dramatically since 1997 inasmuch as there have been over 3500 units constructed here. Even with the construction of six lanes on [redacted], the many residents of [redacted] and [redacted] apartments add to the congestion we are experiencing.

In the 1990 [redacted] Area Plan for land usage put out by the City Development Department, it is cited on page 7 that to the West side of [redacted] there should be construction of "low density preferably single-family market rate housing..." "Low density housing, units per acre, is the most appropriate use for this area."

* Confidential and personally identifiable information redacted from document.
ADDITIONAL AREAS OF GREATEST CONCERN

<table>
<thead>
<tr>
<th>Developer's Proposal</th>
<th>Area Residents' Requests</th>
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<tbody>
<tr>
<td>1. Set-back of 25-50 feet from property lines surrounding</td>
<td>1. 150 feet North, South and West</td>
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<td>2. No traffic study</td>
<td>2. Traffic study including maps. Increase</td>
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<td>number of traffic lights</td>
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<td>3. Storm sewer report lacking details</td>
<td>3. Complete report of storm sewer study</td>
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<td>4. Office buildings with brick or stone front and vinyl</td>
<td>4. Office buildings constructed of brick</td>
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<tr>
<td>on three sides</td>
<td>or stone on all sides</td>
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</table>

Other concerns are as follows:

1. Increase in emergency city services, i.e. police and fire stations, in order to service the increased population in a reasonable response time.

2. Construction of new city schools to alleviate already over-crowded buildings is a better use of the land; looking at it from a land use stand point. Excerpted from report presented by Foundation, Our Kids, Our Schools, Our Community.

Facts and Figures
It has been stated that the current population of the designated Area Planning Area is approximately 86,000 people. It is estimated that by the end of the year 2001, the area will incur a 59% increase in population, bringing the estimated total to 145,000. With this influx of people, the question becomes, will the schools be able to accommodate this massive migration?

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<td>Middle School</td>
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<td>545 &amp; 547**</td>
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* Denotes modular units added to existing structure

** Denotes two schools within the same building.
3. The residents of this community feel that there could be a more appropriate usage for this land which would meet the needs of the residents and community. Consideration should be given to an educational complex including elementary and middle schools, a public library. This area would benefit greatly with the establishment of a satellite medical facility.

In conclusion, the residents of [REDACTED] believe in progress but do not believe that the aforementioned project as it stands meets the needs of the community. See attachment 3 (Signatures of all the residents of [REDACTED] that are in support of this letter and against the project of [REDACTED]).

Sincerely,

[REDACTED]

Corresponding/Recording Secretary
Housing
A comparative analysis

Area

* In 1990, 66.6% of the residential housing stock was 1 or 2-family dwellings. 27% of the housing stock was multi-family (5+ units).

* Since 1990, only 18.5% of new housing has been 1 or 2-family dwellings. Multi-family development has accounted for 58.7% of the residential construction.

City of Columbus

* In 1990, 51.5% of the residential housing stock was 1 or 2-family dwellings. 28.1% of the housing stock was multi-family (5+ units).

* Since 1990, 42.8% of new housing has been 1 or 2-family dwellings. Multi-family development has accounted for 48.6% of the residential construction.
Housing Unit Estimate, based on 1990 Census Data and Building Permit Information, 1990-1999

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<th>Area Comm</th>
<th>City of Columbus</th>
<th>Area Comm</th>
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*Subject to revision

Prepared by City of Columbus Department of Trade and Development.
RESIDENTS AGAINST
(Building apartments on the eighty-eight acres South of )
PLEASE ADD YOUR SIGNATURE ON THE LIST BELOW TO BE ATTACHED TO THE DOCUMENT FROM THE AREA ZONING COMMITTEE THAT IS BEING FORWARDED TO CITY COUNCIL.

NAME
ADDRESS

14 Resident Signatures Redacted
23 Resident Signatures Redacted
22 Resident Signatures Redacted
9 Resident Signatures Redacted

I have personally obtained all the enclosed signatures.

[Seal]

[Signature]

[Date: November 14, 2000]

290
Exhibit 7
Area Commission Disapproval Recommendation Letter To City*

MEMORANDUM

TO: Chris Presuti
   City of Columbus
   Department of Trade and Development

FROM: ________________
   Chairperson
   Area Commission

DATE: June 1, 2000

RE: Rezoning Application Case No: Z00-_____________ - Location

After lengthy discussions, numerous zoning committee and numerous commission meetings the Area Commission at its June 1st meeting voted 8 to 1 to disapprove the applicant's request for a rezoning of 88.4 acres located at _______________ Road. The applicant is requesting that the zoning be changed from a R-1, Residential District, to L-ARO, Apartment Office District.

The reasons for the disapproval are as follows:

1. According to the _______________ Area Plan dated January 19__, page 4 under proposed land use the area in mentioned calls for low density residential max. 8-9 dwelling per acre. The applicant proposes to rezone the property to permit a maximum residential density of up to 10.7 dwellings per acres for the entire area under the L-ARO zoning. Furthermore on page 7 of the _______________ Area Plan states that the lack of residential development in the community is a major issue. Also, the plan recommends that low density residential uses located in the area defined on the land use map, south of _______________ Boulevard, west of ____________ Road, south of ____________ subdivision. Low density housing not to exceed 6 to 7 dwelling units per acre, is the most appropriate use for this area. Further in the Residential section it states that the housing built in this area must be high quality and in character with existing housing stock.

* Confidential and personally identifiable information redacted from document.
2. The applicant proposes that the building setbacks are between 25' to 50'. The adjacent property owners have stated the development would be too close to their adjoining properties and has recommended to the applicant a 150' building setback around the entire perimeter of the project. The applicant rejected the recommendation and stated a 100' setback would be given for the apartments, but the setbacks for the condominiums would remain the same.

3. The Traffic Impact Study (given for the first time and the June commission meeting) for the proposed development stated in its executive summary that the north site driveway is anticipated to meet the traffic signal Peak Hour Volume Warrant when the development is 50 percent complete for both the AM and PM peak hours. The warranted traffic signal at the north site driveway would be 250' from the existing traffic light at [REDACTED] Drive. The traffic signal would cause bottlenecks and severe traffic delays along [REDACTED] Road, which is design in the future to provide the community a consistent and safe flow.

4. The proposed multi-family residential units on the site will increase the number and percentage of multi-family residential units in the community well above the percentage of units built in the entire city of Columbus.

In addition attached please find letters from the impacted civic associations — [REDACTED] and [REDACTED] for your review and consideration.

Thanks
Exhibit 8
Zoning Committee Review Procedures*

ADMITTED AREA COMMISSION
ZONING COMMITTEE
PROCESS AND PROCEDURES
POLICY DOCUMENT

ADOPTED
JANUARY 2000

* Confidential and personally identifiable information redacted from document.
**Area Commission**

**Zoning Committee Process and Procedures**

**Definition of Terms**

City - City of Columbus

Commission - Area Commission

Zoning Committee - Area Commission Zoning Committee

Applicant - Any entity of legal capacity who has complied with the City's filing requirements regarding application for rezoning, variance, special permit, or demolition permit, and where the City has accepted such application

Community - Residents and merchants located within the boundaries of the Area Commission

City Council - Columbus City Council
I. INTRODUCTION
As the city grows and changes, land uses may also change. When this occurs a property owner may initiate an application for rezoning, variance, or special permit. In response, the City of Columbus (City) has developed a review process that evaluates these types of applications in an efficient and consistent manner.

The **redacted** Area Commission Zoning Committee (Zoning Committee) has prepared this document to mirror as closely as possible the review process used by the City's Department of Trade and Development, Development Regulation Division. Where the Zoning Committee does deviate from the City's process it is due to the nature of the area commission as an advisory body coupled with limited resources, and of the special characteristics of the **redacted** community. The following are the specific requirements applicable to the Zoning Committee.

II. ENABLING AUTHORITY
A. The Zoning Committee shall regularly monitor, review and make recommendations on all applications for re-zoning, variances, graphics, special permits, and zoning adjustment appeals regarding properties located wholly or partially within the boundaries of the Commission area. (By-Laws Art. VIII Sec. 2).

[NOTE: HIGHLIGHTED AREA INDICATES REVISIONS]

III. ZONING COMMITTEE ORGANIZATION
A. Committee membership
The **redacted** Area Commission (Commission) Chairperson in consultation with Commission members may appoint Zoning Committee members (By-Laws Art. VI Sec. 105 (a)).

1. Appointment shall be documented and recorded in Commission minutes.

2. Appointees shall receive a copy of and abide by the requirements of the Zoning Committee Member Duties and Conduct Agreement.

B. Officers and Duties
The Zoning Committee shall have as a minimum the following officers:

1. Chairperson whose duties include: Presiding over regular and special meetings; Preparing Zoning Committee agenda; Presenting the Zoning Committee’s report and recommendation(s) to the **redacted** Area Commission and to the City; and other duties that facilitate the operation of the Zoning Committee.

2. Vice-Chairperson who is to perform the duties of the Chairperson in the Chairperson’s absence.
3. Secretary whose duties include: Recording Zoning Committee minutes; Performing written correspondence for Zoning Committee; Organizing and maintaining a records archive; and Facilitating public access to Zoning Committee records.

C. Member Duties
Each Zoning Committee member shall:
1. Perform the functions described in Section II A (Enabling Authority).
2. Discharge his/her duties in a fair, consistent, and objective manner.
3. Follow the guidelines set forth in the Zoning Committee Process and Procedures document; all applicable rules set forth in the REDACTED Area Commission By-Laws; the 1994 REDACTED Area Plan recommendations, and the policy guidelines set forth by the City's Department of Trade and development, Development Regulation Division.
4. Attend regular and special called Zoning Committee meetings.
5. Reveal any conflicts of interest or potential conflicts of interest in matters related to his/her duties as a member of the Zoning Committee.

D. Minimum/Maximum Committee Membership
The Zoning Committee shall consist of at a minimum three members, and at a maximum seven members.

E. Quorum
A valid quorum for voting purposes within the Zoning Committee shall consist of a simple majority of its membership in current and good standing. (For example, a quorum for a seven-member committee would consist of four Zoning Committee members).

F. Records
It shall be the responsibility of the Secretary to:
1. Record minutes of all Zoning Committee meetings and retain minutes in an archive.
2. Organize and maintain the Zoning Committee records archive; provide copies of records to the REDACTED Area Commission Planning Committee; and to provide public access to records.

PREPARED BY MICHAEL MODULA
COMMISSION INTERN, DECEMBER 1999

3
G. Member Attendance
   (i) Attendance shall be mandatory for all Zoning Committee meetings. Non-attendance of two consecutive unexcused absences from regular called Zoning Committee meetings shall automatically require the Secretary to send written notification to such member indicating the number of unexcused absences and of the possible removal of the member in the event of a third consecutive unexcused absence. Notice shall be made within seven days of the second unexcused absence. Member non-attendance due to schedule conflicts is not an excusable absence.
   (ii) In the event of non-attendance of three consecutive unexcused absences from regular called Zoning Committee meetings such member shall be considered to have tendered his/her resignation to the Zoning Committee. The Secretary shall in writing within seven days of the third unexcused absence notify such member of the Zoning Committee’s acceptance of his/her resignation. A copy of the notice shall be presented to the REDACTED Area Commission at its next monthly meeting. The Zoning Committee may use its discretion in deciding matters of reinstatement of resigned members.

H. Regular Meetings
   Regularly scheduled Zoning Committee meetings shall occur on the third Thursday of every month at 7 p.m. In the event that the third Thursday lands on a holiday, the meeting shall be moved to the following Tuesday. The place of meeting shall be made at the discretion of the Zoning Committee Chairperson. The Zoning Committee shall be in recess for the month of August.

I. Special Meetings
   Any Zoning Committee member may call a special Zoning Committee meeting. At least seventy-two (72) hour advance notice shall be required prior to the start of a special called meeting.

J. Quality Assurance
   At the discretion of the REDACTED Area Commission Chairperson an area resident may be appointed to serve on the Zoning Committee as its Quality Assurance Representative. The Quality Assurance Representative shall not be a voting member of the Zoning Committee and shall not be counted when determining a valid quorum. The Duties of the Quality Assurance Representative include:
   1. Attending all Zoning Committee meetings.
2. Ensuring that the Zoning Committee fulfills its duties as described in this document, within the Area Commission's Area Commission By-Laws; and within the policies of the City of Columbus Department of Trade and Development, Development Regulation Division.

3. Reporting significant deviations in the prescribed Zoning Committee duties to the Area Commission Chairperson within seventy-two (72) hours of the alleged incident(s).

K. Commission Intervention
The Area Commission may intervene in and assume the duties of the Zoning Committee when circumstances are established that the Zoning Committee committed significant and material deviations from its duties. A simple majority vote of a quorum of Area Commission members is required to assume the Zoning Committee's duties.
IV. City Review Process

The purpose of this section is to outline in schematic form the City's review process regarding rezoning, variances, and special permits. The focus of this section is to provide reference to the City's processing time guidelines and the position where the REDACTED Area Commission fits within the City's review timeline.

A. Rezoning Process

Chart A describes the typical zoning process. The time required to process a rezoning application varies depending on the complexity of the case and on any revisions that result from the appropriate public hearings such as the Development Commission, area commissions, or City Council. Generally speaking, a simple rezoning can be accomplished in 90-120 days (Columbus Development Guide).

B. Variance Process

Chart B describes the typical Council variance process. From the submission of a Council Variance application until final staff review, the time required is approximately 4-6 weeks. After staff review, an ordinance goes to City Council, with placement on the agenda depending on their scheduling constraints. Time also varies according to the participation of area commissions, architectural review commissions and civic associations (Columbus Development Guide).

C. Special Permit Process

Chart C describes the Board of Zoning Adjustment variance (special permit) process. The Board of Zoning Adjustment takes approximately 2-3 months for completion. Time varies according to when applications enter the cycle (Columbus Development Guide).
City Council Variance Process
Chart B

START

SUBMIT APPLICATION & CERTIFIED ADDRESS TO REGULATION

REVIEW APPLICATION

NOTIFY NEIGHBORHOOD DEVELOPMENT WHERE REQUIRED

CASE PREPARED FOR STAFF REVIEW

TRAFFIC ENGINEERING

PLANNING

SEWERS & DRAINS

OTHER PERTINENT DIVISIONS

AREA OR ARCHITECTURAL COMMISSION REVIEW & RECOMMENDATION

STAFF RECOMMENDATION MADE

PREPARE ORDINANCE CONTACT APPLICANT AND AREA OR ARCHITECTURAL REVIEW COMMISSION

FINAL STAFF APPROVAL

ORDINANCE AND WALK PACKET TO COUNCIL

HEARING BEFORE COUNCIL VOTE (APPLICANT MUST BE PRESENT)

CLOSE FILE

END
Board of Zoning Adjustment (BZA)
Variance Review Process
Chart C

START

FILE APPLICATION - REVIEW
Prepare For Neighborhood Development

FEE DETERMINED
And Paid

FIELD STUDY
FOR CASE REVIEW

STAFF RECOMMENDATIONS

CONTACT APPLICANT TO DISCUSS REVISIONS

PREPARE REPORT

NOTIFICATION OF
PROPERTY OWNERS

PUBLIC HEARING
BOARD DISCUSSION
AND VOTE

NEXT DAY
ZONING CLEARANCE

FILE AND RECORD

END

AREA OR ARCHITECTURAL COMMISSION
REVIEW & RECOMMENDATION
V. **ZONING COMMITTEE REVIEW PROCESS**

Chart D provides a schematic of the Zoning Committee's review process.

VI. **ZONING COMMITTEE REVIEW PROCEDURES**

The following procedures apply to requests for rezoning, Council variance, and Board of Zoning Adjustment variance. The following procedures also apply to demolition permits.

**A. Receipt of Application Packet**

Immediately upon receiving the request for rezoning/Council variance/BZA variance application packet from the City, the Zoning Committee Chairperson shall verify the packet contents for completeness. Within twenty-four (24) hours of receiving an incomplete application packet the Zoning Committee Chairperson shall contact the assigned staff of Development Regulation Division alerting them to the packet's incompleteness.

**B. Dissemination of Information to Zoning Committee Members**

Within seventy-two (72) hours of receipt of a substantially complete application packet the Zoning Committee Chairperson, or his/her designee, shall send by regular mail a written summary of the information contained in the application packet to each Zoning Committee member.

The summary shall contain sufficient information to provide for a general understanding of the applicant's request, which shall include, but is not limited to, the name(s) of the applicant, owner, and/or agent; application number; address of property identified in the application; existing zoning of subject property; nature of applicant's request; background information on the property identified in the application and of contiguous properties; and maps or other graphics. In addition, the summary shall include the Zoning Committee Chairperson's recommendation of either a minor or major review of the application.

In no event shall any Zoning Committee member receive a summary of the application packet in less than two (2) days prior to the First Presentation by the applicant.
Zoning Committee Review Process
Chart D

1. Receive application packet from city
2. Review application packet for completeness
3. Send notifications to applicant, property owners, and civic associations
4. First presentation
5. Determine minor or major review required
6. Applicant presentation at the monthly commission meeting
7. Second zoning committee review
8. Second presentation at the monthly commission meeting
9. Area commission makes recommendation
10. Appropriate city staff receives area commission recommendation

- City Staff Support
- Incomplete application packet
- 6-10 weeks
- Minor review
C. Notification to Applicable Parties

Within twenty-four hours of receipt of an application packet the Zoning Committee Chairperson, or a Zoning Committee member designated by the Zoning Committee Chairperson, shall send by regular mail written notification to:

(i) Applicant of the scheduled date, time, and place where the applicant will make the First Presentation of his/her request to the Zoning Committee. The notification to the applicant shall in addition include a request of issues (e.g., traffic, drainage, etc.), which the applicant is expected to identify and address at the first presentation before the Zoning Committee.

(ii) All property owners identified in the City's application within one hundred twenty-five (125) feet of the exterior boundaries of the property. In addition, any property owner within one hundred twenty-five (125) feet of the applicant's property in the event the applicant owns property contiguous to the property identified in the application (consistent with Columbus City Code Chapter 3310.05(A)(c-d)). Measurements shall be made in the same manner as specified in Columbus City Code Chapter 3310.06. Notification shall include the applicant's name, address of property identified in the application, existing zoning, nature of applicant's request (e.g., rezoning, variance, etc.), date, time, and place of applicant's presentation to the Zoning Committee.

(iii) All civic association(s) and neighborhood association(s) known to the Zoning Committee within one hundred twenty-five (125) feet of the exterior boundaries of the property identified in the application; and within one hundred twenty-five (125) feet of the applicant's property in the event the applicant owns property contiguous to the property identified in the application. Notification shall be sent to the leaders of civic associations and neighborhood associations and include the applicant's name, property address, existing zoning, nature of applicant's request (e.g., rezoning, variance, etc.), date, time, and place of applicant's presentation to Committee.

D. Time Frame for First Presentation

The First Presentation by the applicant shall be made at a regularly scheduled Zoning Committee meeting. In no event shall the time period of the applicant's First Presentation be less than four (4) days from the mailing date of notices to property owners and civic/neighborhood associations; or exceed thirty (30) days from the date of receipt by the Zoning Committee of the application packet (month of August exempted).
E. Purpose of the First Presentation
The First Presentation provides the first official review by the Zoning Committee of the applicant's request regarding:

(i) The completeness and comprehensiveness of the documentation submitted by the applicant.

(ii) The documentation of public input and the identification of additional issues requiring attention.

(iii) Whether the request warrants a minor or major review. At a minimum the Zoning Committee shall consider as the bases for determining whether a request requires a minor or major review: the potential impacts the request may generate on the REDACTED community and the level of public interest the request generates.

(a) A minor review would not ordinarily entail a Zoning Committee review beyond the First Presentation by the applicant, and where the Zoning Committee may be able to render a recommendation to the REDACTED Area Commission regarding the applicant's request.

(b) A major review would ordinarily require both a First Presentation by the applicant and a Second Review by the Zoning Committee prior to rendering a recommendation to the REDACTED Area Commission regarding the applicant's request.

(iv) Recommending the applicant meet with community as warranted.

(v) Alerting the applicant of his/her obligation to make a presentation to the REDACTED Area Commission at the upcoming monthly area commission meeting.

(vi) Identifying the need for additional assistance from appropriate City department(s) for data and/or to request analysis of specific impacts (e.g., traffic study).

F. Presentations at Monthly Commission Meeting
Zoning Committee Presentation

(i) The Zoning Committee Chairperson or his/her designee shall introduce the applicant's request; provide the application number; names of the applicant, owner, and agent; background information on the property identified in the application and of contiguous properties; and the nature of the request.
**REDACTED** AREA COMMISSION

**ZONING COMMITTEE PROCESS AND PROCEDURES**

(ii) The Zoning Committee Chairperson or his/her designee shall report to the **REDACTED** Area Commission the results of the Zoning Committees' first review of the applicant's request. The report should contain as a minimum: background information on property and surrounding area; trends in land use in immediate area; positive and/or negative impacts anticipated as a result of recommending approval of the applicant's request; and photographs and/or slides of the property under question and the immediate area. A time limit not to exceed ten (10) minutes is recommended for each Zoning Committee presentation. The Zoning Committee Chairperson or his/her designee shall prepare a written summary including all the above information and deliver a copy to each **REDACTED** Area Commission member not less than one (1) day prior to the regularly scheduled monthly Commission meeting.

**Applicant Presentation**

(i) The applicant may make a presentation to the **REDACTED** Area Commission. A time limit not to exceed fifteen (15) minutes is recommended. All presenters should identify themselves by stating their full names and titles/functions. Business cards given to the minutes-taker is strongly encouraged.

G. Second Review

The Second Review allows the Zoning Committee to collect and review additional information and public input. The Second Review shall be scheduled on a regular Zoning Committee meeting following the first review meeting, except at the applicant's request for an extension of time. The Zoning Committee may grant an applicant a time extension for reasonable cause. The Committee shall follow the guidelines set forth below regarding matters where an applicant makes revisions to the original request:

(i) Revisions submitted seventeen (17) or more days before a Zoning Committee meeting. Site plans and/or text changes received by the Zoning Committee Chairperson or his/her designee seventeen (17) or more calendar days prior to a scheduled Zoning Committee review meeting will be incorporated into the Zoning Committee's report to the **REDACTED** Area Commission. All revisions must be signed by the applicant (or applicant's agent) and dated. All revisions must clearly indicate all deletions and additions. Major revisions may result in a change to the Zoning Committee's recommendation, further evaluation by Zoning Committee members, or possibly postponement of the Zoning Committee's recommendation to a later date.
(ii) Revisions submitted between ten (10) and sixteen (16) days before Zoning Committee meeting. Revisions and supplemental materials are to be submitted no less than ten (10) days prior to a scheduled Zoning Committee review meeting. Materials received within this time frame will be included in the Zoning Committee's report to the __REDACTED__ Area Commission as addendums to the original submissions. All revisions must be signed by the applicant (or applicant's agent) and dated. All revisions must clearly indicate all deletions and additions. The degree of change and timeliness of receipt will be factors considered by the Zoning Committee in evaluating whether the application should proceed on schedule. Zoning Committee review cannot be guaranteed under this deadline.

(iii) Revisions submitted less than ten (10) days before the Zoning Committee meeting. Revisions submitted less than ten (10) days prior to a scheduled Zoning Committee review meeting may or may not be reviewed by the Zoning Committee. Major changes may result in the Zoning Committee requesting the case be tabled for full review.

H. Subsequent Monthly Commission Meeting
Zoning Committee Presentation

(i) The Zoning Committee Chairperson or his/her designee shall introduce the applicant's request; provide the application number; names of the applicant, owner, and agent; background information on the property identified in the application and of contiguous properties; and the nature of the request.

(ii) The Zoning Committee Chairperson or his/her designee shall report to the __REDACTED__ Area Commission the results of the Zoning Committees' second review of the applicant's request. The report should contain as a minimum a summary of: the applicant's proposal; identification of resolved and unresolved issues; community response to the request; and the Zoning Committee's recommendation either to support, not to support, or conditionally support the applicant's request. A time limit not to exceed fifteen (15) minutes is recommended for each Zoning Committee presentation. The Zoning Committee Chairperson or his/her designee shall prepare a summary document including all the above information and deliver a copy to each __REDACTED__ Area Commission member not less than one (1) day prior to the regularly scheduled monthly Commission meeting.
Applicant Presentation

(i) The applicant may make a presentation to the REDACTED Area Commission. A time limit not to exceed fifteen (15) minutes is recommended. All presenters shall identify themselves by stating their full names and titles/functions. Business cards given to the minutes-taker is strongly encouraged.

(ii) At the request of the applicant the REDACTED Area Commission may table voting on the application and refer the applicant back to the Zoning Committee and/or community for further discussion/negotiations. This would entail a third review of the applicant's request and proceed in a manner similar to the second review.

VII. Recommendation

A. Zoning Committee Recommendation

Upon completion of its review, the Zoning Committee shall at a regularly scheduled Zoning Committee meeting vote on all applications and requests presented before it in accordance with Section III E (Quorum).

(i) The Zoning Committee shall vote to recommend either: to approve, not to approve, or approve with condition(s) the application.

(ii) The Zoning Committee shall present its recommendation to the Commission at the monthly area commission meeting.

B. REDACTED Area Commission Recommendation

Upon voting and making its recommendation, the REDACTED Area Commission shall instruct the Chairperson of the Zoning Committee to complete the City's Standardized Recommendation Form (see Appendix) conveying the recommendation of the Commission and to deliver said form to the appropriate City staff.

VIII. Next Level Review

A. Development Commission Hearing

The Zoning Committee Chairperson or his/her designee shall attend the Development Commission hearings concerning all pertinent applications; shall present the REDACTED Area Commission's recommendation regarding an application and a summary of the process that was under

PREPARED BY MICHEL MODIA
COMMISSION INTERN, DECEMBER 1999
taken that resulted in such recommendation; and shall report back to the Zoning Committee and the "***REDACTED*** Area Commission the status of each application.

B. Board of Zoning Adjustment Hearing

The Zoning Committee Chairperson or his/her designee shall attend the BZA hearings concerning all pertinent applications; shall present the "***REDACTED*** Area Commission's recommendation regarding an application and a summary of the process that was under taken that resulted in such recommendation; and shall report back to the Zoning Committee and the "***REDACTED*** Area Commission the status of each application. The Zoning Committee Chairperson or his/her designee shall obtain at least two copies of the BZA's determination and accompanying documentation: one copy shall be retained in the Zoning Committee archive, and the other delivered to the "***REDACTED*** Area Commission Planning Committee.

C. City Council Hearing

The Zoning Committee Chairperson or his/her designee shall attend City Council hearings for all pertinent applications; shall present the "***REDACTED*** Area Commission's recommendation regarding an application and a summary of the process that was under taken that resulted in such recommendation; and shall report back to the Zoning Committee and the "***REDACTED*** Area Commission the status of each application. A report shall be made to the Zoning Committee and the "***REDACTED*** Area Commission on the status of each application. The Zoning Committee Chairperson or his/her designee shall obtain at least two copies of the City Council's determination and accompanying documentation: one copy shall be retained in the Zoning Committee archive, and the other delivered to the "***REDACTED*** Area Commission Planning Committee.
Appendix B: Case 2 Narrative
## Table 1

Pseudonyms of People and Organizations Involved in Case 2 Research

<table>
<thead>
<tr>
<th>Pseudonym</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunshine Homes</td>
<td>Rezoning Applicant</td>
</tr>
<tr>
<td>Kent Miller</td>
<td>Applicant’s Lead Rep.</td>
</tr>
<tr>
<td>Dawn Cook</td>
<td>Applicant’s Attorney</td>
</tr>
<tr>
<td>Ted Woods</td>
<td>Applicant’s Planner</td>
</tr>
<tr>
<td>Tom Springer</td>
<td>Applicant’s Project Manager</td>
</tr>
<tr>
<td>John Davis</td>
<td>Applicant’s Engineer</td>
</tr>
<tr>
<td>Tinor, Minor, Howard &amp; Erwin (TMH&amp;E)</td>
<td>Applicant’s Consulting Eng.</td>
</tr>
<tr>
<td>Commission</td>
<td>Area Commission</td>
</tr>
<tr>
<td>Woody Barnes</td>
<td>Commission Member</td>
</tr>
<tr>
<td>Stan Gable</td>
<td>Commission &amp; ZC Member</td>
</tr>
<tr>
<td>David Henderson</td>
<td>Commission Member</td>
</tr>
<tr>
<td>Rita Jensen</td>
<td>Commission &amp; ZC Member</td>
</tr>
<tr>
<td>Bob Jones</td>
<td>Commission &amp; ZC Member</td>
</tr>
<tr>
<td>Sally Richards</td>
<td>Commission Member</td>
</tr>
<tr>
<td>Kurt Summer</td>
<td>Commission &amp; ZC Member</td>
</tr>
<tr>
<td>Betty Cooper</td>
<td>ZC Member</td>
</tr>
<tr>
<td>Kevin Moffet</td>
<td>ZC Member</td>
</tr>
<tr>
<td>Roy Dent</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Carroll Grimes</td>
<td>Commission Area Resident</td>
</tr>
<tr>
<td>Paul Hanes</td>
<td>Commission Area Resident</td>
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<td>Loretta Karnes</td>
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<td>Kelly Trace</td>
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<td>Pastor Robert Jefferson</td>
<td>Religious Leader</td>
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<tr>
<td>Mary James</td>
<td>FIST Representative</td>
</tr>
<tr>
<td>Tina Murphy</td>
<td>FIST Representative</td>
</tr>
</tbody>
</table>


During the January 20th ZC meeting the applicant, Sunshine Homes, had its team of representatives focus their presentation on the proposed development plan (i.e., PUD notes). The applicant’s representatives included two attorneys (Kent Miller, the lead attorney, and Dawn Cook), a site/landscape planner (Ted Woods), and Sunshine Homes’ project manager (Tom Springer). The focus of their presentation was about the proposed housing on the site and the large open space to be dedicated to the City, which they emphasized as “going far beyond” the
City’s requirement for parkland dedication. The applicant’s representatives did not, however, explain to the ZC that most of the land being dedicated to the City as parkland/open space was part of the Indigo Stream floodway and therefore unbuildable. They also made no mention of the existence of wetlands on the parcels, or the proposed plan to fill in the wetlands and a portion of the floodplain. Lastly, they did not present any plans to protect the water quality of Indigo Stream or to alleviate the flood proneness of this area.

Attorney Miller, the primary speaker of the applicant’s representative team, had a quiet demeanor, almost sheepish, as he made his first presentation to the ZC of the proposed development planned for the site. Miller appeared to stumble his way through the presentation, giving an appearance that he was not quite sure he knew what he was doing. Immediately after the meeting, two ZC members together came to me and both expressed their shared feelings about Miller and his presentation. The two ZC members told me that they felt Miller’s presentation was contrived, and disingenuous. They also told me they gave Miller, reluctantly, the benefit of the doubt that he was providing the ZC with an honest and comprehensive depiction of the impacts the proposed rezoning and subsequent housing development would have on area residents.

After the applicant’s representatives had concluded their presentations the ZC candidly expressed their concerns over the proposed PUD notes, which the ZC felt were materially incomplete and lacked sufficient details. Indeed, the PUD notes submitted were atypical of PUD notes or development texts the ZC had previously experienced. The ZC made clear to the applicant’s representatives to be prepared at the next meeting in February to explain in detail how the proposed plan would address the community’s concerns regarding: flood protection, environmental protection, traffic circulation, and landscaping and buffering.

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115 Columbus City Code (Revised through March, 31, 2003) Title 33 Chapter 3385 Article XVII Flood Plain Development Regulation.
116 Sunshine Homes initial rezoning application and development text (Appendix B.1 Exhibit 2).
117 Neither the January 20, 2004 ZC minutes nor the February 2, 2004 ZC Report referred to by the ZC’s minutes, specifically listed each area the applicant was requested to address.
The ZC also expressed to the applicant’s representatives that the community would most likely not agree to the current proposed housing design as it was not consistent with the character of the existing housing on Pleasant Drive - the proposed density, lot widths, and exterior housing materials conflicted with the existing neighborhood. Lastly, the ZC indicated to the applicant’s representatives that the community would not be agreeable to the building of houses within the 100-year flood plain. The ZC asked the applicant’s representatives to take back to those who could modify the proposed development plan a request to reconsider increasing housing lot size, and not building within the floodplain. Miller appeared receptive to convey the ZC’s requests to the applicant.

This may all sound as if the ZC was being unreasonable and overly demanding on the applicant’s representatives, but this was not the case. The applicant’s representatives, in particular Miller, were presenting themselves as being surprised and unprepared for the questions the ZC posed to them at the meeting. The fact of the matter was the ZC was following up on the responses Miller provided to the ZC’s list of twenty-five written questions. The ZC’s follow up questions, however, were prompted by Miller’s generic and non-specific responses rather than responses the ZC expected to receive; responses specific and detailed to the proposed development. Miller’s responses to the ZC’s questions forebode the future that was in store for the community in dealing with this applicant’s representative. Throughout the rezoning review process, the Commission perceived the applicant’s attorney as employing a strategy of withholding or delaying the provision of materially significant information of the

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recorded these specific details in my own notes during the ZC meeting. This was the only ZC meeting during this application’s review I did not audio record.

Miller’s letter to ZC dated January 15, 2004 (Appendix B.1 Exhibit 5), which includes 25 total questions and responses (10 initial questions sent by Kevin Moffet and 15 questions sent by Betty Cooper, Zoning Chair)
proposed development\textsuperscript{119} to the Commission. As one Commission member
would later state,

\begin{quote}
\ldots there are certain developers who have come into
our community and they have been very
straightforward and you can believe what they say,
you know, absolute gospel. And then there are
other developers, boy, if you don’t push the
envelope, if you don’t ask those, you know, probing
questions, you know, you’ll never ever get the truth.
We listen to what the developer is saying, and then,
you know, you can tell, you know, after a while,
you know, who’s, who’s straight up and who’s
trying to hide something, you know.\textsuperscript{120}
\end{quote}

Initiating a relationship with the Commission based on apparent partial truths,
omissions of materially significant facts, or semantical trickery is hardly a basis
for building trust between parties.

I now want to turn to examining some of the written responses and the
dialogue that followed between the applicant’s representatives and the
community. These dialogues represent the constructive basis of the relationship
the applicant’s representative and his team created through their interactions with
the community\textsuperscript{121}. The kind of relationship created is indicative of the perceived
value the applicant, acting through its representatives, placed on the Commission
as compared to various other entities (i.e., City, State and Federal Agencies) in

\begin{footnotesize}
\begin{footnote}
\textsuperscript{119} Information that the applicant omitted included: identifying the existence and location of
wetlands on the parcel, and proposing to fill a portion of the flood plain to accommodate
building additional housing units.
\end{footnote}
\begin{footnote}
\textsuperscript{120} Comment by Woody Barnes during my June 20, 2008 interview with him. I cannot confirm
whether Mr. Barnes was referring to this applicant’s representative specifically or developers
generally. However, it is important to note that I began the discussion about trust with
reference to this applicant’s (i.e., Sunshine Homes) specific development.
\end{footnote}
\begin{footnote}
\textsuperscript{121} It can be argued that the applicant’s representative was not concerned with nor had any
intention of establishing a relationship with the community, but was solely interested in
successfully completing the rezoning of the proposed property for his client. However,
whether a relationship or the type of relationship between the applicant’s representative and the
community was intended or not is beside the point as relationships are created through the
reciprocal interactions between people. The important point is not whether relationships were
created, but whether they were constructive or destructive relationships. Nor, for our purposes,
does it matter what was the intent of the developer’s agent. Of interest were his intentions as
perceived by the community because that was pivotal in the creation of trust between parties.
\end{footnote}
\end{footnotesize}
making the proposed development a reality. In particular, I am focusing on the representative’s forthrightness, speed and timing of divulging relevant information, and his capability and amenability to negotiation; and how these aspects of trust were utilized to discourage the building of trust between the Commission and the applicant’s representative.

When Miller responded to the ZC’s list of questions in his letter dated January 15, 2004, his responses to two of the twenty-five questions are particularly noteworthy to this case. These particular responses foretold, although not apparent at that time, a lack of candor that would occur many times in upcoming meetings with the ZC, the Commission, and residents. The first of these two questions asked, “Does your proposal conform to the Commission’s Area Plan?” Attorney Miller’s response was,

Yes. Land use recommendations in the Commission’s Area Plan call for this area to be developed with single-family residences. The Commission Area Plan also calls for preservation of [Indigo Stream] and the area in and around the Stream. This proposal preserves and emphasizes those natural features for the benefit of the community. (my emphasis)

The second of these two questions asked, “What adverse environmental impacts are expected from this proposal?” Miller’s response was,

[Sunshine Homes] does not anticipate any adverse environmental impacts from this proposal.

[Sunshine Homes] will comply with all State and

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122 Stone (1989, 180) distills these aspects of trust to the simple yet necessary ability “to count on one another”. McKnight and Chervany (2000, 828) describe the aspects of trust as integrity (forthrightness), benevolence (speed and timing of divulging relevant information), and competence and predictability (capability and amenability to negotiation).

123 (Appendix B.1 Exhibit 5) Although the applicant’s responses are dated January 15, 2004, these were first provided to the ZC by the applicant’s attorney at its January 20, 2004 meeting. Consequently, the ZC did not have time prior to its meeting to review the responses and therefore had to review the responses during the ZC meeting. The letter was also mailed, presumably, to each ZC member (author can only confirm his receipt), but did not receive letter until January 21, 2004 (after the ZC meeting).
local regulations regarding development, environmental issues, etc. (my emphasis)

Miller’s responses to these questions and in particular to the environmental question did not mention the existence of three wetlands located on the property, and the intention to fill two of them. Nor did Miller’s responses indicate the intention to fill a portion of the flood plain to allow the building of houses not otherwise permitted by Columbus City Code. It is reasonable to assume that both of these intended actions could potentially cause some degree of adverse environmental impact, specifically an adverse water quality impact on Indigo Stream, which the applicant should have at least identified and discussed with the community. Perhaps when answering the first question, Miller was thinking about the plan’s proposed 14 acres of dedicated open space as a contribution to preserving Indigo Stream and the areas in and around Indigo Stream. Regarding the second question - apart from the fact that a challenge can be made about the specificity of the wording of the question\textsuperscript{124} - it is conceivable that Miller forgot there were wetlands on the property and about the proposed filling of a portion of the floodplain to make room for housing.

These appear reasonable and plausible explanations for Miller’s omissions in his responses to these two questions. However, there is evidence to show the contrary. As early as April 2003\textsuperscript{125} Sunshine Homes had contracted the consulting services of Tiner, Minor, Howard, and Erwin (TMH&E) to prepare what is known in the industry as a wetland delineation report, which was completed on August 8, 2003\textsuperscript{126}. The report concluded, “Three wetlands consisting of 2.17 acres were observed on the site” (TMH&E 2003, 5 Appendix

\textsuperscript{124} The question could have been more narrowly specified, but it must also be remembered that these questions sent to the applicant were essentially the sample questions from the ZC’s process and procedures document, and they were sent out prior to the ZC receiving the applicant’s application and corresponding documentation.

\textsuperscript{125} From a wetland survey map produced by TMH&E for Sunshine Homes dated 4/16/03 included in TMH&Es August 8, 2003 report (Appendix B.1)

\textsuperscript{126} TMH&E “44.5 Acres on Pleasant Drive city of Columbus Franklin County, Ohio. Investigation of Waters in the United States. Prepared for: Sunshine Homes, Inc. (Appendix B,1 Exhibit 6)
B.1). Yet this wetland delineation report and the existence of several wetlands located on the property were not mentioned by Miller or any of the applicant’s other representatives present at the January 20, 2004 ZC meeting nor subsequently at the Commission’s February 5th meeting. Jumping ahead for a moment, it was not until the ZC’s February 17th meeting and only after a ZC member specifically asked whether the parcels contained wetlands and if a wetland delineation report had been prepared did the applicant’s representatives first acknowledge these facts127. Also at the February 17th meeting, the same ZC member requested a copy of the wetland delineation report128. However, the ZC did not receive a copy of the report until March 12, 2004129 - nearly three months after the ZC first began its review of the rezoning application.

Furthermore and unbeknownst to the ZC, the Commission, or residents throughout their discussions and negotiations with the applicant’s representatives regarding potential flood issues and environmental protection, Sunshine Homes submitted to the U. S. Army Corps of Engineers and the Ohio Environmental Protection Agency its Proposal for Section 404 & 401 Authorization dated March 23, 2004 (Appendix B.1). In its proposal was an acknowledgement of the adverse environmental impacts the proposed development may potentially have on wildlife, habitat, and water quality of the property and on Indigo Stream130. While the contents of this proposal were not disclosed to the ZC or the Commission during the zoning review process, Sunshine Homes described its assessment of the environmental impacts of its proposed development (i.e., its preferred design) to these regulatory reviewing bodies as,

\[ \text{Water quality on the subject property would be lowered through the fill of approximately 1.76 acres of herbaceous wetlands (Wetlands A and B).} \]

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127 I was the ZC member that probed the applicant’s representatives for this information.
128 I requested a copy.
129 Author received one copy of study from applicant’s attorney via mail on 3/12/2004
130 TMH&E City of Columbus, Franklin County, Ohio. Proposal for: Clean Water Act Section 404 Authorization and Section 401 Water Quality Certification. Prepared for: Sunshine Homes March 23, 2004 (Appendix B.1 Exhibit 7)
However, it is expected that the magnitude of the lowering of water quality on the site would be minimal due to the low quality and disturbed state of the wetlands proposed to be filled. (pg. 9, my emphasis)

Comparing Sunshine Homes’ statement to the regulatory agencies of the environmental impacts of its proposed development to that of its response to the ZC’s question, “What adverse environmental impacts are expected from this proposal?”, Sunshine Homes does not anticipate any adverse environmental impacts from this proposal. Sunshine Homes will comply with all State and local regulations regarding development, environmental issues, etc. (my emphasis)

appears to show that Sunshine Homes’ response to the ZC was not forthright. However minimal Sunshine Homes’ portrayal of the lowering of the water quality was to government agencies; the fact remains that Sunshine Homes acknowledged a potential adverse impact on water quality, which is recognition of an adverse environmental impact, but chose not to disclose that information to the ZC in response to a direct question regarding adverse environmental impacts\(^{131}\).

**The February 5, 2004 Commission Meeting**

During the February 5\(^{th}\) Commission meeting Sunshine Homes’ representative, Miller, and his team made their initial presentation to the Commission of the proposed rezoning and development. In his presentation Miller stated,

One of the main things that we wanted to try to do in this development would be to take special care of the environmental conditions there. We recognize

\(^{131}\) The ZC would learn about the water quality report at a later date, although it had asked a question (number 10) about adverse environmental quality impacts in a letter to applicant dated December 10, 2003 (Appendix B.1 Exhibit 5).
the Stream is a tremendous natural resource for the whole area.

However, Miller did not explain what those special environmental conditions were, nor did he describe how the applicant would take special care of those special environmental conditions.

Ted Woods, the applicant’s site/landscape planner, stated that the proposed project would keep with “the existing surrounding features” referring to the apartment development across the street, yet he was noticeably silent in acknowledging the predominance of single-family housing in the immediate area of the property. Woods continued,

We believe that we have been able to take into consideration the natural area, and then also the character that is currently along [Pleasant Drive] and provide a development that will blend into this area.

During this initial Commission meeting, the Commission and the community focused their questions on four main areas of concern: flood control, environmental protection, traffic impacts, and housing size. The Commission Chair began the inquiry by asking, “Where would the [rain] water go?” Without directly answering the Chair’s question Miller responded,

… we will have this engineered purposely so that the water, any water that’s on the site has to be able to be removed from the site according to the Division of Utilities, and we have to, we have to get permits to do that before we can even start constructing. We have to have that reviewed by the engineers…. So we do have an engineer; in fact if you have more detailed questions on that we have the engineer with us tonight; he can actually answer some more detailed questions.
Tina Murphy, a FIST representative, submitted FIST’s recommendation letter\textsuperscript{132} (dated February 5, 2004) to the Commission and verbally summarized FIST’s recommendations of no floodplain filling, and for the relocation of the proposed storm water treatment ponds outside the floodplain. Murphy asked Miller, “… do you know any more about the flood plain fill permit that will be required at the site?” Miller responded,

\begin{quote}
We’re in the process of engineering the site, and typically that’s something that goes slightly behind the zoning process. So, that is something that we would have to go through as part of this…ultimately as part of the development.
\end{quote}

However, Murphy not deterred by Miller’s non-answer asked again, “As far as you know now will the permit be required?” Miller responded, “Yes, there is a permit that’s required to fill in the floodplain.”

Commission member Modula expressed concern that the applicant’s representatives had not presented the traffic impacts of the proposed development to the Commission and offered them additional time to present their proposed traffic plan. Miller stated,

\begin{quote}
as we’re going through this, with this plan at this point in time we are now in the midst of doing a traffic impact study. As that traffic study is being done we will be in the process of spending time reviewing it with the City of Columbus, in fact Patti Austin is the point person that we’re working with on that. We also, of course, we’ll sit down with the Division of Safety in particular, the Fire Division to make sure that we have adequate ability to, for emergency vehicles to access this… in fact we have already begun discussions with the church to see if this needs modified for that purpose.
\end{quote}

Commission member Modula asked when Sunshine Homes expected to finish its traffic study. Attorney Miller responded, “it’s in the process of being,\textsuperscript{132} (Appendix B.1 Exhibit 9)
they’re doing, I think they’re doing the counts this week, so we probably, we hope to have some more specifics before we come back to the zoning subcommittee.”

Modula asked to be provided a copy of whatever traffic information Sunshine Homes had on the proposed development. Miller agreed to provide this documentation.

The last item addressed came in the form of a caution to the applicant’s representatives by the ZC Chair Betty Cooper, who commented the ZC was “not real happy” with the square footage of the smallest home (i.e., 975 sf) and warned Miller to prepare for community opposition on the size of the houses. Miller indicated that there was flexibility in working with the community on limiting the total number of houses with the smaller square footage.

The February 17, 2004 Zoning Committee Meeting

The Zoning Committee met with the applicant’s representatives for a second time on February 17th and the two parties engaged in dialogue for approximately two hours. The majority of that time was used discussing in greater detail how the applicant would resolve the Commission’s and community’s concerns (identified in the February 5th Commission meeting) regarding water quality protection, wetland identification and preservation, flood control, and the proposed development’s fit with the existing character of the area. It is significant to note that ZC members exhibited two atypical behaviors during this meeting.133 These behaviors had not been present in previous ZC meetings in which I participated. First, the members of the ZC deferred to me to take the lead role of investigating the representatives’ reluctance to talking about the potential environmental and flood impacts connected to the proposed development.134 Second, the ZC members, listening for the most part, focused on evaluating what

133 These behaviors were not planned, but occurred spontaneously.
134 After the meeting I asked the other ZC members why they didn’t join in the discussion. The consensus was that I was expressing the issues sufficiently well that they didn’t feel they needed to repeat what I had already asked or commented on during the discussion.
the representatives were saying when interacting with me about the Commission’s and community’s concerns.

Sunshine Homes’ attorney, Miller, began his presentation by indicating that after considering conversations and comments made at prior meetings, specifically mentioning Tina Murphy (FIST) and her concerns about “the care of Indigo Stream,” he was presenting a revised plan. Miller emphasized two key components of the revised plan which included replacing the two proposed storm water retention ponds with a single and as yet undefined term he called an “active wetland that would be used for control of quality of the water”, and which would be situated in a new location.

ZC member Modula asked “Is there a wetland on these parcels, I believe there are four parcels. Is there any wetland on these parcels?” The applicant’s planner, Ted Woods responded, “Yes there are. Yeah, there are several wetlands on the property.” Woods pointed out three wetlands and their locations on the applicant’s site plan and indicated that two would be “mitigated” (i.e., destroyed) and the third would remain in the woods.

Modula asked whether a wetland study or delineation study was prepared and then a mitigation plan developed. Woods said, “the study was completed by BBC&F, by a local environmental firm, and the mitigation process would take place as part of our engineering.” Modula asked, “when was the delineation done?” Woods said, “I can’t remember exactly. It was probably August or

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135 After the meeting the ZC members also expressed to me, not so much in words as by innuendo, they felt the applicant’s representatives were being disingenuous and performing “double-talk”; and they wanted to focus on what the applicant’s representatives were saying to determine the truthfulness of their words.

136 Site plan only (dated 2/17/2004). No accompanying revised PUD text or development text was submitted to ZC.

137 Applicant’s representatives did not provide ZC at this meeting with dimensional drawings of active wetland or its location on the property. However, during the ensuing discussions applicant’s representatives indicated that the proposed active wetland was planned to be located in the floodway, a location similar to the previously proposed two storm water retention ponds.

138 The audio recording of which this statement was taken was a bit garbled, but TMH&E was the actual firm that conducted the wetland delineation study and prepared the report (Appendix B.1 Exhibit 6).

Modula asked if any of the proposed houses would be located in the flood plain fringe. Woods responded, “Yes.” Modula asked the applicant’s representatives to show on their site plan where the flood plain was relative to the proposed houses - since up to this date the applicant’s representatives had not provided to either the ZC or Commission any maps showing the floodplain. Miller motioned on his map the location of the flood plain relative to the proposed housing.

Modula suggested to the applicant’s representatives not to build within the flood plain fringe because of the area’s history of ponding and flooding, and that not building within the flood plain would be keeping with City Code. However, from this point forward Miller’s demeanor changed dramatically as he interrupted Modula and stated, “Can we kind’a, you’re going on just about ten minutes on this; can I comment, not to be offensive…?”

Modula indicated to the applicant’s representatives that he had not read in any of their proposed texts to date any commitments confirming their oral commitments to standards of flood protection and water quality preservation. Woods, responded,

To answer your question specifically, we don’t have any choice. I mean that’s not something that we can…. We can put it in the text. We can basically say, …, following the [City] Code. We have to do that. It’s not a, would like to, it’s not a prerogative. It’s a requirement. We have to follow the Code that is established and the requirements that are, again, established by people who are professionals within that field.

To be clear, there are no prohibitions in the City Code regarding the inclusion of restating or reaffirming codified text in a PUD text. More significantly, however, Woods failed to point out that the City Code requirements
are minimum standards of compliance, which do not prohibit a developer to make commitments exceeding those minimum City requirements.

Miller, attempting to reinforce the legitimacy and authority of Woods’s statements, added,

We will apply for whatever permits are … that we have to get, I don’t even know all the ones we are…; but if we’re going to deal with wetlands issues, then we will apply for mitigation; that we will apply for the appropriate permits to fill the floodplain. That is, never was a thing we were not going to put in the text. The reason it’s not there is because we know, we can’t dig up, put one shovel full of dirt in that floodway until, I mean that floodplain, until we get the permit. But we’ll be happy to put it in there. (my emphasis)

Modula asked if the project would comply with the City’s newly revised storm water quality rules. Miller stated, “We’ll follow the regulations from Ohio EPA.” Miller did not state that they would comply with the City of Columbus’ rules. Miller did promise that all of the commitments he made today would be in the limitation text (i.e., PUD notes) prior to the next Commission meeting.

Modula moved on to another community concern, which was the character of the proposed development was not in keeping with the character of development on Pleasant Drive. Modula presented housing images of various streets on and off of Pleasant Drive. Modula commented that housing on Pleasant Drive is suburban not urban as the proposed project planned to build. He noted that the exterior veneers of existing housing on Pleasant Drive are primarily brick and stone not vinyl siding as the proposed development planned to build. Woods conceded Modula’s evidence regarding lot widths and veneer treatments of the housing on or near Pleasant Drive, but stated,

What I did was actually, what I’m sure you did, driving up and down Pleasant Drive; I looked at the character of Pleasant Drive. Yes, there are homes
that have natural materials and many of them have very wide lots, and that’s correct. But we took it a step farther. We actually took a look at what is directly across the street, and that’s what we did here by illustrating not only our setback, but also the facet on this side of the street.

Miller indicated that he appreciated the character of housing on Pleasant Drive, however he went on to say,

this site has significant restrictions on it. Because of it we are not going to be able to put… you’re not going to get 35 single-family homes built there. [Suburban style homes] can’t work here because of the restrictions of the land. We tried to match the development to the restrictions of the land.

Modula asked Miller, “It would be appreciated if you could get all your revised text to the Commission prior to the [next] meeting.” Miller responded, “Certainly, and the drawings.” ZC Chair Cooper asked Miller, “How soon could you get us the text, the changes in the text, because we…” Miller responded,

For most every issue that we discussed tonight we are committing to put into the text. We are going to put in the text the issue of … we’ll have a step down for safety proof ponds, stringent requirement from Ohio EPA for stormwater quality control, mitigation of wetlands, filling of the floodplain, … landscape plan, entrance way features…, commitment to follow the City’s traffic requirements, no more than 15 homes that are less than 1200 square feet in the entire development, lot width correction, min lot square footage to 3,050, coach lights on garages.

Modula asked about the architectural features other than vinyl siding. Attorney Miller indicated that anything other than vinyl siding would be cost prohibitive to Sunshine Homes. Miller, concluded, “Asking Sunshine to make brick fronts is like saying we don’t want Sunshine to build here.”
Summary

At the January 20th ZC meeting, the ZC expressed to the applicant’s representatives its concerns over the contents of the PUD notes, which the ZC felt were materially incomplete and lacked sufficient details. The ZC made clear to the applicant’s representatives that they needed to be prepared at the February 17th ZC meeting to explain in detail how the proposed plan would address the community’s concerns regarding: flood protection, environmental protection, traffic circulation, and landscaping and buffering. The ZC also expressed that the community would most likely not agree to the current proposed development as it was not consistent with the existing character of housing on Pleasant Drive. Lastly, the ZC indicated that the community would not agree to building houses within the 100 year flood plain. The ZC asked the applicant’s representatives to take back to those who could modify the proposed development plan their request to reconsider increasing housing lot size, and not building within the floodplain. Attorney Miller appeared receptive to the ZC’s request and agreed to present it to those with the authority to make changes to the proposed development plan.

At the February 17th ZC meeting the applicant’s representatives submitted a revised site plan, but no revised PUD text. The applicant’s representatives, instead, referred to a previous version of the PUD text - which was silent in addressing the areas of flood protection, environmental protection, traffic circulation, and landscaping and buffering - thus utilizing a strategy of talking their way through the issues of concern to the ZC in an undocumented fashion.

The March 4 2004 Commission Executive Meeting

Immediately preceding each monthly Commission meeting the Commission convenes its Executive meeting. One of the main functions of this meeting, according to the Commission Chair, is for Commission members and Committee Chairs to discuss the agenda items so that the Commission can be in “one accord”

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139 This was the first Commission Executive meeting in which the Sunshine Homes rezoning application was discussed.
at the Commission meeting\textsuperscript{140}. The intent of the Executive meeting is to shield from public view any internal Commission conflicts - which the public may misinterpret as unprofessional, disorganized, and discordant behavior - as members work through discussions of agenda items in order to project a (sanitized) Commission image of professionalism, organization, and solidarity to the public at the Commission’s monthly meeting. The Commission’s Executive meetings provided me a special opportunity to hear what several Commission members and the Zoning Committee Chair were thinking as they candidly and unambiguously expressed their thoughts about the quality of the proposed development and the honesty of the applicant’s representatives.

This was the first Commission executive meeting in which the Commission members discussed the Sunshine Homes’ application. Commission Chair Barnes introduced Betty Cooper, the ZC Chair, who started the dialogue regarding the proposed development:

\begin{quote}
We’re going to have [Sunshine Homes] in once again … [Commission members laugh communicating an attitude of here we go again on a verbal carousel with the applicant’s representatives] … and we’re having issues with them putting the houses close together and so many houses … and lighting, and water. So these are issues that we’ve been going back and forth, back and forth with [Sunshine Homes] on, you know, it’s in the flood plain, and we’ve just had a lot of issues with this gentleman [referring to Kent Miller]. Now, he’ll come in here tonight and he’ll act like he’s never built a house or …. He’s the [applicant’s] attorney but he’s gonna act like he doesn’t know what to do. So, I think that he’s really playing us…
\end{quote}

Bob Jones, Commission member and ZC member, interrupts,

\begin{quote}
“That’s definitely what he’s doing.”
\end{quote}

\textsuperscript{140} Statement by Woody Barnes, Commission Chair, at the March 4 2004 Commission Executive meeting.
ZC Chair Cooper “…and so therefore he’s having to come back a multitude of times. Now Kent [Miller] has a real problem of including what we ask him in the [PUD] text.”

Commission member Henderson has concerns over lot size and comments, “That’s World War II cracker box….”

Commission Member Kurt Summer said the proposed development would, “look terrible.”

Commission member Jones, “In five years, in five years you will not like what you’re doing tonight. That will be the worst area in the world in five years.”

Commission member Henderson commented about the type of housing being proposed to be built within the floodplain, “When you start defining homes like that, it’s…, I used to call it planned poverty development.” Henderson continues,

I know they can get around the flooding … and the water quality, but the biggest point I say is the size of the lot and the size of the home and the lighting. That would be a line where we don’t retreat from. I mean, to me those three things are the most important here for our whole neighborhood.

Commission member Jones,

To tell you the truth I like your proposal [referring to ZC Chair Cooper’s suggestion of less houses but larger houses]. He [attorney Miller] should accept your proposal. Make the houses bigger. He should do that, but he don’t care.

Commission Chair Barnes,

And so, you know, as long as we all are one accord, understand that, then we can address some issues to him [attorney Miller], you know, as long as we know that, you know, so we can throw some questions out to him, OK. So that’s important.
The March 4, 2004 Commission Meeting

The Commission spent 1 hour 39 minutes of the 2 hours 15 minutes total meeting time discussing with the applicant’s representatives the Sunshine Homes rezoning application. Most of that time spent was discussing the proposed development’s internal street width, the proposed private streets; the proposed water quality/storm water system of the development; and the size and design of the proposed housing. At the beginning of the Commission meeting Chairman Barnes stated, “We have a full agenda. Developers, we’re going to give you about 5 to 7 minutes to give, do your presentation, and then you’ll have to sit down, OK.” Sunshine Homes’ representatives, attorney Kent Miller and planner Ted Woods, spent 14½ minutes presenting their rezoning proposal, far longer than any other presenter.

Attorney Miller began,

I did want to point out that we did deal with many issues at the zoning subcommittee, and during the zoning subcommittee there were a number of additions that were suggested, and I’m going to go over the text modifications to illustrate that we did in fact put in the text the commitments that we made [at the ZC meeting]. We’ve sent out the text so that you would have a chance to review it in advance. Our PUD notes is our limitation text and we did it in red-line version so that you could see the changes that were made. And a key note there, some of the commitments that were very important to make, that we would have no more than 15 homes within the development would be constructed with less than 1,200 square feet.

Attorney Miller asked Woods to make a brief presentation. Woods highlighted the main features of the proposed development including: two traffic access points; stating, “the traffic commitments are still in the process and we anticipate that we will get some news in the near future as to what type of entrance this is going to be....” Woods also described in some detail the
developer’s dedication of green space to the City, which would provide the City an opportunity to develop its bike trail.

Planner Woods concluded,

we believe we have provided tonight [garbled] through the additional plans and graphics a completely new development that takes advantage of the existing environment and recognizing that [Sunshine Homes] offers a line of homes that, albeit, is single-family, we recognize that based on the site constraints, a home such as this, it does not have basements, is more appropriate on this site.

Attorney Miller followed up,

One of the key things as we were going through the process last time here and as well with the zoning subcommittee is that these units that are, that [Sunshine] builds, the smallest unit is just under a 1,000 square feet. And so the area, the community here thought that we should limit the number of homes that would be under 1000 square feet or under 1200 square feet. So we committed to do that in our conversations in the zoning subcommittee and as reflected in the text that no more than 15 homes within the development will be constructed with lots [sic] of 1200 square feet. 141.

Attorney Miller continued,

Now the other thing we talked about was the homes that are fronting [Pleasant]. (A) It was important to the zoning subcommittee that each of those homes be at least two story and that they not be less than 1200 square feet. 142. So that also was put in the text. We also discussed putting decorative lighting on the garages behind the alleys and we have put in the text here, decorative light fixtures will be installed in the rear of garages along the allies.

141 It is house square footage not lot square footage Miller is talking about.
142 The ZC only requested the applicant either eliminate or limit the number of small square footage units. It did not specify the number of stories or location of housing units.
Regarding traffic concerns, attorney Miller stated,

We have in our text, access and other traffic related commitments shall be determined in accordance with the specifications of the City of Columbus transportation division. We have, are in the process of working with the City now. We’ll most likely have to put left turn lanes in and right turn lane into the, into the development, but that process is whatever the City tells us to do we’ll do.

Addressing the flood and environmental concerns of the community attorney Miller stated,

… we discussed the issue of making certain that we do apply appropriately and follow the procedures of the federal government, the state government, and the city government in dealing with creation of the water quality element here that we’re going to discuss in more detail as you have questions for, but one of the issues was that we prepare a storm water management plan in connection with the development of the site. We’ve agreed to do that. It’s in the text. The plan will include a safety shelf constructed on the site. That was one of the key issues that was brought up in the zoning committee meeting. I will comply with all federal and state and City of Columbus regulations; and we will work in conjunction with the Army Corps of Engineers for relevant and applicable site development issues. And, finally, the applicant will obtain all necessary permits and approvals for site construction, development, and/or storm water management, which may include filling of the flood plain.

Attorney Miller concluded,

Those were key issues we did spend a considerable amount of time on that. I know we discussed it at great length at the zoning subcommittee meeting, but I think that you’ll see that each commitment that was brought forth to us at the zoning

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143 Miller states “commitment” when referring to the *issues* the ZC brought to the applicant.
subcommittee, we have accepted and we have included in our text.

Commission member Jones, an outspoken Commission member, spoke first about his concern regarding security and personal safety of residents who would live within the proposed development, and particularly focused on alley security and the type of lighting illuminating the alleyways. Jones was beside himself, as it appeared he had reached the limits of his patience with the representatives. His suspicion about the presenters’ intent was unmistakable. He clenched his jaw as he spoke in an angry tight voice, pointing and shaking his finger at the representatives,

We also talked when you were here last time about the type of lighting you’ll put on the garage; but we need to put city streetlights back there because I don’t think it’s fair for a home owner to pay to put in streetlights back there. But what you’re doing, you’re making the home owner pay for their lighting. … you say you’re going to look into that, but you never commit to it. You did the same as it was before [Jones is comparing the previous PUD text to the revised PUD text]. And the alley way it should be lit by streetlights; and I suggested that to you last time [Jones is referring to the last zoning committee meeting]; and you said you were going to look into it, and all you did was pass [it] by. You put it the same way that it was, but you did change one word, you made it bigger decorator lights. I don’t think that’s fair to the homeowner.

Attorney Miller appeared anxious to respond and without giving Commission member Jones anytime to make a pause to indicate that he was finished talking, Miller jumped in,

Mr. Chairman. Commissioner. I appreciate your comments. We in fact did look at it. As a matter of fact these developments are all private lights. It’s a private development. There are no city lights in here at all. The homeowner’s association pays for the streetlights that are on the street and the
individual homeowners pay which they do through their dues. The individual homeowners are going to pay for all the lighting in the development.

John Davis, an engineer of TMH&E representing the applicant, referred to MORPC’s (Mid Ohio Regional Planning Commission) rules for shelf construction.

Commission member Henderson commented, “… I didn’t realize this … [referring to the site plan, these] are private streets. That’s a great concern of mine because when they need repair…. How wide are these streets?” Attorney Miller responded, “I believe the streets are 22 feet wide.”

Commission member Henderson continued,

I’m having a real problem with [existing] 25 foot streets and also I believe, I think City Code will call for concrete and so much rebar, and I’ve got a feeling that if you guys just go in there with, like a parking lot, in ten years or five years these streets won’t hold up\textsuperscript{144}, and then it’s up to the homeowners to replace all these streets and I think it wouldn’t be right…. Put it this way… I don’t think these taxpayers are going to get any break from the City on their taxes, so these should be dedicated [public] streets so at least their property taxes would go to maintain the streets.

Attorney Miller responded,

Actually these, these streets and the development are built to the City Code\textsuperscript{145}. The City Code

\textsuperscript{144} I met with Jerry Ryser, Columbus Department of Public Services engineer, on May 30, 2012 where he indicated the Department establishes policy regarding material specifications and construction standards, and the requirements for the depth of material s (i.e., the thickness of the street) used in public street construction are greater than for private streets. Consequently, according to Ryser, a private street will need repair and maintenance sooner than a comparable public street of the same age and level of vehicular use.

\textsuperscript{145} The Columbus Department of Public Services establishes the material specifications and construction standards for public and private street construction not City Code. Consequently, the PUD text dated March 4, 2004 does not state private streets are to be constructed with the same materials and to the same specifications as publically dedicated streets.
establishes the standards for the traditional neighborhood development. Actually, there’s more room on these streets than your 26 foot street for driving because the rules also require parking on only one side. So you actually have more room to get by. On your street, parking is on two sides so you actually have less room.

Commission member Henderson agreed but stated, “But then you’re saying, though, if your requirement is equal to the City’s, but only 3 foot narrower, why can’t you add 3 feet and dedicate [it to the City as a public street]?”

Attorney Miller answered,

Because the economics of doing it... but first of all its City Code that’s been established to build this development. I mean, traditional... we didn’t come up with this on our own. The City has done their evaluations and they’ve passed the change in the zoning code and they’ve established what the widths of the streets are. Likewise, the City adopted ....

Commission member Henderson interrupted Miller. “Could you not also do a PUD with dedicated streets?”

Attorney Miller responded, “Certainly we could, certainly we could, but that’s not what we do.” Miller tries to reassure Commission member Henderson and all those in attendance that Sunshine Homes is required to follow all the City’s standards and qualities for street construction.

Commission member Modula asked for clarification regarding the storm water detention pond, “The second question I have is that pond. In our zoning committee meeting on February 17th you referred to it as an active wetland.”

Attorney Miller looked surprised and off balanced, as he stumbled through an attempt to retract and correct what he had said at the previous ZC meeting; trying to convince the audience he did not know what he was talking about because he was not an “expert” in the subject area. However, in his attempt at revisionism, he apparently forgot that at that earlier ZC meeting he had the
experts present who could have spoken on the subject and corrected him, but
instead they supported Miller as he took the lead in explaining or claiming the
storm water detention pond to be an active wetland.

Attorney Miller,

I don’t think I used it, if, I may have used that word, that certainly would be a layman’s use of that word. Since we have the experts here, I really am not an expert in wetlands. I know that it would be wet in the sense that it’s a, a ponding area, but I prefer to have, if you have a question on…

Commission member Modula interrupted Miller,

Well I do have a question because we spent over an hour discussing this active wetland so I don’t think, I don’t, I, for the life of me, I can’t believe it was a mistake that you used that term and we talked about a wetland, and your engineers talked about a wetland. So what is it? Is it going to be a retention pond or, what is it going to be exactly?

Attorney Miller, visibly angry was trying to interrupt Modula by asking John Davis, one of Miller’s engineering experts to respond. Engineer Davis,

What we’re looking at here [pointing to a colored site plan] is a water quality feature that is actually above and beyond the City of Columbus’ requirement to control water management, … and the term wetland may have been used or misused; I don’t know. So, it’s something that’s being considered at this time…. They [i.e., the developer] want to have a water quality feature….

Commission member Modula,

My understanding, no, it’s not just my understanding, my notes at the February 17th zoning committee meeting, you all were here [referring to Sunshine Homes’ representatives] all of you. This was [described as] an active wetland, it was

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146 The time I’m referring to was the time the ZC spent at the February 17th zoning committee meeting discussing this specific concern with Miller and his team.
proposed as an active wetland. We talked about the
water quality issues. We also talked about why that
wetland was being established, that was the terms
that you used. It was being established because you
acknowledged that there were several wetlands on
this parcel and you were going to fill up, fill-in
some of the wetlands. So you needed to mitigate
the wetland destruction. Part of the mitigation
process is to establish this wetland…. 

Attorney Miller interrupted, “No, No. Actually…”
Commission member Modula continued, “This is exactly what you said
[referring to Miller] I went through the recording, I recorded the whole
meeting…”
Attorney Miller sarcastically, “That’s good.”
Commission member Modula, “That is good because I need, I need to hold you to
what you said. This is what you said, ‘Part of the mitigation process is to
establish this wetland the other part was to pay a fee to a mitigation fund’. That’s
exactly what you said.”
Attorney Miller, “What we’ve stated and I’ll state for the record here is that
this has nothing to do with mitigation of wetlands here.”147 However, this is not
totally correct according to Sunshine Homes’ Proposal for: Clean Water Act
Section 404 Authorization and Section 401 Water Quality Certification prepared
by TMH&E March 23, 2004 (Appendix B.1 Exhibit 7) stating, “The basin is
proposed as mitigation for water quality, but not wetland fill” (p. 15, my
emphasis).
Attorney Miller, “I do request that you take a look at your notes because I
do know that for a fact. We are not and whether we said that before, let me make
it very clear tonight, we will, if, if we fill wetlands we will mitigate those
wetlands according to the laws that require the mitigation. We will not seek to

147 The implication here is that Miller apparently viewed the ZC meetings as not part of “the
record.” In fact they are part of the official record of the Commission.
have this, [referring to the proposed pond on their colored site plan] this process
take the place of us doing our mitigation requirements.”

Commission member Modula asked, “And that lead[s] me to another
discussion with you. How do you preserve the water quality of [Indigo Stream]?
If, if you’re simply going to pay a fund, money into a fund how does that, how
does that maintain or preserve the water quality of [Indigo Stream] here in this
section [referring to the proposed parcel’s shore frontage]?"

Engineer Davis responded, “I think in view of everything that has been said
this one larger basin or body of water with a vegetated shelf. It’s all about water
quality, it’s the goal of that. Fortunately this project, it will meet or exceed the
state’s requirements for post construction of water quality, which are very
relevant.”

Attorney Miller asked Davis, “Will the water quality of water that’s being
released downstream be greater or less if we had retention ponds without this
water quality feature?”

Engineer Davis responded, “That would be a real attribute if you had a
retention basin around and planting; you could get some water quality back there
by introducing the vegetated shelf would enhance it.”

Attorney Miller, “So that was another factor in there. We, in our, in our
mind we really thought that we were doing a better job of providing water quality
with this feature as opposed to having two retention ponds.”

The Commission invited Laura Fay, 401 Coordinator from the Ohio EPA, to
speak about the water quality feature of the proposed development. Fay indicated
she met with the applicant at a pre-application meeting and had reviewed their
proposal for a 401 permit. Fay indicated that although the vegetated portion of
the retention pond was not a state requirement, she was in favor of it because it
adds to enhancing the water quality of water traveling from the pond to Indigo
Stream. Fay also indicated that the vegetated portion would provide additional or
better habitat as compared to not having it. Referring to Sunshine’s proposed
vegetated retention pond site plan Fay stated, “…this is what we call a storm
water wetland…”

Commission Chair Barnes asked, “Anyone have any questions for Laura?”

Commission member Modula asked, “Do you have any concerns about the
position of this pond in regards to if there is a major storm event?”

Fay responded, “Umm, that, not really, and…. We have no authority over
floodplain per se; other communities have built plain storm water basins not even
with the extra water quality features as this one offers, so.”

Commission Chair Barnes, “I think we’ll just entertain some questions from
the audience. I think Pastor [Jefferson] had his hand up first. Pastor [Jefferson] is
the pastor of [Good Sheppard] Church.” Good Sheppard Church (Church) was
one of the principals of the proposed development. Barnes did not state during
this meeting his affiliation with the Church and the potential conflict of interest he
had presiding over the Commission meeting while the Commission was reviewing
the Sunshine Homes’ rezoning application.

Pastor Jefferson, “I wanted to thank you Chair. I wish to address the issue
with regard to the lighting in the back. So what I’m saying is that the lighting
issue is not really a grave issue because we have lights in the back of our church
that’s going to shine on that property…. So, in that regard I think that, I don’t
think the lighting is a real issue. That’s my own personal opinion.”

Commission member Jones, “So you don’t think lighting is a safety…?”

Pastor Jefferson, “No, I’m … I know safety….” Pastor Jefferson continues,
“Let me finish I have the floor…. My point is that we have done everything
within our power because we do have a lot of people that come in our area and we
have to protect it at all times.”

148 Referring to the location of the proposed pond in the floodway.
149 Mr. Paul Hanes, a long time resident of Pleasant Drive just north of Good Sheppard Church,
told me that when the Good Sheppard Church first came to relocate in the area, the Church
promised him that it would put a buffer of trees along its property line to protect Hanes from
invasion of noise and light from church activities. Hanes indicated that the church never
planted that buffer of trees. Conversation author had with Mr. Paul Hanes at his home on
Pastor Jefferson continued,

The second thing that I wanted to suggest is that, I think the words, the operative word is, is affordable housing. I did a survey in my church and I asked everybody to raise their hand who rent. 82% of the people raised their hand, which was a shock to me, I thought that people, you know, have more ownership. We need to provide housing for our people and I know for a fact that my people [garbled]…. I’m not suggesting that the lighting issue will go away. If that’s what the Commission wants to do that’s your option. I’m not hostile about it. All I’m trying to do is provide affordable housing for our people.

In his attempt to verbalize that he was not trying to influence the Commission, Pastor Jefferson was in fact trying to influence the Commission, and communicated to it that he was displeased with the apparent issues the Commission had with the development.

Pastor Jefferson continued,

Number three, is the fact that, that land, that area that we are building on was land that initially that we were going to do what we’re doing across the street [from this meeting hall]. I happen to sit on the board here as Chairman of [Harmony Partnership]. This building that you’re sitting in, I’m the Chair. Started from the very beginning….”

Pastor Jefferson was evaluating the facial expressions of the audience as he tried to persuade the Commission and audience that the proposed development was good for the community. At the same time, he was also trying to discipline the audience, and in particular the Commission, into supporting the proposed development by reminding them of their obligation to him for the use of his building to hold its meetings.

Audience member Collette Thomas commented,

I live on Pleasant Drive. I’ve lived there all my life. I have sort of concerns about the density. I am concerned about how many [houses] are being built
and how close they’re together, and then the traffic
that we’re going to have. It’s unbelievable; [as it is
now] we can’t get out of our drive. Not that I’m
against a nice home, but there’re so many and
they’re so close together …. If they had a fire
they’ll all go. [A low rumble of laughter erupted
from the audience and Commissioners]

Commission Planning Chair Sally Richards asked, “How many ranch style
homes are you going to provide?”

Attorney Miller responds,

I appreciate your question, and that’s the
controversy that we have here in our meeting with
the zoning subcommittee. We’re trying to provide a
product as the Reverend indicated that can answer
the needs of people who want to buy homes. We’re
working with the zoning subcommittee,…. But
because of the request of the zoning subcommittee
we’re limited to building only 15 homes under 1200
square feet. We’re just trying to please as many
people as we can through this process.

Commission member Jones asked, “Did you take a survey of the
neighborhood such as, [Mrs. Trace]. Now she was concerned about the small
houses …. Did you talk with the neighbors or anything like that, take a survey
with the neighborhood and tell them about what you’re doing …? How did they
accept it?”

Attorney Miller, “Actually what we did here, so I think Reverend…”

Commission member Jones interrupted, “No. I asked you. He’s [referring
to the Pastor] not a developer.”

Attorney Miller, “I am responding on behalf of the developer not on my
own personal behalf.”

There is tension growing between Commission member Jones and Miller.

Attorney Miller sarcastically,

I mean, if you like me to answer the question I’d be
happy to…. We actually, we just didn’t think this
out fully. We sat down with Reverend [Jefferson]
and he worked with us on this development plan, and members of the church worked with us on this. And it was determined with the difficulties of this site, trying to utilize this site, that you’re not going to have…

Commission member Jones interrupted, “My question was, DID YOU TALK TO THE NEIGHBORS IN THE NEIGHBORHOOD about what you’re…”

Attorney Miller interrupted and asked, “Any other neighbors?”

Commission member Jones, “Yes.”

Attorney Miller, “No. We submitted, we…”

Commission member Jones interrupted, “Such as these two people right here. That’s my question.”

Attorney Miller responded, “No, no, absolutely not. We did not. You asked if we talked to neighbors and one of them was Reverend [Jefferson], so we did…”

Commission member Jones interrupted, “Well, he’s a, he’s the preacher at the Church.”

Commission member Stan Gable joined in and said, “And he don't live there.”

Commission member Jones agreed and said, “He don't live there.”

Attorney Miller responded, “Very good. No we did not talk to the [Hanes’]. We’ll be happy to talk to him tonight. Sir, I did speak with two of the property owners the, [Loretta Karnes] and her daughter, [Michelle]; and I also spoke with the daughter of [Mrs. Trace]…” Mrs. Trace was in the audience and Miller acknowledged her.

Attorney Miller, “I know your daughter quite well and I spoke with her actually about four weeks ago and went over this…”

Audience member Mrs. Trace interrupted and said, “She [referring to her daughter] was upset.”

\[150\] The Pastor represents one of the principal landowners of the proposed development.
Attorney Miller responded, “She was concerned and we answered her concerns. I apologize for forgetting that I did speak with, I did speak with [Mr. Hanes] and I did speak with the [Traces].”

An unidentified man from the audience commented, “All this land he’s [attorney Miller] talking about here I used to go through that whole, every bit of that in a motor boat. Every acre, every bit of that is all underwater, every bit; and it’s still underwater. Every spring that’ll be all underwater back there; who’s going to pay, is the taxpayer going to have to pay for those people’s houses when they wash away?”

Commission Chair Barnes responded, “When was the last time you did that?” The tone of Barnes’s voice appeared he was attempting to discredit this man’s claim.

The unidentified man responded, “Every spring, you watch here, before the spring….”

Commission Chair Barnes asked, “What’s your pleasure Commissioners, what’ll we do?”

Commission member Jones, “I recommend we table it.”

Another commissioner stated, “we need to vote on [it].”

Commission member Modula, “I think it needs to be sent back to the Zoning Committee. I think there are unresolved issues that haven’t been worked out.”

Commission Chair Barnes asked the Commission, “OK, let’s be specific. What is it that we want him [attorney Miller] to do? What do we want him to do? What do we want him to come back with?”

Commission member Henderson expressed concern over the proposed street width and being private and not public, homeowner fees, and number of lots.

Commission member Modula, …this was my comment at the last [Zoning Committee] meeting… how they [the proposed housing] blend in with the existing characteristics of
the surrounding area. They don’t. They’re urban, [Pleasant] corridor is suburban. The architecturals, the exterior architecturals is siding. The exterior architecture, architecturals of [Pleasant Drive] are brick and stone. Even [Good Sheppard] Church has brick on the front. So these are issues we need to talk about.

Commission member Modula continued,

Let’s talk about your [PUD] text. [Y]ou struck out the whole paragraph on site plans where you refer this text to the site plan, which I imagine this is your site plan [Modula is holding up the documentation that Miller passed out to the Commission at this meeting] but you struck it out in the text. So, there’s no reference to a site plan. You reference a landscape plan, but not a site plan. Also in your text … you talk about minimum separation between buildings should be at least 6 feet or less. I thought we talked about that in our Zoning Committee meeting, that [it] was a typo. So it could be actually zero. Right? 6 feet or less? I’m sure I’m missing quite a few. The point I’m trying to make is we have long ways to go.

Commission Chair Barnes, “But I want us to be as specific as possible so that we don’t have to…”

Commission member Modula interrupted, “Well I gave you specifics.”

Commission Chair Barnes continued,

… so that we don’t have to keep going over there. So that when he comes back before, before the Commission he can, he can have answers for all the questions that we are putting to him, OK. So that’s what I’m trying to do. I want to make sure that we get all the questions out there so that he can come back prepared to answer those questions for the Commission.

Commission member Modula responded,

Mr. Chairman in all due respect he [Miller] was, he was advised of this at our [February 17th] Zoning
Committee meeting. At our Commission meeting he made reference to, when I say he, Kent Miller made reference that there was a traffic study under way and that he was going to have, hopefully have some, some facts and figures for us at our Zoning Committee meeting. To date I’ve yet received any facts or figures regarding any traffic study.

Attorney Miller responded, “We do have our study, but with all the issues coming up, often it is hard to finish a sentence before other questions are asked. If anyone’s interested in knowing what the results of our traffic study are, I’d be glad to state them.”

Unfortunately, this is a weak defense as Miller and his team were allowed time to fully answer each question posed to them at tonight’s meeting, save for Commission member Jones who did interrupt, but Miller also interrupted Jones.

Commission member Modula responded, “There was a request for the traffic study.”

Attorney Miller responded, “We have a study that we have provided to the City.”

Commission member Modula stated,

There was also a request, there was also request, in fact it was my request, you, you at the last meeting, Zoning Committee meeting, you said that there was, I believe, a wetland delineation study done back in September of last year. I asked you for a copy of that study, and I still haven’t gotten that. I requested it back on the 17th of February.

Attorney Miller responded, “I neglected to make a note to provide that to you, but if [Sunshine] wants to give it, I’ll give it to you.”

Commission member Gable stated, “Well, obviously Mr. Chairman I mean, there’s so many issues that have been brought up here that haven’t been explained adequately to the majority, so to me that needs some further discussion to what anything we’re talking about here, but I think we, there need to be further
discussion on this stuff here. There’s just too many things that people have been
asking questions about.”

Commission member Jones states, “There’s a lot of issues here. I think the
houses are too small. I think the houses should be larger. I think in five years
you’re going to be looking at a real bad area, in five years. I’m just predicting
that. But I think if the home was bigger it would be a beautiful thing. With the
houses as small as they are; and I’m going give you just a little advice, and I’m
going to take it from the firemen. I look at this here and all I see is a lot of
trouble.”

Pastor Jefferson made a suggestion,

Wouldn’t it be very professional if you would put it
in a bullet point format and then have them answer
those questions. To just throw hodgepodge
questions out that’s up in the air doesn’t help,
doesn’t help you, doesn’t help him. What does it
take to … put those questions in a bullet point
format, give it to him; discuss if you have to have
another meeting, and give it to him; and at the next
meeting we clear all those things. I just want to be
able to, when I go back to my congregation, to let
them know where I am in the process.

Attorney Miller states,

I do believe that the issues that have been brought
up I think we understand your questions. We
believe we’ve answered them back when…. We’re
so pleased Laura Fay came here tonight from Ohio
EPA and basically endorsed our project for water
quality. It is an improvement over what otherwise
be done. The only other general comment is what
[Sunshine Homes] builds here is a project. This
isn’t a custom designed neighborhood. So when
you bring up issues, well, can’t we have some
houses 10 feet and 15 feet apart, can we widen a
street here and there; the reason these houses are at
the price point they are is because this is laid out
and already designed. There, there isn’t personal
modification for, we’ve got like eight or nine
different models and those are the only models that
we build here. And the reason it works and it
follows the City code, is that the streets are the
width they are, the alleys are the width they are. So,
if, I mean, if, if you have problems with the
traditional neighborhood development that is
something we’re not going to be able to do anything
about. I mean, we certainly want to answer all the
other issues, but I think the issue there is we’re
giving 15 acres of open space when 5 is required.
And so it’s a different style and it may not be a style
that some like, but the counter is, you’re also
getting a home that somebody can buy at $125,000
and if you made your normal typical subdivision,
that’s $150,000, and people aren’t going to be able
to get into them.

Commission member Modula commented, “You need to be clear that this
isn’t a traditional neighborhood development it is a planned urban development,
PUD.”

Attorney Miller sarcastically responds, “Mike you’re so, you’re so accurate.
Thank you very much.”

Commission Chair Barnes states, “The chairperson, the chairperson
[meaning Betty Cooper of the zoning committee] said that she’s going to call, a
call, meeting for the Zoning Committee, is special Zoning Committee, so that we
can work out a difference, work out what we feel that Kent [Miller] and his team
should bring to us, OK?”

Commission member Modula objected to a special called ZC meeting and
believed a special called meeting should be a Commission meeting, “What I'm
saying is the questions should, are not questions generated by the Zoning
Committee, they’re generated right here tonight by this...[Commission]”

Consequently, Commission Chair Barnes set a special called Commission
meeting for March 11 at 7 p.m.
The March 11, 2004 Special Called Commission Meeting

Commission Chair Barnes began the meeting, “We are here to, to work out some solutions or to try to come up with some questions for the, [Sunshine Homes], you know, that surrounds [Good Sheppard] issue and such.”

Commission member Modula submitted to the Commission a list of questions Commission members asked the applicant’s representatives at the last Commission meeting on March 4, 2002 that he transcribed from an audio recording he made of that meeting.

Commission Chair Barnes, “So these are the questions that, that we have as of our March 4th meeting of 2004, and this is regarding application number #Z03- [XXX].”

Commission member Modula indicated the list of questions he provided was only a starting point for the Commission; to help Commission members recall the questions they asked at the last meeting and to facilitate the Commission in efficiently developing a comprehensive list of questions with the little time they had at tonight’s meeting.

Commission member Modula commented that he had talked to Pattie Austin today at the Development Commission meeting. Austin told him she was convinced that that property north of the Church would be developed very soon, and she wanted to see the proposed development’s interior streets provide a connector so when the northern property is developed, the interior streets between the two properties could be connected, and offer better traffic circulation. Sunshine Homes’ current site plan proposed the main interior street dead-end into the houses (i.e., “T” intersection) instead of providing a connector access to future development to the north.

Commission member Modula also stated, “she [Austin ] would like to see the internal streets public, public streets, dedicated to the City. She said she had communicated through an MOU, memorandum of understanding, to [Sunshine

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151 City of Columbus Transportation Engineer.
Homes] that the City preferred to have the streets dedicated as public streets rather than private streets. This was early on when they first met.”

Commission Chair Barnes, “OK, you know, we have an awful lot of questions here, and I think we need to go through the things that [are] our priority.”

Commission member Henderson began by referring to specific City Codes that tie into his questions regarding the proposed development’s internal streets, which he presented as bullet points. His concerns included:

- whether the proposed PUD can have a homeowner association
- the issue of private streets versus public streets, Henderson favored public streets
- lot size, Henderson believes is too narrow, should be 50 foot lot widths
- proposed street lengths are too long per Code
- proposed side yard setbacks are too small per Code.

Commission Planning Chair Richards expressed concern over the developer’s focus on minimum requirements of the City code,

I do recall that everything was under the minimum requirements and when you think of [Pleasant Drive] that the larger homes, you would expect that they [applicant] would do more than just the minimum requirements. And that’s what I was gathering from the residents on [Pleasant Drive]; they want them [applicant] to do more than what the City requires them. We know that the City does say the minimum requirement, but we are asking them to do concessions and say, OK, this is [Pleasant Drive] and there are larger homes on this area, so let’s try to do more than just the minimum requirement. And I think that’s where the frustration was.

Both Commission member Jones and Richards indicated their disproval of the exterior veneers mismatch of the proposed development as compared to the brick and stone exteriors of existing homes along Pleasant Drive.
Commission Chair Barnes,

We don’t have to fight with the developer, OK. We can ask our questions, and we can ask our questions in a civil manner. We’re not fighting with them about this. We need to tell them what it is that we want and they have to provide it to us, OK. So, come on now let’s, let’s keep it, let’s keep it down. It’s not us against them. Let’s just keep it as amenable as possible, because, you know, they need to come to us, they need us and we need information from them, and we need to make, make sure that we get that information that we need from them. If they don’t provide it, then we have to let them know that we can’t do anything until we get this information that we’ve asked for.

Commission member Jones, “Also, we have to look out for the residents…”

Commission Chair Barnes, “No question about it, no question about it.”

Commission member Jones, “I am for the residents.”

Modula read a letter to the Commission from Tina Murphy of FIST dated March 9, 2004, offering its recommendations and suggestions regarding the Sunshine Homes proposed development (Appendix B.1 Exhibit 13). In the letter FIST makes three recommendations to the Commission: 1) “[Withhold] approval of any proposal that includes filling the floodplain.” 2) “Wetlands filling should be avoided if at all possible,” and 3) If filling the wetlands is unavoidable, require [the applicant] to mitigate the loss of these wetlands inside the [Indigo Stream] watershed.”

Commission Chair Barnes commented, “That’s acceptable though, to fill in part of the floodplain fringe; as long as it’s on the fringe it’s acceptable with the City of Columbus.”

Commission member Henderson, “But what we would like to see is a net, no net gain ... in water flow.”

Commission Planning Chair Sally Richards was the meetings scribe who wrote down the Commission’s finalized list of questions, which she indicated she was going to type up when she got home.
The March 16, 2004 Zoning Committee Meeting

The meeting lasted a total of two hours and twenty minutes during which the ZC conducted its administrative business and heard from three applicants. One of the three applicants was Sunshine Homes whose representatives used one hour and ten minutes or approximately one-half of the total meeting time presenting and discussing the proposed development with the ZC. The majority of that time used was to discuss traffic, specifically a stub street connector, turn lanes on Pleasant Drive to and from the proposed development, water quality of the proposed storm water basin, and flood control. Also discussed to a much lesser degree were homeowner association fees and the proposed bike path configuration relating to conflicts with pedestrian traffic.

I have included a rather lengthy portion of the chronological dialogue between the applicant’s representative and ZC members. The purpose is to illustrate what appeared as a deliberate attempt on the part of the applicant’s representative to jump from one issue to another unrelated issue, and comingling unrelated issues in an attempt to confuse or distract the ZC’s chain of thought of the particular issue under discussion. In addition, as the ZC was trying to understand the representative’s explanations, the representative would abruptly shift to another issue resulting in a nearly incomprehensible jumble of dialogue. This disorganization and confusion could have possibly been averted if the Commission at its special called meeting of March 11th had directed a specific individual to deliver the Commission’s list of 46 questions to the applicant’s representative with instructions to the applicant to provide written responses to the ZC on or before its March 16th meeting. The Commission’s list of 46 questions were arranged into eight broad topics concerning: 1) Building standards, 2) Costs, 3) Environment, 4) Flood management, 5) Landscaping, 6) Safety, 7) Streets/Traffic, and 8) Miscellaneous. However, that did not happen and attorney Miller apparently did not receive the Commission’s questions until that evening’s ZC meeting. Consequently, the ZC had no ordered set of
documented responses from the applicant to review, and fell victim to the representative’s control of the flow and content of information he provided and how much time he spent on any one issue.

ZC Chair Betty Cooper presided over the meeting and signaled to the applicant’s representative to begin his presentation.

Attorney Kent Miller,

[Betty] and members of the Commission [Miller seems to be confused that this is a ZC and not a Commission meeting], after our last meeting, and again I appreciate the four area commissioners, a lot of questions there, and I know we attempted to answer some of those and we probably did orally, but what I did in my, from my notes, is I went ahead and assimilated what I thought were the, the questions. And so, what I’ve done is write those questions out and I have them answered. This as opposed to mailing, I’ve hand ordered this tonight. And so I have one for everyone else as well.

One of Miller’s team passed out the written responses to Commission questions attorney Miller had apparently noted down at the March 4th Commission meeting (Appendix B.1 Exhibit 15).

Attorney Miller,

In addition, based on the comments of the last meeting we did, go ahead and do things that we specifically did point out that we would do. We’ve modified the text a little bit further and cleared up an occasional typo that was there. [Miller with a sheepish smile on his face, laughed under his breath]

Attorney Miller continued,

The changes that we’ve put on this set [referring the revised PUD text dated March 16, 2004 Appendix B.1 Exhibit 16], on this, were a couple minor modifications for typographical issues.

PUD notes page 2 section E, there, is that the garages will have a minimum 8 foot rearyard, 3 foot
sideyard setback; at least one decorative light fixture will be installed on the rear of the garages.

And then, this, number 10 with it’s not 6 feet or less, we are going to have a minimum of 6 feet unless as otherwise permitted by the director of development, and quite frankly, we don’t really need that there. It’s just in these, in these site plans we normally put language in that if there’s some type of the engineering issue that comes into play at final engineering, we have the ability to modify based on that, and you’ll see that that is in item, that’s…. Where is that? Oh that’s in item number 3 there on page 2 dealing with street alignments.

And then to make sure that there was no confusion, item 17 as Mike pointed out at our last meeting, I had deleted that; I just put it back in so that there’s no confusion that the site plan is part of this [PUD notes]. So I put it back in.

And then I also, we talked, one of the issues we have on number 13 was, what are we going to do with this [landscaping] mound? So I, I just added to the text that the mound will be planted with grass and each tree will have a mulch planting saucer so that there’s no question about it; it’s explained in the answers to the questions so we wanted to put that in the text.

As we go through this, this again, I know we’re going to be in front of the, hopefully, the full area commission on April 1, so I put it in this fashion for now as we go through this. If there’s other issues that come up and you want us to make modifications to this text we’ll do so and have it done before the full Commission. But I think we’ve narrowed the issues significantly, and I know you, there are some key areas that question you will have, but the ones that I’ve discerned from our meetings were the, in, in looking at the question, I don’t want to take too much time on these, each one individually.
But as you go through them; what are the sizes of the lots and how does it compare to [Pleasant Drive]. So that is answered in writing in this questionnaire here. As far as how many are going to be built? Well, we’ve said in our text is that, we would have, limit our development to homes of under 1200 square feet to 15. So, if the rest of them are all 1200 square feet or more, the 214; but further it was, the question was, can we be more specific as to each model, how many. Well, we cannot be that specific because we don’t know what people are going to buy, but we could be specific and commit to you, now that’s not in the text, but that’s open for your review here that we could indicate that, that we’d do 30% of the homes that would be greater than 1500 square feet. And that would be a, if we had 229 homes that would be 68.

We specify what the building materials are going to be for the entry feature. That was a question that came up at our last meeting.

Of course we had a lot of conversation on the garage alley lights and how much it costs. I’d be happy to go through this orally or perhaps you want to take a moment to read them as you go through, but we’ve answered that question. Homeowners association, what’s the costs on that? Are they variable or fixed? Are they set up to handle infrastructure improvements? And the answer is yes to all of them. In fact, I think that [Tom] brought with him some example, an example what’s done down in [Bluffs Pointe] so you get an idea. [Bluffs Pointe] I think costs $45 a month, but we can break down what that money goes to. But there is specifically funds set aside within that homeowners association dues that create a capital reserve; and that is set aside for purposes of having sufficient funds to deal with capital improvements like if there’s a need for repairing a road or other infrastructure.

You ask, why are we using private streets instead of public streets? That was the question, and I can go
into these in much more detail, but again I wanted
to put it in writing for you.

One of the big questions was, well, why were these
homes, I mean, we made the comment I recall that
these homes would be less expensive than the
traditional [Sunshine] subdivision; you want to
know how much and why. I’ve answered that.

And of course the question dealing with the water
feature. We have our engineers here again tonight,
and what we’ve, what they’ve done for us is to
prepare an exhibit\textsuperscript{152} that’s a visual aid and it also
will illustrate what it’s going to look like. And, I
have prepared a whole bunch of questions that I
kind of combined them together in this document,
but they answer questions that I specifically raised
on that, which I think were questions you had. And
so as you’re, as you like we can go into detail in any
one of these points.

Attorney Miller could have provided his written responses to the ZC prior to
its meeting so the ZC could have had time to review the responses and prepare, if
needed, additional questions or ask for clarification on the responses submitted.
Instead, Miller submitted his responses during the ZC meeting and then used the
ZC’s meeting time to orally repeat the same information he had written in his
responses.

One of Miller’s team members stated,

One of the issues that did come up was and
probably has come up several times throughout this
process gives, who is going to own and maintain the
open space; and we clarified specifically how the
open space is going to be maintained along
[Pleasant Drive] [pointing to a specific area on the
site plan]. This open space and this area we
envision is also going to be a homeowners
association open space.

\textsuperscript{152} There was only a poster board display rendition of the proposed stormwater basin available at
this meeting. The representative did provide the ZC and Commission with copies of that
rendition (Appendix B.1 Exhibit 11).
In discussions that we’ve had with Maureen Lorenz₁₅₃ we have come to the conclusion as to where the bike path connection is going to take place through this property. I think there’s been a discussion all the way through; presentations; the bike path would run along [Indigo Stream] and crossover at a designated location from this water quality management area; run through the woods for a short section, come down along the edge of the woods, and then take up along the southern side of the street. And the discussions that we’ve had with Maureen, we’ve, there were several options, and then the option that I believe she actually appreciated the, the most and the direction we are headed and [Sunshine Homes] is committed to do to create a larger sidewalk on the southern side of the street and put that in a access easement so that people can move freely back and forth through this area.

Attorney Miller commented about their traffic study,

It’s our recommendation that the northern access point be a full access point and we will build a left turn lane into it, northbound left turn lane and a southbound right turn lane there. That this [southern access point] entranceway be utilized as a full access intersection only during construction; and after construction is complete, that way we’ll have most of the trucks using this roadway instead of the main roadway; then it becomes right in right out only.

And the City, they haven’t formalized their review, in fact, Patty [Austin] indicated to me that you had spoken with her Mike₁₅₄. We have been discussing that back and forth, but it seems that it’s a, it was an issue that was important not only to the City, but to

₁₅₃ Maureen Lorenz City of Columbus Recreation and Parks.
₁₅₄ I spoke with Patti Austin, Columbus Division of Transportation Engineer, after the Columbus Development Commission meeting on March 11, 2004 regarding the ZC’s and residents’ traffic concerns on Pleasant Drive and she indicated to me that the applicant’s proposed turning configurations for Pleasant Drive were not practical and would need to be modified probably to one full access and one limited access.
the area Commission, so we’ll, we just went ahead
and we’ll commit that it’ll [southern access point]
be right in right out for; the, the only time we need
full access is for the construction period.

[T]he other issue we have to work out is there’s
about 15 acres north of us that’s undeveloped.
There is a policy issue the City has to decide on, do
we put a stub street there? If this were 40, [or] 50
acres, a stub street makes sense so you don’t have,
you don’t have to go outside on [Pleasant Drive]
back [garbled] to people you are going to visit here
[i.e., proposed development]. But with the small
area that it is and the fact that our development is
unique in that we do private roads. And I tried to
explain in writing why we do private roads, but if
you have a stub street, then that road has to be
public. And so, that public, making that public
changes, I don’t want to use the phrase cookie-
cutter because that’s not what we do, but the
efficiencies of production are big factor in cost
savings. We don’t have basements so we can do 10
units at a time. We have work crews there, they
don’t have to worry about falling in a hole. And
you can move your equipment back and forth. It is
such, it is down to such a science that [Sunshine
Homes] can pass the savings to a tune of $30-
$40,000 per home to its customers. This home that
somebody would buy is roughly the same size,
inside, that the [Sunshine Homes] traditional R-2
development is. So, a 1500 square foot they buy
here, is a 1500 square foot home they would buy
anywhere else that [Sunshine] would build, and, or
approximately the same home. All the options that
you can put in on these R-2 single-family homes,
they’re standard here. And so, people when they
come in here they see what’s on the inside, they’re
getting a, they’re getting a darn good home. What
they’re not paying for is a basement, they’re not,
they, they are closer together and the lots are
smaller; so we don’t have a whole lot of families
with kids living [garbled] because they don’t have.
It’s single or elderly folks that are buying these.
And some, some couples that just haven’t started
attorney, your market here would be some, what do we say their average, a $135,000? One of Miller’s team responds, “...mid-$140s.”

Attorney Miller,

Mid-$140s. And so, we get the cost savings with that and we pass that through to our customers; and it, it, each of the aspects add to that. And we fully disclose to the customer the [homeowner] association requirements and responsibilities and those fees. We get a disclosure statement that we have to do by law; and they see it, they understand it; they’re going to make their house payment plus they got to make a, whatever it is, $45; and depending on the needs it will become variable. But that’s the only traffic. Of course, the City has to review and accept, but we’ve done our, we’ve had our consultant engineer prepare that; and so we do have to work that policy issue out.

Attorney Miller continued, stumbling and grappling for words,

That’s, and of course, if, if the City demands that it be a stub street there, although we don’t think it’s, it’s, it’s really fit to that, if that’s what the requirement is, our text doesn’t [require us to] do that; that we would have to provide some modification of it there.

ZC Chair Betty Cooper was the first member of the ZC to ask questions of Miller and his team. Cooper,

Now I’m still concerned about the homes facing [Pleasant Drive]. And I know we keep rehashing stuff; but we have to rehash it until we get it right. And you agree that you would do nothing smaller than 1200 square feet facing [Pleasant Drive]?

Attorney Miller, “That’s right.”
ZC Chair Cooper, “But now are you, say for instance, you have a buyer comes along and he wants 1500 [square foot house] on [Pleasant Drive]; are you going to mix them?”

One of Miller’s team responded, “Yes. It’ll be a, all those homes that front [Pleasant Drive]…”

ZC Chair Cooper interrupted, “Because that, now that, you said they’ll be two stories. Are they going to be a small two-story?”

One of Miller’s team responded,

We’ve already committed, yeah, we’ve already committed all those homes facing on [Pleasant], builder models, to be two-story homes, and because of our own rules, prohibiting, prohibitive use of, of, pardon me, repetitive use of how the building mix of houses is as you move down the street; so, you know, it won’t, it wouldn’t be just two house types every other house, it would be several models. I think invariably there would be several of those homes would be above the 1500 square feet.

ZC Chair Cooper, “Explain to me, what’s, what’s a stub street? Is a stub [she spells the word] S-T-U-B?”

Attorney Miller, “Yes, a stub, I mean that’s the; what happens is you basically build a road that dead ends there [pointing to the site plan].”

ZC Chair Cooper, “What’s the purpose of that?”

Attorney Miller, “Based on any, any development that occurs here that they, if they want to they another have access route to get to [Pleasant Drive].”

ZC Chair Cooper, “OK that should be given higher…. .”

Attorney Miller,

And some neighbors like it, some don’t. Most don’t. These, you know, [Miller laughs] this, the [Karnes’] [the property owner to the north of the proposed development] don’t want to have anything to do with that, but, and, actually if the area Commission had a view on that; I know we’ve discussed at one time…. We had another crisis
was, what about buffering up here? Well, typically you wouldn’t buffer an empty field, and because there’s nothing there at all right now, but that’s obviously something that we’ll want to talk about, we’ll probably development a [Miller is not understandable because he dropped his voice to nearly a whisper]. You know, we’re not really interested in having this stuff where we don’t think that it would, that...

The ZC distracted by Miller’s buffering comment inadvertently shifted the conversation from discussing traffic issues to talking about buffering and landscaping issues.

ZC Chair Cooper interrupted, “But if you let it take that, wouldn’t that put it a little bit better up here? ‘Cause there’s going to be, 1, 2, 3, 4 houses; four or five houses back there.”

Attorney Miller, “Back there, there’s, actually there’s 14….”

One of Miller’s team commented, “The reality of it is that there’s nothing back here. It’s essentially a wooded area.”

Attorney Miller commented that he thought we “wanted a fence or some type of buffering”

ZC co-chair Modula, “No, we, I thought we’d agreed long ago that there’s no fences on this property like what you have at [Bluffs Pointe]; that all the boundaries were going to mounded in either trees or shrubs.”

Commission member Jones tried to refocus the ZC back on traffic issues and asked Miller to explain more about the stub street.

Attorney Miller,

Only if the City of Columbus says they demand that it be built, and it would, it would just be a street that dead ends right there in the field. And the reason that Columbus recently has started a policy that they want to connect neighborhood to neighborhood. And so they like everybody to put in those stub streets. We don’t want to do that because we think, well first of all, we don’t believe you need to have a public street there. I mean, that’s one of the things
that, and the Columbus codes allows us to do it this way; but it changes all the things that we do. I mean, our whole format is set up to do that 22 inch wide street, and if we, pardon me, 22 foot wide street; it, if a, for many builders it’s not a big deal; for us it’s a big deal. It has a dramatic impact on our development. And so, we will, we’re, we’re asking the City not to do that and, but, if the City requires us to, we’ll figure a way to do it.

ZC member Kevin Moffet commented,

We have already in the community two developments where there’s stub streets, actually, [Vista View] has a stub street, that the community has been unanimous that they do not want those streets open. And [Golden Bear] Civic Association also - [Floral Drive] has a stub street - and they have also requested that it not be opened. So my guess is… that so far that has been unanimously the desire of the people who are, that been impacted.

ZC Chair Cooper commented that they have one in her neighborhood as well and they don’t want it opened.

ZC co-chair Modula commented,

I think we have a slight difference here. First of all you’re talking about two established communities and development that would be coming into the area. This one here [the proposed development], this is all proposed right now. So there’s really no residents to talk to…

ZC member Moffet interrupted, “Well, other than, you know, people here [at the ZC meeting].”

Modula, “Right.”

ZC co-chair Modula tried to stop the ZC from jumping around to different issues and move the meeting into a more organized and systematic review of each of the community’s concerns by discussing each issue one at a time before moving on to the next issue. To accomplish this, Modula wanted the ZC to work from the Commission’s 46 questions.
ZC co-chair Modula asked Commission Chair Barnes, “Did you send the
Commission’s list of [46] questions to the applicant?”
Commission Chair Barnes, “Yes, I believe I did.”
Attorney Miller,
I had gotten a, I had gotten a general list of
questions that came with, but I didn’t know that
those were specifically organized for; I didn’t, I
really didn’t realize that those were, that they had
come from the Commission. I just thought that that
was something... reviewing my notes. Those, those
questions that I, that I have written there, I believe,
they’re not all on there. I just kind of organized it
to fit the fashion that met my own notes, rather than,
than that. I was not, I didn’t realize that these were
coming in any form or fashion from the
[Commission].
ZC co-chair Modula,
They, in fact, were at our last Commission meeting
on, I believe it was on the 4th of March. Pastor
Jefferson made the comment that the Commission
should make all of its questions in writing instead of
having this all verbally; and the Commission did
agree to that. In fact, set up a special Commission
meeting on the 11th of March; sat down and, and
drafted up a list of questions to submit to [you], I
believe since you’re representing the applicant...
Commission Chair Barnes interrupted, “But I, I think, you know, it was
Sunday when I received the minutes [i.e., questions] from Sally, and from the
time we received them to get them to them, you know, they probably didn’t have
very much time.”
ZC co-chair Modula,
Oh I understand that. Yeah because we had the
meeting on the 11th, which was Thursday; and

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155 I received an email from Sally Richards on Friday March 12, 2004 with an attachment
containing the Commission’s questions from its March 11, 2004 special called meeting.
Barnes along with four other Commission members and the ZC Chair received a copy via
email.
Sally, the woman he’s referring to, was, was, excuse me [someone was trying to interrupt Modula] was, that’s what I’m getting to, was his scribe, she had emailed us back, I thought it was for, for review and comment, but obviously it wasn’t; and so you wouldn’t have had enough time to respond to the questions. There’s, there’s, there’s at a minimum at least 46 questions. So I know you didn’t cover …

Attorney Miller interrupted, “Then I must not have gotten those, yeah. I did, I did get some general notes with some general questions, but they weren’t ordered nice. And they, they weren’t numbered or anything, so I don’t know.”

Commission Chair Barnes, “I just gave him the, the list that I brought.”

ZC co-chair Modula, “Yeah, I would, I don’t know what you have…”

Attorney Miller, “There’s 46 questions here.”

ZC co-chair Modula, “I’m under the impression we’re still kind of reviewing that…”

Attorney Miller, “OK. You can give it to me when you want. I, yeah, and I wasn’t, I never saw this question.”

ZC co-chair Modula, “If you want to submit that, Mr. Barnes, as our list of questions?”

Commission Chair Barnes, “These were the latest ones that…”

ZC co-chair Modula interrupted, What I, all I did was I cleaned them [i.e., Commission’s questions] up and numbered them for you and kind of made it, I guess, a little bit easier to read through. Many of the questions are probably the same as what you, what you received. I would encourage whoever answers these questions not to defer to a verbal dialogue to some, some expert like engineers, but I would, I would encourage whoever responses to respond to them in writing, to put a diagram to identify green or open areas, I would encourage you to do that as well. That way we have a document instead of a dialogue. That was, that was what, what was of concern to Pastor [Jefferson]. I’m just trying to follow up on that; be
consistent with what is legal..., and I think, I think it’s prudent for this fashion.

Attorney Miller,

Madam Chair may I ask, in, in just perusing this, which is in a different format in what I’ve seen before, and I did notice that there are additional questions that I was not aware of. Many of these were questions that we took down at our meeting when we did, and we’ve have several, many conversations about it. I think that what you’ll find as you go through it that probably well over half, if not 75% of them, are answered already in this document [Miller is referring to the written responses he passed out to the zoning committee tonight]. So, when I answer these [referring to the 46 written questions the ZC gave him at tonight’s meeting] if it’s related, if I’ve answered it in this letter dated March 16th, can I just say refer to that?

ZC Chair Cooper, “Yes.” Cooper asks, “Are there any more questions from the committee?”

ZC co-chair Modula asked, “And that wet area? Now, what, what are we, what are you going to call it?”

Sunshine Homes’ project planner Ted Woods responded, “Actually we do have the engineer here that can give the specific details on that…”

ZC co-chair Modula interrupted, “I want to know the specific name of it first. Is it a pond or retention pond or what is it, what are you going to call it?”

Attorney Miller, “Typical section for vegetated basin, that’s the title. What, what do we, what’s, what, what do we refer to… [asking his engineer]?”

Sunshine Homes’ engineer John Davis,

It’s a water quality basin with a vegetated shelf; a wetland plant with vegetated shelf. So it’s got a small, water quality detention area that stands with [garbled ]. The vegetative basin is an attribute to that water quality feature.

ZC Chair Cooper, “Are there any more questions from the community?”
An unidentified man commented, “I’m just trying to say a few things, that. Do you realize that’s all underwater other times? I mean its backfill floodplain that you’re building on?”

Attorney Miller, “Yeah, we, we do realize that; that’s why we’ve hired these engineers.”

Unidentified man, “What happens when this all floods? I mean, do these people have to buy flood insurance?”

Attorney Miller, “No, they won’t have to buy flood insurance. It’s our intent to fill the, to fill the floodplain so that won’t be an issue.”

Engineer Davis commented,

We’re working with the City of Columbus. Columbus has very specific criteria for development in the floodplain it’s, and their requirement is actually more strict than the federal standard. They [City] require that they’ll be, the homes, be at least a foot and a half above the flood elevation. So not only are these houses going to be above the 100 year flood elevation, but actually a foot and a half or more, a minimum of a foot and a half above the flood year [garbled].

Unidentified man,

… but this is proposed to being built in the flood, floodplain; that’s what gets me. It’s bound to flood. I say, before the, soon as spring comes it’ll flood. It does every year. Every year. I, I took pictures of it most of the years that I, I…. It floods every year up to that hill. There’s a hill there and that’s the only thing that’s not underwater.

ZC co-chair Modula asked,

One question I have is that you’re going to build on the floodplain fringe and that means that you’re going to, to displace the floodplain fringe because you’re going to build that elevation up; so it’s no longer being a flood, used for flooding purposes, is that correct?
ZC co-chair Modula continued,

So if, if there is a rain event in which, right now that, that area the floodplain area would be used for the water to go and you’re [planning on] taking that portion out of, out of the flooding, for flooding.

Where does that water go then if we have another rain event?

Engineer Davis,

Well, I think there’s been some discussions in prior Commission meetings, so I’m going to play on what I think I, what’s been discussed before, but what we under…, the way the, that FEMA studies done and is published and is, is a matter of record and everyone uses, they show a flood plain or fringe area and then a floodway. And the floodway is based on the assumption that encroachment could occur at a certain point, but that encroachment cannot go beyond that point of that floodway, and that encroachment will not cause more than a half a foot rise in flood elevation. So there’s kind of a built in assumption of possible future encroachment as you can see from this particular project; but that encroachment will be limited to the point where no more than half of foot rise would occur in the flood elevation. Now that’s a cumulative impact. We’re just a small portion [somebody coughed and covered a word or two of what he was saying] well imagine of the floodplain along [Indigo Stream]. So, certainly any encroachment at this particular location will have nowhere near a half foot rise in flood elevation. But there is always the potential. The way the program is established, the way the City of Columbus’ regulations are established, and again, those are even more stringent than, than FEMAs; they allow for that encroachment. They understand that some nominal increases may occur; and that’s why they ask for that, that free board that’s what we have [garbled] to make sure that your development is, is going to be free from any flood damages.
ZC co-chair Modula asked,

I understand, for, for the proposed development, it would appear that the flood potential is reduced, but I’m talking, I’m thinking about the lower lying properties. Now does that water, does that water move out to those other properties? So in fact you [could] have encroachment of those flood waters onto other properties.

Engineer Davis,

Well it, I guess there’s always the potential for that. There is always a chance that these, the encroachment will cause small increases in the flood elevation. If a structure is already in the floodplain, certainly it will continue to be subject to flooding. It’s not going to change.

ZC co-chair Modula asked, “Are you required to model that?”

Engineer Davis, “We are not.”

Because the meeting was nearing the end of its allotted time, ZC Chair Betty Cooper commented, “I think that should be all of our questions.”

Attorney Miller stated,

Madam Chair could I ask you just one other question? The, I, I recognize that we have some additional questions that we’re going to answer that, but based on what I presented to you, the questions that I could think of; and in getting the one document that provided some general detail questions, we’re able to assimilate this; and again we’ve got our experts here floodplain, waterways. Is there any other questions that, that we can answer here because, we’re all here in person now [Miller is talking about the engineers he brought to discuss water issues] and, I think, even though you want to see it in writing, we certainly don’t mind duplicating our efforts in saying it orally and then also putting it in writing. That’s what we’ve tried to do throughout the process here; and any commitments that we make orally, we subsequently then modified the text accordingly. But I just don’t
want to miss the opportunity because we’re answering, you say, well we’re going to answer these questions in writing that we don’t deal with any issue that you might have today. Perhaps there are no other issues in that regard, but, there, the number of questions that came up at the last meeting, there was some dialogue on it, I just wanted to, you know, I like that you have the opportunity to have dialogue on it today if, that, if you feel it’s necessary.

ZC Chair Cooper responded, “I, I don’t have any more dialogue. How ‘bout the, does anyone else have any more dialogue regarding this project?”

ZC co-chair Modula, “I need to get their responses back before I move forward, I have a lot of questions.”

ZC Chair Cooper, “It appears that we’ll probably need the answers from those other 46 questions.”

Regarding getting the answers to the questions back, Cooper asked Miller, “How soon could you get that back to us so that he could, so that everyone could take a look at it before the full Commission?”

Attorney Miller,

Yeah, when, when would you like to have them?
The, and I need to get, what I need to do is make copies [of] this [Commission’s 46 questions] and get it to a couple of our experts, because the water quality question is certainly we would want our engineer to answer those. When would you like to have all the questions back, answered back to you?

ZC Chair Cooper, “Today is Tuesday. I think…. Would five days give you enough time?”

Attorney Miller, “I think so.” Miller conferred with his team. Miller asked, “Can we get the answers to you by the… [Miller spent the next minute talking with his team but did not finish his request before Cooper asked him]

ZC Chair Cooper asked Miller, “Could you have everything completed and to us within the seven days?”
1991 Attorney Miller, “Yes.”
1992 ZC Chair Cooper, “That would be the 23rd.”
1993 Attorney Miller, “Yes.”
1994 ZC Chair Cooper asked Miller, “I suspect you’re going to mail them to us, or how are you going, how are you going to accomplish that?”
1995 Attorney Miller, “I would, if I can put them in the mail to you on the 23rd or…”
1996 ZC Chair Cooper interrupted, “Or put them in the mail on the 22nd so I can [receive] them on the 23rd. Something like that. Just go ahead and put them in the mail on the 23rd and we’ll get them around the 25th.
1997 Attorney Miller, “And if we get them done sooner we’ll get them out sooner.”
1998 ZC Chair Cooper indicated that the ZC was moving the applicant on to the full Commission without any recommendation.

The April 1, 2004 Commission Executive Committee Meeting
2007 The April 1st Commission executive meeting was qualitatively different from the previous month’s meeting of March 4th. First, Commission Chair Barnes initially presided over the meeting with apparently little regard that Commission members discuss the issues in an organized and reasoned fashion. He allowed Commission members to vent their frustrations in unfocused diatribes and vacillate from issue to issue rather than reign in Commission members, and instruct them to proceed in an orderly review and discussion of the merits of the applicant’s responses to the Commission’s 46 questions. Second, the Commission Chair appeared to coerce Commission members, particularly female members, into silence or attempt to discredit viewpoints critical of the proposed development. Third, the Commission Chair appeared to attempt to influence Commission members to give up their opposition to the proposed development because City approval was inevitable. As the chronologically arranged dialogue below shows, the reciprocity of trust, knowledge, and legitimacy between

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Commission members was beginning to strain. Not only were several Commission members openly suspicious and mistrustful of the applicant’s representatives, but now an emerging internal conflict of interest was becoming visible. This internal conflict of interest would test the Commission’s intra group bonds of trust, knowledge, and legitimacy, and threatened to unravel these bonds between Commission members.

Commission Chair Barnes began the meeting,

We’ve received the questions from [Kent Miller] and he answered the questions [Appendix B.1 Exhibit 14]. Did everyone have a chance to look at the questions? Do we need to go through question by question [during this executive meeting] and save us some time, that way we don’t have to, you know, take up all this time during the Commission meeting. Are there anything that we need to, to stress to him…

Commission member Rita Jensen commented,

I don’t think he [Miller], he really answered any of the questions. Now I know I haven’t been here for a couple months, but I know what was going on. When I got this in the mail I sat down and reviewed it. To me, he was just answering the questions generically. He wasn’t really getting into the meat of it, and giving what you’re asking.

Commission Chair Barnes responded, “OK. So you’re saying he was not prepared for tonight…?”

Commission member Jensen , “Maybe I might be wrong. Maybe someone else could…?”

Commission Chair Barnes asked, “OK. [Ms. Jensen] anything specifically sticking out at you that we should, you know, ask him to clarify?”

Commission member Jensen , “A whole bunch of stuff.”

Barnes laughed.

Commission member Jensen continued, “My main concern is this retention pond or whatever this is…”

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Commission Chair Barnes interrupted,

OK, which, which number is that? Anybody have anything? [Rita] said there wasn’t, wasn’t specific enough; you know, he just generically answered the questions. Anyone have anything that we can, you know, go at him right away; you know, not go at him, but have him clarify for us right away?

Several Commission members provided their assessments of the applicant’s responses to the Commission’s questions. Commission member Stan Gable commented on item number 11a concerning the terms ‘various efficiencies’ and wanted the applicant to provide “… clarification on what those various efficiencies are.” Commission member Jensen was concerned about item 9 regarding the lighting costs and homeowners association dues as it applied to infrastructure replacement. ZC Chair, Betty Cooper, had concerns with item 12, “I don’t really understand that… the water you know. That water area kind of makes me a little bit nervous.” Cooper read from the text, “The vegetated basin is to provide water quality related to storm water runoff from the adjoining development site.” Cooper asked, “What, what, what site is adjoining?”

Commission Chair Barnes provided his interpretation,

The way I understand it… the way I understand, that is, that the water is going to run off the land into the retention pond, and in that retention pond that vegetation there… and that vegetation is going to act as a filter and it is going to filter, you know, all the trash and stuff into the vegetation. And as the water comes out of that retention pond and runs into Indigo Stream, it’s supposedly clean.

ZC Chair Cooper responded, “So who’s going to, who’s going to clean the basin? I mean, if it’s going to be collecting trash? I mean, am I misunderstanding this?”

Commission member Jensen appeared extremely dubious regarding the functionality of the vegetated storm water basin regarding the applicant’s response to Commission question 12d,
I still have a problem with this because I know this year [Indigo Stream] overflowed its banks in that area [i.e., the proposed development site]. What happens when we have a heavy rain and the water comes out of its banks? This [detention] basin gets filled up to 5 feet and the water comes over the basin and starts going toward these homes? Now I remember… I’ve seen people in boats when that water has come over those banks, and that there on this area back here. Once that stream overflows its boundaries, the houses that are going to be built along that line there [referring to the floodplain fringe boundary line] are going to be flooded.

Several Commission members indicated to Jenson that they had already brought this concern to the applicant’s attention.

Commission member Gable responded, “But the guy [applicant’s engineer] came back and said that thing’s going build up like about a foot and a half or 2 feet.”

Commission member Jensen responded, “That’s not going to do it. That’s not going….”

Commission Chair Barnes interrupted,

And I guess before they can do anything I guess the Corps of Engineers have to look at it and approve it, and also the EPA, they have to make sure that everything is done according to specification, whatever that is. You know, now it could be, it could be a foot [and a] half or it could be 2 feet or more OK. It all depends on what they ask for.

Commission member Jensen,

I’m so sorry, but I just got this in the mail and I said… you won’t believe this… I got sick [at] 3 o’clock [this afternoon]. I said there’s no way I can make it. … but I told my husband, I said, I’m going if I have to crawl today, because I have to, I don’t know if anybody’s talked along these issues.

Commission Chair Barnes,
Yeah, yeah. You know, I, I agree. I don’t, you know, and [Betty Cooper] just jumped all over me you know. She told me that, you know, if the bike trail, you know, would, you know, if the City didn’t take care of... it’ll be private property, and, and then they could tell us that we can’t walk back there you know.... If you had only been here....

Commission member Jensen,

I wish I’d been here [Barnes laughed] because we don’t know if [Rainier] Park is going to be mowed this year with all the cut backs... and [Sunrise] Park. We don’t know if none of these parks are going to be taking care of, and here they [propose] adding another one that’s already in bad shape. I mean, there’s nothing [but] weeds and stuff back there.

Commission member Modula tried to move the Commission members back to focusing on the Applicant’s responses to the Commission’s questions.

Commission member Modula,

Actually I’ve got several concerns. On page 1, [item number] 4A the, the first sentence, it says, the responses, ‘the development faces [Pleasant Drive] provides a view to the front of 9 of 11 homes, each being two-story’. That’s true for the houses directly... [fronting] [Pleasant Drive], but there’s also going to be houses, let’s see, this, there’s going to be a row of houses... [with garages] fronting or facing [Pleasant Drive]. [N]ow they propose to put a [landscape] buffer in ... but they’re still going to have garages. That, that’s...

Commission Chair Barnes interrupted and asked, “OK. But, so what’s your suggestion Mike?”

Commission member Modula, “My suggestion is that [Sunshine Homes’ planner] [Ted Woods] critiqued or criticized the, the Greenwood apartments for having their backs facing [Pleasant Drive], but they’re doing exactly the same thing with the majority of their units.”
Commission Chair Barnes interrupted and asked, “But do we have a suggestion for him though?"
Commission member Modula, “Well yeah, turn them around [i.e., have houses not the backs of garages face Pleasant Drive].”
Other members of the Commission nodded in agreement with Modula’s suggestion.
Commission member Modula continued, “On page 3…”
Commission Chair Barnes interrupted, “That, that’s what we need to be, we need to tell him that we want, you know, want those turned around if, if we all agree on that.”
No Commissioner responded to Commission Chair Barnes’s comment and ZC Chair Betty Cooper began to talk about a new issue regarding the unsightliness of the position of the utility boxes in which she said the placement of the utility boxes was not “aesthetically pleasing. They need to be put in the back there on the side of the house.”
Commission Chair Barnes, “If we can bring it out, we need to have, we need to have an alternative [placement] for it.”
Commission member Modula, “As far as I can see it’s a design defect, all right. And… and I don’t know…. That’s, that’s not my job [to offer a solution].”
Commission member David Henderson commented, “I think an answer to this does not address the questions, is there over building density? If the density were not as dense, everything would not be on top of everything.”
Commission Chair Barnes responded, “But we know that they’re over building. We know that and they know that. It’s about the dollar. It’s about the dollar bill.”
Commission member Modula tried to move on to another of the applicant’s responses to the Commission’s questions,
On number nine, we’ve gotten stung before on … on not being careful in our reading. The question is, ‘What’s the total infrastructure replacement cost?’ …[H]e [attorney Miller] doesn’t answer the
question, because he talks about future
infrastructure improvements. I’m not, I don’t care
about [future] improvements, I care about replacing
the existing infrastructure.

Commission Chair Barnes interrupted, “Ok, OK. So we want him to tell us.
What do we want him to tell us? We want him to tell us how much is it going to
cost if they have to repave the roads, right? Or if they have to do the sewers, dig
up; are they responsible for sewers? How much is it going to cost if they have to
do anything of major…”

Commission member Modula, “We’re talking about replacements. I’m
being careful, trying to be careful in, in reading, you know, being careful in
asking the questions…”

Commission Chair Barnes interrupted, “I, I want to make sure that, that, that
we are very specific when we ask him the questions so we can get a specific
answer from him.”

As the meeting time was nearing its end, ZC Chair Betty Cooper addressed
the Commission,
If I could get my stuff in here before we close this
meeting out… I won’t be at the meeting tonight.
You know, I just wanted to say to this Commission,
you need to flex your muscles. You don’t know
how much power you have sitting up there. I don’t
have any power, but you do. And those people [i.e.,
developers] are lining up when it comes to our
community. You have the power to say yes or no.
But we’re, we’re not asking for [concessions,
amenities, or community enhancements from the
developer], we’re just saying, yes. …and they’re
not doing anything but razing this neighborhood,
and we’re letting it happen.

Commission Chair Barnes responded, “The only thing that they’re giving,
and, and that’s because of Recreation and Parks, they’re giving that green space;
and that’s one thing I guess … they have to give so much…”

ZC Chair Cooper interrupted, “We need more…”

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Commission Chair Barnes interrupted, “I, I, I, I understand that. I understand that. I’m just saying, but that, that is what they’re going to say that they’re giving. So we need to, we need to come up with something that we want. You know, what do we want?”

ZC Chair Cooper responded, “We want traffic lights, we want an enlarged recreation center, we want a sizable scholarship fund for students graduating out of these schools in this community.”

Commission member Gable interjected, “Probably won’t, but go ahead.”

ZC Chair Cooper, “But, you know, you don’t know until you ask.”

ZC Chair Cooper continued, And another thing is, I’ve been a little, little conservative this evening. I don’t think … I don’t like … the fact that [Commission member Modula] is always the one with information. He doesn’t live in this neighborhood, WE DO. I don’t like the fact that he is always [she emphasized the word always] the one that comes up with, with the research and any questions when we sit here like lumps on a log, and this is our neighborhood. [Emphatically] HE DON’T LIVE HERE!

Commission member Jensen echoed, “And he’s the only one that goes down to City Council every Monday…”

ZC Chair Cooper interrupted, He goes to development [commission meetings]. He should not, I mean, you know, we all should be down there. We all should be making our voices heard. He’s the only one down there, and I don’t like it that he’s down there representing me. I can represent me. And I think we need to get off our duffs and represent our community. And that’s just something we’re not doing.

There was no response from any Commission member. There was no agreement nor was there any disagreement about what she had said. There was only an uncomfortable silence from the Commission members.
ZC Chair Cooper was not attacking Commission member Modula personally that he was representing himself. Rather, she was complaining to the Commission that the only Commission member representing the community was Modula, an outsider, who did not live in the community. Cooper revealed to me after the meeting that she was trying to inspire Commission members to step up and take a leadership role in the community, which, from her perspective, they were not doing.

ZC Chair Cooper also commented that she favored a right-in right-out turn lane at the southern access to the proposed development, public over private streets, and she encouraged the Commission to push the developer for a stub street connector - even though at the March 16\textsuperscript{th} ZC meeting she commented that her neighborhood had a stub street connector and they didn’t want it opened.

Referring to the stub street connector, ZC Chair Cooper urged, “We need to be the ones that, we need to want that because that’s only going to benefit us in the long run.”

Commission Chair Barnes asked, “Everybody agree with that?”

Commission member Henderson went into a lengthy explanation of the City of Columbus’ error in understanding the definition of a private street, which prompted Commission Chair Barnes to ask Commission member Modula, “What does it [i.e., City Code] say about private streets?”

Commission member Modula, … to be perfectly honest with you I haven’t gone into and researched for private streets. I did have a conversation with Patti Austin [Columbus Division of Traffic] and she’s met with the applicant. Patti Austin is … requiring the applicant to have public streets.

Commission Chair Barnes asked, “So, would we be out of order when he, when he comes in here and if we would just say, according to Patti Austin and the City Engineer, that they would like to have the streets public streets, would we be out of order?”
Commission member Modula responded,

I would say leave that as an independent recommendation from the City. So if we want to have public streets, then we can say, we prefer to have public streets. We prefer to have a stub street that would offer the accessibility to the north.

Commission member Modula continued,

I won’t bog the Commission down with this…. [T]his to me is, we’re playing the same game with, with [the applicant’s representative] [Kent Miller]... we’ve been talking with him since January [it is now April 1]. He’s not, not forthcoming with his answers.

The way I see it there’s some big issues, in this order: flood protection, he [Miller] hasn’t adequately addressed…. Building in the floodplain. We have letters from FIST that they’re supporting no development in the floodplain. The City’s comprehensive plan, their guideline, says that you shouldn’t build in the floodplain, but the City allows it, OK. What I think we should tell the builder, we don’t want any building in the floodplain because this development is going to set the standard for all the other developments that’ll come [later]. And if we allow this to happen then the next person [developer] is going to say, well you let that happen…. [with the Sunshine Homes’ development]

Commission Chair Barnes asked, “Are they building in the floodplain or are they building in the fringe?”

Commission members Modula and Jensen simultaneously responded, “The fringe is part of the floodplain.”

Commission Chair Barnes, “OK, but, but, see you can’t do anything in the [flood] plain, but you can build, the City allows you to build in the fringe.”

Modula, “Right.”
Commission Chair Barnes continued, “OK. So we need, we need to be very careful when we say that.”

Commission Chair Barnes asked, “So how many, how many houses are in the, in the floodplain... fringe?”

Commission member Modula,

I counted them up ... there’s 45 homes, or actually 45 lots that are either wholly involved in the floodplain or a piece of it is. So, they would have to reduce it by anywhere from 40 to 45. The flood issue is, I think, the highest priority. Next, at least the way I look at it, protecting the water quality of [Indigo Stream]. They haven’t demonstrated to me that they have in place a wetland [or a] vegetated basin that will meet that function. They keep on referring back to the permitting process. The permitting process does not assure water quality protection.

Commission Chair Barnes, “Excuse me Mike. If they’re [applicant] going before the Development Commission, there is probably no doubt in the world that the City is not going to, that the City will approve them to build down there [i.e., in the floodplain fringe].”

Commission member Jensen responded, “I don’t know.”

Commission Chair Barnes, “They will.”

Commission member Jensen angrily objected to Barnes’s fatalism and stated, “We need to be at that Development Committee so that we can have three speakers up there to voice our concerns, if we had concerns…”

Commission Chair Barnes waved his hand at Commission member Jensen signaling her to stop talking, but she ignored him. Barnes then interrupted Jensen and continued to push his fatalism onto the rest of the Commission, “There’s no doubt in my mind that the City is going to allow them to build there. No doubt.”

Sensing Commission members had become distracted and bogged down by Barnes’s prediction that the City would approve building within the floodplain rather than focusing on Commission’s floodplain issues, Commission member
Modula tried to move the Commission forward to discuss another issue, which was,
...the actual development itself. And I have images here [passing the pictures out to the Commission members]. In my opinion the proposed development doesn’t fit the character of the area in actual visible density, lot widths, lot sizes, and then the architectural…. Exterior architectural, they’re completely inconsistent with the area. And so, those, those are the three or four big issues that I see along with the traffic, so there’d be five issues.

To summarize, Commission member Modula identified five main community issues to the Commission as: 1) Flood protection, 2) Building within the floodplain, 3) Water quality, 4) Inconsistent character of the proposed development as compared to what currently exists in the area, and 5) Public versus private streets.

Commission Chair Barnes, “OK, if we, if we, if we get on the dedicated streets; I think that’s an important one, you know...”

Commission member Henderson interrupted,

The keywords I would want in our verbiage, when we say we want a dedicated public street that will sustain two way traffic and parking on both sides. Now, there you just defined about a 30 foot street. OK? And that’s what we want. Maintenance is number two.

Henderson shifted his focus to a critique of the proposed lot size, “Their lots are smaller than a lot allowed in the City. The smallest lot allowed by the city is 36 by 100, and their lots are like 36 by 90.”

Commission Chair Barnes asked, “What, what are the ones down on [Minute Drive]?” Barnes is referring to the housing development of [Bluffs Pointe] on [Pleasant Drive] just North of [Minute Drive].
Commission member Henderson, “I’m afraid that those down there, they’ve [the applicant] got their nose under the tent. I think this [proposed development] is a mirror image of what they did down there that they didn’t get nailed on.”

Commission member Modula commented, “… the reason why they’re not going public streets, because that’ll pump them up [i.e., density] not to go over the PUD-8.”

Commission member Henderson added reinforcement, “And then, then our fight with PUD-8 is that our area plan does not go for that much of a density. There is no reason [why we can’t] shoot down the PUD-8. So were looking for around 160 units versus 229 in that same area.”

Commission member Gable asked, “Well if we get that public street, that’s going to like, whittle some of that [i.e., number of proposed houses] down.”

Commission member Henderson, “See, that’s what I’m saying …. [I]ncrease lot sizes and do the streets right. They can do it right if they, you know, cut out these 69 lots.”

Because the meeting time was nearly exhausted, Commission Chair Barnes stopped further discussion and made some final comments,

But we need to make sure that, that we know what we’re going to say to Mr. Miller when he comes. OK? We need to have, maybe the, the three most important things, or four most important things, you know. That other stuff, you know, we can pile that on, but, but if we want the, the streets…

Commission member Henderson interrupted, “No retreat from the streets, and no retreat from density. We know we can win those fights.”

Commission Chair Barnes, “OK.”

Commission member Henderson continued, “I, I’m with you, we can lose the water, but …”

Commission Chair Barnes, “OK.”

Commission member Henderson continued, “But I can’t see us losing the other two: density and the streets.”
Commission member Gable commented, “I think those two are very important and [we] should work for it.”

Commission member Henderson responded, I mean we’re going to try the best to get the other, you know, to get the water and the… what we can get out of him; out of the flood zone. I agree with [Modula] that, I don’t like the idea of just building it [i.e., floodplain] up ….

Commission Chair Barnes asked the Commissioners, So we agree on that, make it…. Well, I think, I think that the no development in the floodplain, I really do think it’s an important issue. If we can do it with, you know, cutting down the number of units, that’s fine because then they can take it out of the floodplain.

The April 1, 2004 Commission Meeting

The Commission took up the matter of the Sunshine Homes’ rezoning application a final time at this meeting. Officially, the Commission consisted of eleven Commission positions: ten were filled positions and one was vacant. At this meeting, eight Commission members were present; two were absent. Five of the eight Commission members present spoke at the meeting. Three Commission members said nothing during the entire meeting other than to give their voice vote. The Commission used 1 hour 27 minutes of the total 2 hours 11 minutes meeting time to review the Sunshine Homes’ rezoning application. After hearing from the applicant’s representatives, Commission members, residents, and other stakeholders, the Commission voted 7-0-1 (1 abstention, Barnes) to recommend disapproval of the rezoning application. The Commission’s official reasons for disapproving the application were that the proposed development provided, 1) Undesirable density of homes.

2) Inadequate treatment of water areas, floor [sic] plain, and tributaries.

3) Streets without sufficient width to accommodate traffic circulation (Appendix B.1 Exhibit 19).
Stakeholders, mainly residents, packed the large conference room where the Commission held its meeting. This was the biggest turn out I had seen of any Commission meeting, except for one meeting in 1997 which had similar controversial land use issues. Usually, Commission meetings attracted about twenty to thirty residents - a remarkably high turnout for resident type meetings.

At this meeting, I estimated that there were approximately sixty people in attendance. Every chair in the room was filled, and those who could not find a chair, stood in the back of the room or along the walls throughout the over two-hour meeting.

The residents’ frustration toward the applicant’s representatives was palpable to me and other Commission members even before the meeting started. I also sensed an anxiety from the audience; a nervousness and uncertainty about what the Commission was about to do at this meeting. Commission members, however, outwardly displayed much more somber facial expressions than usual, which also included expressions of unity of conviction in what they were about to do.

Commission Chair Barnes called upon ZC Chair Betty Cooper to present her report to the Commission. Cooper provided background information about the Sunshine Homes’ rezoning application and proposed development, and summarized the meetings the ZC and Commission had to date with the applicant’s representatives. Cooper explained,

The Zoning Committee voted four to zero to move the application to the Commission for a third hearing without a recommendation, pending [the applicant’s] written responses of 46 questions.

ZC Chair Cooper offered the floor to the applicant’s representative for fifteen minutes to make his presentation.

Attorney Miller began,

Thank you very much. I do want to submit to you tonight further modifications to our text [Appendix B.1 Exhibit 18] and this modification puts
additional restrictions, in particular on parking. In our work with the Division of Fire at the City, and the building industry has been doing for the last year and a half; the City and the development community has come up with standards for alleys and streets within PUD and TND developments.

This is our third meeting before the area commission. Now we’ve had an opportunity to have a, a number of discussions, and I think that most of you have an understanding of the project that we are proposing to develop here; and I hope you had an opportunity to review the answers to the questions. As we know, many of these questions were asked of us at various times and meetings…. And so, I would be prepared to offer any additional explanation to any of the questions that you have and in particular the explanation of our answers.

We have gone to great lengths with the, with the City, with the City of Columbus as well as with the property owner, the church. And we have attempted to do mod, make all the modifications that we have had discussions on at each of our meetings. Every, every issue that, that was brought to our attention, I believe, we have modified, and I know you, there are, perhaps, additional issues that you want to raise in light of the answers to our questions.

We have reached conclusion with the City of Columbus Transportation Division as far as the improvements that need to be made to the entranceway. The northern entranceway will be a full access entranceway. The Southern will be a right-in and right-out. It’ll only be used full access at the beginning stages of the development for purposes of the construction traffic.

Now Columbus is still interpreting and making a decision [regarding the stub street]. In fact, one of the reasons that we have not put a final decision on that is that we really wanted to get the recommendation from the area commission. As we
discussed in our last meeting, the City of Columbus would like there to be a stub created here [Miller is pointing to an area on the site plan] so that there could be access to this 15 acres ... to our north. . . . We discussed that briefly last time, and that was an issue we had asked the Commission to give us your input as to your interest in doing that or not. It may be ultimately the decision the City of Columbus makes and we won’t have any choice either way.

All the streets here [Miller is pointing to the site plan] are private streets; as there [were] questions that were asked and [as] our answers would indicate. All these private streets are built to the specifications that are permitted in the City of Columbus. The alleys, the streets, in fact, we build these greater than most of the specifications.

[T]he final comment that I would make is we have had conversations and we have brought our experts here to discuss any questions or issues that may come up as far as storm water management. We, we think that as was indicated in our last meeting, when the person from the Ohio EPA was here, that the choice of using a vegetated basin for water quality is a better solution to provide water quality for the [Indigo Stream]. And with the donation, I also like to add on, that with the donation of the land that we are, the dedication of land that we’d be making here, it’s approximately 14 plus acres to the City of Columbus, [Sunshine Homes] will have dedicated an excess of 30 acres of land along [Indigo Stream], so that it would become public land. I’d be here to answer any questions that you may have.

Attorney Miller appeared unsettled, his voice lacked its usual enthusiastic self-confidence, and he nervously fidgeted while addressing the Commission. He appeared half-believing what he was saying to the Commission. This could have been due to the fact that the April 1st revised development text he submitted to the Commission was essentially unchanged from the earlier March 16th revised
development text. The developer had not reduced the number of proposed houses, which included removing houses from within the floodplain. He did not change the proposed streets from private to public and make them wider as the ZC and Commission had requested. Lastly, they did not relocate the proposed vegetated storm water basin outside the floodway. The April 1st revised development text factually disregarded the Commission’s and the community’s issues, but Miller still tried to convince the Commission he was aware of these issues and that all of the issues were addressed in this latest revised text. As attorney Miller stated,

As we know, many of these questions were asked of us at various times and meetings…. and we have attempted to … make all the modifications that we have had discussions on at each of our meetings. Every, every issue that, that was brought to our attention, I believe, we have modified.

After Miller made this statement to the Commission, the expression on the faces of nearly all of the Commission members’ was disbelief and anger. The moment Miller uttered that statement he finally destroyed his credibility and any remaining amount of trust he may have had with the Commission. However, Attorney Miller’s statement carried with it two meanings depending on one’s perspective. One meaning came from the literal use of the words. In his statement, Miller said they modified every issue that was brought to their attention. In fact, this was precisely what Miller had been doing throughout the Commission’s review process. Instead of addressing Commission and community issues, Miller frequently “modified” their issues to something different. A second meaning came from interpreting the words uttered within the context they were uttered. Up until attorney Miller made his closing statement, he had talked about the various modifications made to the revised development text addressing the Commission’s issues. When Miller made his closing statement, he was still talking within the context of addressing and resolving the Commission’s issues. Consequently, Commission members did not understand Miller’s
statement to mean that he had modified the issues brought to his attention. Rather, Commission members apparently interpreted Miller’s statement to mean that he believed that every issue brought to Miller’s attention had been resolved and included in the modified development text. This interpretation of Miller’s statement became visibly apparent as disbelief and anger showed on the faces of most Commission members. Several Commission members used the remainder of the meeting time to test for contradictions in the representative’s present and past statements regarding how they addressed or resolved the Commission’s issues.

Commission Chair Barnes, “Any Commissioners have any questions?”

Commission member Kurt Summer asked the first question regarding maintenance of green space, “I have a quick question. The land that you have, that you’re dedicating to the City, who will be taking care of that, that land, that portion of the land; responsibility of the upkeep, the cutting of the grass?”

Attorney Miller,

That would be, if that, if we give it to Columbus, I mean, …; Columbus may ask us to do that, but typically Columbus wants to maintain it themselves. And again, that’s an issue that we really have no flexibility on that. If the City of Columbus were to ask us to, for example, maintain the, the vegetative basin, that’d be something that we would have to discuss with them in the process; but at this point in time what we were asked to do was to dedicate everything west of the sidewalks to the City of Columbus.

Attorney Miller did not provide a definitive answer regarding who would be responsible for the maintenance of the green space, but vacillated in a confusing fashion between the possibility that it could be the applicant’s (i.e., homeowners association’s) responsibility or it could be the City’s responsibility. He gave the impression that he was confused and not sure. However, item 21 of the proposed revised development text alluded to the 15.26 open space acres, which the
The developer proposed to dedicate to the City’s Recreation and Parks Department. The City intended to use this open space, which Miller also referred to as green space, as passive parkland - left natural and undisturbed other than for the proposed construction of a bike trail. Miller knew about the intended use of the green space, and that the City was going to be responsible for the maintenance of it. Apparently, Miller did not want to risk escalating the issue by stating definitively the City would take responsibility for the maintenance of the green space because he was aware from complaints from the Commission and residents that the City was doing a poor job of mowing or otherwise maintaining the existing parks within the Commission’s boundaries.

Commission Chair Barnes asked, “Anyone else?”
Commission member Rita Jensen, “I want to ask about this row of houses that’s facing [Pleasant Drive]. Is that the front or the back?”
Attorney Miller,
Well, actually you won’t, you’ll be looking at, this is the church property here, but what you’ll be looking at is part of our landscaping here; and we have, we have a landscaping board [i.e., rendition of the proposed landscaping]. We have agreed, as part of our text… that we will put along this property line, a two to three foot mound with a buffer of trees put on top of that. Now, perhaps, [Ted] you can go into a little bit more detail on that.”

Planner Ted Woods, “What we’ve specified is a 2 to 3 foot mound along that property line between the alley and the property line itself. It would include evergreen and ornamental trees…”

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156 In a meeting with Maureen Lorenz, Columbus Recreation and Parks, prior to the April 1, 2004 Commission meeting (between January and March 2004) we discussed the City’s planned use of the proposed green space.
157 Maureen Lorenz, Columbus Recreation and Parks, discussed with me via telephone and in person (between January and March 2004) that she had discussed the green space matter with Miller, and he was aware of the City’s position in which the City would accept the extra acreage from the developer, but as dedicated land to the City, and the City would own, control, and maintain the area.
Commission member Jensen interrupted, “Oh, so that’s the back of the house. That was my question.”

Planer Woods, “Yes, this is, that’s the back of the house. Correct.”

Commission member Jensen continued, “So the garages will be facing [Pleasant Drive], not the front of the houses?”

Attorney Miller, “That’s correct, right.” Planner Woods responds, “Correct.”

Commission Chair Barnes asked, “Any, any others with questions?”

Commission member Modula, “Ok, then how do you know they’re [i.e., ODNR or EPA standards] being met? How do you know the standards are being met if you don’t, never test the water?”

Engineer, “Well, again, the EPA has developed the standards. They are the ones who have set the standard, the bar, and we are exceeding the bar. So we assume that the performance standard will be met.”

One of Attorney Miller’s team, an engineer, responded, “Well, as the answer to that question states, there is no water monitoring required...as part of the EPA process. What ODNR, the Ohio Department of Natural Resources, has offered are some standards for post construction water quality; and as described in the text of this answer compilation, the standards that are, are being met and actually exceeded by the proposal for this vegetated storm water basin. And what, by offering those minimum standards the, the EPA is suggesting that and ODNR is suggesting that water quality standards will be met. And as such they are not requiring water quality monitoring.”

Commission member Modula, “Oh, so that’s the back of the house. That was my question.”
Commission member Modula, “And let me ask you this last question …. The proposed vegetated storm water basin will be constructed in the floodway. Is that correct?”

Engineer, “I believe that’s true. It is excavation in the floodway. That’s correct.”

Commission member Modula, “OK. And if we have a rain event where that storm water basin gets inundated, … how does that affect the storm water management of that site? Does the water just back up into the drains [and] back into the alleys or how, how is that handled?”

Engineer, Well, let’s back up a little bit. You talked about what the real purpose of this basin is. It is a water quality basin. It is designed to capture and abate … what they referred to as a first flush of runoff, that first inch of rain. So we’re not talking about a major flooding event by any means. And it’s that first flush of runoff from any site that generates most of the pollutants associated with the development. So we’re not talking about a major rainfall event. The performance of the basin would not be affected by a larger event because it’s managing the smaller runoff events [garbled because he lowered his voice to the point where we couldn’t hear]. It’s providing infiltration. It’s providing percolation. It’s providing uptake in the vegetated portion of the, of the basin, and, and that function will be preserved.

Commission member Modula, “So let me, let me make sure I understand you correctly. … [T]he primary purpose of this vegetated storm water basin is for water quality control and not storm water control. Is that correct?”

Engineer, “It, it needs to be a post construction water quality feature and as such it will pass storm water detention requirements. The EPA requires that it has at least a 24 hour drawdown time.”

Commission member Modula, “What’s that mean?”
Engineer, “That means that the water needs to be impounded in that area for at least 24 hours, for that water quality volume that [I] talked about earlier, that first flush of runoff. That’s significant.”

Commission member Modula, “But… the primary purpose is for, for water quality and not storm water?”

Engineer, “It is. That’s… the primary is water quality, second would be storm water, storm water control.”

Commission member Modula next provided the applicant’s representative an opportunity to answer unequivocally a question the ZC asked the representative several times previously, but had only received ambiguous responses. Due to the water basin’s proposed location in the floodway, the ZC was concerned about the water basin’s flood control capability in the event Indigo Stream overflowed its banks and inundated the water basin. Modula asked,

And so this area… has a history of ponding, where [Indigo Stream] will even come out of its bank on this side, on the east side. If that pond [referring to the vegetated storm water basin] gets inundated, what happens to its, its capacity then? If it gets filled up, how does it handle the runoff from, from the site?

Engineer,

Well at that point you’ve got, your, your floodplain is up, right? We’re not… we’re… we’re such a small contribution of flow to [Indigo Stream] if you consider the vast square miles of runoff area that cause flooding associated with [Indigo Stream]. The water would pass through the basin, probably undetained, and enter into the floodplain of [Indigo Stream].

Commission member Modula,

But [what] if the floodplain is already filled up? What… I’m worried about is… if that pond [referring to the proposed water basin] is filled up, is there going to be a back flow of water, or is
there… going to be a one-way valve that keeps that
water from backing up into…?  

Engineer interrupted,
In reality no. I mean the difference in the elevation
between the site that’s being developed and the
church that’s adjacent to it is such that any
backup… water from [Indigo Stream] itself
associated with a 100 year floodplain would not
cause any damage to the site, would not represent a
flood hazard potential to any of the structures on
that property.

Commission member Modula, “So that the storm water system that you’re
putting in would not have a tendency to back up?”

Engineer,
There will be no backup of the floodplain into those
streets. It’s, it’s not; well, it would be; if you had
your, your pipes full because it would backup…
from the outlet, which is [Indigo Stream]. There is
designed flood routing so that the water would flood
route to the streets, and, and swales between houses
and back to the floodplain.

Both Commission members Jensen and Modula simultaneously asked, “Into the
houses?”

Engineer, “No, not into the houses.”

ZC Chair Betty Cooper, “I have several questions and I’ll give them all to
you because I don’t often have a chance to speak. My first question, I noticed that
in the text you did not put in there that [of a] right turn in and out. That’s not in
the text. Is that something new [that you] found out after…[our last ZC
meeting]?”

Attorney Miller, “No. …[W]hat we have in the text is that we’ll meet the
requirements of the City of Columbus. The City of Columbus will dictate that to
us; they have orally told that to us.”
ZC Chair Cooper responds, “So you can’t put it in writing? Right-in right-out?”

Attorney Miller,

We certainly can put it in writing, and we will. In fact, we’ll have a, have that in writing in a commitment letter to the City of Columbus. They typically don’t ask us to do that letter until they make all their determinations. If you would like… I mean… I can certainly put that in the text without any problems, but it will be … it … I mean, it’s generally stated in there now that we’ll do whatever Columbus requires, and Columbus is requiring us to do that.

ZC Chair Cooper responded with some suspicion to Miller’s promise, “Just for my purposes, just, just kind of pamper me and put that in the text, please. OK?”

ZC Chair Cooper continued,

And we looked at some pictures of the area [i.e., a similar development] that you have now built…. [W]e noticed that the trash cans were out in the alley, not on trash day. Now, do you have a provision where people can park their trash cans someplace, or are they just always … to face an alley?”

Project manager Tom Springer responds,

There are rules and regulations of the homeowners association … that require their trash cans to be kept within the garage. That people aren’t taking them, in fact in the garages … then the regulations of the association allow the … property management company to require that the home owner put their can in the garage. And ultimately, if they don’t do it, if they don’t comply on a routine basis, then they can fine them. They have that ability.

ZC Chair Cooper, “We also looked at the utility boxes that you have. Is there any other way with those that you intend to dealt with?”
Project manager Springer,

Really, …they’re placed in the rear of the homes and the alleys because that’s where they’re the most screened from view, rather than out in front. They, they pretty much have to go in the alleys, and that’s the way, you know, they’re going to keep them screened. It also provide the necessary services to the homes. Those carry, within those, those utility trenches and ultimately the transformers and, and the pedestals, you’ll have your electric, your phone, and your cable TV services….

ZC Chair Cooper, “And will we be seeing some of those boxes on [Pleasant Drive]? Because you want to have some houses with their backs facing the road.”

Project manager Springer,

You shouldn’t. If you go back to this exhibit here, you know, whether these garages or rather these houses…. First of all, this is several hundred feet from this alley out to [Pleasant Drive].... What we typically do in these areas in our PR landscaping plans, … we design our landscaping, we put additional plantings in these areas [referring to particular areas on the site plan] so that you screen the views down those alleys from the public roads. It’s part of what we like to do just to screen the garages from the public viewing and additionally all the necessary utility services and things of that nature that are located within the alleys.

ZC Chair Cooper, “Is that in here [referring to the development text]?”

Project manager Springer, “It’s not, I don’t think that’ll be in there…”

Attorney Miller interjected, “We can insert, put that in our text.”

Planner Ted Woods added,

What we do above and beyond the commitments that are made within the rooms like this is, we will design landscaping features on the ends of these alleys so that you don’t at any point look down the ends of the streets. That is something that [Sunshine Homes] … make[s] sure that you can’t
[see] them, those areas. We have committed to on this plan screening those areas both north and south.... If it would be the pleasure of this Commission, we would be pleased to add additional trees as a condition for this plan.

Attorney Miller added, “We’ll, we’ll put it in the text that we’ll screen the, the end of the alley there.”

From Attorney Miller’s bewildered facial expressions, it appeared that his planner, Woods, had gone “off script” as he offered verbal commitments to the Commission that he had not apparently discussed previously with Miller. Woods stumbled through his words, groping and searching for particular words that seemed to be words he believed the Commission wanted to hear. Woods’s oratory skill, however, instead of appeasing the Commission, appeared to have had the opposite effect. Once again, from their facial expressions, several Commission members appeared annoyed by the inflected insincerity, condescension, and paternalism of Woods’s utterances.

Commission member Modula responded,

Well, I don’t think that’s [i.e., more screening] the issue. My concern is that the property owner steps out the back door and they’ve got these three [utility] boxes right in their face, and it’s about 3 foot tall. They’re there on every property; and, and that’s, that’s my concern is you have these boxes that are just right there as soon as you step out of your back door. They’re right in front of you, and to me, it’s about as appealing as having a junk car up on, you know, blocks in your yard. That’s, that’s my personal opinion, but to me it’s, it seems more of an afterthought that you just stuck these things back there; they’re all lined up like little soldiers and they, they just, they just spoil the scenery, they really do.

At least one Commission member verbally agreed with Modula’s opinion.

Planner Woods responded,
Yeah Mike I can appreciate your opinion on that, but, first of all these are, there are necessary service has to be provided to the residents. I don’t disagree that they are unsightly. I mean, but, pretty much everybody got utility boxes or pedestal in their backyards or the neighbor’s backyard ‘cause they’re necessary services that have to be provided to the home owner. [They’ve] got to go somewhere.

Commission member Modula, “You can’t eliminate them or reduce them so they’re less conspicuous?”

Planner Woods, “If we could we would. If we could eliminate them we would. First of all they’re costly; and second of all, I agree with you, they are unsightly, but they’ve got to be there, they provide the essential utility services to the homes.”

Commission member Summer asked, “You can’t build them closer to the home?”

Commission member Jensen added additional support, “That’s what I was going to say; or next to the garage, at the end of the garage or on the side…?”

Commission member Summer interrupted, “I’ve seen some, some homes like that with them, you know, close to the home. You really … wouldn’t be able to notice them. But, you know, when you, this is like, BOOM! you run right into it. It is an eyesore, you know; I know it’s a necessity, you have to have it, but…..”

Commission Chair Barnes asked, “Can we look at, look a way, you know, to make less conspicuous…?”

Planner Woods responded, We can check with the utility companies to see what can be done about that. I mean, the other alternative is, … where you have a frontloaded house where you drive into your garage on the front side. There is no opportunity for an alley, and at each corner of the lot you have as, as been pointed out these attractive green boxes [sarcasm in his voice] that provide services from the front of the house. So that, really you don’t have an attractive view as you’re driving down the public street. That
was for many years the way that the City developed.
Alternatively, and through the opportunities that
alleys have presented, there is a place to put those.
And now the utilities are being provided through the
backs of the homes and therefore it does provide the
opportunity to, to drop those in. That also happens
on newer detached single-family homes where you
have these, the utility boxes in the backs of the
homes standing out at the property corners. So, this
is not atypical for developments of this type for
single-family homes.

Commission member Modula, “I think what aggravates the situation is the
depth of the lot. These lots…. How deep did you say they are?”
Commission member David Henderson responded, “Well, they’re between
3, 3000, around there.”
Commission member Modula continued, “About 90 feet deep… and the
traditional lots are… what, 100 [feet deep]?…”
Commission member Henderson responded, “120.”
Commission member Modula,
120. And so, if you put, you have an easement at
the back of the lot, … the utility easements, it’s a lot
farther away so it’s a lot less conspicuous. People
… can plant their trees or whatever. You really
can’t plant anything around these particular boxes
because there’s really no space to plant anything
around. You put a tree there, it’s probably going to
be growing in somebody else’s yard. So, it’s…
Commission Chair Barnes interrupted,
Well just, just look at…. I have a friend that lives
in [Walnut Station], and those things are right next
to the houses, you know, almost out in front. And
they have all the plants and vegetation around it and
you really don’t notice them [referring to the utility
boxes], OK.

Planner Woods responded,
And to add to that, [Sunshine Homes] because this is not the first project of this type, [Sunshine Homes] is in the process of reviewing and coming up with new standards on how you treat the views down the alleys. In fact, … [t]here are going to be new treatments in place as part of not only this development, but I believe that they’re going to be retrofitting some of the existing developments.

Commission Chair Barnes asked, “You will, you will check into it?” Planner Woods, “We’ll look into it. Any opportunity …” Commission member Henderson had questions for the applicant’s representatives regarding where in the City Code Sunshine Homes was getting its private street definition. Henderson explained to the representatives that he found only one mention of private street in the Code under the manufactured home park district, and he found no mention of it in the PUD or TND sections of the Code. Henderson’s argued that Sunshine Homes’ street widths were too narrow per the Code.

Attorney Miller responded, “… if you were to review the section of the Code in… with traditional neighborhood developments …” Commission member Henderson interrupted, “It’s, it’s I mean, it’s silent. That’s what I’m saying.” Attorney Miller, “It does have roadway standards in there, and those standards are 22 feet streets.” Commission member Henderson, “But a 22 foot street would be one way with parking on one side.” Attorney Miller disagreed with Commission member Henderson. Commission member Stan Gable encouraged Commission member Henderson to read the Code to Attorney Miller. Commission member Henderson, “Well, this is it [referring to the City code]. It’s 3343.13.”

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158 Manufactured Home Park District, Columbus City Code, Revised through March 31, 2003
Planner Woods interrupted, “I actually have a, a depiction and I can hold this up for everybody.”

Commission member Modula asked, “That’s for a TND, though, right?”

Planner Woods, “That’s correct, which is an accepted street within the City of Columbus.”

Commission member Modula asked, “For PUDs?”

Attorney Miller in a condescending and belligerent tone responded,

[Y]ou do understand that the PUD is, just basically, a blank slate and you use the development standards from other districts within it. In, in itself it doesn’t have its own standard of development. So, we incorporate the TND standards here…. [B]ecause it’s a PUD it, it’s sort of like … you can go ahead and design it the way you want to. What we chose, and to use for the streets are 22 foot widths, which are the widths permitted in the Traditional Neighborhood Development.

Commission member Henderson,

What I’m saying here, quoting it …, that your street has to be … it’s a … 35 feet is your street with two-way parking, 28 feet with parking on one side, and 20 feet; then on the 20 feet, parking on one side, one-way. But your minimum width is 28 feet for parking on one side and two-way traffic.

Attorney Miller, “I’m not familiar with that section …”

Commission member Henderson interrupted,

Private street is defined as such that you can block it and not interfere with public egress and degress [sic, i.e., ingress], and these streets cannot be blocked. Also, is, that private streets are one owner, you know, one person owns the street, which they’re not. However, an apartment complex, you do have private streets and you do have one owner.

In a manufactured home district you do have one owner and you do have private street. But that’s the

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159 Columbus City Code Chapter 3345 Revised through March 31, 2003, pages 829 passim, specifically enumerates PUD development standards.
only place that I know of; having been in the real estate, being a broker for 25 years, I’ve never heard of private residential streets.

Commission member Henderson shifted his concern over to the proposed density,

OK, here we go, [referring to City Code] under the 3345 Planned Unit Development, this is a PUD, it says … you got to subtract public streets and, excluding any areas dedicated for public purposes. So what I did is, I took your own numbers … I think you guys were doing 44.90 acres, and that you’re dedicating 15.26 acres to the public area, and I calculated that you had 2.79 acres of street, at 22 foot; giving you a net acreage of 26.85 acres. You multiply that by six and that comes up to be 161 homes, not 229. So if you go by the actual PUD development formula, you can only put in … 161 homes, so this will relieve many of the floodplain issues, the crowding issues. That’s only point two.

Attorney Miller, “We respectfully....”

Commission member Henderson interrupted,

OK, you disagree, but these are the points. Point three. I went into, again the PUD, its 3345.05, and it says, OK this is your computing what I just quoted you. OK, the next one is 3320.19. The minimum lot size in the City of Columbus allowed for single-family residents is 3600 square feet, 36 by 100. Your specifications say you’re going to be 3050 square feet, and that does not meet the minimum. In addition, in 3320.15, it was in the NG neighborhood, like you say we’re doing mixing and matching, I found that 900 foot is the longest block you can have without having another roadway. This is under the sanitation rules. Your one block I calculated to be something like 1225 feet long.

160 Columbus City Code Chapter 3345.03(a), but does not state, “excluding any areas dedicated for public purposes.”
161 Columbus City Code Chapter 3320.19 is the Traditional Neighborhood Development (TND) section of the City Code pertaining to private buildings.
162 From 3320.19 Building Standards Table Districts.
You’ve got to have a street to break that up, and that’s in the Code.

Planner Woods,

When you’re in 3320.15 in the TND Codes, did you notice number four in that section where it says, ‘in case of private thoroughfares right of way provisions are intended as dimensional requirements to accommodate sidewalk, planter, and other thoroughfare elements’?

Commission member Henderson, “Well, that’s why I recognize your thing, I don’t have it here but I’ve got the whole thing downloaded. That’s why I want you to tell me what you… give me your number again [referring to the City Code number].”

Planner Woods, “3320.15, and its item number four within the code. In addition regarding the, the street widths. Under thoroughfare types; the street cross-section, the ST4822 illustrates a 22 foot roadway with two way traffic, parking on one side, which is what we’re proposing here.”

Commission member Henderson, “Under the specification, because it’s sure not in the City code.”

Planner Woods, “It’s under 3320, the Traditional Neighborhood Development Codes, under thoroughfare.”

Commission member Henderson, “But this is a public street, there, right?”

Planner Woods, “It doesn’t classify one way or another.”

Commission member Henderson, “No, I found private street. The only place they have private street is your manufactured home as private street.”

Planner Woods, “This Traditional Neighborhood Development code permits public or private streets to be a pavement width of 22 feet.”

Commission member Henderson, “What I am saying, under manufactured home, it says 35 feet on both sides, … 28 feet with parking on one side.”

Attorney Miller broke into the conversation in a very condescending tone,
There’s a number, there are a lot of inconsistencies if you review the Columbus Code. And I’m, I’m sure you have many times, a lot of inconsistencies. With all due respect, we do appreciate [you] going through this, thank you very much. But … we’re not inventing the process at this point in time. We actually have, I think, almost 12 of these communities built in Columbus, and each one of these communities had to go through the same review process with the City utilities, City transportation, City zoning staff, and City Council approval. And so, this is, this same development has been gone through the zoning code review extensively with at least 12 other condos….

Attorney Miller ended speaking so meekly and in such a whisper that his very last word was inaudible. The above verbal exchange provides another example of participants Attorney Miller found necessary to include in the review process, specifically “the City utilities, City transportation, City zoning staff, and City Council.” In contrast, Miller consistently failed to mention area commissions, residents, and other stakeholders as participants in the review process. Also Attorney Miller’s comment raised the ire of at least one person in the room, ZC Chair, Betty Cooper.

ZC Chair Cooper,

[Kent] [i.e., attorney Miller] let me interrupt you for just a moment. Now you’re trying to say that you’re putting these neighborhoods in, and they aren’t cookie-cutter neighborhoods. So you really can’t say that you’ve done this 12 times. Every area is individual. This is an individual neighborhood. This is an individual community. So you have to look at it as… we are all individuals. This [proposed development] is different.

Attorney Miller’s revealed his impatience with Cooper as he hand gestured to his planner, Ted Woods, to interrupt her. Woods interrupted, “Well, it’s actually a detached condominium home.”
ZC Chair Cooper, “What I’m trying to say to you, every area is individualized so you don’t….”

Attorney Miller interrupted,

Yes, what I…. I apologize. I wasn’t trying to paint with a broad brush there. It’s the issue of the road widths, that was the issue that we were dealing with here. The road widths and the specific PUD code issues that was….

Commission member Henderson interrupted, “Well, you still didn’t answer the formula that I talked about. How you calculate density?”

Planner Woods responds,

And I can address that one. Actually, in working with Mr. Bier, …. He’s one of several planners at the City of Columbus. Going through a number of Planned Unit Development as I have, there, unless it is designated as a public street, the right of way requirement is not netted out of the area calculation.

Commission member Henderson,

That doesn’t make that many difference in the homes though. I said I had less than 3 acres of street. You know, that might add another half a dozen units to your plan, but you calculate that, and no way if you throw the streets out, don’t calculate them; but it does state specifically in there that streets, I’ll argue with you whether their public or not, but let’s say we add another 2.7 times 6, OK that’s what, 18 more? Your 18 and 161 is 179, not … 229. I want to know, … [the] math on how you get to 229?

Planner Woods,

We are also permitted to incorporate into the area calculation, and I think the best example of this is really right across the street. The apartment development that was created was developed to a standard of a PUD 6, and … included the large open space down along [Pleasant Drive]….
Commission member Henderson, “I counted all of your open space. It says excluding your public dedicated, and it’s your own numbers; saying that you’re dedicating 15 acres; so that’s what has to be subtracted.”

Planner Woods responds, “That’s subtracted after the calculation is done.”

Commission member Henderson disagreed, “Before the calculation.”

Henderson’s voice was hoarse and showed signs of frustration with the Sunshine Homes’ planning representative,

So since I’ve done the homework, …. [H]ere’s the rules I’ve got to fly by. So I think everybody …. And here’s the rules laid out. Now I’ll tell you, show me the different areas this is how it says you calculate under a PUD. It says excluding streets, excluding dedicated areas. It’s very simple in black-and-white.

In all fairness to the applicant’s representatives, some of Commission member Henderson’s facts regarding the City Code’s street requirements and density calculations were factually inaccurate. While the inaccuracy of Henderson’s facts may have weakened the credibility of his arguments, it did not reduce the validity of his concerns that the streets should both be wider and dedicated public streets, and the proposed housing density was too high.

Commission Chair Barnes interrupted, “[David] [i.e., Commission member Henderson] why don’t we do this. Why don’t we have, why don’t we have you and someone else from the Commission here go and talk to… what’s his… what’s this gentleman’s name? Mr. Bier?”

Planner Woods answered, “Any one of the planners.”

Attorney Miller, “I would suggest you talk to their bosses, Mr. Prezutti….”

Commission member Henderson asked Commission Chair Barnes, “Do you want to go with me [Woody]?”

Commission Chair Barnes, “I’ll go with you, yes.”

Commission Chair Henderson suggested, “Do you want to do it tomorrow? I can make time.”
Commission Chair Barnes,

See if, see if you can, see if you can, see if we can have [an] appointment to meet down there [at the City’s Department of Building Services]. OK, and then we’ll do that OK. And we’ll get back with you all, OK, and, before you get to the Development Commission. That way we can make our recommendation.

Commission Chair Barnes’s agreement to go with Commission member Henderson to meet with Prezutti to discuss the zoning code applicability to Sunshine Homes’ proposed development violated Barnes’s own promise not to “have anything to do with this whatsoever.”

At this point in the meeting, the Commission Chair allowed public comment. Barnes recognized audience members wishing to speak, “Yes sir?”

Audience member Roy Dent, emotionally pleaded,

I’ve been listening, my name is [Roy Dent]. I’m just amazed at … what’s going on here. I mean… first of all this development when I first looked at it… I haven’t seen that density since I was in the Army. I mean, that’s ridiculous. Everything they said would be minimum….

I live on a street like most of you … about 26 foot … and you can’t drive what they’re saying on there [i.e., proposed 22 foot]. And … what about fire trucks that come in our neighborhood? If somebody’s parked there they can’t get by [and] the house burns down. They may get a ticket, but they probably won’t. Or they might get fined by the Association. And if you’re a member of an Association you know yourself they aren’t going to fine you; they never fine them. You’re not going to pay, I mean, just a ridiculous statement.

I just wish that you would all stand behind what this gentleman said here. I mean… and make them, make the lots bigger, cut their density down. I mean, there’s so many things… we’d have to spend the night here, I mean, this is ridiculous.
[T]heir specialists... haven’t really answered the
questions to a layman’s, like myself here, and I’m
sure these people that live in the area don’t have any
idea what they’re saying. ...[T]his answer here that
they just passed out [i.e., the applicant’s written
responses to the Commission’s 46 questions] says
nothing. They say, well, it’ll work out, we’ll try to
do this in general terms. I mean, I just think they’re
just trying to cram, you know....

So, they’re like everybody else who’s trying to
develop a piece of property that’s in the floodplain,
and probably if it is built up, the houses that are
right there on [Sweetwater Road], they’re probably
going to feel the pressure of a flood or whatever.
And they say, well, you know, the City says this is
what is in the Code that will happen, but it doesn’t
say who’s going to be responsible, you know, for
the flood insurance ... or anything else.

I just don’t think they planned ahead. And they’re
going right ahead and pushing this thing forward. I
just think it’s, it’s very unfair, and I think this... I
hope that the Association [i.e, Commission] will,
you know, stand up and... who cares what other
developments in the past or in other parts of the
City have approved. You’re right, I mean, that
doesn’t mean anything. They, they’ve got to have a
certain amount square footage for yards. Make it a
nice development for a change.

Audience member Kelly Trace, stood up,

He [i.e., Roy Dent] speaks here on behalf of
everybody here on [Pleasant Drive]. I am [Kelly
Trace], I lived there all my life; my parents have
lived there. I hope the Commission please take into
respect and account to the people that live there.
And I know they [i.e., applicant’s representatives]
have their opinion and we have our opinion.... I am
asking on behalf of everybody that still lives there
and that have lived there. For forty-some years
since my grandmother’s and grandfather’s property
was farmland. Please take into consideration and
let these people have their, the quality of life still.
Please I’m asking for your consideration.
Commission member Rita Jensen angrily commented that Sunshine Homes
did not take a survey of Pleasant Drive residents regarding the proposed
development,
... I’m appalled [stressing frustration and anger]
that you did not go to the residents on [Pleasant
Drive] and find out how they felt about this
development. [Audience began applauding]. I’m
really appalled, personally. And to be here … and
to see residents that didn’t even know anything
about this development. When any developer that
comes before the Commission, we always, we
always have them go to the community, to the civic
association, and run everything pass them. Now
how did this get passed [Pleasant Drive] residents?
And these people can tell you more about the
flooding of [Indigo Stream] than anybody here.
Because we just had flooding just a few months
ago.
Attorney Miller, “I don’t think anyone here just discovered it [i.e., proposed
development] today. We’ve been going through the process for almost three
months.”
Commission member Jensen, “And you invited them to meetings?”
Attorney Miller, “Yes. They’ve been. I’ve spoken to several of these
individuals myself, and we’ve sent out the text, we sent out the site plan.
Everybody here has had this from the very beginning.”
Audience member Kelly Trace, commented,
We have been notified. And after I went door to
door last weekend; so many of the people, you
know, they feel that they can’t fight this because
they will not win, and I think that’s horrible to think
that way. So, yes, they did notify us by letter. But,

The Commission could not direct the applicant to a neighborhood organization such as a civic
association because no such organization existed for Pleasant Drive residents. However,
during previous meetings the ZC suggested to the applicant’s representative to talk to Pleasant
Drive residents to get their views about the proposed development.
you know, Mr. Gore [Miller] did not come to my
parent’s door and ask them; how do you feel about
houses being built in your backyard? How do you
feel about having trucks drive in and out all
Summer long, all hours of the day? Do you enjoy
seeing those deer out in your backyard right now?
Well, forget about seeing them the next six
months…. We have not been considered.
Commission member Jensen, “But they’re going to go to the Development
Commission on the 8th of April.”
Audience member Kelly Trace, asked the Commission, “Why are they
going, how can they get to the City already without it being passed through us?”
Commission Chair Barnes explained where the Commission was in its
review process,
Well, see they, they’ve, they’ve been to us. This is
the third time that they’ve been to us and they’ve
been to the Zoning Committee three times as, as
well. And, you know, we, we’ve always wanted the
input from the community. And tonight we have
more community people than we’ve had before.
And, you know, if you’re silent, then, you know,
you know, as long as they’re maintaining the City
codes, you know, then it’s up to us as
Commissioners to do the right thing all the time by
the community. But [if] the community is not
coming forth in their concerns, then we have to use
our own judgment and, and try to do what we think
is the best thing for the community. OK? And so
that’s what we’ve tried to do.
Because little meeting time remained, Commission Chair Barnes announced,
“OK, OK, we have, we have, we have, we have about five minutes; we have to be
out of here by 15 or a quarter after, OK.”
Tina Murphy of Friends of Indigo Stream and its Tributaries (FIST)
commented,
I just wanted to say that … the Friends of [Indigo
Stream] are very pleased that water quality in the
[Indigo Stream], it seems to be a major concern for
area’s development, and I appreciate your concern for the resource. And I think one question that the Commission seemed to have is; are we really protecting the [Indigo Stream]? And that’s what I want to try to address. And basically, we’ve got four issues to think about. Floodplain: Right now floodplain is going to be filled as this development now stands proposed. And we know that’s a potentially a hazard in terms of downstream flooding...

Commission Chair Barnes interrupted, “But the floodplain is not going to be filled.”
FIST representative Murphy confused about the statement Barnes blurted out, responded, “I’m sorry?”
Commission Chair Barnes, “But, but, not the floodplain. They are not filling the floodplain.”
Attorney Miller chimed in, “Not the floodplain.”
There was frustration in FIST representative Murphy’s voice as Commission Chair Barnes allowed her to continue,
It’s a 100 year floodplain…. So, it is different than the, than the floodway, which gets flooded on a regular basis. So, I, I just looked at the map and it looks to me, … about a quarter of the homes in the development will be in areas that are filled to bring them out of the floodplain. So, basically I wanted to remind the Commission that the floodplain, of course, is, is very important for the [Stream]; the natural component of a river system. So, filling in floodplains will be detrimental to the [Stream].
Murphy continued her presentation of FIST’s second concern about storm water management of the proposed development. “Storm water, I think [FIST] would support the use of the wetland to treat storm water as long as [Sunshine Homes] is following provisions set forth by ODNR as was discussed earlier.
Also, regarding wetlands; there are three wetlands on this site and…”
Commission Chair Barnes interrupted Murphy and asked one of Attorney Miller’s team to respond, “Excuse me [Tina]. Why don’t we, you [Miller’s team] want to comment on, on what she just said?”

Attorney Miller’s engineer,

… [W]e said earlier; there is some fill in the floodplain, that’s true. There is no fill in the floodway. There is only a portion of the floodplain being filled and this is consistent with what the City of Columbus does permit. And we talked about what the City allows, what the City allows, what the minimums are. But there is some balance here; some fill in the floodplain, some material being taken out [of the floodway] as part of this storm water vegetated basin; and again water quality enhancement. None of the existing riparian corridor as I understand it is being disturbed. And the fact that this area is being dedicated to [Columbus] parks, … for their use. [TMH&E] has work with a lot of watershed action groups…. We’re aware of a lot of this setback, greenways, and other riparian corridor requirements that are associated with developments in or near a stream or river, and we feel that this site is consistent with that.

The floor is again returned to FIST representative Murphy,

Thank you, and I, I wasn’t aware of the storm water detention design, so it should have answered that question. Regarding the floodplain [filling], … it’s a permitting process. … [I]t doesn’t make it a good quality. I mean, you can fill the floodplain. It does raise … the houses out of the flood level. However, cumulative impact is what we have to look at here. Regarding the wetlands, that is also a permitting process…. EPA issue[s] those permits, [and] those permits do not protect [local water quality]. What they do is they demand that if you destroy a wetland that you preserve one someplace else. I would recommend to the Commission that as much of these wetlands be preserved as possible. If wetlands are filled, I like to recommend that … the mitigations required to happen [occur] in the
[Indigo Stream] watershed, … otherwise mitigation happens at a bank, … [in] Marion County, and the benefit of that wetland is lost to the local community. So, if [Sunshine Homes] would work with us to find a site locally where we can use up that mitigation, that would help us preserve the corridor.

There were no more questions or comments from Commission members or from the audience.

**Note**

A letter from Dr. Mary Knapp of the United States Department of the Interior Fish and Wildlife Service reinforced FIST’s concern about the potential cumulative impacts of flood plain filling. In her letter, Dr. Knapp provided her recommendation and her fear regarding flood plain filling,

As always, we recommend that filling of wetlands be avoided. And frankly, we are dismayed that the City allows developments in this and other floodplains across the City. We fear that someday a rainfall event may reclaim those floodplains in a disastrous manner.164.

Dr. Knapp’s statement echoed residents’ concerns who knew the flooding history of the area; what their common knowledge told them regarding the flooding potential the proposed development presented to the area, especially with regard to building new housing within the flood plain. In addition, the Commission’s area plan documented its support for wetland and floodplain preservation. The Commission also created an action plan - a companion document to its area plan - specifically addressing issues of environmental degradation arising from storm water runoff and flood plain filling. Offering further support to the Commission’s environmental advocacy is the Columbus Comprehensive Plan’s (1993) recommendations to,

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164 Letter from US Fish & Wildlife Services dated June 23, 2004 (Appendix B.1 Exhibit 21)
1. Maintain and improve the environmental quality of Columbus.

2. Protect, expand, and enhance the natural features of Columbus.

3. Promote the greening of Columbus.

Remaining natural resources, including river valleys and banks, ravines, natural drainage ways, park land, and open space should not be developed for more intensive uses. Preservation of natural resources, including wetlands, natural habitats, river valleys and banks, ravines, natural drainage ways, forested areas, and flood plains should be encouraged.\(^{165}\)

Lastly, The Mid-Ohio Regional Planning Commission’s (MORPC) document entitled *Greenways*, recommended “no net loss of wetlands/flood plains,”\(^ {166}\) which provides reinforcing support to the Commission’s argument against floodplain filling. However, all these plans and reports are purely advisory, guidelines for planning and not legally binding upon the City of Columbus.

Commission Chair Barnes asked, “Alright commissioners what do we do?”

After a long pause and no apparent indication that any Commission member was preparing to speak, Commission member Modula asked,

I have a question about logistics. You alluded to earlier that [David] [Commission member Henderson] and, I think, yourself are going to get a question answered with the planner and then get back to the applicant, and then the Commission is going to make a recommendation. We don’t meet again until…”

Commission Chair Barnes interrupted, “We were going to call a special meeting just for that.”

Commission member Modula continued,

\(^{165}\) Pages 30, 39, and 41.

\(^{166}\) Goal 6, number 4.
… and I’m just wondering. We’ve met three times at the Commission, three times at the Zoning Committee. Is there anything else that needs to be discussed? Can we make a recommendation tonight? They’re, the applicant is going forward to the Development Commission on the 8th [of April].

Commission Chair Barnes, “Well, I would like for us to be able to meet with Prezutti in the next day or two.”

Commission member Modula, “I doubt that’s going to happen. My experience is he’s not responsive.”

Commission member Henderson, “I think we should go ahead and vote tonight, and we can then add, you know, what we find out tomorrow ….”

Commission Chair Barnes, “OK. Someone make a recommendation.”

Silence came over the Commission again, but was broken when Commission member Rita Jensen and ZC Chair Betty Cooper both asked Commission member Modula to make a recommendation. Modula began,

I can’t, I can’t support this project. There’re too many issues and I’ll line them out very briefly.

There’s a flooding issue; it has been unresolved still. And we’ve asked the question, and we haven’t gotten the answers. And to continue asking the questions, to me, we’re at a point where we’re just not getting, were not getting succinct answers. So, we have a flooding issue, flood protection issue.

We have a floodplain protection issue. You have a traffic issue, with that being a private street. I think, I think the Commission is all on the same page; the want, the desire would be having this development public street. You have an issue with the actual development itself as being out of character with the, with the existing area, both from a density standpoint, from a lot width standpoint, from an architectural exterior standpoint, … [and] it’s not consistent with the surrounding area. Have I missed anything? There’s a water quality issue if I haven't mentioned that. I think there’s four or five issues that in my mind they’re still, they’re unresolved; and, and we’ve met as Mr. [Miller] indicated six
times; three with the Zoning Committee and three
with this Commission. The questions have been
relatively the same questions, and in my mind, I
haven’t had satisfactory answers. And so, I would
recommend disapproval of this … [rezoning
application]. I would suggest the Commission vote
no….

Commission member Henderson immediately made a motion, “I make the
motion that we approve this [Sunshine] PUD 6 project.”
Commission member Jensen, “I second.”
Commission Chair Barnes acknowledged the motion and the second, and
asked, “Are there any questions?” There were no questions.

A voice vote was requested, and the Commission voted 0 for, 7 against, and
1 abstention (Commission Chair Barnes). As the meeting adjourned, grateful
audience members came up, one after another, to Commission members and
thanked them for “standing up for their community.”

**Commission’s Interaction with City Departments**

This section is extremely brief due to the few people from City departments
who interacted with either the ZC or Commission. As I mentioned earlier, Patti
Austin of the City’s Traffic Division worked closely with the ZC regarding the
proposed development’s external and internal traffic circulation plan. Austin
included into the department’s requirements all of the ZC traffic
recommendations except two. The proposed development’s internal street widths
remained unchanged at twenty-two feet, and all internal streets and allies
remained private, except for a main collector street, which was required to be
public. The ZC also worked closely with Maureen Lorenz of the City’s
Recreation and Parks department regarding the proposed open space, bike path,
and stormwater basin. Lorenz provided the ZC copies of recently passed City
Code legislation and stormwater regulations. She also helped ZC members
understand City Code and regulations related to the proposed development.
Lorenz concurred with the ZC’s conclusion that the proposed location of the vegetated stormwater basin (i.e., within the floodway) was not only prohibited by City Code, but also posed a greater than acceptable risk of failure from floodwater inundation due to its close proximity to Indigo Stream.

Don Bier, one of the City’s planners that worked on this rezoning application’s review had scheduled to attend the Commission’s February 2004 meeting to discuss the rezoning application and proposed development with Commission members. Unfortunately, he was unable to attend the Commission meeting, and was unavailable to attend any other Commission meetings. Subsequently, I spoke with Shannon Pine, the City Planner assigned to the Sunshine Homes rezoning application, and she indicated to me that the Commission needed to do its own review separate from the City’s planning department. To my knowledge, no interaction occurred between the Commission and the City’s planning department or the ZC and the planning department. Indeed, the sole source of communication between the Commission or ZC and Shannon Pine was in the form of the Commission’s April 5, 2004 disapproval recommendation letter sent to Ms Pine (Appendix B.1 Exhibit 19).

To assist area commissions to function more effectively and to gain better access to the City’s large array of departments, the City created a City Liaison position. The City assigned one City Liaison to each area commission. The City Liaison’s primary responsibilities include providing,

- Information directly to individual citizens and neighborhood groups regarding available city services….
- Advocacy of Columbus neighborhoods … to build and maintain relationships with neighborhood leaders and city staff….
- Coordination … to connect necessary [C]ity services with the needs of the neighborhoods.
- Education and Training … [of] neighborhood residents and organizations. Specifically, Liaisons seek to move citizens through the process from mere awareness of the existence of
neighborhood organizations to involvement, participation, and contribution to those organizations and the governmental process\textsuperscript{167}.

However, the City Liaison assigned to the Commission offered no support or help to the Commission regarding how or whom to contact within the City’s departments for assistance in obtaining technical information or assistance with aspects of the rezoning application or its corresponding proposed development.

**The July 19, 2004 City Council Meeting**

The rezoning application went before City Council on July 19, 2004. Council, as it had traditionally done, allowed the applicant or applicant’s representative to present a brief overview of what the applicant intended to do with the rezoned parcels, and how the applicant’s proposed development would affect the surrounding area. Sunshine Homes’ attorney Kent Miller provided such an overview and brought particular attention to the great extent he and his team reached out to the community.

We actually met with the area commission publicly six times, that’s over three months, and we met with them again privately once. We also had a more private meeting with the neighbors *in an effort to try to build some hope for community involvement* with the project (my emphasis).

Attorney Miller’s presentation to Council attempted to portray Miller as performing his “due diligence” to show Council that the applicant did everything within reasonable limits to engage the community through numerous meetings over several months. Miller also attempted to demonstrate to Council the applicant’s (i.e., the applicant’s representatives) “good faith” effort in working with the community, which resulted in “a number of commitments” included in the PUD text.

Council then heard testimony for and against the proposed re-zoning. Each side had the opportunity for three speakers to present testimony to City Council. Robert Jefferson, Pastor of the Good Shepard Church spoke in support of the re-zoning application. Pastor Jefferson acknowledged that his church owned a substantial portion of the land that comprised the proposed re-zoning application. Pastor Jefferson indicated that he was in support of the application because it lined up with his church’s vision of providing affordable housing for the community, which included members of his church. He said that sixty percent of his members were renters and it would be wonderful if they could become homeowners. There were no other speakers in support of the re-zoning application.

There were three speakers in opposition to the proposed rezoning application. Mary James, representing Friends of Indigo Stream and its Tributaries (FIST) testified before Council in opposition to the proposed re-zoning application. Ms James indicated FIST’s main concern was with the filling in of the 100-year floodplain to allow forty-one homes to be built on the site. She went on to say that FIST recommended City Council not approve that portion of the proposed re-zoning that included filling in of the floodplain.

The second speaker in opposition to the re-zoning was Betty Cooper representing the Commission. Ms Cooper referred to the Commission’s letter recommending disapproval of the re-zoning application and expanded on the contents of that letter by stating, “the character of the development is inconsistent with property located on [Pleasant Drive]. It appears that the developers are attempting to turn a suburban area into an urban setting.” Ms. Cooper submitted photos to Council members illustrating the current housing on Pleasant Drive, which she indicated highlighted the proposed housing’s discontinuity in character with the existing neighborhood.

The third and final speaker in opposition to the re-zoning application was Karl Meeks. Mr. Meeks stated he represented the residents of Pleasant Drive who

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168 Appendix B.1 Exhibit 19.
had several concerns about the proposed development\textsuperscript{169}. Their first concern regarded the character of the proposed housing was not in keeping with the character of the existing houses on Pleasant Drive, which had large lots and whose exteriors were built from natural materials (e.g., stone and brick). The Pleasant Drive residents also had a concern about the amount of increased traffic that the proposed development would generate, making an already congested Pleasant Drive more so. The residents’ third concern was that of the applicant wanting to fill-in some of the floodplain. Lastly, Mr. Meeks indicated that the residents requested Council to direct the applicant to go back and work with the neighborhood to produce a better plan.

Councilmember Boyce was the only member of Council that asked any questions of those who provided testimony in opposition of the re-zoning. Boyce asked only one question to ZC Betty Cooper regarding the character of the development not being consistent with the area. Boyce stated, “It is my understanding that the proposed development fits the character of the area,” referring to the development at Bluffs Pointe. Cooper responded, “[Bluffs Pointe] doesn’t fit the character either.” Cooper did not indicate to Council that the Bluffs Pointe development was located outside of the Commission’s boundaries.

Council did ask the applicant to explain the procedure for the wetland permitting process. At no time did Council members discuss the type of storm water control or its location in the floodway. Maureen Lorenz from Columbus Recreation and Parks who first alerted the applicant and the Commission of the potential conflict between the proposed location of the stormwater basin and City Code attended the Council meeting. She addressed Council’s questions, but never alerted Council to the conflict between the planned location of the stormwater basin and its prohibition as specified in Columbus City Code.

In the end, City Council unanimously approved the re-zoning application with no amendments made to the development text (i.e., PUD Notes). Council

\textsuperscript{169} Appendix B.1 Exhibit 20.
did not provide any reasons to the Commission or the public for going against the Commission’s recommendation of disapproval of the re-zoning.
Appendix B.1
Exhibit 1
Zoning Committee Review Procedures*

[REDACTED]
AREA COMMISSION
ZONING COMMITTEE
PROCESS AND PROCEDURES
POLICY DOCUMENT

ADOPTED
JANUARY 2000

* Confidential and personally identifiable information redacted from document.
DEFINITION OF TERMS

City - City of Columbus

Commission - [REDACTED] Area Commission

Zoning Committee - [REDACTED] Area Commission Zoning Committee

Applicant - Any entity of legal capacity who has complied with the City's filing requirements regarding application for rezoning, variance, special permit, or demolition permit, and where the City has accepted such application

Community - Residents and merchants located within the boundaries of the [REDACTED] Area Commission

City Council - Columbus City Council
I. INTRODUCTION

As the city grows and changes, land uses may also change. When this occurs a property owner may initiate an application for rezoning, variance, or special permit. In response, the City of Columbus (City) has developed a review process that evaluates these types of applications in an efficient and consistent manner.

The **REDACTED** Area Commission Zoning Committee (Zoning Committee) has prepared this document to mirror as closely as possible the review process used by the City's Department of Trade and Development, Development Regulation Division. Where the Zoning Committee does deviate from the City's process it is due to the nature of the area commission as an advisory body coupled with limited resources, and of the special characteristics of the **REDACTED** community. The following are the specific requirements applicable to the Zoning Committee.

II. ENABLING AUTHORITY

A. The Zoning Committee shall regularly monitor, review and make recommendations on all applications for re-zoning, variances, graphics, special permits, and zoning adjustment appeals regarding properties located wholly or partially within the boundaries of the Commission area. (By-Laws Art. VIII Sec. 2).

[NOTE: HIGHLIGHTED AREA INDICATES REVISIONS]

III. ZONING COMMITTEE ORGANIZATION

A. Committee membership

The **REDACTED** Area Commission (Commission) Chairperson in consultation with Commission members may appoint Zoning Committee members (By-Laws Art. VI Sec. 105 (a)).

1. Appointment shall be documented and recorded in Commission minutes.

2. Appointees shall receive a copy of and abide by the requirements of the Zoning Committee Member Duties and Conduct Agreement.

B. Officers and Duties

The Zoning Committee shall have as a minimum the following officers:

1. Chairperson whose duties include: Presiding over regular and special meetings; Preparing Zoning Committee agenda; Presenting the Zoning Committee's report and recommendation(s) to the **REDACTED** Area Commission and to the City; and other duties that facilitate the operation of the Zoning Committee.

2. Vice-Chairperson who is to perform the duties of the Chairperson in the Chairperson's absence.
3. Secretary whose duties include: Recording Zoning Committee minutes; Performing written correspondence for Zoning Committee; Organizing and maintaining a records archive; and Facilitating public access to Zoning Committee records.

C. Member Duties
Each Zoning Committee member shall:
1. Perform the functions described in Section II A (Enabling Authority).
2. Discharge his/her duties in a fair, consistent, and objective manner.
3. Follow the guidelines set forth in the Zoning Committee Process and Procedures document; all applicable rules set forth in the REDACTED Area Commission By-Laws; the 1994 REDACTED Area Plan recommendations, and the policy guidelines set forth by the City's Department of Trade and Development, Development Regulation Division.
4. Attend regular and special called Zoning Committee meetings.
5. Reveal any conflicts of interest or potential conflicts of interest in matters related to his/her duties as a member of the Zoning Committee.

D. Minimum/Maximum Committee Membership
The Zoning Committee shall consist of at a minimum three members, and at a maximum seven members.

E. Quorum
A valid quorum for voting purposes within the Zoning Committee shall consist of a simple majority of its membership in current and good standing. (For example, a quorum for a seven-member committee would consist of four Zoning Committee members).

F. Records
It shall be the responsibility of the Secretary to:
1. Record minutes of all Zoning Committee meetings and retain minutes in an archive.
2. Organize and maintain the Zoning Committee records archive; provide copies of records to the REDACTED Area Commission Planning Committee; and to provide public access to records.
G. Member Attendance

(i) Attendance shall be mandatory for all Zoning Committee meetings. Non-attendance of two consecutive unexcused absences from regular called Zoning Committee meetings shall automatically require the Secretary to send written notification to such member indicating the number of unexcused absences and of the possible removal of the member in the event of a third consecutive unexcused absence. Notice shall be made within seven days of the second unexcused absence. Member non-attendance due to schedule conflicts is not an excusable absence.

(ii) In the event of non-attendance of three consecutive unexcused absences from regular called Zoning Committee meetings such member shall be considered to have tendered his/her resignation to the Zoning Committee. The Secretary shall in writing within seven days of the third unexcused absence notify such member of the Zoning Committee's acceptance of his/her resignation. A copy of the notice shall be presented to the ^^REDACTED^^ Area Commission at its next monthly meeting. The Zoning Committee may use its discretion in deciding matters of reinstatement of resigned members.

H. Regular Meetings

Regularly scheduled Zoning Committee meetings shall occur on the third Thursday of every month at 7 p.m. In the event that the third Thursday lands on a holiday, the meeting shall be moved to the following Tuesday. The place of meeting shall be made at the discretion of the Zoning Committee Chairperson. The Zoning Committee shall be in recess for the month of August.

I. Special Meetings

Any Zoning Committee member may call a special Zoning Committee meeting. At least seventy-two (72) hour advance notice shall be required prior to the start of a special called meeting.

J. Quality Assurance

At the discretion of the ^^REDACTED^^ Area Commission Chairperson an area resident may be appointed to serve on the Zoning Committee as its Quality Assurance Representative. The Quality Assurance Representative shall not be a voting member of the Zoning Committee and shall not be counted when determining a valid quorum. The Duties of the Quality Assurance Representative include:

1. Attending all Zoning Committee meetings.
2. Ensuring that the Zoning Committee fulfills its duties as described in this document, within the REDACTED Area Commission By-Laws; and within the policies of the City of Columbus Department of Trade and Development, Development Regulation Division.

3. Reporting significant deviations in the prescribed Zoning Committee duties to the REDACTED Area Commission Chairperson within seventy-two (72) hours of the alleged incident(s).

K. Commission Intervention
The REDACTED Area Commission may intervene in and assume the duties of the Zoning Committee when circumstances are established that the Zoning Committee committed significant and material deviations from its duties. A simple majority vote of a quorum of REDACTED Area Commission members is required to assume the Zoning Committee's duties.
IV. CITY REVIEW PROCESS

The purpose of this section is to outline in schematic form the City's review process regarding rezoning, variances, and special permits. The focus of this section is to provide reference to the City's processing time guidelines and the position where the REDACTED Area Commission fits within the City's review timeline.

A. Rezoning Process

Chart A describes the typical zoning process. The time required to process a rezoning application varies depending on the complexity of the case and on any revisions that result from the appropriate public hearings such as the Development Commission, area commissions, or City Council. Generally speaking, a simple rezoning can be accomplished in 90-120 days (Columbus Development Guide).

B. Variance Process

Chart B describes the typical Council variance process. From the submission of a Council Variance application until final staff review, the time required is approximately 4-6 weeks. After staff review, an ordinance goes to City Council, with placement on the agenda depending on their scheduling constraints. Time also varies according to the participation of area commissions, architectural review commissions and civic associations (Columbus Development Guide).

C. Special Permit Process

Chart C describes the Board of Zoning Adjustment variance (special permit) process. The Board of Zoning Adjustment takes approximately 2-3 months for completion. Time varies according to when applications enter the cycle (Columbus Development Guide).
City Rezoning Process
Chart A

START

Submit Application w/Certified Address to Regulation

Fee Determined and Paid

Review Application

Area Commission or Architectural Review Commission Notified

Case Prepared for Staff Review and Recommendation

City Departments Notification for Review

Staff Recommendation Made

Architectural Review Commission Review & Recommendation

Development Commission Meeting

Results Mailed to Applicant w/Additional Requirements and/or Recommendations of Approval or Disapproval

Applicant Submits Additional Items Necessary for Ordinance Preparation

Prepare Ordinance & Staff Recommendation Send Ordinance to City Clerk

Clerk Schedules for Council Hearing, Publishes & Mail Notices

City Council Hearing

Publish Results for City Clerk

Close File

END

Further Study

2 Weeks

At Least 4 Weeks

2 Weeks
City Council Variance Process
Chart B

START

SUBMIT APPLICATION & CERTIFIED ADDRESS TO REGULATION

REVIEW APPLICATION

NOTIFY NEIGHBORHOOD DEVELOPMENT WHERE REQUIRED

CASE PREPARED FOR STAFF REVIEW

TRAFFIC ENGINEERING

PLANNING

SEWERS & DRAINS

OTHER PERTINENT DIVISIONS

AREA OR ARCHITECTURAL COMMISSION REVIEW & RECOMMENDATION

STAFF RECOMMENDATION MADE

PREPARE ORDINANCE CONTACT APPLICANT AND AREA OR ARCHITECTURAL REVIEW COMMISSION

FINAL STAFF APPROVAL

ORDINANCE AND WALK PACKET TO COUNCIL

HEARING BEFORE COUNCIL VOTE (APPLICANT MUST BE PRESENT)

CLOSE FILE

END

4-5 Weeks
Board of Zoning Adjustment (BZA)
Variance Review Process
Chart C

START

FILE APPLICATION - REVIEW PREPARE FOR NEIGHBORHOOD DEVELOPMENT

FEE DETERMINED AND PAID

FIELD STUDY FOR CASE REVIEW

STAFF RECOMMENDATIONS

CONTACT APPLICANT TO DISCUSS REVISIONS

PREPARE REPORT

NOTIFICATION OF PROPERTY OWNERS

PUBLIC HEARING BOARD DISCUSSION AND VOTE

NEXT DAY ZONING CLEARANCE

FILE AND RECORD

END
V. **ZONING COMMITTEE REVIEW PROCESS**
Chart D provides a schematic of the Zoning Committee's review process.

VI. **ZONING COMMITTEE REVIEW PROCEDURES**
The following procedures apply to requests for rezoning, Council variance, and Board of Zoning Adjustment variance. The following procedures also apply to demolition permits.

A. **Receipt of Application Packet**
Immediately upon receiving the request for rezoning/Council variance/BZA variance application packet from the City, the Zoning Committee Chairperson shall verify the packet contents for completeness. Within twenty-four (24) hours of receiving an incomplete application packet the Zoning Committee Chairperson shall contact the assigned staff of Development Regulation Division alerting them to the packet's incompleteness.

B. **Dissemination of Information to Zoning Committee Members**
Within seventy-two (72) hours of receipt of a substantially complete application packet the Zoning Committee Chairperson, or his/her designee, shall send by regular mail a written summary of the information contained in the application packet to each Zoning Committee member.

The summary shall contain sufficient information to provide for a general understanding of the applicant's request, which shall include, but is not limited to, the name(s) of the applicant, owner, and/or agent; application number; address of property identified in the application; existing zoning of subject property; nature of applicant's request; background information on the property identified in the application and of contiguous properties; and maps or other graphics. In addition, the summary shall include the Zoning Committee Chairperson's recommendation of either a minor or major review of the application.

In no event shall any Zoning Committee member receive a summary of the application packet in less than two (2) days prior to the First Presentation by the applicant.
Zoning Committee
Review Process
Chart D

1. Receive Application Packet from City
2. Review Application Packet for Completeness
3. Send Notifications to Applicant, Property Owners, Civic Associations
4. First Presentation
5. Determine Minor or Major Review Required
6. Applicant Presentation at the Monthly Commission Meetings
7. Second Zoning Committee Review
8. Second Presentation at the Monthly Commission Meeting
9. Area Commission Makes Recommendation
10. Appropriate City Staff Receives Area Commission Recommendation

City Staff Support

Applicant Meet with Community Groups

6-10 weeks
C. Notification to Applicable Parties

Within twenty-four hours of receipt of an application packet the Zoning Committee Chairperson, or a Zoning Committee member designated by the Zoning Committee Chairperson, shall send by regular mail written notification to:

(i) Applicant of the scheduled date, time, and place where the applicant will make the First Presentation of his/her request to the Zoning Committee. The notification to the applicant shall in addition include a request of issues (e.g., traffic, drainage, etc.), which the applicant is expected to identify and address at the first presentation before the Zoning Committee.

(ii) All property owners identified in the City's application within one hundred twenty-five (125) feet of the exterior boundaries of the property. In addition, any property owner within one hundred twenty-five (125) feet of the applicant's property in the event the applicant owns property contiguous to the property identified in the application (consistent with Columbus City Code Chapter 3310.05(A)(c-d)). Measurements shall be made in the same manner as specified in Columbus City Code Chapter 3310.06. Notification shall include the applicant's name, address of property identified in the application, existing zoning, nature of applicant's request (e.g., rezoning, variance, etc.), date, time, and place of applicant's presentation to the Zoning Committee.

(iii) All civic association(s) and neighborhood association(s) known to the Zoning Committee within one hundred twenty-five (125) feet of the exterior boundaries of the property identified in the application; and within one hundred twenty-five (125) feet of the applicant's property in the event the applicant owns property contiguous to the property identified in the application. Notification shall be sent to the leaders of civic associations and neighborhood associations and include the applicant's name, property address, existing zoning, nature of applicant's request (e.g., rezoning, variance, etc.), date, time, and place of applicant's presentation to Committee.

D. Time Frame for First Presentation

The First Presentation by the applicant shall be made at a regularly scheduled Zoning Committee meeting. In no event shall the time period of the applicant's First Presentation be less than four (4) days from the mailing date of notices to property owners and civic/neighborhood associations; or exceed thirty (30) days from the date of receipt by the Zoning Committee of the application packet (month of August exempted).
E. Purpose of the First Presentation
The First Presentation provides the first official review by the Zoning Committee of the applicant’s request regarding:

(i) The completeness and comprehensiveness of the documentation submitted by the applicant.

(ii) The documentation of public input and the identification of additional issues requiring attention.

(iii) Whether the request warrants a minor or major review. At a minimum, the Zoning Committee shall consider as the bases for determining whether a request requires a minor or major review: the potential impacts the request may generate on the community and the level of public interest the request generates.

(a) A minor review would not ordinarily entail a Zoning Committee review beyond the First Presentation by the applicant, and where the Zoning Committee may be able to render a recommendation to the Area Commission regarding the applicant’s request.

(b) A major review would ordinarily require both a First Presentation by the applicant and a Second Review by the Zoning Committee prior to rendering a recommendation to the Area Commission regarding the applicant’s request.

(iv) Recommending the applicant meet with community as warranted.

(v) Alerting the applicant of his/her obligation to make a presentation to the Area Commission at the upcoming monthly area commission meeting.

(vi) Identifying the need for additional assistance from appropriate City department(s) for data and/or to request analysis of specific impacts (e.g., traffic study).

F. Presentations at Monthly Commission Meeting
Zoning Committee Presentation

(i) The Zoning Committee Chairperson or his/her designee shall introduce the applicant’s request; provide the application number; names of the applicant, owner, and agent; background information on the property identified in the application and of contiguous properties; and the nature of the request.
The Zoning Committee Chairperson or his/her designee shall report to the Area Commission the results of the Zoning Committees' first review of the applicant's request. The report should contain as a minimum: background information on property and surrounding area; trends in land use in immediate area; positive and/or negative impacts anticipated as a result of recommending approval of the applicant's request; and photographs and/or slides of the property under question and the immediate area. A time limit not to exceed ten (10) minutes is recommended for each Zoning Committee presentation. The Zoning Committee Chairperson or his/her designee shall prepare a written summary including all the above information and deliver a copy to each Area Commission member not less than one (1) day prior to the regularly scheduled monthly Commission meeting.

Applicant Presentation

The applicant may make a presentation to the Area Commission. A time limit not to exceed fifteen (15) minutes is recommended. All presenters should identify themselves by stating their full names and titles/functions. Business cards given to the minutes-taker is strongly encouraged.

G. Second Review

The Second Review allows the Zoning Committee to collect and review additional information and public input. The Second Review shall be scheduled on a regular Zoning Committee meeting following the first review meeting, except at the applicant's request for an extension of time. The Zoning Committee may grant an applicant a time extension for reasonable cause. The Committee shall follow the guidelines set forth below regarding matters where an applicant makes revisions to the original request:

Revisions submitted seventeen (17) or more days before a Zoning Committee meeting. Site plans and/or text changes received by the Zoning Committee Chairperson or his/her designee seventeen (17) or more calendar days prior to a scheduled Zoning Committee review meeting will be incorporated into the Zoning Committee's report to the Area Commission. All revisions must be signed by the applicant (or applicant's agent) and dated. All revisions must clearly indicate all deletions and additions. Major revisions may result in a change to the Zoning Committee's recommendation, further evaluation by Zoning Committee members, or possibly postponement of the Zoning Committee's recommendation to a later date.
(ii) Revisions submitted between ten (10) and sixteen (16) days before Zoning Committee meeting. Revisions and supplemental materials are to be submitted no less than ten (10) days prior to a scheduled Zoning Committee review meeting. Materials received within this time frame will be included in the Zoning Committee's report to the ***REDACTED*** Area Commission as addendums to the original submissions. All revisions must be signed by the applicant (or applicant's agent) and dated. All revisions must clearly indicate all deletions and additions. The degree of change and timeliness of receipt will be factors considered by the Zoning Committee in evaluating whether the application should proceed on schedule. Zoning Committee review cannot be guaranteed under this deadline.

(iii) Revisions submitted less than ten (10) days before the Zoning Committee meeting. Revisions submitted less than ten (10) days prior to a scheduled Zoning Committee review meeting may or may not be reviewed by the Zoning Committee. Major changes may result in the Zoning Committee requesting the case be tabled for full review.

H. Subsequent Monthly Commission Meeting
Zoning Committee Presentation

(i) The Zoning Committee Chairperson or his/her designee shall introduce the applicant's request; provide the application number; names of the applicant, owner, and agent; background information on the property identified in the application and of contiguous properties; and the nature of the request.

(ii) The Zoning Committee Chairperson or his/her designee shall report to the ***REDACTED*** Area Commission the results of the Zoning Committees' second review of the applicant's request. The report should contain as a minimum a summary of: the applicant's proposal; identification of resolved and unresolved issues; community response to the request; and the Zoning Committee's recommendation either to support, not to support, or conditionally support the applicant's request. A time limit not to exceed fifteen (15) minutes is recommended for each Zoning Committee presentation. The Zoning Committee Chairperson or his/her designee shall prepare a summary document including all the above information and deliver a copy to each ***REDACTED*** Area Commission member not less than one (1) day prior to the regularly scheduled monthly Commission meeting.
Applicant Presentation

(i) The applicant may make a presentation to the REDACTED Area Commission. A time limit not to exceed fifteen (15) minutes is recommended. All presenters shall identify themselves by stating their full names and titles/functions. Business cards given to the minutes-taker is strongly encouraged.

(ii) At the request of the applicant the REDACTED Area Commission may table voting on the application and refer the applicant back to the Zoning Committee and/or community for further discussion/negotiations. This would entail a third review of the applicant's request and proceed in a manner similar to the second review.

VII. RECOMMENDATION

A. Zoning Committee Recommendation

Upon completion of its review, the Zoning Committee shall at a regularly scheduled Zoning Committee meeting vote on all applications and requests presented before it in accordance with Section III E (Quorum).

(i) The Zoning Committee shall vote to recommend either: to approve, not to approve, or approve with condition(s) the application.

(ii) The Zoning Committee shall present its recommendation to the Commission at the monthly area commission meeting.

B. REDACTED Area Commission Recommendation

Upon voting and making its recommendation, the REDACTED Area Commission shall instruct the Chairperson of the Zoning Committee to complete the City's Standardized Recommendation Form (see Appendix) conveying the recommendation of the Commission and to deliver said form to the appropriate City staff.

VIII. NEXT LEVEL REVIEW

A. Development Commission Hearing

The Zoning Committee Chairperson or his/her designee shall attend the Development Commission hearings concerning all pertinent applications; shall present the REDACTED Area Commission's recommendation regarding an application and a summary of the process that was under
taken that resulted in such recommendation; and shall report back to the
Zoning Committee and the Area Commission the status of each application.

B. Board of Zoning Adjustment Hearing

The Zoning Committee Chairperson or his/her designee shall attend the
BZA hearings concerning all pertinent applications; shall present the
Area Commission's recommendation regarding an application and a summary of the process that was under taken that
resulted in such recommendation; and shall report back to the Zoning
Committee and the Area Commission the status of each application. The Zoning Committee Chairperson or his/her designee
shall obtain at least two copies of the BZA's determination and
accompanying documentation: one copy shall be retained in the Zoning
Committee archive, and the other delivered to the Area Commission Planning Committee.

C. City Council Hearing

The Zoning Committee Chairperson or his/her designee shall attend City
Council hearings for all pertinent applications; shall present the
Area Commission's recommendation regarding an application and a summary of the process that was under taken that
resulted in such recommendation; and shall report back to the Zoning
Committee and the Area Commission the status of each application. A report shall be made to the Zoning Committee and
the Area Commission on the status of each application. The Zoning Committee Chairperson or his/her designee shall
obtain at least two copies of the City Council's determination and
accompanying documentation: one copy shall be retained in the Zoning
Committee archive, and the other delivered to the Area Commission Planning Committee.
Exhibit 2
Applicant Rezoning Application with Development Text (PUD Notes)*

City of Columbus | Department of Development | Building Services Division | 757 Cassily Avenue, Columbus, Ohio 43224

Application # 203- Date Accepted: 12/3
Accred: 449

Planning Area: _______ Requested District(s): PUD-6 For: _______

Existing Zoning: _______ Accepted by: _______ Height District: _______

REZONING APPLICATION

LOCATION
1. Certified Address (for Zoning Purposes): ___________________________ City: Columbus Zip: _______
Parcel Number (only one required): 010-010-010-010-010
Requested Zoning District(s): PUD-6 Proposed Use: Residential

APPLICANT
2. Name: ___________________________
3. Address: ___________________________
   City: Columbus Zip: 43215
4. Phone # (614) __________ Fax # __________ Email: __________

PROPERTY OWNER(S)
5. Name: ___________________________
6. Address: ___________________________
   City: Columbus Zip: 43215

ATTORNEY / AGENT (CIRCLE ONE)
7. Name: ___________________________
8. Address: ___________________________
   City: Columbus Zip: 43215
9. Phone # (614) __________ Fax # __________ Email: __________

SIGNATURES (ALL SIGNATURES MUST BE SIGNED IN BLUE INK)
10. Applicant Signature by: ___________________________
11. Property Owner Signature by: ___________________________
12. Attorney/Agent Signature by: ___________________________

My signature attests to the fact that the attached application package is complete and accurate to the best of my knowledge. I understand that the City staff review of this application is dependent upon the accuracy of the information provided and that any inaccurate or inadequate information provided by me/my firm/etc., may delay the review of this application.

* Confidential and personally identifiable information redacted from document.

440
AFFIDAVIT

(See reverse side for instructions)

STATE OF OHIO
COUNTY OF FRANKLIN

APPLICATION # 203-

Being first duly cautioned and sworn, (1) NAME
of (1) MAILING ADDRESS,

deposes and states that (he/she) is the applicant, agent, or duly authorized attorney for same and the following is a list of
the name(s) and mailing address(es) of all the owners of record of the property located at

CERTIFIED ADDRESS FOR ZONING PURPOSES

for which the application for a rezoning, variance, special permit or graphics plan was filed with the Department of

Development, Building Services Division on

(2) See attached list

SUBJECT PROPERTY OWNER’S NAME
AND MAILING ADDRESS

APPLICANT’S NAME AND PHONE #
(same as listed on front of application)

AREA COMMISSION OR CIVIC GROUP
AREA COMMISSION ZONING CHAIR
CONTACT PERSON AND ADDRESS

and that the attached document (6) is a list of the names and complete mailing addresses, including zip codes, as
shown on the County Auditor’s Current Tax List or the County Treasurer’s Mailing List, of all the owners of
record of property within 125 feet of the exterior boundaries of the property for which the application was filed, and
all of the owners of any property within 125 feet of the applicant’s or owner’s property in the event the applicant or the
property owner owns the property contiguous to the subject property (?)

SIGNATURE OF AFFIANT

Subscribe to me in my presence and before me this 2nd day of December 2003, in the year 2003.

SIGNATURE OF NOTARY PUBLIC

My Commission Expires:

RITA MARTIN
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 09-24-05
PROJECT DISCLOSURE STATEMENT

Parties having a 5% or more interest in the project that is the subject of this application.

THIS PAGE MUST BE FILLED OUT COMPLETELY AND NOTARIZED. Do not indicate 'NONE' in the space provided.

STATE OF OHIO
COUNTY OF FRANKLIN

APPLICATION # 203-

Being first duly cautioned and sworn (NAME) of (COMPLETE ADDRESS)
deposes and states that (he/she) is the APPLICANT, AGENT or DULY AUTHORIZED ATTORNEY FOR SAME and the following is a list of all persons, other partnerships, corporations or entities having a 5% or more interest in the project which is the subject of this application and their mailing addresses:

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SIGNATURE OF AFFIANT
Subscribed to me in my presence and before me the 25th day of December 2003, in the year 2003.

SIGNATURE OF NOTARY PUBLIC
My Commission Expires:

This Project Disclosure Statement expires six months after date of notarization.

RITA MARTIN
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 09-24-05

Notary Seal Here

page 7 — Rezoning Packet
DEVELOPMENT TEXT

PUD-6, PLANNED UNIT DEVELOPMENT
44.9± ACRES

EXISTING DISTRICT: R, RURAL

PROPOSED DISTRICT: PUD-6, PLANNED UNIT DEVELOPMENT

PROPERTY ADDRESS: 

OWNER: 

APPLICANT: 

DATE OF TEXT: December 2, 2003

APPLICATION NO.: Z02- 

1. Introduction
The property subject of this rezoning ("Site") consists of approximately 44.9± acres and is located generally along [description]. The Site is bounded to the west by [description]. The proposed development of the Site consists of 229 single-family homes, with a total gross density of 5.10 units per acre. An additional sub-area consisting of 14.0± acres of open space is also provided along [description].

2. Development Standards

Site Data:
1. Gross Area 44.9± acres
2. Open Space Required 4.20± acres
3. Open Space Provided 15.57± acres

PUD Plan Notes:
This tract will be developed with 229 single-family homes as a "true" PUD, with standards primarily that of the TND District, NC. The following exceptions apply:
1. Minimum lot width shall be 38 feet;
2. Minimum lot square footage shall be 3,250 sq. ft.
3. Minimum side yards may be 3 feet, not including projections such as windows, fireplaces and/or roof overhangs, etc.
4. Minimum side yards on corner lots may measure 25.5 feet from center line of the street, and 20.5 feet measured from the center of the alley.
5. Garages shall be provided via alleyways.
6. Minimum building setbacks shall be 31 feet on private streets, as measured from the center line of the street.

Traffic Commitments:
Any curb cuts, access points or other traffic-related commitments will be in accordance with the requirements and specifications of the City of Columbus Transportation Division.

Parkland Commitments:
The Applicant will comply with applicable Parkland Dedication requirements, per the specifications of the City of Columbus Recreation and Parks Department.

Miscellaneous Commitments:
The Site shall be developed in substantial accordance with the site plans submitted herewith. The site plans may be slightly adjusted to reflect engineering, topographical, or other site data developed at the time of the development and when engineering plans are completed. Any slight adjustment to the site plans shall be reviewed and approved by the Director of the Department of Development, or his designee, upon submission of the appropriate data regarding the proposed adjustment.

Forum for Variance:
The Board of Zoning Adjustment shall be the body to hear any and all variance requests to Site development standards, including any and all specific Site development standards contained in this ordinance.

The undersigned, being the owner of the subject property, together with the applicant in the subject application, or their authorized representatives/attorneys, do hereby agree singularly and collectively for themselves, their heirs, successors and assigns, to abide by the above restrictions, conditions and commitments regarding development of the subject property, and for such purpose each states that he fully understands and acknowledges that none of the foregoing restrictions, conditions, or commitments shall in any manner act to negate, nullify, alter or modify any more restrictive provision of the Columbus City Code.

Date: 12/2/03
September 23, 1999

John Doe
XYZ COMPANY
12345 Anywhere
Columbus, OH 43219

Subject: Zoning Application # XXXXXX

Dear Mr. Doe:

The [REDACTED] Area Commission Zoning Committee is in receipt of your rezoning application. The first review of your application is scheduled for (Date, Time, Location).

Please be prepared to present to the Committee your strategy for addressing the following:

- Why was this site chosen for the proposed use?
- Describe how the proposed zoning changes may affect adjacent properties.
- Does your proposal conform to the [REDACTED] Area Plan? If not, please describe the reasons for pursuing approval of this proposal.
- How would approval of this application enhance the [REDACTED] Area and benefit its residents?
- What adverse impacts to the [REDACTED] community are anticipated?
- What are the expected traffic impacts of this proposal? What traffic mitigation measures do you propose?
- What are the drainage impacts of this proposal? What mitigation measures do you propose?
- What school impacts are expected?
- What are the expected impacts of this proposal on the community’s recreational facilities?
- What adverse environmental impacts are expected from this proposal?

If you have further questions, please do not hesitate to call me at (614) XXX-XXXX. I look forward to working with you toward enhancing our community.

Sincerely,

[REDACTED]
Zoning Committee Chair,
[REDACTED] Area Commission

* Confidential and personally identifiable information redacted from document.
Exhibit 4

Exhibit 4 redacted to help protect confidentiality
January 15, 2004

Via regular U.S. Mail
Michael Modula
Area Commission
Columbus, Ohio 43204

Re: Rzoning of
Applicant:
Application No.: Z03-
Proposed District: PUD-6

Dear Mr. Modula:

This correspondence is intended to address the written questions presented by the zoning subcommittee, regarding the proposed development along.

Our written answers will be supplemented by PlatNotes (text) that are committed to as part of the PUD rezoning. Further, we intend to provide illustrations, drawings, renderings, etc., at both the zoning subcommittee meeting and the full meeting of the Area Commission. Our hope is to answer all or as many of your questions as we can, as clearly and fully as possible.

If you have any additional questions, please feel free to contact me at (614)...

* Confidential and personally identifiable information redacted from document.
AREA COMMISSION QUESTIONS
DECEMBER 10, 2003

1. Why was this site chosen?

 has been pleased with the success of the subdivision, which is located to the south along . That development has been very successful and well received by the community, thinks this area can support and would benefit from a similar development.

2. Describe how your proposal, if approved, is likely to impact adjacent properties.

 proposal for this site is the construction of 229 single-family homes. Currently, the area behind the is vacant and undeveloped. The addition of new homes to the area, while certainly a change from the existing vacant land, it is intended to create a quality development, and more importantly a quality neighborhood.

 proposal preserves and emphasizes the natural features of the site, and particularly is working with the City of Columbus to permit the extension of a County-wide bike/walking path through the site, along . To the extent this development will facilitate the community's use and enjoyment of , we consider that a positive.

3. Does your proposal conform to the Area Plan?

Yes. Land use recommendations in the Area Plan call for this area to be developed with single-family residences. The Area Plan also calls for preservation of and the area in and around the . This proposal preserves and emphasizes those natural features for the benefit of the community.

4. How would approval of this application enhance the area and benefit its residents?

The first direct benefit from this development is the addition of quality single-family home ownership. The resulting benefits will include economic growth and development of the area, spurred by additional people living there. In other words, homeowners within the development will need services such as groceries, dry cleaners, bakeries, shops, etc. Additional business development in the northeast area that will develop as a result of home ownership and reinvestment in the area, is good for the entire neighborhood.

Further, as mentioned above, this proposal will facilitate the entire community's use and enjoyment of , and extend the City of Columbus Parks & Recreation's plan for bike/walking paths interconnected throughout the City.

5. What adverse impacts to the community are anticipated?

None.
6. What are the expected traffic impacts of this proposal?
   is currently undertaking a traffic impact study to determine the traffic impacts from this development. A copy of that traffic impact study will be provided to the Area Commission upon completion. will fully comply with any requests by the City of Columbus for traffic and/or roadway improvements.

7. What are the drainage impacts of this proposal?
   Due to the site’s location next to the , there should be no impacts on other properties. will comply with all City and State requirements for storm water management, soil erosion protection, etc. Further, this development will not have basements, thus reducing potential drainage impact.

8. What school impacts are expected?
   According to the City of Columbus Public Schools, children residing within this development will attend Elementary School, Junior High and High School. At present, those schools can accommodate increased student population.

9. What are the expected impacts of this proposal on the community’s recreational facilities?
   As mentioned above, is working with the City of Columbus Recreation and Parks department to accommodate a public bike/walking path along . This feature, and the inter-connectivity of this path to other such paths within the City, will result in an additional recreational feature for the entire area.

   In addition, will comply with the requirements of the City’s Parkland Dedication Ordinance, which required donations of land, for use as public parks. This development will also provide park land to create yet another recreational feature for residents and the entire community.

10. What adverse environmental impacts are expected from this proposal?
    does not anticipate any adverse environmental impacts from this proposal. will comply with all State and local regulations regarding development, environmental issues, etc.

ADDITIONAL QUESTIONS
JANUARY 7, 2004

1. Type of home(s) and the square footage of each property.
   Single-family homes, with detached garages. The developer will offer a variety of home(s) with sizes that range from 974 to 1,800 square feet. The developer is willing to limit the amount of homes offered between 974 and 1,200 square feet. Illustrations will also be provided at the zoning subcommittee meeting.
2. **Do they have basements?**
   No. Due to site constraints, the homes will not be constructed with basements.

3. **What street will the traffic spill onto?**
   The site is accessed by [Road].

4. **Has there been a traffic study?**
   Yes. [Agency] is currently working with the City on the traffic study. A copy of the
   finalized traffic study will be presented to the [Area] Area Commission. [Agency]
   expects to implement the recommendations of the traffic study, as recommended by
   the City of Columbus.

5. **Impact on local schools?**
   As discussed above, any students generated from this development will attend [Elementary].
   [Junior High] and [Senior High] Schools.

6. **Any provision for green space?**
   Yes. Significant commitments to green space and preservation of [Area] have been
   made in this proposal.

7. **Site layout.**
   It is the intent of [Developer] to dedicate this area as parkland to the City of Columbus
   Recreation and Parks Department.

8. **Are the garages attached or detached?**
   Detached garages will be provided via alleyways.

9. **Where is the entrance to the alley mentioned in the text?**
   See site plan, attached. [Developer] or its representatives can elaborate on this point
   during the upcoming meetings.

10. **The area in question floods when we have more than 3 inches of rain. What is being
done to avoid these homes being under water if this should happen?**
    [Developer] will comply with all state and local regulations regarding storm water
    management and drainage issues through appropriate detention or retention ponds.

11. **What is the design for roads entrance and exit onto [Road]?**
    [Developer] is currently preparing illustration boards to demonstrate the proposed
    entranceway for the development along [Road]. These materials will be presented
    at the Zoning Subcommittee meeting on January 20.

12. **Are the roads being designed to handle emergency vehicles and trash vehicles?**
    Yes. All streets, roadways and alleys will be constructed in accordance with the City of
    Columbus specifications, which specifications are designed to handle emergency and refuse
    vehicles.
13. **Are there basements?**
   Due to site constraints, the proposed homes will not include basements.

14. **Who are these homes being offered to? Members of the church or community?**

   [Redacted] will make these homes available to any qualifying buyers, regardless of where they come from, within or out of the existing community.

15. **Fencing of entranceway.**

   [Redacted] is preparing illustrations of the proposed fence way. Those materials should also be available for the Zoning Subcommittee meeting on January 20.

Again, please let me know if you have any questions in advance of the January 20[redacted] Area Commission meeting.

Very truly yours,

cc: [Redacted], Zoning Chair
Exhibit 6
Wetland Delineation Report*

44.5 Acres on [redacted] Road
City of Columbus
Franklin County, Ohio

Investigation of Waters of the United States

Prepared for: [redacted], Inc.

August 8, 2003
2003-[redacted]

* Confidential and personally identifiable information redacted from document.
INTRODUCTION

A routine delineation of waters of the United States, including wetlands, has been conducted and a report prepared by [Company Name], Inc. for an approximately 44.5-acre property located west of [Road Name], in the City of Columbus, Franklin County, Ohio. The investigated parcel consisted of residential property, fallow fields, and wooded property. This study was performed at the request of and is for the exclusive use of [Company Name], Inc.

Potential wetlands located on non-agricultural lands are identified using the 1987 Wetland Delineation Manual (Environmental Laboratory, 1987) for confirmation by the U.S. Army Corps of Engineers (COE). Impacts to waters and wetlands are regulated by the COE and the U.S. Environmental Protection Agency (EPA) through Section 404 of the Clean Water Act (33 U.S.C. 1344). In addition, prior to federal authorization for impacts to waters or wetlands, certification must first be obtained from the State as defined in Section 401 of the Clean Water Act (33 U.S.C. 1341). Waters of the United States incorporates coastal waters, navigable inland waters such as lakes, rivers and streams, tributaries to navigable waters and associated adjacent wetlands, and isolated lakes, wetlands, and intermittent streams (Environmental Laboratory, 1987).

A review of public information and a field investigation were conducted for the property. The results of the review and the location and extent of potential jurisdictional waters are summarized in the following report. The boundaries identified by [Company Name] are potential as only the COE has the final authority to determine if a wetland or water is jurisdictional.

SITE DESCRIPTION

As shown on Figure 1, the subject property is located west of [Road Name], north of [Road Name], east of [Road Name] and south of [Road Name] Road in the City of Columbus, Franklin County, Ohio. The site consists of residential property, fallow fields, and wooded property. The site is surrounded by residential property to the south, north, and east, and the [Property Line] to the northeast. [Property Line] denotes the western boundary.

INVESTIGATIVE METHODOLOGY

According to the Federal Register (1980: 1982), wetlands are defined as Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Under normal site conditions, all three indicators of jurisdictional wetlands including the presence of hydrophytic macrophytes, hydric soils and certain hydrologic indicators, must be identified to meet the criteria for a jurisdictional wetland (Environmental Laboratory, 1987).

[Company Name] conducted a field investigation of the property on July 16, 2003 to determine the location and extent of potential waters of the United States, including wetlands. Areas identified as potential waters and areas that exhibited all three indicators of potential jurisdictional wetlands were noted. Identification of potential jurisdictional wetlands required characterization of plant community types and identification of hydric soils and hydrologic indicators for each community type.
Potential Wetlands and Waters on Non-Agricultural Lands

The dominant vegetation within the wetland areas and the hydric soil and wetland hydrologic indicators found within the areas are described below based on data forms located in Appendix B. Corresponding upland sample points are also located on data forms in Appendix B. Photographs of the wetland are included in the Exhibits.

Area A

Area A consisted of an herbaceous wetland (Exhibits 1-5) dominated by Salix exigua (sandbar willow) in the shrub layer, and Leersia oryzoides (rice cutgrass), Lysimachia nummularia (moneywort), Asclepias incarnata (swamp milkweed), Carex vulpinoidea (fox sedge), Eleocharis obtusa (blunt spike rush), Polygonum persicaria (lady's thumb), Carex tribuloides (blunt broom sedge), Carex frankii (Frank's sedge), and Mentha spicata (spearmint) in the herb layer. Soils were identified as hydric, very poorly drained Sloan silt loam. Inundation, saturated soils, and drainage patterns were observed as the primary indicators of wetland hydrologic conditions.

The adjacent upland to the north consisted of a filled area with no vegetation present. The remaining upland surrounding Area A contained both an herbaceous community and a scrub/shrub community. The upland herbaceous community was dominated by Cirium arvense (Canada thistle), Festuca pratensis (meadow fescue), and Festuca rubra (red fescue). The upland scrub/shrub community was dominated by Fraxinus oxycarpa (green ash) saplings, and Rubus allegheniensis (common blackberry) in the shrub layer, and Aster species (Aster), and Geum virginianum (spring avens) in the herb layer. Upland soils were identified as non-hydric, somewhat poorly drained Shoals silt loam. No indicators of wetland hydrologic conditions were observed.

Area B

Area B consisted of an herbaceous wetland (Exhibits 6-7) dominated by Juncus interior (inland rush), Carex vulpinoidea (fox sedge), and Carex frankii (Frank's sedge). Soils were identified as hydric, very poorly drained Sloan silt loam. Inundation, saturated soils, and drainage patterns were observed as the primary indicators of wetland hydrologic conditions.

The surrounding upland consisted of an herbaceous area dominated by Rubus allegheniensis in the shrub layer, and Aster species, Geum virginianum, Vernonia altissima (tall ironweed), and Juncus interior in the herb layer. Soils were identified as non-hydric, somewhat poorly drained Shoals silt loam. No indicators of wetland hydrologic conditions were observed.

Area C

Area C consisted of a forested wetland (Exhibits 8-9) dominated by Fraxinus pensylvanica and Populus deltoides (Eastern cottonwood) in the tree layer, Fraxinus pensylvanica, Ulmus americana (American elm), and Acer negundo (ashleaf maple) in the sapling layer, and Lysimachia nummularia, Boehmeria cylindrica (false nettle), Elymus virginicus (Virginia wildrye), and Toxicodendron radicans (poison ivy) in the herb layer. Soils were identified as hydric, very poorly drained Sloan silt loam. Inundation, saturated soils, drift lines, drainage
patterns, and watermarks were observed as the primary indicators of wetland hydrologic conditions.

The surrounding upland consisted of a forested area dominated by *Fraxinus pennsylvanica*, * Celtis occidentalis* (hackberry), and *Maclura pomifera* (osage orange) in the tree layer, *Fraxinus pennsylvanica* and *Acer negundo* in the sapling layer, *Lonicera tatarica* (tartarian honeysuckle) in the shrub layer, and *Parthenocissus quinquefolia* (Virginia creeper), *Polygonum sp.* (knotweed sp.), *Toxicodendron radicans*, *Vitis labrusca* (fox grape), and *Geum canadense* (white avens) in the herb layer. Soils were identified as non-hydc, somewhat poorly drained Shoals silt loam. No indicators of wetland hydrologic conditions were observed.

**Creek**

Creek was located along the majority of the western property boundary, and the boundary appeared to fluctuate between the centerline of the Creek and the eastern bank. The amount of channel on the subject property was approximately 1900 linear feet in length by approximately 15-25 linear feet in width.

**Additional Feature**

A ditch was located on the north-central portion of the subject property. The ditch was constructed in non-hydc soils in approximately 1994 to serve as a storm sewer outlet for the adjacent to the east [refer to the figure]. A review of a 1994 aerial photograph shows the ditch and adjacent facility under construction. A 1964 and 1971 aerial photograph show the site as an agricultural field with no ditch or stream present. Given the man-made nature of this ditch and its construction in non-hydc soil, it would likely be considered non-jurisdictional upon review by the COE. The photographs are included in Appendix C.

**CONCLUSIONS**

A routine delineation of waters of the United States, including wetlands, has been conducted by [firm name] on behalf of [owner name] for an approximate 44.5 acre property located west of [street name] Road in the City of Columbus, Franklin County, Ohio. Three wetlands consisting of 2.17 acres were observed on the site. Approximately 1900 linear feet of [stream name] was located along the western property boundary. No other waters were observed.
Exhibit 7
Section 401 Water Quality Certification*

City of Columbus, Franklin County, Ohio

Proposal for:
Clean Water Act Section 404 Authorization
and
Section 401 Water Quality Certification

Prepared for:

March 23, 2004
2004-

* Confidential and personally identifiable information redacted from document.
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INTRODUCTION

[Redacted]

The investigation parcel consists of residential property, fallow fields, and wooded property. This document was prepared by [redacted] to address the proposed project in accordance with a request by [redacted] for Section 404 authorization from the U.S. Army Corps of Engineers, Huntington District (COE) and for Section 401 authorization from the Ohio Environmental Protection Agency (Ohio EPA) for impacts to waters of the United States in association with the project. This document also contains an alternatives analysis as required by the COE for Section 404 Authorization and as required by the Ohio EPA for Section 401 Water Quality Certification.

SITE DESCRIPTION

Location

The subject property is located west of [redacted] Road and east of [redacted] Creek, in the City of Columbus, Franklin County, Ohio as shown in Figure 1. The southern portion of the subject property consists of three estate-sized residential lots. The southern-most lot consists entirely of well-maintained residential grass. The northern two residential lots consists of well-maintained residential grass along the eastern one-fourth of the lots, with the remaining portions having been abandoned to fallow areas that were in the process of being overgrown with shrubs and saplings. The majority of the wetlands on the subject property are contained within the abandoned areas of these two residential lots. The remaining portion of the site consists of fallow fields and forested [redacted] Creek riparian corridor. The site is surrounded by residential property to the south, north, and east, and the [redacted] Road to the northeast. [redacted] Creek denotes the western boundary.

Site Features

As shown on Figure 2, the subject property is at an approximate elevation of 760 to 770 feet (National Geodetic Vertical Datum) according to the USGS 7.5' Series Northeast Columbus, Ohio quadrangle (USGS, Revised 1995). No open water or marsh symbols were mapped on the site, however, [redacted] Creek is located along the western property boundary.

According to the Soil Survey of Franklin County, Ohio (USDA-SCS, 2/80) as shown on Figure 3, the subject property contains Eldean silt loam with 6-12% slopes, eroded (EIC2); Ockley silt loam with 2-6% slopes (OcB); and Shoals silt loam (St) on nearly level ground that is occasionally flooded. No open water or marsh symbols are shown on the subject property. [redacted] Creek is located along the western property boundary.

A hydric soil is a soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation (USDA-SCS, 1985). According to the NRCS, no hydric soils are listed on the subject property (USDA-SCS, 1/91). Shoals silt loam is listed as a non-hydric soil with hydric inclusions in Franklin County, Ohio (USDA-SCS, 1/91). Hydric inclusions may be found in the Shoals soil unit within depressions and along high water channels.
The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) was reviewed for the site (FEMA, 8/2/95). As shown on Figure 4, the subject property lies within three zones: (1) Zone X (shaded) which are areas of 500-year flood; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile, and areas protected by levees from 100-year flood; (2) Zone AE (shaded) which are special flood hazard areas inundated by 100-year flood with flood elevations determined; and (3) Zone AE (shaded and cross-hatched) which are floodway areas in Zone AE.

WETLAND DELINEATION

A wetland delineation was conducted on the subject property by [redacted] on July 16, 2003 in order to determine the location and extent of potential waters of the United States, including wetlands. The wetland delineation was forwarded to the COE, Huntington District in January, 2004 and field verified by the COE on February 25, 2004. Figure 5 is a delineation map of the site and shows the location of delineated waters. Photographs are included within the Exhibits. Table 1 shows the extent of jurisdictional waters and wetlands.

<table>
<thead>
<tr>
<th>Name</th>
<th>Classification</th>
<th>Wetland Area (acres)</th>
<th>Stream Length (linear foot)</th>
<th>Water Area (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wetland A</td>
<td>Non-agricultural</td>
<td>1.49</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wetland B</td>
<td>Non-agricultural</td>
<td>0.27</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wetland C</td>
<td>Non-agricultural</td>
<td>0.41</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creek</td>
<td>Perennial</td>
<td></td>
<td>1900</td>
<td>0.88</td>
</tr>
<tr>
<td>Site Total</td>
<td></td>
<td>2.17</td>
<td>1900</td>
<td>0.88</td>
</tr>
</tbody>
</table>

PROPOSED PROJECT

The proposed project involves the development of one of the applicant’s communities. The [Filename of offense] Series typically consists of single-family homes in a homeowners association community. The project is designed to resemble a traditional neighborhood, with homes set close to streets which are typically linear, and rear-facing garages along alleys. The homeowner’s association maintains all landscaping and grassy areas within the neighborhood, including individual lots. The homes range in size from approximately 1,000 to 1,900 square feet, with both one and two-story models.

The development will provide homes for approximately 228 families. Access to the site is gained from two entrances off [redacted] Road on the southeastern portion of the subject property.
APPLICATION COORDINATION

Per the reissuance of the Nationwide Permits (3/18/02) by the COE, coordination with the U. S. Fish and Wildlife Service (FWS) and the State Historic Preservation Office is required prior to authorization of any activity under Section 404 of the Clean Water Act. In order to provide information regarding these requirements, a literature search of the information available from the FWS, the Ohio Department of Natural Resources (ODNR) and the Ohio Historic Preservation Office (OHPO) was conducted as described below.

Federally Listed Rare and Endangered Species

The FWS published list of endangered and threatened species in Ohio (10/20/03) was reviewed. According to the list, four endangered species are found distributed within Franklin County, including Myotis sodalis (Indiana bat), Noturus trautmani (Scioto madtom), Pleurobema clava (clubshell mussel), and Epioblasma torulosa rangiana (northern riffleshell). Sistrurus catenatus catenatus (Eastern massasauga) is listed as a candidate species.

According to Clark, B. K., et al., Myotis sodalis is found in Ohio during summer months through September. Preferred habitat includes large living or dead trees with large cavities, cracks or exfoliated bark (1987). Tree species including Ulmus americana (American elm), U. rubra (slippery elm), Quercus stellata (post oak), Q. rubra (red oak), Carya ovata (shagbark hickory), C. cordiformis (bitternut hickory), Populus deltoides (Eastern cottonwood), Acer saccharinum (silver maple) and Fraxinus pennsylvanica (green ash) have been documented as used by reproductively active females in Michigan (Kurta, et. al., 1993). The majority of the site’s developable land consists of fallow grassy areas. The entire forested riparian corridor along Creek will be preserved.

The known occurrences of Epioblasma torulosa rangiana, Noturus trautmani and Pleurobema clava within Franklin County have only been from the Big Darby Creek of the Scioto River basin. In addition, Noturus trautmani has only been collected from the lower Big Darby Creek and has not been recorded in over 30 years (Fazio, 1993). The known occurrences as stated by Fazio imply that these species are unlikely to be found within the project site.

According to the ODNR - Division of Wildlife, Sistrurus catenatus catenatus has been recorded in 22 Ohio Counties, including Franklin County. Known habitat includes wet prairies, sedge meadows, and early successional fields. Preferred habitat are marshes and fens. The species avoids open water and woody-vegetated areas (ODNR, 2/9/00). Wetlands proposed to be filled on the subject property are marginal in habitat quality and would not likely provide residence for this species. No evidence of this species was observed during site reconnaissance.

State Listed Rare and Endangered Species

The ODNR was contacted for any information available concerning the presence of state listed endangered, threatened and proposed species or their habitat for the project site. ODNR was requested to provide information through a formal search of the ODNR Natural Heritage Database.
According to Mr. Butch Grieszmer, Ecological Analyst, the database search revealed that no records of rare or endangered species or their habitat were present on the project site. In addition, no records of existing or proposed state nature preserves or scenic rivers were located at the project site and the state was unaware of any unique geologic features, breeding or non-breeding animal concentrations, champion trees or state parks, forests or wildlife areas within one mile of the property (ODNR, 2/18/04). A copy of the ODNR letter is included in Appendix A.

Archaeological and Historical Records

Records from the Ohio Archaeological Inventory, the Ohio Historical Inventory, and the National Register of Historic Places were reviewed by [redacted] at the Ohio Historic Preservation Office (OHPO). No recorded sites were found to be located within the property boundaries.

The applicant has conducted a Phase 1 Cultural Resources Management Investigation on the entire subject property. No sites potentially eligible for the National Register of Historic Places were found to be located on the subject property. This document is attached under separate cover.

REQUIRED AUTHORIZATION

The U. S. Army Corps of Engineers administers the Nationwide permit program for the state of Ohio. On March 13, 2002, the COE published the final rule for the administration of its nationwide permit program regulations under the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and the Marine Protection, Research and Sanctuaries Act. The rule became effective on March 13, 2002 (COE, 3/13/02).

The COE permits authorize the discharge of dredged or fill material under Section 404 of the Clean Water Act and are not valid until the state of Ohio certifies that the proposed discharge is not in violation of the state’s water quality standards (COE, 3/13/02).

Proposed impacts to waters of the United States include wetland impacts in excess of 0.5 acre. The proposed project does not meet the criteria for a Nationwide permit; therefore, for activities associated with the proposed impacts, an Individual Section 404 permit is sought from the COE and a Section 401 Water Quality Certification is sought from the Ohio EPA.

An alternatives analysis is required for an Individual Section 404 permit and for the Section 401 Water Quality Certification through the antidegradation review. Due to the comprehensive nature of the requirements of the antidegradation review, one alternatives analysis is presented below in this form and is intended to provide information for purposes of both Section 404 and Section 401.

WETLAND HABITAT ASSESSMENT

A wetland rapid assessment method (RAM) has been developed by the State of Ohio for use in determining wetland quality and the following assessment is based upon that method. The RAM seeks to determine whether wetlands are rated as Category 1, 2 or 3 based on the State of Ohio Wetland Water Quality Standards adopted in 1998. Category 1
represents the lowest quality wetland. Category 2 is a moderate quality wetland and Category 3 is the highest quality wetland. The RAM asks a series of questions regarding wetland functions and characteristics and scores wetlands based on the answers provided. Table 2 represents a scoring breakdown for the wetlands based on the Ohio RAM Version 5.0.

TABLE 2
Ohio Wetland Rapid Assessment Method Version 5.0 Results

<table>
<thead>
<tr>
<th>Wetland</th>
<th>Type</th>
<th>Score</th>
<th>Condition Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Herbaceous</td>
<td>27</td>
<td>Category 1</td>
</tr>
<tr>
<td>B</td>
<td>Herbaceous</td>
<td>26</td>
<td>Category 1</td>
</tr>
<tr>
<td>C</td>
<td>Forested</td>
<td>50</td>
<td>Category 2</td>
</tr>
</tbody>
</table>

The herbaceous wetlands A and B are located within the abandoned residential area on the northern two residential lots. These wetlands were historically mowed and maintained as residential grassy areas. Based upon existing vegetation within and surrounding these areas, it appears that they have been abandoned for less than five years. The eastern and southern-most portions of these areas are still mowed. Both wetlands scored in the low range due to very narrow buffer areas with moderately high to high intensity of use, modifications to hydrology due to fill activities on the adjacent property to the north, substrate and habitat alteration, lack of horizontal interspersion, minimal coverage of invasive plants, and limited microtopography.

The forested wetland C is located within the riparian corridor of Creek on the western portion of the property, and has never been aggressively maintained by the owners of the residential lots. It scored in the Category 2 range due to narrow buffers with low to moderately high intensity of use, high connectivity due to its location within a riparian corridor in the 100-year floodplain between a stream and other human use, lack of hydrologic, substrate, or habitat alteration, and the presence of a variety of microtopographic features. Copies of the RAM data forms are included in Appendix B.

STREAM HABITAT ASSESSMENT

According to the State of Ohio 305(b) Guidelines Appendices to the Year 2000 Ohio Water Resource Inventory (9/11/03), the portion of Creek that exists along the western property boundary is included within a 19.9 mile segment of the creek that was surveyed by the Ohio EPA (WBID# OH36 2: Creek – Columbus Boundary to Big Walnut Creek). According to Appendix D1 of the year 2000 305(b) report, the best section (10.4 mile) of the total 19.9 mile length has reached Full, but Threatened attainment. The report also states the following:

The lead causes of impairment in this segment include urban and stormwater runoff, combined sewer overflows, contaminated sediments, impoundments, and other habitat modifications. Sediments were contaminated with PAHs (polycyclic aromatic hydrocarbons), PCBs (polychlorinated biphenyls), arsenic, zinc and cadmium at most of the sediment stations. The greatest level of contamination was found at

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Proposal for Section 404 & 401 Authorization

river mile 9.2, downstream from American Ditch. Water quality problems included high fecal coliforms concentrations, and low dissolved oxygen levels. Despite all of the above, overall conditions in Creek have improved compared to sampling done in 1988. Impacts from the Huber Ridge WWTP were minimal, significantly reduced compared to previous surveys.

The proposed development plan preserves all of Creek on the subject property within a 14 acre open space. Additional measures to protect Creek beyond preservation of this riparian corridor are discussed in detail in later sections of this document.

PROJECT ALTERNATIVES ANALYSIS - U.S. ARMY CORPS OF ENGINEERS

An alternatives analysis is required to be performed in association with individual 404 permit application review. Project specific alternatives are discussed below. The Individual 404 permit review also requires that an applicant consider whether a project could be built off-site to accommodate the desired goal but have no impact to waters of the United States.

The impetus for starting a new project is the result of the project (located approximately 0.5 mile south of the subject property) approaching a sold out status. The project, like the proposed project, consists of the applicant's product line. The applicant needs to find a replacement property in the immediate vicinity of the project in order to continue to meet the market demand for this type of housing. A location on Road is desirable due to its close proximity to the, and easy access to two major freeway systems.

In order to meet this need, conducted a search of properties in the immediate vicinity of Road to determine if a large-enough property could be assembled and then purchased. Three sites (Appendix C) were identified: the property, the property, and the subject property. The property is located adjacent to the north of the subject property and contains enough acreage to construct a project, however, the owner of this property refused to sell regardless of price. The second property is located adjacent to the northeast of the subject property. This parcel also is large enough for a project, but the owners have set the purchase price in the range of commercial property, not residential. This site was, therefore, rejected by as too expensive for a residential development. The third property, the subject property, was also determined to be large enough for the project and was able to be obtained at a viable price.

Extensive funds have been invested by the applicant to evaluate the extent of environmental concerns, including the presence of wetlands/ waters of the United States, soils sampling for construction, hydrology studies, archaeology studies, and preliminary engineering. As a result, the applicant is proposing to move forward at this time with developing the subject property. Alternatives with respect to different design scenarios on the proposed project site and their associated impacts are discussed in the following section in detail.

PROJECT ALTERNATIVES ANALYSIS - OHIO EPA

The alternatives analysis of the preferred design, non-degradation and minimal degradation alternatives are discussed below. Each alternative includes a discussion of the expected
magnitudes of the lowering of water quality associated with each scenario. As required by the Anti-Degradation Rule, the anticipated impact of the proposed lowering of water quality on aquatic life and wildlife and the overall aquatic community structure and function is included. In addition, mitigative techniques are also discussed.

The sequence of the alternatives analysis discussion follows the format of the Application for Ohio EPA Section 401 Water Quality Certification and the numbers following the heading titles correspond to those indicated on the application form.

DESCRIPTION OF THE WORK (10a)

Preferred Design

The proposed project includes the development of 228 single family homes within a homeowner's association type community (Figure 6). The project includes a vegetated detention basin for water quality treatment, and the donation of approximately 14 acres of riparian corridor to Columbus Recreation and Parks Department.

The site will be accessed from ____ Road on the southeastern portion of the site. The applicant will contribute to public infrastructure improvements by widening ____ Road along the project boundary in order to add turn lanes.

Approximately 1.76 acres of Category 1 herbaceous wetland (Wetlands A and B in their entirety) are proposed to be filled. These two wetlands have historically been maintained as residential grassy areas through active mowing and turf management. These maintenance activities ceased approximately 5 years ago and the areas have been abandoned.

The purpose for the fill of the wetlands is to adjust site contouring for lot pads for housing and for streets and alleys. Fill of Wetland A allows for development of 20 lots, and fill of Wetland B allows for development of 7 lots.

Stormwater will be managed on the site through the construction of a subsurface culvert system. All stormwater collected from surface streets and residential properties will enter this system and be routed to a vegetated basin to be constructed on the western portion of the subject property. The basin will handle all rainfall up to the 5-year storm event, at which stormwaters will also be routed through streets, then overland flow across the Open Space Preserve and into ____ Creek, thereby bypassing the basin. The design of the vegetated basin is discussed in detail in a later section of this document.

Table 3 presents the proposed impacts under the Preferred Design.
### TABLE 3
Proposed Impacts Under Preferred Design

<table>
<thead>
<tr>
<th>Name</th>
<th>Existing Wetland (acres)</th>
<th>Existing Waters (acres)</th>
<th>Existing Length (feet)</th>
<th>Welland Impact (acres)</th>
<th>Filled Channel (acres)</th>
<th>Filled Channel (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wetland A</td>
<td>1.49</td>
<td>1.49</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wetland B</td>
<td>0.27</td>
<td>0.27</td>
<td></td>
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</tr>
<tr>
<td>Wetland C</td>
<td>0.41</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creek</td>
<td>0.88</td>
<td>1900</td>
<td></td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2.17</strong></td>
<td><strong>0.88</strong></td>
<td><strong>1900</strong></td>
<td><strong>1.76</strong></td>
<td><strong>0</strong></td>
<td><strong>0</strong></td>
</tr>
</tbody>
</table>

Fill material will be generated from site grading and with earthen fill brought to the site from an offsite source. Total fill is approximately 6000 yds$^3$.

**Minimal Degradation Alternative**

The Minimal Degradation Alternative preserves all of Wetland B, resulting in a redesign of lots and streets within proximity to this area (Figure 7) and the elimination of the vegetated detention basin. The remaining portion of the plan remains the same as the Preferred Design. This design results in the loss of 7 lots.

Table 4 presents the proposed impacts under the Minimal Degradation Alternative.

### TABLE 4
Proposed Impacts Under Minimal Degradation Alternative

<table>
<thead>
<tr>
<th>Name</th>
<th>Existing Wetland (acres)</th>
<th>Existing Waters (acres)</th>
<th>Existing Length (feet)</th>
<th>Welland Impact (acres)</th>
<th>Filled Channel (acres)</th>
<th>Filled Channel (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wetland A</td>
<td>1.49</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wetland B</td>
<td>0.27</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wetland C</td>
<td>0.41</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creek</td>
<td>0.88</td>
<td>1900</td>
<td></td>
<td>1.49</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2.17</strong></td>
<td><strong>0.88</strong></td>
<td><strong>1900</strong></td>
<td><strong>1.49</strong></td>
<td><strong>0</strong></td>
<td><strong>0</strong></td>
</tr>
</tbody>
</table>

Fill material will be generated from site grading and with earthen fill brought to the site from an offsite source. Total fill is approximately 4800 yds$^3$.

**Non-Degradation Alternative**

The Non-Degradation Alternative involves a significant redesign of the southern portion of the site in order to avoid Wetlands A and B (Figure 8). As a result, a total of 36 lots are lost.
MAGNITUDE OF THE LOWERING OF WATER QUALITY (10b)

Preferred Design

Water quality on the subject property would be lowered through the fill of approximately 1.76 acres of herbaceous wetlands (Wetlands A and B). However, it is expected that the magnitude of the lowering of water quality on the site would be minimal due to the low quality and disturbed state of the wetlands proposed to be filled. Wetlands A and B were historically maintained as residential grassy areas until these management practices were abandoned approximately 5 years ago. The buffer surrounding the wetlands is routinely mowed up to the wetland boundary, and at times within the wetlands. Construction and grading activities are ongoing on the adjacent property to the north. As a result, both wetlands scored low on the ORAM, and the potential for improvement is unlikely due to their being located in such close proximity to the two homes on the property. If the applicant fails to move forward with this project, it is likely these residential lots would be sold to new families who would re-implement maintenance activities on the site and mow or attempt to drain the features to 'reclaim' their yard.

No impacts are proposed to ____ Creek or its forested riparian corridor. Preservation efforts of open space and the implementation of a vegetated basin for stormwater treatment would help insure that water leaving the site would not contribute to a degradation of ____. Creek.

No impacts are anticipated to occur to threatened/endangered species or important commercial or recreational sport fish species as none are known to be found on the site. According to the Ohio Department of Natural Resources Natural Heritage Database, no existing or proposed state nature preserves or scenic rivers exist at the site. In addition, ODNR is unaware of any unique ecological sites, geologic features, breeding or non-breeding animal concentrations, champion trees or state parks, forests or wildlife areas in the project vicinity.

Minimal Degradation Alternative

The Minimal Degradation Alternative preserves an additional 0.27 acre of wetland. Although impacts are less than the Preferred Design, it is expected that the magnitude of the lowering of water quality would be similar to the Preferred Design due to the low quality of preserved wetland. The vegetated treatment basin is not proposed under this alternative, and all features associated with it will be lost.

Non-Degradation Alternative

It is anticipated that the Non-Degradation Alternative will have no affect on water quality as there would be no impacts to streams or wetlands.
TECHNICAL FEASIBILITY AND COST EFFECTIVENESS (10c)

Preferred Design

The Preferred Design is the only design which is economically and technically feasible to construct, as this site plan makes best use of the available acreage on the site. In order to successfully develop the subject property, the applicant must overcome several significant obstacles in addition to the many routine challenges common to the development process. These non-routine obstacles include an extensive amount of dirt costs, extensive floodway and floodplain on the site, fill of low-quality herbaceous wetlands, avoidance of high quality wetlands, a trunk sewer line located on the site, on-site infrastructure improvements, and high land costs.

The subject property contains approximately 40,000 cubic yards of poor quality fill material that has been placed by the most recent property owner. This fill material is not suitable for construction as it contains an extensive amount of demolition debris, and will have to be exported from the site. The site also has contains a 0.27 acre area of peat soils and approximately 50,000 cubic yards of topsoil that will also need to be excavated and relocated to a portion of the site that will not be developed, or exported off the site. Extensive portions of the site, including floodplain, require fill material in order to achieve proper grade for construction. It is estimated that approximately 100,000-150,000 cubic yards of fill will be necessary. The costs for handling both the poor soils on the site and importing fill material is estimated to be approximately $1.5 million.

The subject property contains a total of 45 acres. Approximately 13.5 acres lie within Creek floodway and is unable to be developed. Approximately 8.5 additional acres are located within 100-year floodplain, which is developable if filled and properly permitted. As a result, the subject property has approximately 25 acres (57% of total acreage) that are not encumbered by Creek floodway or floodplain. The amount of developable land is proposed to be increased through importation of fill material within the 100-year floodplain.

In addition, the majority of the wetlands on the site are located outside of these designated flood areas. The applicant designed the site plan to avoid the highest quality wetland while filling the low quality wetlands. Additional economic costs will be incurred to permit this fill and provide mitigation.

The trunk sewer line runs north and south along the western portion of the subject property. This alignment limited development options, especially the placement of stormwater treatment ponds and areas to attain quality excavated fill.

The applicant has proposed to make infrastructure improvements to Road through the addition of turn lanes. It is expected these improvements will cost approximately $150,000.

The applicant is also paying a premium price for the three residential lots as the cost to purchase these lots includes both the land and the existing residential structures.

All of these restraints increase pressure on the applicant to maximize the available land in order for the project to remain economically viable. The Preferred Design allows the
Proposal for Section 404 & 401 Authorization

applicant to obtain the necessary lot count to cover all of the extensive economic costs, and keep the final sales price of a house within a competitive range and in line with the existing subdivision which is being replaced by this site.

Minimal Degradation Alternative

The Minimal Degradation Alternative is technically feasible to construct, however, has several economic difficulties. This alternative includes a redesign of the southeastern portion of the subject property in order to lessen wetland fill. As a result, 7 residential lots are lost. The loss of these lots will cost the applicant approximately $1.03 million in lost revenues. This high cost will cause the project to fail on two accounts. First, the applicant would not be able to recover their land development costs to the point where the project remains viable. Secondly, if the applicant were to spread out the costs to the remaining lots, the finished price of a house would escalate to approximately $148,500. The average sales price of a similar house at the project is approximately $16,000 less. It would be very difficult for the applicant to market a similar product at such a higher price. As a result, the applicant would likely abandon the project under this alternative.

Non-Degradation Alternative

The Non-Degradation Alternative is technically but not economically feasible to construct. The preservation of all wetlands on the site would cause the applicant to lose 36 lots over the Preferred Design. This would cost the applicant approximately $5.3 million in lost revenue. This would present the same difficulties as described above, but to a far greater degree. As a result, the applicant would abandon the project under this alternative.

CONSERVATION PROJECTS FOR WATER QUALITY AND RECREATIONAL OPPORTUNITIES (10e)

Preferred Design

No known government sponsored conservation projects are known to have been formed to specifically target improvement of water quality for the segment of Creek that exists along the western property boundary.

The Friends of  is a local organization formed to protect the Creek watershed and provide educational and volunteer opportunities for water stewardship for the community. The website post a draft Action Plan for the Creek watershed. This Plan has been reviewed by as a part of the preparation of this application.

Minimal Degradation Alternative

Conservation projects for water quality and recreational opportunities are discussed under the Preferred Design.

Non-Degradation Alternative

Conservation projects for water quality and recreational opportunities are discussed under the Preferred Design.
WATER POLLUTION CONTROL AND BEST MANAGEMENT PRACTICE COSTS (10f)

Preferred Design

Best Management Practices (BMP) for water quality control would consist of controlling erosion at discharge points through the use of silt fencing and protection of all new catch basins. Stone mats would also be used at access points from existing blacktop to new pavement area subgrades. The site would be seeded for stabilization. The subject property will contain a vegetated detention basin.

The cost for these measures is estimated to be at least $130,000.

Minimal Degradation Alternative

BMP costs are estimated to be approximately the same as the Preferred Design.

Non-Degradation Alternative

BMP costs are estimated to be approximately the same as the Preferred Design.

IMPACTS TO HUMAN HEALTH AND THE OVERALL QUALITY AND VALUE OF THE WATER RESOURCE (10g)

Preferred Design

No impacts are expected to occur to human health due to implementation of the Preferred Design. The water resource within the project limits may experience a small decrease in quality due to the fill of herbaceous wetlands. However, these wetlands do not have a direct connection to Creek other than through hydric soils, so it is unlikely they are performing functional water quality treatment for Creek. In addition, the wetlands proposed for fill are located outside of the 100-year floodplain and therefore do not have a role in the storage of floodwaters emanating from Creek.

Efforts by the applicant to preserve and protect the water quality of Creek include the preservation of the highest quality wetland on the site, which is located in the floodplain and does serve a role in storage of floodwaters. The applicant is also proposing to preserve all of the Creek fens along with additional ground to form a 14 acre riparian buffer zone. The applicant is also proposing to route all stormwater through a vegetated water quality treatment basin.

Minimal Degradation Alternative

No impacts are expected to occur to human health due to implementation of the Minimal Degradation Alternative. Impacts to water quality would be similar to the Preferred Design, as the preservation of an additional 0.27 acre of Category 1 herbaceous wetland is not expected to significantly affect the integrity of the watershed. Benefits associated with the water quality treatment basin will be lost as the basin is not proposed under this plan.
Proposal for Section 404 & 401 Authorization

Non-Degradation Alternative

No impacts are expected to occur to human health or to the overall quality and value of the water resource due to implementation of the Non-Degradation Alternative.

SOCIAL AND ECONOMIC BENEFITS TO BE GAINED (10h)

Preferred Design

Jobs created by the project would include short-term construction related activities. The subject property in its existing state provides approximately $10,000 in annual property taxes. With full development of the site, it is estimated that annual property taxes would exceed $450,000.

The project also includes public infrastructure improvements along _____ Road, including the addition of turn lanes into the development. It is estimated that these infrastructure improvements will cost the applicant approximately $150,000.

The subject property provides a lower cost housing option for an area of Columbus that is experiencing commercial and retail growth and an expanding labor pool. The area surrounding the subject property is zoned residential, but is underdeveloped although adequate infrastructure is in place.

Minimal Degradation Alternative

Social and economic benefits would be slightly less than the Preferred Design due to the loss of 7 residential units. However, the development is not economically feasible under this alternative and would likely be abandoned.

Non-Degradation Alternative

The property would not be technically feasible to develop under the Non-Degradation Alternative resulting in no social or economic benefits.

SOCIAL AND ECONOMIC BENEFITS TO BE LOST (10i)

Preferred Design

No jobs or tax revenues are expected to be lost as a result of the project. Property values are not expected to be lowered as a result of the project and no negative impacts to either recreational or commercial opportunities associated with the water resource are expected as none currently exist.

Minimal Degradation Alternative

No social and economic benefits are anticipated to be lost as a result of implementation of the Minimal Degradation Alternative.
Non-Degradation Alternative

No social and economic benefits are anticipated to be lost as a result of implementation of the Non-Degradation Alternative.

ENVIRONMENTAL BENEFITS TO BE GAINED AND LOST (10j)

Preferred Design

Due to the low quality of wetlands proposed to be filled, and the lack of valuable habitat, minimal environmental benefits would be lost as a result of wetland impacts on the site. Environmental benefits to be gained include the preservation of the highest quality wetland on the site, which is located in the floodplain and serves a role in storage of floodwaters, the preservation of all of the Creek floodway along with additional ground to form a 14 acre riparian buffer zone; and the routing of all stormwater, except for exceptional large events, through a vegetated water quality treatment basin.

This design is not expected to provide any benefits or losses to threatened or endangered plant or animal species as none are known to exist on the site. The development of wetlands (within the treatment basin) on the site in close proximity to forested areas will likely provide excellent habitat for amphibians.

Minimal Degradation Alternative

Environmental benefits to be gained would be similar to the Preferred Design due to the low quality of the additional 0.27 acre of preserved wetlands. Benefits associated with the treatment basin would be lost under this alternative, as the basin is not proposed under this alternative.

Non-Degradation Alternative

The Non-Degradation Alternative would not cause the gain or loss of any environmental benefits for aquatic life, wildlife or threatened or endangered plant or animal species as the development project would not be feasible.

PROPOSED MITIGATION TECHNIQUES (10k)

Preferred Design

The applicant has reserved 2.7 acres of wetland bank credits at the Wetlands Resource Center's Little Scioto mitigation bank site. This mitigation represents a 1.5:1 mitigation ratio for 1.75 acres of Category 1 herbaceous wetlands that are proposed to be filled by the applicant under the Preferred Design. The Little Scioto mitigation bank site is an approximately 700-acre tract located in Big Island Township, Marion County, Ohio. A large wooded tract containing extensive high quality forested wetlands is located in the north-central portion of the site. The Little Scioto River bisects the site in a northeast to southwest direction and an intermittent tributary to the Little Scioto River flows from east to west and converges with the river in the northeast portion of the site. Included within the area approved for wetland restoration is an approximately 200 acre parcel owned by the Ohio
Department of Natural Resources, Division of Wildlife (ODNR, DOW) as part of the Big Island Wildlife Area. The wetland bank site will incorporate both the parcel owned by Wetlands Resource Center and the ODNR, DOW parcel. Monitoring of the wetlands will be conducted by Wetlands Resource Center and ownership and management of the property is planned to convert to ODNR, DOW. A prospectus and final mitigation plan were prepared for the bank site by [ ] As part of the bank approval process, the RAM was conducted for each restored wetland parcel within the overall site. The majority of the site scored as Category 3 wetland while the remainder scored within categories 2 and 3. Although these scores are only predictions based on the expected outcome of the constructed bank site, it is expected that both Category 2 and 3 wetland will be achieved during the 5 year monitoring period. Existing preserved wetland on the site scored as high Category 3 wetland (December 12/29/98). A copy of the agreement for the purchase of wetland credits between the Wetlands Resource Center and [ ] is included in Appendix D.

Minimal Degradation Alternative

The Minimal Degradation Alternative proposes to preserve an additional 0.27 acre of wetland. All mitigation practices proposed under the Preferred Design would apply with fewer wetland credits purchased from the Wetlands Resource Center.

WATER QUALITY DETENTION BASIN

[ ] is proposing to construct a vegetated water quality treatment basin on the western portion of the project area (Appendix E). The basin is proposed as mitigation for water quality, but not wetland fill. Existing wetlands on the site filter a small percentage of the subject property tributary area. Conversely, the constructed vegetated basin will filter and treat the entire developed portion of the subject property.

The basin will contain a sediment forebay and a vegetated shelf. The vegetated shelf is approximately 0.5 acre and will have an undulating bottom elevation with a maximum normal pool depth of 6 inches. The sediment forebay will be approximately 5 feet in depth to allow for suspended solids to settle and accumulate. A 1 foot deep safety shelf is designed around the perimeter of the forebay to provide a safe transition to the deeper water in case the forebay is accessed by the public. All stormwater on the subject property will be routed to this basin. Large storm events will be routed to the basin and also along streets and across the riparian corridor to [Creek].

Besides the aesthetic benefits of having water and wetlands on the site, the basins and vegetated areas also serve a wildlife benefit, particularly for amphibians, reptiles and birds, and a water quality filtration function. The constructed vegetated shelf is located in close proximity to the preserved Wetland C, and would likely enhance this preserved wetland by providing greater diversity of habitat. The presence of the vegetated areas within a basin offers an efficient method for removing a wide variety of pollutants, such as suspended solids, nutrients, heavy metals, and petroleum compounds. A basin is an effective means of reducing peak runoff rates and stabilizing flow to downstream areas.

One of the basic advantages of a vegetated shelf is that it provides a filtration mechanism. Pollutants in stormwater can be removed by wetlands via incorporation or attachment to
wetland biota or sediments, degradation, or export to groundwater or the atmosphere. Physical, chemical and biological processes contribute to the wetland filtration mechanisms. The removal of suspended solids and pollutants occurs primarily via filtration and adsorption. The length of detention time, turbulence, depth and flow of the water in combination with the presence of standing vegetation in the system contribute to the efficiency of pollutant and sediment removal. Plant biomass contributes to the filtration process by decreasing water velocity. This allows sediment particles to settle out and dissolved pollutants to be adsorbed onto sediment surfaces, vegetation and detritus. Nutrient removal will also occur through vegetative and bacterial uptake and detritus decomposition.

The establishment of a diverse wetland system is directly influenced by stable water levels and varying water depths throughout the system. Wetland plants are dependent upon saturated soil conditions for varying time periods. The plants typically incorporated into these systems will require some standing water in deep zones during all but the driest periods. Consideration must be given to the ability of the vegetation to accommodate the range of inundation depths anticipated in the basin shelf.

Appropriate planting zones and plant species are situated as they relate to different water depths in the wetland area. Wetland plants will be selected with these criteria in mind. The planted areas of the basins will have a maximum water depth of 6 inches. Soils will be over excavated and backfilled with stockpiled soils removed from Wetland A. Wetland A has a diverse herbaceous community and a low presence of invasive or aggressive species. It is expected that the seedbank within these soils will produce a healthy and diverse plant community within the proposed vegetated shelf. Supplemental plantings of shrubs are proposed throughout the shelf area. The vegetated area will also be seeded with a wetland marsh seed mix, with additional live herbaceous plantings to occur if needed.

BEST MANAGEMENT PRACTICES FOR CONSTRUCTION

Stormwater permits and Stormwater Pollution Prevention Plans for construction activities will be prepared as needed for site development, following the requirements of the National Pollutant Discharge Elimination Systems program (USEPA, 9/92) and Notices of Intent (NOIs) will be submitted to the Ohio EPA. Appropriate, site specific Best Management Practices (BMP's) will be included in construction plans to decrease erosion and sedimentation during and after construction of the project site including the placement of sediment fence inside impact areas. Additional water quality measures are described above.

All sediment controls that are utilized will be kept in place during construction activities and until the site has been stabilized. All areas disturbed during construction will be seeded to encourage the establishment of a vegetative cover and decrease erosion potential. No area for which grading has been completed shall be left unseeded or unmulched for longer than 14 days.

MANAGEMENT AND MAINTENANCE

Site maintenance and management during construction will be performed by and/or subcontractors. Stormwater management measures will be inspected
immediately after each rainfall and at least daily during periods of prolonged rainfall. Specifications for any necessary repairs and removal of sediment deposition will be developed as needed in the Stormwater Pollution Prevention Plan for the site.

CONCLUSIONS

A permit application requesting authorization for impacts to waters of the United States on a proposed residential and retail project has been prepared by on behalf of . This document provides information to address permit application requirements for an individual Section 404 permit from the U. S. Army Corps of Engineers, Huntington District and a Section 401 Water Quality Certification from the Ohio Environmental Protection Agency. An alternatives analysis in the form of information required for a state Antidegradation Review is also provided. Information requested by the COE and the Ohio EPA was presented for Preferred Design, Minimal Degradation, and Non-Degradation alternatives and extensive mitigation techniques were proposed for site impacts.

The site contains three wetlands with approximately 2.17 total acres, and approximately 1900 linear feet of Creek. Two wetlands scored as herbaceous Category 1 areas and a third wetland scored as a forested Category 2 area. The applicant is proposing to fill the herbaceous wetlands and preserve the forested wetland. The applicant is also proposing to mitigate for water quality impacts by constructing a vegetated detention basin and preserving 14 acres of forested riparian corridor along Creek which is proposed to be donated to City of Columbus Recreation and Parks Department. Mitigation for wetland fill is proposed through the purchase of wetland mitigation bank credits.

The implementation of the preferred design alternative was found to not cause a significant lowering of water quality, to be technically feasible and cost effective, to not impact local conservation projects for water quality or recreation, to provide necessary water pollution control and BMP practices, and to have insignificant impacts to human health and the overall quality and value of the water resources on-site and downstream of the project. Some environmental benefits would be gained and some would be lost; however, mitigation proposed for the impacts associated with the preferred design alternative would serve to enhance and protect water quality within the Creek watershed.
CITATIONS


FEMA. Flood Emergency Management Agency. 8/2/95. Flood Insurance Rate Map County of Montgomery, Ohio. Panelis 165 & 170 of 387. Map numbers 39049C01650C & 39049C01700C. Available from the Ohio Department of Natural Resources, Division of Water.


Ohio EPA. State of Ohio 305(b) Guidelines Appendices to the Year 2000 Ohio Water Resource Inventory (6/11/03). Prepared by the Ohio EPA, Division of Surface Water, 1800 Watermark Drive, PO Box 1049, Columbus, Ohio 43216-1049.

CIRC 3745-1-05, 7/1/03. State of Ohio Antidegradation Rule

USDA-SCS. United States Department of Agriculture-Natural Resources Conservation Service. 2/80. Soil Survey of Franklin County, Ohio. Available from the Natural Resources Conservation Service (NRCS), 200 North High Street, Columbus, Ohio 43215.

----------, 1/91. List of Hydric Soils for Franklin County, Ohio. Available from the NRCS, 200 North High Street, Columbus, Ohio 43215.

----------, 6/91. List of Non-Hydric Soils with Hydric Components for Franklin County, Ohio. Available from the NRCS, 200 North High Street, Columbus, Ohio 43215.


Appendix A
ODNR-DNAP Correspondence
February 18, 2004

Dear Ms. 

After reviewing our Natural Heritage maps and files, I find the Division of Natural Areas and Preserves has no records of rare or endangered species within one mile of the ___________ project #2004. The site is located 0.75 mi. ENE. of the junction of ___________ Rd. and __________ Ave., __________ Twp., Franklin Co., Northeast Columbus Quadrangle.

There are no existing or proposed state nature preserves at the project site. We are also unaware of any unique ecological sites, geologic features, breeding or non-breeding animal concentrations, champion trees, state parks, state forests, scenic rivers, or wildlife areas within the project area.

Our inventory program has not completely surveyed Ohio and relies on information supplied by many individuals and organizations. Therefore, a lack of records for any particular area is not a statement that rare species or unique features are absent from that area. Although we inventory all types of plant communities, we only maintain records on the highest quality areas. Also we do not have data for all Ohio wetlands. The Division of Wildlife has a statewide wetland inventory that can give you additional data. Their phone number is (614) 265-6300. For National wetlands inventory maps, please contact Madge Friak in the Division of Geological Survey at (614) 265-6576. Aerial photos may be obtained from ODOT at (614) 275-1369. USGS maps can be requested directly from the U.S. Geological Survey at 1-888-275-8747.

Please contact me at (614) 265-6409 if I can be of further assistance.

Sincerely,

[Signature]

Butch Grieszner, Data Analyst
Resource Services Group
Appendix B

Wetland Assessment Documentation (ORAM)
Appendix C

Alternative Sites Evaluated
Map Redacted

Alternative Sites Evaluated
Appendix D

Wetland Mitigation Bank Agreement
WETLANDS MITIGATION AGREEMENT
Wetlands Resource Center
Little Scioto Wetlands Mitigation Bank

This agreement between Wetlands Resource Center LLC (WRC), an Ohio Limited Liability Company, and _________(Client) conveys from WRC to Client, acres of wetland credits pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344. This agreement is made this ________ day of February, 2004.

Obligations of WRC

WRC has applied to, and received, approval from the United States Army Corps of Engineers (Corps) and Mitigation Banking Review Team (MBRT) to preserve, restore and enhance wetland ecosystems at its Little Scioto Wetlands Mitigation Bank, located in Marion County, Ohio. WRC will at its own cost design, build and maintain wetland habitat in accordance with the Final Mitigation Plan as approved by the Corps and MBRT. All risks financial, regulatory and otherwise associated with the Little Scioto Mitigation Bank are the responsibility of WRC.

WRC will supply the Corps with the annual monitoring reports for five (5) years and provide confirmation that wetlands restoration, enhancement, and/or preservation was completed on behalf of Client.

WRC will convey to Client credits for acres of wetland category habitat as defined by the Ohio Environmental Protection Agency (OEPA) Ohio Wetland Water Quality Standards to satisfy Client mitigation requirements outlined by the Corps and OEPA.

Obligations of Client

Client is required under Section 404 of the Clean Water Act to mitigate wetland impacts at its development site located in Franklin County, Ohio.

Client will provide copies of the granted Section 404 permit from Corps and the granted Section 401 Water Quality Certification from Ohio EPA (if needed) to WRC upon receipt to demonstrate regulatory approval of the Little Scioto Mitigation Bank to meet wetland mitigation requirements on the development site.

In order to determine the quality of wetland being impacted by Client, Client will conduct a wetland assessment using the Ohio Wetland Rapid Assessment Method (OWRAM) as per requirements of the MBRT. Client will provide copies of data forms sheets to WRC with signed agreement for all wetland impacts. Copies of the OWRAM are available from the Ohio Environmental Protection Agency.
Client must purchase credits in one-tenth (0.1) acre increments and WRC reserves the right to apply Client's payment to enhancement, restoration or preservation of wetlands or upland buffer. The Client agrees to purchase credits as listed below:

<table>
<thead>
<tr>
<th>Impacted Wetland Category</th>
<th>Acres Impacted Completed by Client</th>
<th>Mitigation Ratio</th>
<th>Credits Required (round to next tenth) completed by Client</th>
<th>Credit Category completed by WRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1.75</td>
<td>x 1.5</td>
<td>2.7</td>
<td></td>
</tr>
<tr>
<td>2 non-forested</td>
<td></td>
<td>x 2.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 forested</td>
<td></td>
<td>x 2.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 non-forested</td>
<td></td>
<td>x 2.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 forested</td>
<td></td>
<td>x 3.0</td>
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<tr>
<td>Total</td>
<td>1.75</td>
<td></td>
<td>2.7</td>
<td></td>
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</tbody>
</table>

Client agrees to pay $1,600 per one-tenth acre credit up to 3 acres and $1,500.00 per one-tenth acre credit for additional credits in excess of 3 acres per development site. A breakdown of the credit costs is indicated below.

<table>
<thead>
<tr>
<th>Credits</th>
<th>Credit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of credits purchased up to 3 acres (one-tenth increments): 2.7</td>
<td>$1,600/one-tenth acre</td>
<td>$43,200</td>
</tr>
<tr>
<td>Number of credits purchased over 3 acres (one-tenth increments): 0</td>
<td>$1,500/one-tenth acre</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
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<td>$43,200</td>
</tr>
</tbody>
</table>

Mitigation Credit Payment

WRC offers two payment options for purchase of credits at the Little Scioto Mitigation Bank:

**Option 1**
Client may elect to pay 100% of the purchase price upon signing this agreement, and take a 10% cash discount.

**Option 2**
Client may elect to pay 10% of the purchase price upon signing this agreement, with the remaining 90% due within (30) days or receipt of the Section 404 permit from the Corps.

In consideration of utilizing mitigation credits from WRC's Little Scioto mitigation bank, Client agrees to pay WRC $43,200 for credits purchased as outlined above, in recognition of WRC's restoration,
enhancement and/or preservation at its Little Scitoo mitigation bank site. A non-refundable deposit of ten (10) percent of the total payment is due upon signing of this agreement. The remaining ninety (90) percent is due within thirty (30) days of receipt of the Section 404 permit from the Corps. If client fails to receive regulatory approval, then the ten (10) percent deposit will be returned to Client and the Client will not be obligated to pay the additional ninety (90) percent.

Wetlands Resource Center

By: [Signature]

Print: Cal Miller

Date: 3/7/04

FOR WRC USE ONLY:

Deposit
Check number: [Redacted] Amount Paid: $28,800 Balance due: $0

For Balance
Check number: [Redacted] Amount Paid: [Redacted]
All Maps & Images Redacted
Exhibit 8

Exhibit 8 redacted to help protect confidentiality
Exhibit 9
February 5, 2004 FIST Letter*

Area Commission
Columbus, OH

February 5, 2004

Dear Area Commission Members,

The development proposal submitted by [ ] to be located between [ ] Road and [ ] Creek (behind [ ]) mission is to preserve and protect [ ] Creek and increase its value as a community amenity. Because of the proximity and possible impacts of this proposed development to [ ] Creek, [ ] would like to submit the following recommendations for your consideration:

1) [ ] is generally pleased that proposal includes 15 acres of natural area buffer along [ ] Creek. However, the current development proposal would require a permit to fill portions of the 100-year floodplain. [ ] recommends that the natural area buffer be expanded to include all of the 100-year floodplain.

[ ] has submitted that this area is not at risk for flooding due to the creation of the [ ] Dam in 1974 in Delaware County. While the dam has certainly diminished flooding potential, it has not eliminated it. There are additional sixty square miles of land that drains to [ ] Creek between the reservoir dam and the proposed development site. Intense precipitation within this area could result in localized flooding.

What’s more, the area has grown significantly in the last fifty years, which has offset some benefits that the reservoir has provided concerning flood control. Precipitation no longer filters slowly through forest soils that once existed here, but rather runs quickly off of hard surfaces such as parking lots and roof tops and into [ ] Creek. This has increased the rate and volume of precipitation flowing into [ ] Creek, which could result in increased flood potential.

[ ] has also submitted that this site is no longer vulnerable because it hasn’t flooded since 1953. The 100-year floodplain in question is defined as having a

* Confidential and personally identifiable information redacted from document.
1-in-100 chance of flooding during any given year. Even though a major flood event hasn’t occurred for many years, this does not guarantee that the area will be free of flooding in the future.

2) Aside from protecting residents from potential flooding threats, ______ recommends increasing the natural buffer area along the creek (to include all floodplain areas) for other benefits to local residents, such as:
   - Preserving more of the scenic quality of ______ Creek for the community
   - Reducing the amount of runoff pollution from the new development from reaching the creek, resulting in cleaner water for recreation and wildlife
   - Allowing natural flooding cycles will reduce the negative effects of other pollution problems and diminish downstream flooding

3) The current proposal shows stormwater treatment ponds located in the floodplain. These ponds are required by the Ohio EPA for the purposes of filtering pollutants from runoff before entering the creek, and for detaining runoff during storm events to minimize the extent of creek flooding. Locating the ponds in the floodplain creates the possibility that they will be inundated during flood events and lose their intended function. ______ recommends that these ponds be moved outside of the floodplain.

A recent report by the Ohio EPA has shown that the portion of ______ Creek bordering this site was in decline between 1996 and 2000, and no longer meets standards for stream health and clean water. Land use change is the largest source of degradation causing this decline. It is ______ hope that the ______ Area Commission will do everything within its power to prevent further impacts to the stream.

Thank you for the opportunity to provide comments on this development proposal. Please feel free to contact me 614-______ should you have any questions.

Sincerely,

[Signature]

Watershed Coordinator
Exhibit 10
City Council Passed PUD Notes (Development Text) *

PUD NOTES

PUD-6, PLANNED UNIT DEVELOPMENT
44.9± ACRES

EXISTING DISTRICT: R, RURAL
PROPOSED DISTRICT: PUD-6, PLANNED UNIT DEVELOPMENT
PROPERTY ADDRESS: 
OWNER: 
APPLICANT: 

DATE OF TEXT: May 26, 2004
APPLICATION NO.: Z03-

1. **Introduction**
The property subject of this rezoning ("Site") consists of approximately 44.9± acres and is located generally along [redacted] Road, south of [redacted] Road. The Site is bounded to the west by [redacted] Creek. The proposed development of the Site consists of 229 single-family homes, with a total gross density of 5.10 units per acre. An additional sub-area consisting of approximately 14.0± acres of open space is also provided along [redacted] Creek.

A. **Site Data:**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Gross Acreage: 44.90± acres</td>
</tr>
<tr>
<td>2.</td>
<td>Gross Density: 5.10± units/acre</td>
</tr>
<tr>
<td>3.</td>
<td>Right-of-Way to be Dedicated: 2.67± acres</td>
</tr>
<tr>
<td>4.</td>
<td>Net Acreage: 42.78± acres</td>
</tr>
<tr>
<td>5.</td>
<td>Net Density: 5.35± units/acre</td>
</tr>
</tbody>
</table>

* Confidential and personally identifiable information redacted from document.
2. **PUD Plan Notes:**

1. This tract will be developed with 229 single-family homes as a PUD, with standards as follows:
   a. Minimum lot width shall be 36 feet;
   b. Minimum lot square footage shall be 3,050 sq. ft.
   c. Minimum side yards may be 3 feet, not including projections such as windows, fireplaces and/or roof overhangs, etc.
   d. Minimum side yards on corner lots may measure 25.5 feet from center line of the street, and 20.5 feet measured from the center of the alley.
   e. Garages shall be provided via alleyways, and have a minimum 8-foot rear yard and 3-foot side yard setback.
   f. Minimum building setbacks shall be 31 feet on private streets, as measured from the center line of the street.
   g. No more than fifteen (15) homes within the development will be constructed with less than 1,200 sq. ft. of total living area.
   h. Homes fronting [Redacted] Road will be two-story, and will not be constructed with less than 1,200 sq. ft. of living area, and the front facades will include a diversity of building materials and natural treatments.
   i. At least one decorative light fixtures will be installed on the rear of garages, along the alleys.
   j. Maximum lot coverage shall be sixty (60%) percent.

2. a. Access and other traffic-related commitments shall be determined in accordance with the specifications of the City of Columbus Transportation Division.

   b. As required by the City of Columbus Transportation Division, the Applicant shall be permitted two (2) drive entrances off of [Redacted] Road.

   c. The north entrance shall be full access. The Applicant shall construct a northbound left turn lane on [Redacted] Road, into the north entrance, approximately 225 feet in length (including diverging taper), as set forth in the Applicant’s approved Traffic Impact Study. The Applicant shall construct a southbound right turn lane on [Redacted] Road, into the north entrance, approximately 225 feet in length (including taper).

   d. The south entrance shall be full access with full north and southbound access, during the entire construction phase of the development. Thereafter, the south entrance shall be right-in and right-out only.

3. The street alignments and connectivity shall be developed as shown on this plan,
as required by the City of Columbus Transportation Division. However, they are subject to modification with final engineering, and may be adjusted to reflect engineering, topographical or other factors established at the time development and engineering plans are completed. The director of development or the director’s designee may approve adjustments to the street alignments and connectivity upon submission of the appropriate data regarding the proposed adjustment.

4. Homes may be used as model homes for the purpose of marketing and sales. A manufactured modular building, or a model home with adjacent or appurtenant parking areas, may be used as a sales office during the development of the project and the construction of homes therein.

5. With regard to landscaping, the following commitments are made:

(a) The developer shall install one (1) street tree per dwelling unit and three (3) street trees per corner dwelling unit. Street trees shall be installed at regular intervals as shown on the development plan. Street trees shall be of a minimum 2.5” caliper. Species shall not be mixed on individual streets.

(b) The Site shall be landscaped/buffered in substantial compliance with the Landscape Buffer Plan. As depicted, the developer shall install/maintain a 2-3 foot mound (with adjustments/gaps as needed for engineering/drainage) within the eastern boundary setback (along the adjacent site). Integrated into this mounding shall be a tree row, which shall consist of evergreen trees (approximately 1 tree per 15 linear feet) and ornamental trees (3 trees per 100 linear feet). The mound will be planted with grass, and each tree will have a mulched planting saucer.

(c) The developer shall install a landscape buffer within the Site’s southern boundary setback. This landscape buffer shall consist of a mixture of evergreen trees (approximately one tree per 15 feet) and ornamental trees (interspaced at approximately 3 trees per 100 linear feet).

The minimum size of all trees at installation (excluding street trees, detailed above) shall be 5 feet in height for evergreen trees, 2.5-inch caliper for deciduous trees, and 1.5-inch caliper for ornamental trees. Caliper is measured 6 inches from the ground at the time of planting.

The landscaping shall be maintained in a healthy state. Any dead material shall be removed and replaced with like materials within six months or the next planting season, whichever occurs first. The size of the new material shall equal the size of the original material when it was installed.
6. For private streets, the Developer shall install decorative street lamps at regular intervals, similar to City of Columbus standard spacing. For public streets, the Developer shall comply with Columbus City Code §1165.01, et seq., for street lighting.

7. Concrete sidewalks shall be provided by the developer along [redacted] Road and on both sides of private streets, except for single-loaded streets, which shall have sidewalks on the house side of the street only.

8. On private streets, the minimum building setback shall be thirty-one (31) feet, measured from the centerline of the street. Porches may not encroach setback areas. The Minimum side yard building setback on corner lots shall be 25.5 feet, measured from the centerline of the street, and 20.5 feet measured from the centerline of the alley.

9. Private streets shall be at least twenty-two (22) feet in width. All alleys shall be private and shall be at least twelve (12) feet in width. Intersection details, including turning radii and tapers, will comply with the City of Columbus standards for 22-foot wide streets and 12-foot lanes, as depicted on Sheet 2 of the Development Plan. Public street(s) shall be twenty-two (22) feet in width. Right-of-way for public street(s) shall be forty-eight (48) feet, unless a lesser distance is approved by the City of Columbus. The minimum setback from public street(s) shall be twelve (12) feet where a home fronts on that public street, and three (3) feet where the side of a home is adjacent to that public street.

10. Minimum separation between buildings shall be at least six (6) feet, unless otherwise permitted by the director of the Department of Development, or the director's designee.

11. Attached garages shall be provided off of alleys and shall provide at least two (2) enclosed spaces per dwelling unit. A minimum maneuvering area of 18.5 feet shall be provided behind all garages. This maneuvering area includes the alley. Garage footprints shall not exceed 720 square feet. Garage height shall not exceed fifteen (15) feet.

12. Parking restrictions shall be controlled by appropriate signage displayed within the development, and include that parking shall be limited to one side of the street and that no parking shall be permitted on either side of any street within twenty-five (25) feet of street intersections. Fire hydrants shall be located on the side of the street where no parking is permitted. Enforcement by the condominium / homeowners association shall be established by the rules and regulations of that association.

13. The Site entrance points shall be designed and landscaped as follows:
a. The Site’s southern entrance shall have one stone column on each side of the entranceway. Residential-scale landscaping, in the nature of deciduous and evergreen shrubs, deciduous trees and plantings, which plantings shall be clustered on both sides of the entries, shall be provided around each column.

b. A white, wooden 3-rail fence shall be installed along the Site’s Road frontage (excluding drives or drive/entrance ways), so as to connect at the stone columns, or project identity sign.

c. The Site’s northern entrance shall include a stone column on one side of the entranceway, and a project identity sign on the other side. The project identity sign shall be similar in appearance and character to the existing stone entry feature across Road. Residential-scale landscaping, in the nature of deciduous and evergreen shrubs, deciduous trees and plantings, which plantings shall be clustered on both sides of the entries, shall be provided around the column.

14. Signage regulating parking shall be installed consistent with City signage requirements for private streets, and parking requirements shall be enforced through an agreement between the association of homeowners and a private towing company. Such agreement, together with the association’s governing documents, shall be filed with the City of Columbus Division of Fire, Fire Prevention Bureau, and Refuse Division, consistent with Columbus City Code §3320.15(A)(10).

15. Parking is not to be allowed anywhere but in garages, as designated on the site plan; on streets as set forth in Note 12 above; and in driveways where applicable. There will be no parking allowed in alleys. In conjunction with Note 12 above, the owner, developer, their successors and assigns (including the association of homeowners) must provide and maintain adequate and proper signage to designate all no-parking zones.

16. The owner, developer and/or the association of homeowners must establish and maintain an agreement(s) with a private towing company(s), which agreement(s) authorizes the private towing company(s) to remove/tow any vehicles parking in restricted areas. There may be one or more such agreements with one or more towing company(s), for any time/lengths, terms, etc., as the association determines, so long as at least one such agreement shall always at all times be in force for the purposes of enforcement/removal/towing, as required above. Towing agreements shall be filed with the City of Columbus Division of Fire, Fire Prevention Bureau, upon execution of contract.

17. The owner, developer, or the association of homeowners, as applicable, shall designate the City of Columbus as an authorized agent for the sole and specific purpose of enforcement of parking restrictions and the issuance of citations and/or
removal of vehicles parked in violation of posted parking restrictions on private streets or alleys.

18. The Site shall be developed in substantial accordance with the site plans submitted herewith. The site plans may be adjusted to reflect engineering, topographical, or other site data developed at the time of the development and when engineering plans are completed. Any adjustment to the site plans shall be reviewed and approved by the director of the Department of Development, or his designee, upon submission of the appropriate data regarding the proposed adjustment.

19. The Applicant will comply with applicable Parkland Dedication requirements, per the specifications of the City of Columbus Recreation and Parks Department.

20. The Board of Zoning Adjustment shall be the body to hear any and all variance requests to Site development standards, including any and all specific Site development standards contained in this ordinance.

21. The Applicant shall prepare a storm water management plan in connection with development of the Site, which will include a safety shelf for any pond constructed on site.

22. The Applicant will comply with all Federal, State of Ohio EPA, and City of Columbus regulations. The Applicant will work in conjunction with the U.S. Army Corps of Engineers for relevant applicable Site development issues.

23. The Applicant will obtain all necessary permits and approvals for Site construction, development and/or stormwater management, which may include filling of the floodplain. The Applicant may modify the site plan to incorporate stormwater management permit requirements.

24. Applicant hereby agrees to make a good neighbor commitment, separate and apart from this document and not to be enforced by the City of Columbus, to address concerns should the wells of the four properties to the immediate south of this Site go dry or become unusable due to the direct and proximate actions of the Applicant or its sub-contractors, during the construction of this proposed development. Said commitment will be kept on file with the City’s Department of Development and provided to each applicable neighbor by the Applicant and/or developer.
Exhibit 11
Applicant’s Proposed Vegetated Basin*

* Confidential and personally identifiable information redacted from document.
Exhibit 12

Applicant’s Removal of Proposed Vegetated Stormwater Basin*  

September 27, 2004

Ms. Laura Fay
Ohio EPA - Division of Surface Water
122 South Front Street
6th Floor
Columbus, Ohio 43216

RE: 401 Application

Dear Laura,

I refer to the Request for 401 Water Quality Certification application submitted to your office on March 23, 2004 on behalf of [redacted]. This application was put out to public notice by Ohio EPA on July 20, 2004. The application proposed a vegetated stormwater quality treatment basin as mitigation for any potential water quality impacts resulting from site development and fill of wetlands. A portion of the basin was proposed to occur within the floodway of [redacted] Creek. This portion of the proposed mitigation was discussed with you during a site visit on February 26, 2004.

Since this time we have encountered opposition to this type of activity occurring within the floodway from various City of Columbus departments, most notably the Department of Recreation and Parks. The position that the City of Columbus has taken is that construction of a vegetated stormwater treatment basin in the floodway is not permitted by the City’s floodplain regulations found within the City’s zoning code. [Redacted] have had extensive discussions with the City on this matter, however, the City held to its position despite our disagreement.

As a result, [redacted] proposes to remove the vegetated basin feature from its proposed mitigation. A stormwater management basin is proposed to be placed in the 100-year floodplain in order to meet NPDES Phase 2 requirements for post-construction stormwater quality. Due to space limitations, this basin will not have a vegetative component.

In lieu of the vegetated basin, [redacted] wishes to propose tree reforestation to supplement the existing riparian corridor along [redacted] Creek. The reforestation shall also serve as additional stream mitigation for the [redacted] 401 application. The attached color map depicts the proposed areas for reforestation. Approximately 3 acres of riparian corridor along [redacted] Creek will be planted with 1,500 bare-root hardwood trees. The area will also be seeded with native meadow grass. As a result of this reforestation and installation of meadow grass, approximately 2,000 linear feet of [redacted] Creek corridor will be significantly enhanced.

* Confidential and personally identifiable information redacted from document.
Though this changes the scope of the additional mitigation being proposed for this project, we are confident that the reforestation and seeding will provide water quality and habitat benefits to [Creek] corridor as great as those provided by a vegetated stormwater basin alternative. Please note that the reforestation plan is still subject to City of Columbus approval since it lies within the floodway. [Company Name] has submitted the appropriate permit applications for this activity to the City of Columbus for review and final approval. Should you have any questions regarding the proposed change in a portion of the proposed mitigation for this project, please feel free to give me a call at [614-______]. Thank you for your assistance in this matter.

Sincerely,

[Signature]

[Name]
Environmental Scientist
Environmental Division

Cc/
March 9, 2004

Area Commission
Columbus, OH

Dear Area Commission Members,

Thank you once again for the opportunity to share recommendations from the [redacted] regarding the [redacted] development proposal for [redacted] to be located between [redacted] and [redacted]. Given new information regarding wetlands and the commission’s dedication of special attention to this proposal, [redacted] would like to supplement a letter submitted on February 5th, 2004, with the following recommendations:

1) The commission should be commended for their concern regarding proposed floodplain filling activities. [redacted] has argued that the cumulative impact of floodplain filling along [redacted] Creek has already degraded the health of the stream, increased risk of flooding for downstream neighbors, and endangered residents and their property (in the case of a monumental flooding event) [redacted] continues to support withholding approval of any proposal that includes filling of the floodplain.

2) **Wetland filling should be avoided if at all possible.** Although [redacted] has not received information regarding the amount or quality of the wetlands that presently occur on the property, preserved wetlands will provide many services to the area residents:

   - Wetlands filter runoff from suburban landscapes, resulting in better water quality in [redacted] Creek. The families residing in this development will no doubt find [redacted] Creek a wonderful playground; keeping the water clean should be a priority.
   - Wetlands act like a sponge during heavy rain events, holding water and slowing releasing it over time. Wetlands can decrease risk of flooding for both immediate and downstream residents.
   - Wetlands can provide a wonderful learning environment and an amenity for trail users. Children will have access to a class room in their own back yards! [redacted] would be happy to facilitate educational wetlands programs for area residents.

* Confidential and personally identifiable information redacted from document.
3) If filling the wetlands is unavoidable, urges the commission to require the
mitigate the loss of these wetlands inside the Creek watershed.

To fill these wetlands, must apply for a “401” permit from the Ohio EPA. The
permit requires that the developer mitigate, or “make up for,” these damages by protecting,
creating or restoring a wetland elsewhere. Developers are often allowed to buy mitigation
credits at a created wetland bank several counties away. However, stresses the need for
mitigation to occur in the immediate drainage basin where the wetlands are lost, to prevent net
degradation to our local environment and stream quality.

Often times works with Columbus Recreation & Parks to find such local mitigation
opportunities. In the past we have been able to protect creek-side property for use in building the
Trail. There is a good chance that mitigation in the Creek watershed could directly benefit new and existing area residents by persevering local greenspace
and the trail corridor.

4) Lastly, as the commission continues to review development proposals in the Area, I
wanted to alert you to the existence of a Columbus city code that was developed to protect the
Hellbranch Run (located in western Franklin County). These standards were developed using
scientific evidence regarding the minimum policies needed to fully protect stream health during
land development. suggests that these may be helpful in determining appropriate measure
for the current development proposal, and if enacted in for the entire area, may be helpful when
considered future proposals.

Thank you for your consideration of the above comments. Please feel free to contact me to
discuss them further at (614) , or email

Sincerely,

Watershed Coordinator
Exhibit 14
March 11, 2004 Area Commission Questions & Applicant Responses*

March 23, 2004

Via regular U.S. Mail

[Address]

Zoning Chair

Area Commission

Columbus, Ohio

Re: Rezoning of [Redacted]

(App. No.: Z03-[Redacted])

Proposed District: PUD-6

Dear [Redacted]:

Per your request, enclosed please find our client’s responses to your Commission’s questions with regard to the proposed development on [Redacted]. Note, copies are being provided to all Commission and Zoning Subcommittee members.

If you have any questions regarding this matter, please do not hesitate to contact me at (614) [Redacted].

Very truly yours,

[Redacted]

cc: Area Commission Members

Zoning Subcommittee Members

* Confidential and personally identifiable information redacted from document.
Questions for [Blank] (Applicant)
Rezoning Application #Z03-
From [Blank] Area Commission Members
March 11, 2004

1. Are the proposed lots the same size as the ones you’ve developed at [Blank], located on [Blank]?  
   A: Most of the lots will be 38 feet wide, and some will be 36 feet. The lot size at the [Blank] project is only 36 feet wide.

2. What is the breakdown of the number of houses of the various floor plans you intend to build and their corresponding square footages? For example, how many homes do you plan to build that are 1200 sq. ft., 1500 sq. ft., 1800 sq. ft., and so forth?  
   A: We have limited the number of homes in the development with less than 1,200 sq. ft. to fifteen (15). Thus, if we build 229 homes, 214 will be 1,200 sq. ft. or larger. We cannot be specific as to the exact number of each model, because buyer preference is a factor. However, we can commit that thirty (30%) percent of the homes built (68 of 229) will be greater than 1,500 sq. ft. We offer the following models:
   
   - 974 sq. ft. of living space
   - 1,613 sq. ft. of living space
   - 1,354 sq. ft. of living space
   - 1,584 sq. ft. of living space
   - 1,202 sq. ft. of living space
   - 1,289 sq. ft. of living space
   - 1,887 sq. ft. of living space
   - 1,333 sq. ft. of living space
   - 1,818 sq. ft. of living space

3. What housing style at the [Blank] development is your most popular seller?  
   A: [Blank], with 1,584 sq. ft. of living space.

4. How do the proposed single-family units blend in with the characteristics of existing homes near the proposed site?  
   A: This development provides a larger and more village-like character than the apartment development directly across [Blank]. The setback from [Blank] meets or exceeds the setback of the northern adjacent, existing homes. The development faces [Blank] and provides a view to the front of nine of the eleven homes; each being two-story. The homes are detached single-family.
5. What materials will the entry features be made of?
   A: The entry feature will be constructed from concrete and concrete block (unseen). It will be faced with limestone, cut limestone plaques, and cut limestone caps on the columns. The entry feature will be similar in character to the existing entry across \[\_\_\_\_\_\_\_\_\_\_\_\_\] from the \[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\].

(a) How will the entry features be illuminated?
   The signs will be lighted from ground-mounted, concealed lights. Landscaping will be included to reduce the view of the lights.

6. Is there a reason why in the proposed plans that only the City of Columbus minimum requirements are being used in building this project?
   A: These houses will be built with the same level of detail, product and workmanship as all other \[\_\_\_\_\_\_\_\_\_\_\_\_\_\] houses, including \[\_\_\_\_\_\_\_\_\_\_\_\] collection of top brand components (Anderson windows, GE appliances, Kohler fixtures, etc.). The reference to minimum standards is a baseline for infrastructure on the site. Infrastructure will meet or exceed Columbus standards, as is required of all developments.

7. Who pays for the operation, maintenance, repair, and replacement of the alley lights?
   A: The homeowner will pay the cost for operation, maintenance and replacement of the lighting.

(a) What is the projected per-unit monthly electrical cost of the alley lighting?
   We anticipate that the cost to each homeowner for the alley/garage light to be approximately $2.00 to $3.00 per month.

8. How much do you project the homeowners association dues to cost the individual property owner? Please provide an itemized description of what the association dues will pay for.
   A: The monthly dues will be approximately $45.00, which is the current cost for each homeowner in our \[\_\_\_\_\_\_\_\_\_\_\_\] development on \[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] Road. The disclosure statement provided to home buyers gives a two-year projection of monthly dues, based upon full buildout. The association dues cover electric (street lighting), management and administrative fees, street maintenance, snow removal, landscaping and capital reserve.
(a) What is your projected rate if increase of the homeowners dues?
The monthly dues can be revised based upon projected budgets. Increases should not be expected to be greater than the normal rate of inflation, to cover increases of costs in providing services.

9. Do the projected homeowners association dues cover the total costs of all infrastructure replacement?
   A: Part of the dues are set aside to create a capital reserve account for future infrastructure improvements.

10. It was indicated that the proposed development will have private street lights. In other words, the City does not provide street lighting. I’m referring to street lighting other than alley lighting. Who pays the electrical operating costs of this street lighting?
    A: Street lighting is provided on all streets, based upon Columbus standards. The homeowners association pays for the cost of operation and maintenance of the street lights.

   (e) What is the projected per-unit monthly electrical cost for the street lighting?
   We estimate that the average monthly cost (at full buildout) for street lighting is approximately $3.00 per homeowner.

11. It was indicated that the cost of the proposed home is “significantly less” than other homes that builds. Please define in dollars what you mean by “significantly less.”
    A: The square footage of total living area of the proposed homes for this neo-traditional development is comparable to the conventional subdivision. However, the cost of each home is approximately $30,000 to $40,000 less.

   (e) Please also explain in detail how this development can be built for significantly less than other developments builds.
   The major factors that go into the cost savings, which passes on to its customers, is the neo-traditional neighborhood design, including narrower streets, slightly higher densities, and various efficiencies in construction of the homes and community.

12. Is the water area identified on your plan a proposed wetland, retention pond, or some other feature?
    A: Refer to responses below. Also refer to the attached exhibit entitled “Vegetated Basin Details.”
a. What exactly are you proposing this water area to be?
   A: The water area is a vegetated storm water basin. The primary function of
   the vegetated basin is the meet OEPA requirements for post-
   construction water quality for the development site.

b. What will be the function(s) of this water area?
   A: As mentioned above, the primary function of the vegetated basin is to
   provide water quality related to storm water runoff from the adjoining
   development site. For that purpose, the OEPA would require that the
   basin must have a minimum of 0.8 acre-feet of storage volume. The
   current design of the basin includes a sediment forebay that provides
   between 1.5 and 2.0 acre-feet of storage. To further supplement the
   water quality attributes of the basin, it will include a planted wetland
   shelf of approximately 0.5 acres, which is half of the total area of the
   basin.

c. What material(s) will compose the basin of the water area?
   A: The vegetated basin will be excavated in the native soils of the site.
   Topsoil will be reapplied to enhance the wetland planting portion of the
   basin and to promote re-vegetation of all areas disturbed by the grading.

d. What is the size (area and depth) of the water area identified on your plan?
   A: Approximately 1 acre; depth varies in the forebay, but will have a
   maximum depth of 5 feet.

13. How are you going to preserve the water quality of [blank] Creek as it related to your proposed
development?
   A: The vegetated basin intercepts the storm water runoff from the development site
   and includes post-construction water quality attributes that exceed those
   required by the OEPA. The sediment forebay will intercept pollutants that
   often contaminate storm water runoff from urbanized areas. As a further
   means of removing pollutants from the storm water runoff, water in the basin
   will need to pass through the vegetated shelf prior to being released from the
   basin. One of the basic advantages of a vegetated shelf is that it provides a
   filtration mechanism. The removal of pollutants occurs primarily via filtration
   and adsorption by the wetland plantings. The length of detention time,
   turbulence, depth and flow of the water in combination with the presence of
   standing vegetation in the system contribute to the efficiency of pollutant and
   sediment removal.
The water quality attributes being proposed are recognized by the Ohio Department of Natural Resources (ODNR) in their “Rainwater and Land Development Manual” for providing acceptable levels of post-construction water quality. The OEPA refers to that manual in evaluating whether their post-construction water quality requirements have been met. As mentioned previously, the design of the vegetated exceeds the minimum requirements stipulated by the OEPA.

14. How do you propose to maintain the water quality of [Creek] as it relates to your proposed development?
   A: See response to No. 13, above.

15. How do you propose to monitor the water quality of the water leaving your site and entering [Creek]?
   A: As mentioned previously, the proposed water quality attributes are consistent with the recommendations of ODNR and exceed the requirements of the OEPA. No further monitoring is required.

16. Is this development responsible for the storm water management of the [site]?
   A: Storm water runoff from the [site] will be intercepted by the storm sewer system associated with the development site.

17. Will the homeowners association own and maintain the green space along [Road], indicated on your plan?
   A: The association will own all green space on the site plan, except for the large area along [Creek], which is approximately 14 acres and includes the vegetated basin, which will be dedicated to the City.

18. What exactly are the green areas identified on your plan (e.g., green space, open space, parkland)?
   a. Will these areas be private property or will they be dedicated to the City of Columbus for public use?
      A: See Answer to No. 17, above.
   b. Will there be any recreational equipment provided? If so, what type?
      A: We anticipate installing children's recreational equipment within one of the private open spaces, to be owned and maintained by the association.
c. Will there be a walking path? If so, what kind?
   A: Sidewalks will be used as walking pedestrian paths throughout the neighborhood. The developer will construct an eight (8)-foot wide sidewalk along the south side of the most southern road, to allow for public right-of-way to the public park.

19. Are the landscape buffers going to be behind all of the existing homes?
   A: Most of our site abuts [REDACTED], but we believe that our landscaping buffer will buffer existing homes.

a. What is the composition of the buffers?
   A: The buffers will be composed of dirt, with a tree row of evergreen and ornamental trees. Grass will be planted to hold soils in place.

b. What is the height of the buffers?
   A: 2-3 feet in height.

c. Who will maintain the buffer area?
   A: The homeowners association.

20. How do you propose to buffer the northern boundary of the property?
   A: We are buffering along our property line, where there is an existing residence. Since the northern boundary abuts undeveloped property which is an open field, buffering would not normally apply.

21. Why doesn’t the proposed landscape buffer extend the entire east-west distance of that section of the property abutting the [REDACTED] property?
   A: There is no additional plant material planned as it would require the removal of the existing tree row and plant material.

22. What will cover the buffer mounding (e.g., grass)?
   A: The landscape mounds will be planted with grass.

23. What will keep the soil of the buffer mounding from washing off during a heavy rain?
   A: The landscape mounds will be planted with grass, which will hold the soil in place.
24. Do you have an existing site with styles of homes that are similar to those you are proposing here?
A: Yes, please refer to the site map distributed by [redacted] at our last meeting. The site that is closest is the [redacted] development, one mile south of [redacted]. (See also "Projects Under Construction," attached hereto).

25. Did you take a survey of the neighborhood residents regarding the proposed development?
   a. If so, who did you contact and what are the results of the survey?
   A: [redacted] did not survey the neighbors regarding this proposed development. With the success of [redacted] and other communities throughout Central Ohio, [redacted] is confident that this too, will be well received by the Community.

26. Are there any street lights on the streets?
A: Yes.

27. Will the lights on the garages provide lighting in the alleys, in compliance with the minimum lighting requirements of the City of Columbus Codes?
A: No specific minimum standards are in place in Columbus. In most cases, the neighbors and City Staff push for a limit on maximum lighting. Our goal is safety without undue neighbor interference.

28. What is the length of the pond safety shell?
A: The wetland safety shelf will be eight (8) feet wide.
   a. Does the safety shell extend across the entire pond?
      A: The safety shelf will be constructed along the perimeter of the vegetated basin wherever the depth of the basin will exceed one (1) foot.
   b. If the safety shell does not extend across the entire pond, is there a drop-off at the end of the safety shell?
      A: As referenced in the above response, the wetland shelf will encompass the portion of the vegetated basin where the depth exceeds one (1) foot. From there, the basin will have a gradual (4:1) slope down to a maximum depth of five (5) feet. In the area of the wetland plantings, the depth of the basin will be less than one foot.
c. What is the composition of the safety shell?
   A: The safety shell will be composed of native soils exposed during the excavation of the vegetated basin.

29. Please provide a cross-sectional diagram of the proposed safety shell that would be used in this development.
   A: Please refer to the attached exhibit entitled “Vegetated Basin Details.”

30. Will individual homes be allowed to have basketball hoops on their properties? If so, where?
   A: No, basketball hoops are prohibited by the condominium documents.

31. Why are you using private streets as compared to public streets?
   A: First and foremost, private streets are provided for under the Columbus City Code. We believe that the use of private streets allows us to meet the development standards for our neighborhoods; assists in the placement of utilities; and allows us to better control costs, which we pass on to our home buyers.

32. What is the exact composition of materials to be used for the private streets?
   A: Roller-compacted concrete and asphalt concrete.

33. What are your standards of construction for the proposed private streets?
   A: The sub-base is properly prepared and compacted, then 6 inches of roller-compacted concrete is placed. This surface is used until construction and building is finished, and then the surface of the street is finished with 1 1/4 inches of asphalt concrete. This street construction is allowed by the City of Columbus specifications.

34. Would you build these streets as if you’re going to dedicate them to the City of Columbus?
   A: If the streets were to be dedicated to Columbus, then the standards for public streets would apply. The same materials are allowed for both private and public streets, but the depth of concrete/asphalt and width of streets are different.
   a. Will they be built to City Code?
      The streets are built to specifications that have been accepted by the City of Columbus.
35. How wide are these streets going to be?
   A: The streets are built to City-standard widths in neo-traditional communities, which are twenty-two (22) feet.

36. How far along in the traffic study are you?
   A: The traffic study is completed by our consultant and has been given to the City of Columbus.

37. Are there plans for a right in/right out only at the southern entrance of the proposed development?
   A: Yes.

38. What is your proposed turning lane configuration at the development’s northern entrance?
   A: To be determined, to specifications of the City of Columbus Transportation Division.

39. Where in your development text do you refer to your site plan and make it part of your development text?
   A: In a PUD development, the text is actually printed on the site plan, thus the site plan is included as part of the rezoning ordinance.

40. Why in your development text is the minimum separation between building six (6) feet or less?
   A: This was a typographical error. Six (6) feet is the minimum separation between single-family homes.

41. What is the target market for this development?
   A: We do not target any specific segment of the population with our marketing program. Our communities are open to all qualifying buyers. However, our buyers in these type of communities have tended to include older persons who are at or near retirement age, and young professionals who desire the maintenance-free aspects of these communities. These communities typically have less than half the number of average children per house when compared to traditional neighborhoods.
42. If these homes will be marketed to families with children, what consideration is being given for recreational uses? (e.g., basketball courts, football/softball fields, etc.).
   A: See answer to No. 41, above. Please note that we will have private open space within the development, and we plan to make a significant dedication of land along for a public City park area.

43. Who would be responsible for managing the wetlands located on this site?
   A: Assuming the City Department of Recreation and Parks accepts the dedication of the parkland and vegetated basin, then the City will maintain it. If not, the association will maintain the basin.

44. Will there be a clause written to protect homeowners by not being able to rent out properties?
   A: Recognizing that issues may arise that would benefit homeowners by allowing for a sub-lease of homes, we do not include any specific prohibition against sub-leasing. However, the association has authority to adopt rules concerning subleases if problems arise. Further, recognizing the importance of keeping the community in good condition and repair, there are strict responsibilities with any sub-lease. The rules include provisions that no lease can be less than 30 days; the lease must be in writing; the homeowner must notify the Board of the sub-lease and provide the nature and terms of the lease. Further, the association can make any repairs necessary to a house and bill the homeowner, if the homeowner fails to maintain the home. Finally, the new annexation statute provides the association with eviction authority as to sub-lessees that do not comply with community rules.

45. Are Section 8 vouchers being used for the purchase of these homes? If so, why?
   A: No.

46. Is any extra parking being provided for people visiting the residents who will live in this development?
   A: Visitor parking is available on one side of each street. In addition, each garage has two parking spaces, and the driveway has room for two cars.
Exhibit 15
March 16, 2004 Representative’s Responses*

March 16, 2004

Via Hand Delivery

[Address]

[City, State] 43210

[Redacted]

Re: Rezoning of
Applicant: Dominion Homes (App. No.: Z03-__)
Proposed District: PUD-6

Dear [Redacted],

During our presentation at the last meeting of the Area Co...ission, several members of the Commission and the audience raised several questions regarding our proposed project. While some of the questions raised were answered at previous meetings, we felt that restating the questions and answers in writing would better serve the Commission in its evaluation of our project.

1. **What are the sizes of the lots; how do they compare to the current project?**
   Most of the lots will be 38 feet wide. The lot size at our other [Redacted] project is only 36 feet wide.

2. **Can we specify the number of homes in our development that are 1,200 sq. ft. or larger**? Also, how many homes of each size will be built?
   We have limited the number of homes in the development with less than 1,200 sq. ft. to fifteen (15). Thus, if we build 229 homes, 214 will be 1,200 sq. ft. or larger. We cannot be specific as to the exact number of each model, because buyer preference is a factor. However, we can commit that thirty (30%) percent of the homes built (68 of 229) will be greater than 1,500 sq. ft.

* Confidential and personally identifiable information redacted from document.
3. What building materials will be used for entry features, and how will it be lighted? The entry feature will be constructed from concrete and concrete block (unseen). It will be faced with limestone, cut limestone plaques, and cut limestone caps on the columns. The entry feature will be similar in character to the existing entry across from the. The signs will be lighted from ground-mounted, concealed lights. Landscaping will be included to reduce the view of the lights.

4. Who pays for the garage alley lights; how much will each alley light cost per month to be lit; and do the alley lights provide enough lighting? This development will have one light with decorative fixture on each garage, near the door. Further, there will be one light on the rear of each home, near the outside door. The homeowner will pay the cost for operation, maintenance and replacement of the lighting. We anticipate that the cost to each homeowner for the ally/garage light to be approximately $2.00 to $3.00 per month. We believe that the lighting provided on the garages for the alleys is at a reasonable level. We want to provide adequate lighting, without creating a problem of light pollution.

5. Is street lighting provided on all streets; what is the cost to operate those; and is that cost built into the association dues? Street lighting is provided on all streets, based upon Columbus standards. The homeowners association pays for the cost of operation and maintenance of the street lights. We estimate that the average monthly cost (at full buildout) for street lighting is approximately $3.00 per homeowner.

6. How much are the monthly homeowners association dues; are the dues fixed or variable; do the association dues cover total costs for infrastructure replacement; and can we provide a breakdown of itemized costs? The monthly dues will be approximately $45.00, which is the current cost for each homeowner in our development on. The disclosure statement provided to home buyers gives a two-year projection of monthly dues, based upon full buildout. The monthly dues can be revised based upon projected budgets. Further, part of the dues are set aside to create a capital reserve account for future infrastructure improvements. We will provide an analysis that shows how the dues are utilized at the development.

7. Why are we using private streets and not public streets; do the streets meet City construction standards? First and foremost, private streets are provided for under the Columbus City Code. We believe that the use of private streets allows us to meet the development standards for our neighborhoods; assists in the placement of utilities; and allows us to better control costs,
March 16, 2004
Page 3

which we pass on to our home buyers. The streets are built to City Code widths, which are twenty-two (22) feet. The sub-base is properly prepared and compacted, then 6 inches of roller-compacted concrete is placed. This surface is used until construction and building is finished, and then the surface of the street is finished with 1 1/4 inches of asphalt. This street construction is allowed by the City of Columbus.

8. What is the status of the traffic study; when is it expected to be completed?
The traffic study is completed by our consultant and given to the City of Columbus.

9. How do the single-family homes blend with the characteristics of the surrounding area?
This development provides a larger and more rural character than the apartment development directly across [ ]. The setback from [ ] meets or exceeds the setback of the northern adjacent, existing homes. The development faces [ ] and provides a view to the front of nine of the eleven homes. Each of these homes will be two-story. The homes are detached single-family, and the lots and homes are smaller than the other adjacent single-family lots.

10. Why is the cost of these homes less than the traditional [ ] development; how much less?
The square footage of total living area of the proposed homes for this development is comparable to the traditional [ ] subdivision. However, the cost of each home is approximately $30,000 to $40,000 less.

The major factors that go into the cost savings, which [ ] passes on to its customers, are: slightly higher densities, private streets, no basements, efficiencies of production building, and making most options standard, which allows for bulk purchasing.

11. Describe in detail the specifics of the water area, including proposed use/function (wetlands, retention, etc.), safety shelf, and size (including how it will preserve the water quality of [ ]). Also identify what materials are to be used for the basin, and how you will monitor and maintain water quality.
Our engineering consultant, [ ], will provide a detailed description and exhibit for review during the Area Commission meeting.

12. Who will own the green space along [ ]? Who will own the green space along [ ]?
The homeowners association will own all green space on the site plan, except for the large area along [ ] (including the pond), which will be dedicated to the City.
March 16, 2004
Page 4

13. **How will the northern boundary be buffered; what materials will cover the mounding; and how will the soil be kept from washing away in heavy rain?**

We are buffering along our property line, where there is an existing residence. Since the northern boundary abuts undeveloped property which is an open field, buffering would not normally apply. The landscape mounds will be planted with grass, which will hold the soil in place.

14. **Was a survey of the neighbors conducted in the planning of this development? If so, provide the specifics of same.**

[Redacted] did not survey the neighbors regarding its proposed development.

15. **Will the site plan be made a part of the development text?**

In a PUD development, the text is actually printed on the site plan, thus the site plan is included as part of the rezoning ordinance.

I hope that the information provided above is helpful to you and the Commission members. If you have any additional questions, I can be reached at (614) [Redacted].

Very truly yours,
Exhibit 16
March 16, 2004 PUD Notes (Development Text)*

PUD NOTES
PUD-6, PLANNED UNIT DEVELOPMENT
44.9± ACRES

EXISTING DISTRICT: R, RURAL
PROPOSED DISTRICT: PUD-6, PLANNED UNIT DEVELOPMENT
PROPERTY ADDRESS: [Redacted]
OWNER: [Redacted]
APPLICANT: [Redacted]
DATE OF TEXT: March 4, 2004 March 16, 2004
APPLICATION NO.: 203-

1. Introduction
The property subject of this rezoning (“Site”) consists of approximately 44.9± acres and is located generally along [Redacted], south of [Redacted]. The Site is bounded to the west by [Redacted]. The proposed development of the Site consists of 229 single-family homes, with a total gross density of 5.10 units per acre. An additional sub-area consisting of approximately 14.0± acres of open space is also provided along [Redacted].

A. Site Data:
1. Gross Area 44.9± acres
2. Open Space Required 4.2± acres
3. Open Space Provided 15.26± acres

2. PUD Plan Notes:
1. This tract will be developed with 229 single-family homes as a PUD, with standards as follows:
   a. Minimum lot width shall be 26 feet.
   b. Minimum lot square footage shall be 3,050 sq. ft.
   c. Minimum side yards may be 3 feet, not including projections such as windows, fireplaces and/or roof overhang, etc.

* Confidential and personally identifiable information redacted from document.
d. Minimum side yards on corner lots may measure 25.5 feet from center line of the street, and 20.5 feet measured from the center of the alley.
e. Garages shall be provided via alleys and have a minimum 8-foot rear yard and 3-foot side yard setback.
f. Minimum building setbacks shall be 31 feet on private streets, as measured from the center line of the street.
g. No more than fifteen (15) homes within the development will be constructed with less than 1,200 sq. ft. of total living area.
h. Homes facing the street will be two-story, and will not be constructed with less than 1,200 sq. ft. of living area.
i. At least one decorative light fixture will be installed on the rear of garages, along the alleys.

2. Access and other traffic-related commitments shall be determined in accordance with the specifications of the City of Columbus Transportation Division.

3. The street alignments shall be developed as shown on this plan, however, they are subject to refinement with final engineering and may be adjusted to reflect engineering, topographical or other site data, established at the time development and engineering plans are completed. The planning director, director of development or the director's designee may approve adjustments to the street alignments upon submission of the appropriate data regarding the proposed adjustment.

4. Homes may be used as model homes for the purpose of marketing and sales. A manufactured modular building, or a model home with adjacent or appurtenant parking areas, may be used as a sales office during the development of the project and the construction of homes therein.

5. The developer shall install one (1) street tree per dwelling unit and three (3) street trees per corner dwelling unit. Street trees shall be installed at regular intervals as shown on the development plan. Street trees shall be of a minimum 2" caliper. Species shall not be rated on individual streets.

6. The Developer shall install decorative street lamps at regular intervals, similar to City of Columbus standard spacing.

7. Concrete sidewalks shall be provided by the developer on both sides of private streets, except for single-loaded streets, which shall have sidewalks on the house side of the street only.

8. On private streets, the minimum building setback shall be thirty-one (31) feet, measured from the centerline of the street. Porches may not encroach setback areas. The Minimum side yard building setback on corner lots shall be 25.5 feet, measured from the centerline of the street, and 20.5 feet measured from the centerline of the alley.

9. All streets shall be private and shall be at least twenty-two (22) feet in width. All alleys shall be private and shall be at least twelve (12) feet in width. Intersection details, including turning radii and tapers, will comply with the City of Columbus standards for 22-foot wide streets and 12-foot lanes, as depicted on Sheet 2 of the Development Plan.

10. Minimum separation between buildings shall be at least six (6) feet or less, as permitted by the director of the Department of Development, or the director's designee.

11. Attached garages shall be provided off of alleys and shall provide at least two (2) enclosed spaces per dwelling unit. A maneuvering area of 18.5 feet shall be provided behind all garages. Garage footprints shall not exceed 720 square feet. Garage height shall not exceed fifteen (15) feet.
12. Parking restrictions shall be controlled by appropriate signage displayed within the development, and include that parking shall be limited to one side of the street and that no parking shall be permitted on either side of any street within twenty-five (25) feet of street intersections. Fire hydrants shall be located on the side of the street where no parking is permitted. Enforcement by the condominium/homewoners association shall be established by the rules and regulations of that association.

13. The Site shall be landscaped/buffered in substantial compliance with the Landscape Buffer Plan. As depicted, the developer shall install/maintain a 2-3 foot mound (with adjustments/passes as needed for engineering/drainage) within the eastern boundary setback (along the adjacent site). Integrated into this mounding shall be a tree row, which shall consist of evergreen trees (approximately 1 tree per 15 linear feet) and ornamental trees (3 trees per 100 linear feet). The mound will be planted with grass, and each tree will have a mulch planting saucer.

14. The developer shall install a landscape buffer within the Site's southern boundary setback. This landscape buffer shall consist of a mixture of evergreen trees (approximately one tree per 15 feet) and ornamental trees (interspaced at approximately 3 trees per 100 linear feet).

15. The Site entrance points shall be designed and landscaped as follows:
   a. The Site's southern entrance shall have one stone column on each side of the entranceway. Residential-scale landscaping shall be provided around each column.
   b. A white, wooden 3-rail fence shall be installed along the Site's frontage (excluding drives or drive/entrance ways), so as to connect to the stone columns, or project identity sign.
   c. The Site's northern entrance shall include a stone column on one side of the entranceway, and a project identity sign on the other side. The project identity sign shall be similar in appearance and character to the existing stone entry feature across Residential-scale landscaping shall be provided around the column.

16. Signage regulating parking shall be installed consistent with City signage requirements for private streets, and parking requirements shall be enforced through an agreement between the association of homeowners and a private towing company. Such agreement, together with the association's governing documents, shall be filed with the City consistent with Columbus City Code §3320.15(A)(10).

17. The Site shall be developed in substantial accordance with the site plans submitted herewith. The site plans may be slightly adjusted to reflect engineering, topographical, or other site data developed at the time of the development and when engineering plans are completed. Any slight adjustment to the site plans shall be reviewed and approved by the director of the Department of Development, or his designee, upon submission of the appropriate data regarding the proposed adjustment.

18. The Applicant will comply with applicable Parkland Dedication requirements, per the specifications of the City of Columbus Recreation and Parks Department.

19. The Board of Zoning Adjustment shall be the body to hear any and all variance requests to Site development standards, including any and all specific Site development standards contained in this ordinance.
§20. The Applicant shall prepare a storm water management plan in connection with development of the Site. The stormwater management plan will include a safety shelf for any pond constructed on site.

§21. The Applicant will comply with all Federal, State of Ohio EPA, and City of Columbus regulations. The Applicant will work in conjunction with the U.S. Army Corps of Engineers for relevant applicable Site development issues.

§22. The Applicant will obtain all necessary permits and approvals for Site construction, development and/or stormwater management, which may include filing of the floodplain.

The undersigned, being the attorney for the Applicant, and with requisite authority from the owner of the subject property, do hereby acknowledge the commitments contained in this text, and further represent the agreement of the Applicant and owner, singularly and collectively for themselves, their heirs, successors and assigns, to abide by the above restrictions, conditions and commitments regarding development of the subject property, and for such purpose acknowledges that none of the foregoing restrictions, conditions, or commitments shall in any manner act to negate, nullify, alter or modify any more restrictive provision of the Columbus City Code.

Date: ____________________
Exhibit 17
Maureen Lorenz Email*

From: "Lorenz, Maureen" <lorenzma@protonmail.com>
To: <lorenzma@protonmail.com>
Subject: some info on new floodplain regs
Date: Wednesday, March 10, 2004 3:12 PM

Council changed floodplain regs recently. Here's a copy. I am paying close attention to uses in the floodway because of the [redacted] Rd rezoning. [Redacted] is asking about the wetland created in the floodway. New code says wetland conservation - not all the other stuff. I don’t think a stormwater BMP’s are acceptable in the floodway and most engineers tell me that is a no brainer. Treating stormwater in the floodway is like treating stormwater in the creek... I also think the intent is to minimize disturbance of the floodway - not to dig barrow pits. Although I like the idea of their seedbanking of the wetland they plan to destroy, native soils are extremely important. Opening up the floodway, digging a barrow pit, creating a wetland, creates an unstable area and at floodtime will scour and dump more sediment into the stream. This is precedent setting, so need I need to understand the impacts. I need someone to tell me what the intent of these new regs are. But in the meantime:

<<RE New code changes for floodway/floodplain.rt>>

Maureen Lorenz
Office
Fax
Columbus Recreation and Parks Department
200 Greenlawn Avenue
Columbus, OH 43223

* Confidential and personally identifiable information redacted from document.
**Exhibit 18**

*April 1, 2004 PUD Notes (Development Text)*

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**PUD NOTES**

**PUD-6, PLANNED UNIT DEVELOPMENT**

**44.9± ACRES**

**EXISTING DISTRICT:** R, RURAL

**PROPOSED DISTRICT:** PUD-6, PLANNED UNIT DEVELOPMENT

**PROPERTY ADDRESS:** [Redacted]

**OWNER:** [Redacted]

**APPLICANT:** [Redacted]

**DATE OF TEXT:** March 16, 2004  April 1, 2004

**APPLICATION NO.:** Z03-

---

1. **Introduction**

The property subject of this rezoning ("Site") consists of approximately 44.9± acres and is located generally along [Redacted], south of [Redacted]. The Site is bounded to the west by [Redacted]. The proposed development of the Site consists of 229 single-family homes, with a total gross density of 5.10 units per acre. An additional sub-area consisting of approximately 14.0± acres of open space is also provided along [Redacted].

<table>
<thead>
<tr>
<th>Site Data</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Gross Area</td>
<td>44.9± acres</td>
</tr>
<tr>
<td>2. Gross Density</td>
<td>5.10± units/acre</td>
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<tr>
<td>3. Open Space Required</td>
<td>4.21± acres</td>
</tr>
<tr>
<td>4. Open Space Provided</td>
<td>15.26± acres</td>
</tr>
<tr>
<td>5. Right-of-Way to be Dedicated</td>
<td>0±</td>
</tr>
<tr>
<td>6. Net Density (same as gross)</td>
<td>5.10± units/acre</td>
</tr>
</tbody>
</table>

2. **PUD Plan Notes:**

1. This tract will be developed with 229 single-family homes as a PUD, with standards as follows:
   - Minimum lot width shall be 36 feet.
   - Minimum lot square footage shall be 3,550 sq. ft.

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* Confidential and personally identifiable information redacted from document.
c. Minimum side yards may be 3 feet, not including projections such as windows, fireplaces and/or roof overhangs, etc.

d. Minimum side yards on corner lots may measure 25.5 feet from center line of the street, and 20.5 feet measured from the center of the alley.

e. Ganges shall be provided via alleyways, and have a minimum 8-foot rear yard and 3-foot side yard setback.

f. Minimum building setbacks shall be 31 feet on private streets, as measured from the center line of the street.

g. No more than fifteen (15) homes within the development will be constructed with less than 1,200 sq. ft. of total living area.

h. Homes facing will be two-story, and will not be constructed with less than 1,200 sq. ft. of living area.

i. At least one decorative light fixture will be installed on the rear of garages, along the alleys.

2. Access and other traffic-related constraints shall be determined in accordance with the specifications of the City of Columbus Transportation Division.

3. The street alignments shall be developed as shown on the plan, however, they are subject to refinement with final engineering and may be adjusted to reflect engineering, topographical or other site data, established at the time development and engineering plans are completed. The director of development or the director’s designee may approve adjustments to the street alignments upon submission of the appropriate data regarding the proposed adjustment.

4. Homes may be used as model homes for the purpose of marketing and sales. A manufactured modular building, or a model home with adjacent or appurtenant parking areas, may be used as a sales office during the development of the project and the construction of homes therein.

5. The developer shall install one (1) street tree per dwelling unit and three (3) street trees per corner dwelling unit. Street trees shall be installed at regular intervals as shown on the development plan. Street trees shall be of a minimum 2.5" caliper. Species shall not be raised on individual streets.

6. The Developer shall install decorative street lamps at regular intervals, similar to City of Columbus standard spacing.

7. Concrete sidewalks shall be provided by the developer along and on both sides of private streets, except for single-loaded streets, which shall have sidewalks on the house side of the street only.

8. On private streets, the minimum building setback shall be thirty-one (31) feet, measured from the centerline of the street. Porches may not encroach setback areas. The Minimum side yard building setback on corner lots shall be 25.5 feet, measured from the centerline of the street, and 20.5 feet measured from the centerline of the alley.

9. All streets shall be private and shall be at least twenty-two (22) feet in width. All alleys shall be private and shall be at least twelve (12) feet in width. Intersection details, including turning radii and tapers, will comply with the City of Columbus standards for 23-feet wide streets and 13-foot lanes, as depicted on Sheet 2 of the Development Plan.

10. Minimum separation between buildings shall be at least six (6) feet, unless otherwise permitted by the director of the Department of Development, or the director’s designee.
11. Attached garages shall be provided off of alleys and shall provide at least two (2) enclosed spaces per dwelling unit. A maneuvering area of 18.5 feet shall be provided behind all garages. This maneuvering area includes the alley. Garage footprints shall not exceed 730 square feet. Garage height shall not exceed fifteen (15) feet.

12. Parking restrictions shall be controlled by appropriate signage displayed within the development, and include that parking shall be limited to one side of the street and that no parking shall be permitted on either side of any street within twenty-five (25) feet of street intersections. Fire hydrants shall be located on the side of the street where no parking is permitted. Enforcement by the condominium/homeowners association shall be established by the rules and regulations of that association.

13. The Site shall be landscaped/buffed in substantial compliance with the Landscape Buffer Plan. As depicted, the developer shall install/maintain a 2-3 foot mound (with adjustments/gaps as needed for engineering/landslide) within the eastern boundary setback (along the adjacent site). Integrated into this mounding shall be a tree row, which shall consist of evergreen trees (approximately 1 tree per 15 linear feet) and ornamental trees (3 trees per 100 linear feet). The mound will be planted with grass, and each tree will have a mulched planting saucer.

14. The developer shall install a landscape buffer within the Site’s southern boundary setback. This landscape buffer shall consist of a mixture of evergreen trees (approximately one tree per 15 feet) and ornamental trees (interspaced at approximately 3 trees per 100 linear feet).

15. The Site entrance points shall be designed and landscaped as follows:
   a. The Site’s southern entrance shall have one stone column on each side of the entranceway. Residential-scale landscaping shall be provided around each column.
   b. A white, wooden 3-rail fence shall be installed along the Site’s frontage (excluding drives or drive/entrance ways), so as to connect at the stone columns, or project identity sign.
   c. The Site’s northern entrance shall include a stone column on one side of the entranceway, and a project identity sign on the other side. The project identity sign shall be similar in appearance and character to the existing stone entry feature across.
   Residential-scale landscaping shall be provided around the column.

16. Signage regulating parking shall be installed consistent with City signage requirements for private streets, and parking requirements shall be enforced through an agreement between the association of homeowners and a private towing company. Such agreement, together with the association’s governing documents, shall be filed with the City consistent with Columbus City Code §3220.15(A)(10).

17. Parking is not to be allowed anywhere but in garages, as designated on the site plan; on streets as set forth in Note 12 above; and in driveways where applicable. There will be no parking allowed in alleys. In conjunction with Note 12 above, the owner, developer, their successors and assigns (including the association of homeowners) must provide and maintain adequate and proper signage to designate all no-parking zones.

18. The owner, developer and/or the association of homeowners must establish and maintain an agreement(s) with a private towing company(s), which agreement(s) authorizes the private towing company(s) to remove/tow any vehicles parking in restricted areas. There may be one or more such agreements with one or more towing company(s), for any time/lengths, terms, etc., as the association determines, so long as at least one such agreement shall always at all times be
in force for the purposes of enforcement/removal/towing, as required above. Towing agreements shall be filed with the Division of Fire, Fire Prevention Bureau, upon execution of contract.

19. The owner, developer, or the association of homeowners, as applicable, shall designate the City of Columbus as an authorized agent for the sole and specific purpose of enforcement of parking restrictions and the issuance of citations and/or removal of vehicle parked in violation of posted parking restrictions on private streets or alleys.

20. The Site shall be developed in substantial accordance with the site plans submitted herewith. The site plans may be slightly adjusted to reflect engineering, topographical, or other site data developed at the time of the development and when engineering plans are completed. Any slight adjustment to the site plans shall be reviewed and approved by the director of the Department of Development, or his designee, upon submission of the appropriate data regarding the proposed adjustment.

21. The Applicant will comply with applicable Parkland Dedication requirements, per the specifications of the City of Columbus Recreation and Parks Department.

22. The Board of Zoning Adjustment shall be the body to hear any and all variance requests to Site development standards, including any and all specific Site development standards contained in this ordinance.

23. The Applicant shall prepare a storm water management plan in connection with development of the Site.

The stormwater management plan will include a safety shelf for any pond constructed on site.

24. The Applicant will comply with all Federal, State of Ohio EPA, and City of Columbus regulations.

The Applicant will work in conjunction with the U.S. Army Corps of Engineers for relevant applicable Site development issues.

25. The Applicant will obtain all necessary permits and approvals for Site construction, development and/or stormwater management, which may include filling of the floodplain.

The undersigned, being the attorney for the Applicant, and with requisite authority from the owner of the subject property, do hereby acknowledge the commitments contained in this text, and further represent the agreement of the Applicant and owner, singularly and collectively for themselves, their heirs, successors and assigns, to abide by the above restrictions, conditions and commitments regarding development of the subject property, and for such purpose acknowledges that none of the foregoing restrictions, conditions, or commitments shall in any manner act to negate, nullify, alter or modify any more restrictive provision of the Columbus City Code.

____________________________________
Date: ____________________________
April 5, 2004

Ms. Shannon Pines
Department of Development
Building Services Division
757 Carolyn Avenue
Columbus, Ohio 43224

Dear Ms. Pines:

Subject: Application No 203- Request by [redacted] to rezone property located at [redacted] being 44.9 +/- acres, from R-Rural to PUD-6, for the purpose single family homes development.

The [redacted] Area Commission, at a public hearing on April 1, 2004, voted 7-0 with one abstention to recommend disapproval of the above indicated application.

We appreciate the applicant's cooperation in spending considerable time meeting with the Area Commission Zoning Committee (3 sessions), area residents, and the Area Commission (3 hearings), during the review process at this level.

The Area Commission's rationale for the unfavorable recommendation on this application includes:

- Applicant proposes to build 229 homes in the development of this 44.9 +/- acres resulting in undesirable density of homes on this site.
- Applicant's treatment of water areas, floor plant, and Tributaries is inadequate to provide compatible residential living with the natural environment abutting this site.
- Applicant proposes to construct streets without sufficient width to accommodate traffic circulation.

Please consult if you have questions or additional information is required.

Sincerely,

[Redacted]
Chair
Zoning Committee
Area Commission
(614) [Redacted]
E-Mail [Redacted]
cc: Attorney [Redacted]

* Confidential and personally identifiable information redacted from document.
Exhibit 20
Residents Letter to City Council*

The Residents Of

The Honorable Council Members
Columbus City Council
City Hall
90 West Broad Street, Room 231
Columbus, OH 43215-9015

RE: Zoning Application # Z03-__ (________ property located at ______)

Dear Sir or Madam,

We are residents of ___________ who will be directly affected by this proposed development. One of the things that attracted us to the area was the character of the houses and the scenic drive down _______ south of _______ Road.

We have seen many changes since _______ has been built, including the development of Apartments on the former _______ property across the street (by______). The difference between that development and the proposed development, though, is that the developer of _______ Apartments _______ was willing to work with the neighbors to fit that development in with the neighborhood and alleviate any concerns and to maintain the wetlands on their property. We have not been satisfied with how our appeals have been disregarded by _______.

We are not in support of this development for several reasons. _______ has repeatedly ignored these concerns. The reasons are in three major categories.

1) The proposed density of this development.
2) The adverse impact of this development on the _______ Area.
3) The adverse impact of this development on the _______ ecosystem.

The first major concern is the proposed density. _______ is placing 229 houses where there were 3 houses. Additionally, they are trying to place houses on every available square foot of property that is not directly in the floodway. This large number of houses will add an estimated 435 automobiles to _______. (229 houses X 1.9 automobiles/household).

The second major concern is the adverse impact on the _______ Area. The proposed density and the type of houses for this development are not in keeping with this area of _______. This area is semi rural with large lot sizes and houses constructed of natural materials. The proposed Urban development with 229 houses constructed with vinyl siding does not fit in with the neighborhood. We would like to see larger lot sizes and the availability of natural materials on all of the homes rather than the few showcase homes fronting _______. Additionally, the substantial increase in traffic on top of the other development that has already occurred coupled with the 45-MPH speed limit on _______ will make it impossible to leave the development or our driveways. Since _______ placed

* Confidential and personally identifiable information redacted from document.
a similar development south of [REDACTED], there has been an increase of vehicle, foot, and bicycle traffic along [REDACTED]. We would like the City of Columbus and [REDACTED] to go the extra step to help reduce the speed limit (currently 45 mph) and to help eliminate the passing zone that continues to exist. Solely placing a turn lane for their traffic is not enough. Additionally, widening [REDACTED] is in contradiction with the plan set forth by the area residents and the [REDACTED] Area Commission. It would be difficult to widen [REDACTED] due to its proximity to several items, namely [REDACTED], steep banks leading to [REDACTED], and a cemetery.

Based on the information in the [REDACTED] proposals and in our observations of a nearly identical development south of this area this development will allow [REDACTED] to sell homes at the expense of the [REDACTED] Area.

The third major point of concern is the adverse impact on the [REDACTED] Ecosystem. This development includes the filling of local wetlands. This will then be mitigated by purchasing credits in a remote wetland bank that isn't in the area and won't benefit this area or even [REDACTED] Creek. Additionally, this development has proposed a water quality feature that they have said will be substantially better than what is there. Several residents and [REDACTED] Area Commission Members have raised concerns regarding the effectiveness and location of the water quality feature. It is our understanding that the City is not allowing the water quality feature to be built in the flood way as has been proposed. Most houses on our section of [REDACTED] are supported by well and septic systems that may be directly affected by this, not to mention [REDACTED] Creek itself and the ecosystem surrounding it. The response to any questions regarding this is that [REDACTED] will do the minimum required by the law to be able to fill the area. This type of action will cause further degradation to [REDACTED] Creek and will add to the flooding problems to residents downstream. We would like to see a site plan that takes the wetlands and water retention ability of the current land into account.

We are not against [REDACTED], nor are we against development of the area. However, we feel that this development should be in keeping with the area and beneficial to the area both in the short term and especially in the long term. Because of these concerns and [REDACTED] refusal to address these concerns we cannot support this development and are asking you not to support it as well in this current form.

Thank you for taking time to read our concerns.

Best Regards,
United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
6950 Americana Parkway, Suite H
Reynoldsburg, Ohio 43068-4127

(614) 469-6923/FAX (614) 469-6919

June 23, 2004

Col. William E. Bulen
District Engineer,
Huntington District, Corps of Engineers
502 Eighth Street
Huntington, WV 25701-2070

Attn: Lee A. Pittman

Dear Col. Bulen:

The U. S. Fish and Wildlife Service has completed the review of Public Notice No., a Section 404 permit application, dated April 5, 2004. The applicant, , proposes to place fill material into 1.76 acres of wetlands for the purpose of constructing about 228 houses on a floodplain parcel in the City of Columbus, Franklin County, Ohio.

We understand that the applicant proposes to preserve 0.41 of forested wetland and 14 acres of riparian corridor along site. In addition 2.7 acres of wetland credits would be purchased at the Little Scioto Wetlands Mitigation Bank in Marion County. We recommend that those credits be placed in a permanent easement and managed at nature preserves by the City of Columbus. As always, we recommend that filling of wetlands be avoided. And frankly, we are dismayed that the City allows developments in this and other floodplains across the City. We fear that someday a rainfall event may reclaim those floodplains in a disastrous manner.

ENDANGERED SPECIES COMMENTS: The proposed project lies within the range of the Indiana bat (Myotis sodalis), a Federally listed endangered species. Summer habitat requirements for the species are not well defined, but the following comments are thought to be important:

1. Dead or live trees and snags with peeling or exfoliating bark, split tree trunk and/or branches, or cavities, which may be used as maternity roost areas.
2. Live trees (such as shagbark hickory) which have exfoliating bark.
3. Stream corridors, riparian areas, and upland woodlots which provide forage sites.

Should the proposed site contain trees with any of the characteristics listed above, we recommend that they and surrounding trees be saved wherever possible. If they must be cut, they should not be cut between April 15 and September 15.

If desirable trees are present and if the above time restriction is unacceptable, mist net or other surveys should be conducted to determine if bats are present. The survey should be designed and conducted in

* Confidential and personally identifiable information redacted from document.
coordination with the Endangered Species Coordinator for this office. The survey should be conducted in June or July, since the bats would only be expected in the project area from approximately April 15 to September 15.

The proposed project also lies within the range of the Sciocto madson (Noturus trimianus), clubshell mussel (Pleurobema clava), and the northern riffleshell (Epioblasma torulosa rangiana), all Federally listed endangered species; and eastern massasauga (Sistrurus catenatus catenatus) and rayed bean mussel (Villosa fabalis), both Federal candidate species. Due to the project location, the project, as proposed, will have no effect on these species, provided best construction practices are implemented to control erosion. This precludes the need for further action on this project as required by the 1973 Endangered Species Act, as amended.

Should additional information on listed or proposed species or their Critical Habitat becomes available, or if new information reveals effects of the action that were not previously considered, this determination may be reconsidered. If project plans change, or if portions of the proposed project were not evaluated, we would recommend that you contact our office for further review.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act of 1973, as amended, and are consistent with the intent of the National Environmental Policy Act of 1969 and the U. S. Fish and Wildlife Service's Mitigation Policy.

If you have questions, or if we may be of further assistance in this matter, please contact Ken Lammers at Extension 15 in this office.

Sincerely,

[Signature]

Mary M. Knapp, Ph.D.
Supervisor

cc: ODNR, Div. of Wildlife, SCEA Unit, Columbus, OH
ODNR, Div. of Real Estate and Land Management, Columbus, OH
Ohio EPA, 481/Wetland Section, Columbus, OH
Appendix C: Sample Interview Questions
Appendix C
Sample Interview Questions

Background Information

First, how do you feel today? Have any events occurred today that have taken you out of your usual daily mood?

Before we start, are there any questions that you’d like to ask me?

1. How long have you lived in the Northeast Area?

2. Why did you move to your current neighborhood?

3. Are you currently an active member of the Northeast Area Commission (NEAC)? (Yes goto 3a, No goto # 4)
   3a. How long have you been a member?
   3b. Why did you get involved?

4. Have you ever been a member of the Northeast Area Commission? (Yes goto #4a, No goto #5)
   4a. How long were you a member?
   4b. When did you stop being a member?
   4c. Why did you stop being a member?

5. What stopped you from becoming a member of the Northeast Area Commission?

6. Are you currently an active member of a neighborhood or civic association, or other type of community-based organization? (Yes goto 6a, No goto #7)
   6a. What is the name of your organization?
   6b. How long have you been a member?
   6c. Why did you get involved?

7. Have you ever been a member of a neighborhood or civic association, or other type of community-based organization? (Yes goto #7a No goto #8)
   7a. How long were you a member?
   7b. When did you stop being a member?
   7a. Why did you stop being a member?
8. What stopped you from becoming a member of a neighborhood or civic association, or other type of community-based organization?

**Issues Section**

9. What does citizen participation in public decision-making mean to you (as it relates to residents interacting with the City’s public decisions)?

10. What do you feel are the most pressing issues facing the Northeast community?

11. Now, based on those issues you’ve just described, please tell me about one issue you are familiar with, which in your opinion resulted in a beneficial or good outcome for the Northeast community.
   11a. Why do you think it turned out the way it did?
   11b. What organizations and/or groups were involved with this issue?
       1. In your opinion, why did they get involved?
       2. What did these groups do to try to influence the (City’s decision) outcome?
   11c. In your opinion, did residents have any influence on the outcome?
       1. How so?
   11d. Do you believe residents have the same level of influence on all public issues impacting the Northeast community?

12. Now, please tell me about another issue you are familiar with, which in your opinion resulted in a detrimental or bad outcome for the Northeast community.
   12a. Why do you think it turned out the way it did?
   12b. What organizations and/or groups were involved with this issue?
       1. In your opinion, why did they get involved?
       2. What did these groups do to try to influence the (City’s decision) outcome?
       3. Was the community well organized?
       4. Could it have been organized or run differently?
   12c. In your opinion, did residents have any influence on the outcome?
       1) How so?
   12d. Do you think the type of issue or the potential magnitude of its impact was a factor in the outcome?

13. Do you believe there is a better way residents can influence the outcomes of public decisions that affect the quality of life of the Northeast community? (Relationship type - cooperative/adversarial)
14. Do you feel that the same people always seem to do the work of bringing the concerns/issues facing the residents of the Northeast area community before the City? (If yes, goto #14a. If no, goto #15)
   14a. Why don’t other residents help out?
   14b. How would you solve that?

15. Do you feel residents have a tendency to put their self-interests before community interests even when their self-interests may be harmful to the community? (If yes, goto #15a)
   15a. How would you solve that?

16. Has the amount of time, energy and resources you’ve spent doing community service been worthwhile?
Appendix D: Area Commissions Functions and Duties
Appendix D
Area Commissions Functions and Duties

Columbus City Codes 3109.14
An area commission is an advisory body. No duty or function of an area commission shall invalidate any action of council. In general, an area commission shall:
In the interests of local planning for local needs, identify and study the problems and requirements of the commission area in order to:
- Create plans and policies which will serve as guidelines for future development of the area;
- Bring the problems and needs of the area to the attention of appropriate government agencies or residents; and
- Recommend solutions or legislation.
Aid and promote communications within the commission area and between it and the rest of the city by means of:
- Regular and special meetings of the commission which are open to the public;
- Public hearings on problems, issues, and proposals affecting the area;
- Public forums and surveys to provide an opportunity for area residents, businesses, and organizations to state their problems and concerns;
- Soliciting active cooperation of all segments of the area and city, including organizations, institutions, and government;
- Initiating proposals and supporting those introduced by individual citizens or area organizations, which will enhance the quality of life enjoyed by area residents and preserve the unique residential and commercial mix of the area; and
- Promoting and encouraging businesses whose functions, methods of operation, architectural appearance, and locations are consistent with the character and requirements of the area.
Initiate, review and recommend criteria and programs for the preservation, development, and enhancement of the commission area, including, but not limited to, parks, recreational areas, sidewalks, streets and traffic, by means of:
- Reviewing the proposed capital improvements budget and proposing new items and changes relating to the area;
- Making recommendations for restoration and preservation of the historical elements within the area; and
- Receiving and reviewing for recommendation, prior to adoption by governmental bodies, any new or revised comprehensive plan affecting the area.
Recommend priorities for and review government services and operation of the various government departments in the commission area by means of:

- Requesting and receiving from departments or agencies periodic reports concerning governmental services or practices in the area;
- Meeting with administrative heads of any department or agency, or any of their subordinates, to obtain additional information deemed necessary for the commission to fulfill its functions;
- Requesting and receiving from departments or agencies, prior to implementation, full reports on any proposed changes in service or practice in the area, and recommending approval or disapproval of the proposed changes;
- Reviewing and evaluating pending legislation substantially affecting the area prior to its consideration by council; and
- Regularly receiving for review, comment and recommendation from the development regulation division copies of applications and notices of all public hearings related to re-zonings, special permits, variances, demolitions, and zoning appeals regarding property located wholly or partially within the area.