Local Leaders Institute

Speaker Biographies and Presentation Materials


City of Fernley, Fernley City Hall, City Council Chambers
595 Silver Lace Boulevard
Fernley, NV 89408

http://www.unce.unr.edu/
Speaker Biographies

Chester Newland, Ph.D.

Chester Newland, Ph.D., has taught at USC since 1966. His public administration research, practice, and teaching have focused on public executives, federal and local government management, the American presidency, public law, business and government, human resources, and labor management relations. He served as editor-in-chief of the *Public Administration Review* (1984-1990). He was national president of the American Society for Public Administration, (ASPA;1980-1981), and he has been a member of the National Academy of Public Administration (NAPA) since 1973. He has authored many publications and is co-editor of the *Handbook of Public Law and Administration*, (1997). Professor Newland was the initial director of the Lyndon Baines Johnson Presidential Library, and he served twice as the director of the Federal Executive Institute. He is an honorary member of the International City/County Management Association. The National Association of Schools of Public Affairs and Administration presented him the Elmer Staats Award for Public Service Teaching Excellence. In 2002, he was the recipient of the Van Riper Award for Lifetime Achievement from the National ASPA and the Harry Scoville Award for Academic Excellence from the Los Angeles ASPA. He has worked internationally, including places such as Bahrain, the Czech and Slovak Republics, Greece, Hungary, Kazakstan, Kuwait, Moldova, and Poland.

Michael Harper, FAICP

Mike Harper, FAICP, is retired from a 32+ year local government planning career, primarily as a department director and program manager with Washoe County, NV. During his professional career, he managed both current planning and long range planning efforts for the county. His professional organization leadership positions have been with American Planning Association; American Institute of Certified Planners; American Society for Public Administration; National Association of County Planners; and Western Planning Resources, Inc. For over 30 years he was involved with Lake Tahoe as chair of the Tahoe Regional Planning Agency's advisory planning commission, chair of the Tahoe Transportation District and Commission, Chair of the State of Nevada commission on the purchase of land in the Lake Tahoe Basin; and as Washoe County's permanent alternate on the Tahoe Regional Planning Agency's Governing Board. As a trainer/teacher he has presented at the Rocky Mountain Land Use Institute's annual conference, Nevada Chapter of the American Planning Association's annual conference, the American Planning Association's national conference, Western Planning Resource's annual conference, at U.S. Forest Service forums on the national forest service's planning policy; and as faculty of the National Business Institute and the University of Nevada, Reno. Mike presently serves on Washoe County's design review committee and as the treasurer of 3 planning organizations. He has a Bachelor of Arts in history and the first Master of Public Administration from the University of Nevada, Reno.
**Madelyn Shipman, J.D.**

Madelyn Shipman has practiced law in northern Nevada since she moved here from Minnesota in 1982. Currently employed part-time at Laxalt & Nomura, Ltd., she retired from full-time public law practice in January 2005. Prior to her retirement, she was Assistant District Attorney and chief civil counsel to the Washoe County Commission. She has appeared before the 2nd Judicial District Court, the Nevada Supreme Court, the various Nevada federal courts and the 9th Circuit Court of Appeals in her various roles as counsel to the Nevada Department of Transportation, the City of Reno and Washoe County. She received her B.A. degree from The American University, Washington, D.C., and her J.D. degree from Hamline University College of Law in St. Paul, Minnesota. She is a Settlement Judge and Foreclosure Mediator for the Nevada Supreme Court, certified as an arbitrator by the First, Second and Ninth Judicial District Courts and is legal counsel currently for the Sun Valley General Improvement District.

**Frederick Steinmann, DPPD**

Frederick Steinmann is currently an Extension Educator, Assistant Professor with the University of Nevada Cooperative Extension, University of Nevada, Reno. He began his professional economic development career with the Reno Redevelopment Agency in the City of Reno, Nevada. Since then, he has worked for the Nevada Small Business Development Center, Bureau of Business and Economic Research, and for the Carson Economic Development Services Department in the City of Carson, California. Frederick has also worked as a Senior Associate for David Paul Rosen & Associates, one of the elite economic development and public policy consulting firms in California. Frederick earned his Doctorate in Policy, Planning, and Development, with areas of study including economic development, public policy, public finance, and real estate development, from the University of Southern California with the successful defense of his dissertation titled, “The Twilight of the Local Redevelopment Era: The Past, Present, and Future of Urban Revitalization and Urban Economic Development in Nevada and California.” He also earned a Bachelor’s of Science and Masters of Science in Economics from the University of Nevada, Reno.
Speaker Biographies

Paul Danczyk, Ph.D.

Paul Danczyk is the Director of Executive Education in Sacramento for the University of Southern California Sol Price School of Public Policy. In his current capacity, Paul designs, coordinates and presents in leadership and management programs--impacting national, state and local governmental and nonprofit organizations--and teaches master-level classes on strategic management, leadership and public administration in California and Mexico. Paul is a National Council representative for the American Society for Public Administration and represents the eight-state District 5 membership (Arizona, California, Hawaii, New Mexico, Nevada, Oklahoma, Texas and Utah); a past president and current board member of ASPA Sacramento Chapter; and a past president of the USC Alumni Club of Sacramento. He actively serves on the Asian Pacific State Employees Association Steering Committee and the World Affairs Council/Sacramento Chapter executive board. He was a Peace Corps Volunteer in Namibia, where he was the acting director of a teacher-training program at the National Institute for Educational Development. Paul earned his PhD from the University of Pittsburgh, focusing on Public and International Affairs; Master of Public Administration from the University of Southern California; and BS from the Pennsylvania State University.
Welcome!

Local Leaders Institute
University of Nevada Cooperative Extension
Friday, July 19, 2013

Leadership and You

- Celebrating the important work we’ve already done:
  - P.O.W.E.R (NAICO and UNR Extended Studies)
  - Chamber Leadership Programs
  - Elected/Appointed New Orientation
  - UNCE Engaged Leadership/Office of Civic Engagement

- Certificate of Completion

- Guests

Objectives

The Local Leaders Institute:

- Main Objective: To create a pool of qualified officials as the difficulty of challenges in Nevada grow; officials who understand the ins-and-outs of government Management and Administration.

- Secondary Objective: To reduce conflict between staff and elected/appointed officials over procedural matters pertaining to government Management and Administration.
Objectives

The Pilot Workshops:

– To test curriculum and elicit feedback from participants of the pilot workshop.

– To raise awareness with potential partners/funding sources. Expand to include municipalities, counties, and even state agencies in Nevada.

– To generate interest among potential attendees/participants for a larger institute.

Our First Exercise

On the inside of your table name tent:

1. Write down something that no else knows about you.

2. Pass your table name tent to someone else: Person 2: make up (pure fiction) something that no-one else knows about Person 1.

3. When called upon, Person 2 will introduce you reading both the true and false thing about you. Class guesses which fact is true about you.

Our Second Exercise

What is Leadership?

- As an **individual**, write down an answer to this question on the index card provided on your table. Think about qualities, responsibilities, activities, etc.

- As a **group**, and using your individual answers, write a single sentence on the flipcharts provided for your group.

- As a **class**, we will discuss and share our answers.
The Agenda

An exploration of thoughts and skills associated with leadership in local government:
1. An Introduction to Local Government.
2. Local Government and the Law.
3. An Introduction and Overview of Public Finance and Budgeting.
4. Local Economic Development

But first, Dr. Chester Newland, University of Southern California…

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University of Nevada Cooperative Extension
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Forms of Local Government

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What is it?

- Scientific Management.
- The Progressive Era.
- The role of Industrialization and Urbanization in the United States.
- Its Legacy.

The Bureaucratic Hierarchy
Structures of Local Government

Five Typologies from the International City-County Manager’s Association (ICMA):

1. Council-Manager Organizational Structure
2. Mayor-Council Organizational Structure
3. Commission
4. Town Meeting
5. Representative Town Meeting

Common Elements

- Role of Voters
- Legislative and Executive (Administrative) Functions
- A Politics-Administration Dichotomy – separating the "lock" from the "key" of policy making and policy implementation.

Our Third Exercise

Pros and Cons

- As an group, write down the pros and cons of a bureaucratic hierarchy based on your experiences on the flip chart provided.
- As a class, we will review your answers.
Special Forms of Government

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Friday, July 19, 2013

Units of Government (William Turk)

- Six "Units" (1997 to 2002):
  - National (1) and State Units (50 – D.C.? Puerto Rico?)
  - Counties (3,035)
  - Towns and Townships (16,504)
  - Municipalities (19,429)
  - School Districts (13,506)
  - Special Districts and Public Authorities (35,052 – since 2002, has this gotten bigger or smaller?)

- A Grand Total of **87,576**.
The Network

- Growth in Complexity – Don Kettl (Is the Worst Yet to Come?) and “Wicked Problems”
- New Public Management – it’s rise in the 1980’s; current decline?
- New Ways of Thinking: Quantum Mechanics, Chaos Theory, Systems Dynamics, Biology, etc.

Structures of Local Government

Different Types and Applications:
1. Regional “Council of Governments” (Sacramento Area Council of Governments)
2. Service Provider Networks (Homeless services)
4. Transportation Authorities (Regional Transportation Commission)
5. Regional Planning Authorities (Truckee Meadows Regional Planning Authority)
6. Others…

Common Elements

- Role of Voters? Role of Government Agencies? Role of Administrators?
- Importance of Trust and Reciprocity – telling our stories.
- Build conflict into the network.
- Certain fluidity and flexibility; but it is NOT a lack of structure.
Our Third Exercise

Pros and Cons

- As an group, write down the pros and cons of a networks based on your experiences on the flip chart provided.

- As a class, we will review your answers.
Definitions (NRS 241.015)

- "Action"
- "Meeting"
- "Public Body" - Designation of substitute to attend meeting must be authorized by law or on the record of a public meeting in order to count towards quorum or to participate in vote - new with AB 65

Definitions (NRS 241.015)

- "Quorum"
- "Deliberate" – to collectively examine, weigh and reflect upon reasons for or against a proposed action
  – Added by AB 65
New Authorization

- AB 65 authorizes a member of a public body to participate by electronic means
- Participation must allow the public to hear the member so participating and the member so participating to hear statements made by the public

Meetings (NRS 241.020)

- Open
- Noticed
  - Accommodation
  - Notice to include:
    - Time, place and location of meeting
    - List of locations where notice was posted
    - An agenda

Meetings (continued)

Agenda must include:
- Clear and complete statement of matters to be considered
- “for possible action”
- Public Comment periods
- Notifications that (items may be taken out of order, may be combined, may be removed or may be delayed)
- Any restrictions on public comment
Meetings (continued)

Minimum Notice
– Posting at principal office or where meeting is to be held
– Three additional prominent places
– Copies to persons requesting notice
– Email notice okay if agreed to by requestor

Meetings (continued)
• Include name and contact information of person able to provide supporting materials and locations where supporting materials may be obtained – new in AB 65

• In counties of 45,000 or more, supporting materials to be posted on website – new in AB 65

Meetings (continued)
• Website, if maintained, must include notice of meetings
• Free copies to requesting public
• Supporting materials to be provided to public at same time provided to public body
• May provide by email
• “Emergency”
Meetings (continued)

- AB 445 requires that all public body meeting notices be posted on the State’s website at the same time posted in local area and to persons requesting notice.
- AB 445 requires such posting by public bodies to commence no later than July 1, 2014.
- AB 445 requires that the State Department of Administration have the State website prepared no later than January 1, 2014.

Exceptions (NRS 241.030)

- Personnel Matters
  - Prepare, administer or grade examinations
  - Appeals of examinations

EXCEPTIONS (continued)

- Subject may waive
- Agenda must state statute authorizing closed session and nature of business to be considered
- Exception may not be used to:
  - Prevent removal of disruptive persons
  - Prevent removal of witnesses
  - Discuss appointments
  - Discuss member (NRS 241.031)
Closed Meetings (NRS 241.033)

- Written notice to subject – proof of service
  - In person – 5 working days
  - By certified mail – 21 working days
- Must include topic to be discussed and right of person to attend and be represented
- Chair or public body decides attendees
- Copy of record available to subject
- Casual or tangential mention...

Administrative Action/Eminent Domain (NRS 241.034)

- Notice same as in NRS 241.033
- Proof of service
- Must be on agenda
- Not required separate from notice per NRS 241.033
- If eminent domain, real property described

Record of Meeting (NRS 241.035)

- Minutes
  - “substance” of matters considered
- Available within 30 days – retained for 5 years
- May be recorded by public
- Must tape or transcribe meeting – 1 year – available to public or AG
- Same for closed meetings
Statements Privileged (NRS 241.0353)
Voting (NRS 241.0355)

- Privilege applies to both member and public
- Action by Majority Vote of Entire Body
- Abstention not an affirmative vote
  - Legal counsel opinion

Action in Violation Void (NRS 241.036)
Action by AG or Person (NRS 241.037)

- AG may seek injunctive relief – no damage or harm required
- Person may sue to:
  - Void an action
  - Require compliance with law
  - Seek determination of applicability of law to action
- Suit to require compliance – 120 days
- Suit to void action – 60 days

Action by AG or Person (continued)

- AB 65 authorizes the AG to forgo prosecution of a violation if there is a correction within thirty days of the alleged violation if in the best interests of the public
- AB 65 requires that if taking corrective action, agenda must state “for corrective action” but such posting is not an admission of a violation
Role of AG (NRS 241.039)
AG Finding (NRS 241.0395)
- AG to investigate and prosecute violations
- AG may issue subpoenas
- If violation found, AG opinion must be included on following agenda
- Inclusion on agenda is not admission
- Re-do/ratification of questioned action

Penalties (NRS 241.040)
- Violation, with knowledge, is misdemeanor
- Wrongful exclusion – misdemeanor
- Civil penalty - $500
  - Must be sought by AG
  - sections
  - Prohibits the designation of a substitute unless authorized by statute or the legal authority (ordinance/resolution) creating the entity.
What are “Ethics”?

An Ethical Decision Making Model

Nevada’s Code of Ethical Conduct

What Ethics Is

“...ethics may be understood as the study of moral conduct and moral status. Ethics and morality are often used interchangeably, but here I will distinguish them.

Morality assumes some accepted modes of behavior that are given by a religious tradition, a culture (including an organizational culture), a social class, a community, or a family. It involves expected courses of conduct that are rooted in both formal rules and informal norms.

Ethics, then, is one step removed from action. It involves the examination and analysis of the logic, values, beliefs, and principles that are used to justify morality in its various forms.”
What Ethics Is

“Ethics considers what is meant by principles such as justice, veracity, or the public interest; their implications for conduct in particular situations; and how one might argue for one principle over another as determinative in a particular decision.

Ethics takes what is given or prescribed and asks what is meant and why.

Ethics also deals with the moral status of entities such as families, organizations, communities, and societies.”

What Ethics Isn’t

Descriptively or Normatively:

– Descriptively, ethics attempts to reveal underlying assumptions and how they are connected to conduct. (What we believe as individuals, as a society, as an organization).

– Normatively, ethics attempts to construct viable and defensible arguments for particular courses of conduct as being better than others in specific situations. (Infers a conflict between choices).
What Ethics Is

An analytical tool to help us determine what course of action to take when we are confronted with two or more equally good or two or more equally bad choices when we are forced to choose.

Building an Ethical Decision Making Model

Levels of Ethical Reflection:

– The Expressive Level: “You should know better!”
– The Moral Rules Level: “Always be a good team player.”
– The Ethical Analysis Level: “Always tell the truth unless innocent third parties are harmed.”
– The Postethical Level: “Why should I be moral?”

Nevada’s Code of Ethical Standards
Code of Ethical Standards

- NRS 281A.400 – NRS 281A.480
- Applies to Public Officers and Employees
- The Ten “Do-Nots”
  1. Seek or accept any gift, service, favor, employment, etc. which would tend to improperly influence or cause a departure from faithful and impartial discharge of duties…

“Do-Nots” (continued)

2. Use position in government to secure or grant unwarranted privileges for self, business interest in which one has significant pecuniary interest, or person to whom one has a commitment in a private capacity…

3. Participate in negotiation or execution of contract in which one has a significant pecuniary interest…

“Do-Nots” (continued)

4. Accept anything of value from a private party for the performance of public duties…

5. Use non-public information to further pecuniary interest of self, business entity or person…

6. Suppress government report or document because it might affect pecuniary interest of self, business entity or person…
“Do-Nots” (continued)

7. Use governmental time, property or equipment outside of any “limited use” policy adopted by entity represented or by whom employed…

8. Attempt to benefit personal or financial interest through the influence of a subordinate…

“Do-Nots” (continued)

9. Seek employment or contracts through use of official position…

10. Represent or counsel, for compensation, any person on issue before his/her entity or for one year after leaving entity on any issue under consideration at the time of leaving…

Definitions – Nevada SB 228

“Commitment in a private capacity to the interests of another person” means commitment, interest or relationship to a person:

– Spouse or domestic partner
– Member of household
– Related within third degree of consanguinity or affinity
– Employs self, spouse, domestic partner or member of household
– With whom self has a substantial and continuing business relationship
– With whom self has a commitment, interest or relationship substantially similar to above
Definitions - Nevada SB 228 (continued)

• “Pecuniary Interest” means any beneficial or detrimental interest that consists of or is measured in money, economic value and includes payments for government service and gifts.

• The determination regarding gifts is whether gift is token vs. sufficient to affect conduct of job or office…

Conflict of Interest
NRS 281A.420

If the matter under consideration involves:
– A gift or loan to member;
– An economic or money interest of member; or
– The same with regard to a person to whom I have a commitment in a private capacity

DISCLOSE!! DISCLOSE!! DISCLOSE!! DISCLOSE!!

Conflict of Interest (continued)

• Disclosure means:
  – Specific identification of conflict; and
  – Specific identification of relationship involved in conflict

• Disclosure must be made when matter considered:
  – If member, publicly to chair and other members
  – If appointed, to supervisor/superior in charge
Voting/Abstaining

- Public policy favors participation and voting…
- Whether one votes, participates or abstains involves consideration of “the independence of judgment of the reasonable man”…
- “Reasonable man” means a consideration of whether a reasonable person would be materially affected by disclosed conflict…

Voting/Abstaining (continued)

- After disclosing, conduct “reasonable man” analysis to determine whether to participate and vote or to abstain from matter…
- Handout
  - If not a clear conflict, participate and vote…
  - If a clear conflict, abstain…
  - If abstaining, leave table for duration of item…
- Caveat…

Voting/Abstaining (continued)

- If abstaining, quorum requirement is reduced accordingly… but
- Quorum not reduced for elected boards…
Violations

- Civil penalties – for willful violations
  - $5,000 for first violation
  - $10,000 for second violation
  - $25,000 for third violation
- May be referred to AG or DA for criminal review...
- SB 228 – Balancing on part of Commission
- Other actions…

Opinion Requests

- First Party Advisory
  - Forms/opinions on Commission website;
  - Confidential unless waived – how waived;
  - Type of request;
  - Effect of request;
- Third Party Complaint
  - Forms on website;
  - Investigation/hearing/representation

Opinion Requests (continued)

When in doubt…
- Ask entity attorney for opinion…
- As soon as you are aware of potential conflict…
- Preferably in advance of meeting…
- Call for short recess to allow discussion with attorney…
- If you abide by opinion, no willful violation…
Fiscal Authority and Stability

Local Leaders Institute
University of Nevada Cooperative Extension
Saturday, July 20, 2013

\[ \text{Tax Revenue} = \text{Tax Rate} \times \text{Tax Base} \]

where...

Tax Base is a function of the Economic Base

“Something is seriously out of sync in California. Many of its cities’ revenue sources aren’t well aligned with their communities’ changing service demands. Diminishing local control over their finances and the unprecedented dominance of the state in local affairs has left city officials frustrated as they work to respond to the growing needs of their communities.

When legislators do seek to reform the current system of state-local finance, they encounter hundreds of distrustful local officials and technical complexities in a situation where almost any change helps some communities and harms others.”

- Coleman and Colantuono (2003)
### Fiscal Authority and Stability

As a group, take 10 minutes to quickly answer these questions:

- How sustainable are Nevada local government (municipalities, counties, etc.) revenues?
  - Prior to 2008?
  - Financial Collapse/Recession of 2008?
  - Changing demographics of Nevada’s population and implications on service demand?
  - Urban (Sales Tax, Property Tax, etc.) vs. Rural (Net Proceeds)?

- How much authority do local governments in Nevada have to redesign their finances to meet changing needs?

### Three Characteristics to Consider

- The degree of local control and discretion, including:
  - Control of the **tax base** (who pays).
  - Control of the **tax rate** (how much they pay).

- The degree of economic risk, including:
  - **Sustainability** (the capacity of the revenue to grow comparably to growth in service demand).
  - **Volatility** (the level of year-to-year fluctuation).

- The degree of political risk (the vulnerability of revenues to appropriation or reallocation by the state or federal government including the courts).

### Local Control and Discretion

- Rate, Base, and Use – Discretion and Control?

- Degree of Flexibility:
  - Setting the rate(s) level.
  - Determining who pays and on what basis (the base of the revenue measure).
  - Using the revenues.
Local Control and Discretion

Figure 1 – How Sustainable Are Major City Revenues?

<table>
<thead>
<tr>
<th>City Revenue Source</th>
<th>Strongly Sensitive To:</th>
<th>Not Sensitive To:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Charges and User Fees</td>
<td>Service Demand</td>
<td>Inflation (unless built into rate structure)</td>
</tr>
<tr>
<td>Sales &amp; Use Tax</td>
<td>Taxable sales, inflation, commercial activity</td>
<td>Resident population</td>
</tr>
<tr>
<td>Property Tax</td>
<td>Real property values, sales</td>
<td>-</td>
</tr>
<tr>
<td>Vehicle License Fee</td>
<td>Resident Population</td>
<td>Commercial activity</td>
</tr>
<tr>
<td>Utility User’s Tax</td>
<td>Sales of utility services, population, commercial activity, utility rates, inflation</td>
<td>-</td>
</tr>
<tr>
<td>Business License Fee</td>
<td>Commercial activity, inflation</td>
<td>Resident population</td>
</tr>
<tr>
<td>Transient Occupancy Tax</td>
<td>Hotel activity and rates, inflation</td>
<td>Resident population</td>
</tr>
<tr>
<td>Gas Tax</td>
<td>Resident population</td>
<td>Commercial activity</td>
</tr>
<tr>
<td>Local Assessments</td>
<td>Number of rate payers</td>
<td>Inflations (unless built into rate structure)</td>
</tr>
<tr>
<td>Real Property Transfer Tax</td>
<td>Real estate sales, property values</td>
<td>-</td>
</tr>
</tbody>
</table>

Economic Risk

Two Aspects of Long-Term Stability:

1. Sustainability: “A tax is best suited to fund programs where the demand for service changes in proportion to the proceeds of the tax...provides sufficient revenue to cover service costs even as service demands change over time.”
   - Services to People
   - Services to Property
   - Services to Businesses

2. Volatility: “…a measure of the degree of annual fluctuation from the average annual growth of a revenue source.” Generally unacceptable, except for when:
   - The source provides strong return in relation to service demand over time. Example?
   - Sufficient reserves and use of one-time programming can be used to cushion the impacts of fluctuation. Example?
   - The revenue budget contains a mix of other sources with different performance characteristics that mitigate volatility. Example?
Political Risk

“Local revenue stability is also affected by the potential for the state or federal governments (or courts) to reduce the revenue, which we label ‘political risk’.

To the extent that this delegation of authority is accomplished by the state Constitution, the risk of state actions impacting local finances and powers is reduced.”

Nevada? End of the 2011 Session? Net Proceeds in the 2013 Session?

Political Risk

• Impacts on Fiscal Planning:
  "…certain bells cannot be unrung. Once a serious proposal is made to transfer a revenue stream on which local government has relied, the dependability of that revenue stream for long-range fiscal planning is significantly damaged for as long as the political memory of the debate remains.”

• Impacts on the Cost of Financing Government:
  "Political risk means uncertainty, and in finance – whether public or private – uncertainty means at the very least higher costs and may mean complete frustration of important fiscal goals for a community."

Looking Ahead – Who has a Crystal Ball?

“In recent decades, local home rule in California (Nevada?) has been substantially eroded, particularly in municipal fiscal affairs…Meanwhile, the state’s economy and society are evolving, and finance officers are becoming increasingly concerned about the stability of city revenues.”
Three Questions
As a group, take 10 minutes to quickly answer these questions:

- How will our mix of revenues weather economic ups and downs?
- Will these revenues grow in concert with increasing service demands?
- If our control of local revenues is more strictly limited (is it?), how can we influence our revenues to meet changing service demands?
Elements of a Comprehensive Debt Policy

“An effective debt policy improves the quality of decisions, provides justification for the structure of debt issuance, identifies policy goals, and demonstrates a commitment to long-term financial planning. For these reasons, a debt policy is viewed favorably by credit rating agencies.”

- Miranda, Picur, and Straley (1997)


- Does your jurisdiction have one? Why or why not?
  - At your table, pick one jurisdiction that has a comprehensive local government debt policy and discuss its elements. 10 Minutes.

- Do you think it’s important to have a Comprehensive Local Government Debt Policy? Why or why not?
  - At your table, discuss the pros/cons of having a comprehensive local government debt policy. 10 Minutes.
Elements of a Comprehensive Debt Policy

- Purposes for which debt may be issued.
- Legal debt limitations, or limitations established by policy.
- Use of moral obligation pledges.
- Types of debt permitted to be issued and criteria for issuance.
- Structural features that may be considered.
- Credit objectives.
- Method of sale.
- Selection of external financial professionals.
- Refunding of debt.
- Disclosure (primary and secondary market).
- Compliance with federal tax law provisions, including arbitrage requirements.
- Integration of capital planning and debt financing activities.
- Investment of bond proceeds where otherwise not covered by explicitly written law or written investment policy.

Elements of a Comprehensive Debt Policy


- Identified Seven (7) Major Categories with 36 Subcategories:
  - Conditions for Debt Issuance
  - Restrictions/Limitations on Debt Issuance
  - Debt Service Limitations
  - Limitations on Outstanding Debt
  - Characteristics/Terms/Provisions of Debt Issuance
  - Debt Issuance Processes
  - Other Forms of Debt

Conditions for Debt Issuance

- Policies identified which generally specified the conditions or purposes for which debt could be issued.

- Five (5) Subcategories:
  - Purposes and Uses of Debt
  - Capital Expenditures
  - Project Life
  - Types of Debt (The almighty “GO” Bond – as a last resort? Why? Implications? Special Districts?)
  - Refunding Bonds Policies
Restrictions on Debt Issuance

- Shares a common theme of restrictions and/or limitations on use of debt including specific prohibitions against debt issuance.

- Five (5) Subcategories:
  - When Not to Issue Debt
  - Size of Issuance
  - Statutory Limitations
  - Analysis Requirements
  - Reserve Capacity

Debt Service Limitations

- Limit debt service expenditures to some definition of resources available to government.

- Four (4) Subcategories:
  - Operating Budget
  - Operating Revenue
  - General Fund Revenue
  - Expenditure Limitations

Limitations on Outstanding Debt

- These policies limit the total amount of outstanding debt to a measure of the tax base (i.e. property values or population).

- Restrictions represented by this category of policies are substantially different must be place in the *local context*.

- Four (4) Subcategories:
  - Market Value Limitations
  - Assessed Value
  - Per Capita Limitations
  - Miscellaneous Limitations
Characteristics of Debt Issuance

- Relate to characteristics of the debt being issued that are generally legal in nature and incorporated into various official documents including the bond ordinance.

- Five (5) Subcategories:
  - Repayment Provisions
  - Maturity Guidelines
  - Debt Service Funds
  - Insurance/Letters of Credit/Other Enhancements
  - Capitalized Interest Guidelines

Debt Issuance Process

- These policies relate to various process activities associated with issuing the debt.

- Six (6) Subcategories:
  - Sale Process
  - Professional Services
  - Bond Rating Goals (Impacts of cities on counties within that county?)
  - Disclosure Requirements
  - Rating Agency Relations (Reno and Goldman Sachs?)
  - Intergovernmental Coordination

Other Forms of Debt

- The kitchen sink…or creative ways to fund local government activities that may/may not get you into trouble.

- Seven (7) Subcategories:
  - Inter-Fund Borrowing (careful…)
  - Variable Rate Debt (careful…)
  - Short-Term Debt (Bond Anticipation Notes, Revenue Anticipation Bonds, Tax Anticipation Notes…property tax revenues?)
  - Revenue and Tax Increment Financing (TIF) Bonds
  - Lease Debt
  - Limited Tax GO Bond
  - Derivative Restrictions
Elements of a Comprehensive Debt Policy

“A debt policy improves the quality of decisions, provides justification for the structure of debt issuance, identifies policy goals, and demonstrates a commitment to long-term financial planning. For these reasons, a debt policy is viewed favorably by credit rating agencies.”

- Miranda, Picur, and Straley (1997)
Types of Budgets

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- The Budget Deliberation Process
- The Revenue Constraint
- Four Types of Budgets

A Struggle

A Paradox

Public Accountability and Organizational Responsibility and Transparency

Organizational Efficiency, Effectiveness, and Economy

How do we balance these forces?
Is one force more important than the other?
The Budget Deliberation Process

“The Budget Deliberation Process

“Budget deliberations tend to focus on total spending or spending in specific expenditure categories, such as travel, printing or contracts. Important policy decisions may emerge as consequences of spending decisions, but budget deliberations are focused on fiscal policy rather than substantive policy.”

- Gianakis and McCue (1999)

The Budget Deliberation Process

The Budget Process asks Program Managers for Information in Three Broad Areas:

- Provide an indication of what the program will accomplish.
- Consider how the mission will be accomplished and what resources will be required.
- COST: What will the program cost?

Functions of Budgets

- Three Functions (Allen Schick, “The Road to PPB”, 1966):
  - Control Mechanisms: hold public managers accountable for using public funds for approved ends.
  - Guides to Operations: tell managers what is expected of them in terms of output; help managers plan their work.
  - Enunciate Public Policy: allow policy makers to plan how public funds will be used to achieve desired societal outcomes.

- Fourth Function (Gianakis and McCue):
  - Influence Organizational Culture: centrality as an organizational symbol and annual ritual; reflection of the basic values of the organization.
Functions of Budgets
- As a group, think about your organization's annual budget and identify examples of the following:
  - Control Mechanisms?
  - How does your annual budget guide organizational operations?
  - What public policies are enumerated in the budget?
  - How does your organization's annual budget influence your organization's culture?
- Discuss as a class in 10 minutes.

The Revenue Constraint
"Regardless of the format employed, budgetary decision making must usually be conducted within the constraints posed by available revenues."

"Local government budgeting is revenue-driven, and all processes and formats operate under this constraint. Tax policy is inherently incremental, because large increases in tax rates are not well tolerated by those affected, regardless of the relative burdens they currently bear."
The Revenue Constraint

Revenues = Spending

Taxes
Fees
Investment Income
Savings
Debt
Everything Else

The Revenue Constraint

\[ \text{Tax Revenue} = \text{Tax Rate} \times \text{Tax Base} \]

where...

Tax Base is a function of the Economic Base

The Revenue Constraint and the Revenue Forecast

“The centrality of the revenue constraint highlights the importance of the revenue forecast.”

“…budgeters must forecast twenty months into the future. The actual collections from the previous year are available to the forecasters at that time, but the current year’s revenue have only begun to materialize. Good budgeters will continue to revise their forecasts as more data becomes available, but the initial estimate has great salience in the budget process.”

Bad budgeters? Gaming? Under-Forecasting? Over-Forecasting?
### Types of Budgets

- Line-Item Budgets
- Program Budgeting
- Performance Budgets
- The Zero-Base Budget Process

### The Line-Item Budget

- "Line-item, or object-of-expenditure, budgets are input-oriented budgets that optimize the control function."
- The "quintessential incremental" budget:
  - Pushes policy considerations in the background.
  - Ask only what you think will be approved.
- Three broad areas:
  - **Personnel Categories** (salaries, benefits, overtime, and other funds paid to the employees of the organization)
  - **Operating Expenditures** (items and materials that will be consumed during the fiscal year)
  - **Equipment and Materials** (anything that has a useful life longer than one year – i.e. a snow plow)

### The Line-Item Budget

- **Strengths:**
  - Wide spread application to many government organizations.
  - Format requires little to no analysis by the operating manager.
  - Elected Officials/Legislative Bodies comfortable discussing "stuff" vs. "policy choices".
  - Minimized conflict associated with allocating finite resources.
- **Weaknesses:**
  - Agency/Department self-interests emphasized.
  - Long-term organizational financial viability of the organization becomes secondary.
  - Engenders agency atomization, self-interested behavior leading to a climate of distrust.
Program Budgeting

- The Program Planning and Budgeting System (PPBS) – President Lyndon Johnson, Robert Macnamara.
- The “polar opposite” of Line-item Budgeting: “The pursuit of valued societal outcomes rather than the control of expenditures assumes center stage here… the simultaneous pursuit of effective government and controlled public administrators.”
- A Top-down approach: (Role of Political Control)
  - GOAL (Civil Rights for African Americans)
  - Activity (Sending Troops into Schools to force Desegregation)

Program Budgeting

- Strengths: Are we doing what we set out to do?

  “The format required the agencies to analyze the impacts of their programs in order to be able to demonstrate success. Thus, the role of structured analysis is also highlighted in this format, and PPBS put the field of program evaluation at center state.”

- Weaknesses: You are NOT a king or a technocrat!

  “Our Constitution was written to fragment political power, and major changes in substantive policies are more likely to be driven by ideas that capture receptive audiences at the grass roots…PPBS also saddled agencies with extensive analytical responsibilities that threatened to overwhelm the annual budget process.”

Performance Budgets

“…focus on the work being done in public agencies, and they seek to enhance efficiency – that is, to maximize production at a given level of resources. Resources are allocated to specific activities that produce immediate outputs, rather than the line-items that indicate the materials consumed in the production process”

“…input-oriented or output-oriented depending on whether the work activities are viewed as inputs to public policy outcomes or organizational outputs in their right.”

Bottom-Up Format:

  OUTPUTS (or GOALS)
  
  ACTIVITIES
Performance Budgets

**Strengths:**
1. Encourages managers to make their production processes more efficient.
2. A formal management by objectives (MBO) planning and education system.
3. A multiyear dimension.
4. Help reduce **gaming** in the system.

**Weaknesses:**
"The principal shortcoming of the performance budget format is that it is difficult to apply in many of the service areas encompassed by the local government organization."

**Possible Issues:**
- Do managers currently use output measures to manage their operations?
- Is efficiency a core organizational value?
- Are managers competent/professional enough to be held accountable for outputs?
- Are elected officials amenable to this approach?
- How much of the organization can employ this approach?

---

The Zero-Base Budget Process

"Zero-base formats seek to **encourage non-incrementalist thinking** and the re-allocation of resources while maintaining a bottom-up approach to budget development."

"Zero-base budgeting is different from line-item and performance budgeting on this criterion, and from PPBS on the basis that program managers have a prominent role in the policy-making process."

Role of **Marginal Analysis**: "Marginal analysis calls for successive comparison of the effects of allocating an additional amount of funds to the various programs. All programs share the overall goal of enhancing the general welfare, and each program targets an identifiable dimension of the general welfare."

---

The Zero-Base Budget Process

**Variant:** Target-Base Budgeting

**Strengths:**
- Encourages managers to look within previous allocations in order to fund new programs (use of existing allocations).
- Encourages innovative and creative managers.
- Makes agencies more aware of organizational goals.
- Ends **gaming** that characterizes many budget processes.

**Weaknesses:**
- Time and paperwork intensive.
- Not all managers are innovative and creative.
- Some managers lack the level of sophistication and training required.
A Struggle

Where would you place each budget type?

Public Accountability and Organizational Responsibility and Transparency

Organizational Efficiency, Effectiveness, and Economy

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Saturday, July 20, 2013
Home Rule vs. Dillon’s Rule

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Saturday, July 20, 2013

Home Rule vs. Dillon’s Rule

- **Home Rule**: States that give local governments wide latitude to decide which policies are appropriate for their communities.

- **Dillon’s Rule**: States that give limited powers to local government to decide which policies are appropriate.

Home Rule

- “Local governments in home rule states are free to pass laws and ordinances as they see fit to further their operations, within the bounds of the state and federal constitutions.” (Wikipedia)

- Somewhat akin to the “Bill of Rights” in the U.S. Constitution wherein the powers not reserved to the Federal Government may be exercised by the states.
Dillon’s Rule

- **Merriam v. Moody’s Examiners** (25 Iowa 163 (Iowa 1868))
- Judge John F. Dillon of the Iowa Supreme Court established the common-law rule known as "Dillon’s Rule".
- A local government is authorized to exercise only those powers that are:
  - Expressly granted.
  - Necessarily or fairly implied in or incident to the powers expressly granted.
  - Essential to the accomplishment of the declared purposes of the local government.

Home Rule vs. Dillon’s Rule

**A Continuum**

<table>
<thead>
<tr>
<th>Total Home Rule</th>
<th>Total Dillon’s Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nevada?</td>
<td>Nevada?</td>
</tr>
<tr>
<td>Nevada?</td>
<td>Nevada?</td>
</tr>
</tbody>
</table>

Factors along the Continuum that may determine if a state chooses Home Rule or Dillon’s Rule:

- Impact of one town or city’s decisions on surrounding communities.
- Citizens that travel through one community or reside there temporarily for work, recreation, or other activities, but due to lack of residency have no voice in that government.
- Involvement and awareness of a community’s citizens in governments.
- Fairness between wealthier and poorer communities.
- State-wide goals for various programs.
Home Rule vs. Dillon’s Rule

Issues Most likely to be “Home Rule”:
– The rate of property taxation and structure of fees paid exclusively by local residents and businesses.
– Level of government services provided to local citizens and businesses.
– Design and management of local service roads and streets.
– Creation of local laws and policies, as long as local laws and policies are made clear to visitors using signs or other documentation.

Home Rule vs. Dillon’s Rule

Issues Most likely to be “Dillon’s Rule”:
– A state bill of rights must exist to ensure that local governments both treat their citizens fairly, and most importantly visitors to the community fairly.
– Local laws need to be consistent enough so that visitors know what to reasonably expect when they visit a community and what those communities require.
– Inter-community highways need to be regulated by the state to promote the quick and convenient movement of goods and people.

Application of Dillon’s Rule In Nevada

• **Sadler v. Board of County Commissioners** (15 Nevada 39, 42 (1880)): County Commissioners in Nevada are authorized to exercise only those powers which are expressly granted and powers that are necessarily implied to carry out express powers.

• **Tucker v. Mayor of Virginia City** (4 Nevada 20, 26 (1868)): A Nevada city government is authorized to exercise only those powers expressly granted by the charter or laws creating the city, and the necessary means of employing those powers.
### Home Rule vs. Dillon’s Rule

**Nevada is a Dillon’s Rule State**

*(but is it uniformly so?)*

<table>
<thead>
<tr>
<th>Total Home Rule</th>
<th>City/County Master Plans (under 100K population)</th>
<th>Maximum Property Tax Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zoning</td>
<td>Subdivision of Property Process</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Dillon’s Rule</th>
<th>City/County Master Plans (over 100K population)</th>
<th>Subdivision of Property Process</th>
</tr>
</thead>
</table>
| Distribution of Property tax rate within counties | | }

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University of Nevada Cooperative Extension  
Saturday, July 20, 2013
Early Planning in the United States

Governments' effect on land design and subdivision dates from the Land Development Ordinance of 1785 (authored by Thos. Jefferson – One of America’s earliest planners?)

- The Land Ordinance established the basis for the public land survey system
- Land was to be systematically surveyed into square townships, six miles (9.656 km) on a side. Each of these townships were sub-divided into thirty-six sections of one square mile (2.59 km²) or 640 acres. These sections could then be further subdivided for re-sale by settlers and land speculators.
Shifting Trends to mid-19th Century

- First, American residential population was growing rapidly.
  - Revolution to 1790, 4 million per year.
  - 1790 to 1820, growth of 6 million people.
  - 1820, 10 million residents.
  - 1840, 17 million residents.
- Second, decline in eastern agriculture.
  - 1790: 1 in 30 persons lived in a city (8,000 or more).
  - 1820: 1 in 20 persons lived in a city.
  - 1840: 1 in 12 persons lived in a city.
- Third, growth in new urban centers (Buffalo, Detroit, Milwaukee, Cleveland, Chicago, San Francisco) with the move westward led to new industries and new opportunities.

Late 19th Century Changes

- By the late 1800’s, past political, economic, and social paradigms were beginning to change.
- Federal and State governments were (slowly) shifting their attention from the largely rural areas to the urban environment.
- New/shifting paradigms supported a more ACTIVIST role for both the federal and state governments.
The Downside of Urbanization in the Late 19th Century

- Garbage and Refuse Disposal
- Unsafe Drinking Water
- Inadequate Sewage
- Undersupply of Housing
- Dangerous Population Overcrowding

- Two Problems
  - Economic
  - Social
  (Cullingworth and Caves, 2003)

NYC Tenement-1890s

The Response – Planning, Zoning, and Professional Management

- Planning – “Planning as a function of local government began in the early 20th century, stimulated by the wretched conditions of cities. The kinds of dirt, noise, and congestion of the city proposed by our first city planners consisted of physical alterations in the urban structure.” (David C. Ranney (1961))

- Planning as a precursor for the political and bureaucratic reform movement known as the PROGRESSIVE ERA (1890’s – 1920’s).
Two Important Early 20th Century Planning, Zoning, and Professional Management Responses

- **Euclid v. Ambler Realty Co.** (1926): “The biggest of them all” – US Supreme Court upheld the Euclid town comprehensive plan that outlawed the development of industrial uses and multi-family housing and established **zoning as a legitimate exercise of the police power**. [emphasis added]

- **Standard State Zoning Enabling Act** (SSZEA) of 1926. “The SSZEA gave state legislatures a procedure, based upon an accepted concept of property rights and careful legal precedent, for each community to follow.” (Cullingworth and Caves (2003))

Planning and Zoning
Early Nevada Efforts

- **1921** NRS 268.100 through 268.220 adopted by legislature, giving communities the ability to create city planning commissions; (This legislation was not compulsory.)

- **1924** NRS 268.230 through 268.300 adopted by legislature, giving to cities the process by which to adopt municipal zoning. (This legislation was not compulsory.)

- **1941** Legislature adopted NRS 278.030 through 278.260 adopted by legislature, creating the procedure by which city and/or counties would create planning commissions. Legislation also allowed creation of a regional planning.

- **1947** Legislature adopted current NRS 278

Planning in Nevada - The Present Enabling Legislation

- Nevada Revised Statutes (NRS) Chapter 268 enables planning commissions in cities and annexation by cities.

- Nevada Revised Statutes (NRS) Chapter 278 enables regional, county and city planning commissions, master planning, zoning, subdividing, and a host of other planning tools.

- Nevada Revised Statutes (NRS) Chapter 278A enables planned unit development (PUD)

- Nevada Revised Statutes (NRS) Chapter 278B enables impact fees
Master Planning and Zoning
An Important Distinction!

- Planning typically represented through a master plan document and master plan map(s).
- Zoning typically represented through a zoning ordinance and zoning map(s).
- Zoning is not planning, but a tool to implement a plan.

Master Plans in Nevada

- In Nevada Master Plan required for all counties over 45,000 population; all cities over 25,000 population.
  - Occurs because these jurisdictions required to have a planning commission and requirement of planning commission is to create a master plan.
- Planning commission must adopt the master plan; elected body can only amend after consulting with planning commission.
- Except for counties over 100,000 population (and the municipalities within these counties), jurisdictions free to choose what elements in 278.160 they wish to include.

City of Fernley Master Plan

Adopted: October 2005 (Planning Commission; November 2005 (County Commission)

Plan Elements:
- Introduction
- Housing and Population
- Conservation
- Land Use
- Transportation
- Public Services and Facilities
Zoning in Nevada

- Generally NRS provides for master plan map as basis for land use control.
  - NRS states "...zoning regulations must be adopted in accordance with the master plan for land use".
- Zoning considered most common method of implementing a master plan.
  - NRS does not require zoning map or regulations; only authorizes adoption of same.
  - NRS does state, though, if zoning adopted – must be in conformance with adopted master plan.
  - Over past legislative sessions, zoning authorization has been broadened.
    - Density bonuses; inclusionary zoning; minimum densities.

Zoning in Nevada

- NRS 278 identifies 14 issues that zoning is designed to address, e.g.
  - Conservation of air and water
  - Views and access
  - Character & physical limitation of land
  - Adequate supply of housing
  - NRS 278.260:
    - "The governing body shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts are determined, established, enforced and amended."
Types of Zoning

- Euclidian
- Planned Unit Development (a variation on Euclidian)
- New Urbanism
- Form Based

Euclidian Zoning

- Derived from 1926 Supreme Court case in Euclid, Ohio.
- Most community zoning codes based on Euclidean model. Most common, especially in West.
- Generally text-based with an accompanying map.
- Based on:
  - Typical zoning districts: residential, commercial, industrial, public uses
  - Permitted uses, prohibited uses, accessory uses and conditional/special uses enumerated in each zoning category
  - Dimensional standards: lot area, setbacks, height restrictions
Euclidian Zoning

- Typically identifies the range of:
  - Residential ("X" units per acre)
  - Non-residential (Floor Area Ratios – F.A.R.)

- Zoning districts applied geographically on zoning map.

- Attempts to better control impacts of different uses by permitting them only in certain zoning districts, e.g.
  - No industrial uses in residential zones
  - Only neighborhood commercial in residential zones

- Effective during time of industrializing America, but has caused sprawl and auto dependence.

Euclidian Zoning

- Easiest design to comply is grid.
  - Grid typically does not respect topography

  - Typically results in extensive grading
    - Significant cuts and fills
    - Substantial import or export of fill
    - Elimination of large areas of natural vegetation resulting in mechanical stabilization, or planting of non-native species

  - Grid design can result in long extensions of services: water, sewer, cable
    - Costly construction, costly maintenance

Euclidean zoning typical grid and separation of use
(red=commercial; green=park; pale pink=small residential lots; gold=large residential lots; yellow=agriculture)
Planned Unit Development (PUD)

- Typically associated with zoning that permits mixed use, commercial/industrial uses, and varying lot sizes.
  - Open space is a common, but not always required, attribute.
  - Uses still usually separated.
  - Many communities require special use permit.

- Better design with topography.
  - Reduced grading.
  - Reduced extension of services and subsequent maintenance costs.

Planned Unit Development (PUD)

Typical PUD design resulting from PUD zoning

New Urbanism (aka Neo-Traditionalist)

Though recent in introduction to the public, reflects a development pattern of small communities that was prevalent from the 1700s to 1920s:

- Town center focal point.
- Mixed use in and immediately near town centers.
- Mixed residential lots, often tending to lots less than ¼ acre in size.
- Less emphasis on garages in front of residences; one solution has been re-introduction of alleys.
- Narrow and curvilinear streets with parking bays.
- Emphasis on walking/biking to local services, e.g. schools, post office, groceries, etc.
Neo-Traditionalist

New Urbanism

- New urbanism applicable more to new development, and infill (where sufficient land exists).
- More of a design concept.
  - Difficult to implement with Euclidian zoning ordinances.
  - Trend is to marry form based codes with new urbanism.
- Ideal zoning pattern is small lot and dense development (town center) trending to larger lots and eventually open-space (transect zoning)

New Urbanism

Concept design resulting from New Urbanism zoning

<table>
<thead>
<tr>
<th>Transect Zoning Categories</th>
<th>T1 Rural Preserve</th>
<th>T2 Rural Reserve</th>
<th>T3 Sub-Urban</th>
<th>T4 General Urban</th>
<th>T5 Urban Center</th>
<th>T6 Urban Core</th>
</tr>
</thead>
</table>
**Form Based Zoning**

- "A regulatory approach designed to **shape the physical form of development** while setting only broad parameters for use". [emphasis added]

- "Form-based codes foster predictable built results and a high-quality public realm by using physical form (rather than separation of uses) as the organizing principle for the code. **They are regulations, not mere guidelines**, adopted into city or county law. Form-based codes offer a powerful alternative to conventional zoning." [emphasis added]

---

**Form Based Zoning**

- Prescriptive and uses graphics extensively

- Clear and objective design standards.
  - Can be administered by staff w/few or no public hearings

- Regulates zoning by:
  - building type
  - street type
  - location
  - transect
  - ecozone or combination

---

**Form Based Zoning**

- Goal to produce type of "place" rather than "use".

- Characteristics:
  - Focuses on "form" before "function"
  - Mixed-use development
  - Development of town centers
  - Commercial structures to the sidewalk and oriented toward the street (parking behind the structure)
  - Provision of open space
  - Transit and pedestrian orientation
  - Absence of uses and dimensional standards

- Best codes are hybrids.

- Used most extensively for new communities and rapidly urbanizing areas.
SUMMARY

- **Master Plans**
  - Establish vision for community (region, county, city)
  - Establish goals, policies and strategies to achieve vision
  - Required of most Nevada counties and cities
  - Developed and adopted by planning commissions; approved by governing bodies

- **Zoning**
  - Simply a tool, not a plan
  - Not required in Nevada; but if adopted, must comply with adopted master plan
  - Many new & innovative zoning tools to achieve master plan vision

Downtown Fernley, NV
Eminent Domain

Local Leaders Institute
University of Nevada Cooperative Extension
Saturday, Jul 20, 2013

Eminent Domain

Legal Structure

Process and Uses

Touching the Third Rail

History of Eminent Domain in the United States

"Follow me, boys... another town needs saving!"
Legal Structure

Webster’s Dictionary: “The right of a government or its agent to expropriate private property for public use, with payment of compensation.”

Legal Structure

In Nevada: NRS Chapter 37

The power of eminent domain rests in the 5th Amendment to the US Constitution:

“…nor shall private property be taken for public use without just compensation.”

NRS Chapter 37 – Eminent Domain
https://www.leg.state.nv.us/NRS/NRS-037.html#NRS037Sec009

NRS 37.010: Public uses for which eminent domain may be exercised.

– (o) Redevelopment. The acquisition of property pursuant NRS 279.382 to 279.685 inclusive.

– NRS 278.368: Definition of “blight”.
NRS 37.038: Private property subject to condemnation.

- (1) All real property belonging to any person, company or corporation.
- (2) Lands belonging to the State, or to any county, or incorporated city or town, not appropriated for public use.
- (3) Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

- (4) Franchises for toll roads, toll bridges, ferries, and all other franchises shall not be taken unless for highways, railroads or other more necessary public use.
- (5) All rights-of-way for any and all purposes mentioned in NRS 37.010, and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right-of-way or improvement or structure thereon.
- (6) All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

Legal Structure

- The 5th Amendment:
  - “Public Use” Clause
  - “Just Compensation” Clause

- Up through to the 1950’s, State and Federal Courts emphasized the “Public Use” Clause – roads, schools, parks, etc.
It's Application and Use

Police Power and US Supreme Court:

- Hadacheck v. Sebastian (1915): “zoning” and “land use restrictions” ruled an appropriate use of a government’s policy power.

- Lincoln Trust Company v. Williams Building Corporation (1920): municipalities had the right to use police power to restrict and refuse certain land uses.

It's Application and Use

US Supreme Court:

- Berman v. Parker (1954): “public use” expanded to include slum clearance and acquisition of real property.

- Poletown Neighborhood Council v. Detroit (1981): “public use” expanded to include “new job creation” (465 acres of privately owned land transferred to GM).

- Hawaii Housing Authority v. Midkiff (1984): “public use” expanded to include the development of affordable, public housing.

It's Application and Use

Poletown Neighborhood Council v. Detroit:

“...the power of eminent domain is to be used in this instance primarily to accomplish the essential public purpose of alleviating unemployment and revitalizing the economic base of the community. It would benefit a small portion of the public. The benefit to a private interest is merely incidental”.

- Majority Opinion of the Court Ruling
It’s Application and Use

Fulton and Shigley (2005), It’s expansion to the world of economic development:

• To overcome “hold-outs”.

• To “write-down” land costs and assemble land.

In Economic Development

“Write-Downs” and Land Acquisition: (example)

– Private Developer - $100 million project. Needs to acquire 10 acres costing $30 million. Has only $20 million budgeted for land assembly.

– $30 million in Agency-City “eminent domain” costs.

– Agency-City sells the property to Developer for “below market cost”: i.e. $20 million, $1 million, $1, etc.
After Kelo v. City of London (2005)

Emerson and Wise (1997):

- Public Opinion had begun to "sour" against both regulatory and physical "takings".
- 43 states by 1997 had adopted or were considering one of four different "anti-takings" legislative reforms:
  - Preliminary Measures
  - Procedural Changes
  - Assessment Provisions
  - Compensation Measures


"What's mine is mine ... and what's yours is mine!"
The Run-Up to Kelo
Emerson and Wise (1997):
- Preliminary Measures: 7 States
- Procedural Modifications: 13 States
- Assessment Laws: 17 States
- Compensation Status Revision: 6 States

And then there was Kelo...
2. Court reaffirmed current interpretation of US Federalism.
3. Court reaffirmed Local Government’s RIGHT to pursue Economic Development.

...and a New World was Born.
Goodin (2007), Three Immediate Impacts:
1. Narrowing of the Definition of Public Use by State Governments.
2. Increased State-level Statutory Compensation "Minimums".
3. States created more "extensive procedures" regarding takings of private property.
No More Eminent Domain!

Goodin (2007), Three “Future” Impacts:

1. Legislation that prohibits Eminent Domain for Economic Development Purposes.
2. Create “Judicial Confusion” – broad definition of “blight”.
3. Effective Restriction of Eminent Domain – narrow definition of “blight”.

People “HATE” Eminent Domain

Somin (2007):

<table>
<thead>
<tr>
<th>Household Income</th>
<th>% Agree with Kelo Decision</th>
<th>% Disagree with Kelo Decision</th>
<th>% Strongly Disagree with Kelo Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $10,000</td>
<td>25%</td>
<td>75%</td>
<td>18%</td>
</tr>
<tr>
<td>$10,000 - $24,999</td>
<td>20%</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>$25,000 - $34,999</td>
<td>18%</td>
<td>82%</td>
<td>20%</td>
</tr>
<tr>
<td>$35,000 - $49,999</td>
<td>13%</td>
<td>87%</td>
<td>18%</td>
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<td>$50,000 - $74,999</td>
<td>15%</td>
<td>85%</td>
<td>18%</td>
</tr>
<tr>
<td>$75,000 - $150,000</td>
<td>25%</td>
<td>75%</td>
<td>20%</td>
</tr>
<tr>
<td>Over $150,000</td>
<td>32%</td>
<td>68%</td>
<td>40%</td>
</tr>
<tr>
<td>All Groups Total</td>
<td>18%</td>
<td>81%</td>
<td>63%</td>
</tr>
</tbody>
</table>

Source: Reproduced from Somin (2005), November 2005 Saint Index

Future of Eminent Domain

“It’s easy... blight is whatever we say it is!”
What is the “Future”? 

- We don’t yet…we are still dealing with Kelo.

Efficiency? Economy? Equity?

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University of Nevada Cooperative Extension
Saturday, July 20, 2013
Types of Economic Development

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Sunday, July 21, 2013

Economic Development – Approaches

• What is Economic Development?
• Economic Development in Nevada – AB 449
• The Comprehensive Economic Development Strategy (CEDS)
• Funding Economic Development

What is Economic Development?

• Fundamentally, a function of the public sector.
• A set of comprehensive policies, programs, and projects designed to help:
  – Create mid to high skill level jobs.
  – Create jobs that pay mid to high level wages.
  – Help Stabilize local, regional, state-wide revenues.
  – Offer individuals meaningful opportunities for general upward mobility.
  – Improve the quality of life in a particular community.
What is Economic Development?

Property and Non-Property Based Strategies:
– Real Estate and Land Reuse Strategies
– Economic Development Marketing and Attraction
– Tech-Transfer and Technology-Based Strategies.
– Small Business and Entrepreneurial Development
– Neighborhood and Community-Based Development
– Workforce and Job Training Development

Economic Development in Nevada – AB 449

Nevada Assembly Bill (AB) 449 (2011):
– Restructured economic development efforts throughout Nevada.

Economic Development in Nevada – AB 449

Nevada Assembly Bill (AB) 449 (2011):
– Creation of the Catalyst Fund
– Creation of the Knowledge Fund:
  • Recruitment, hiring, and retention of faculty and teams to conduct research in science and technology
  • Research laboratories and related equipment.
  • Construction of research clinics, institutes, and facilities and related buildings.
  • Matching funds for federal/private grants that further economic development.
Economic Development in Nevada – AB 449

The State Plan:

– Objective 1: Establish a Cohesive Economic Development Operating System.
– Objective 2: Advance Target Sectors and Opportunities in the Region.
– Objective 3: Expand Global Engagement.
– Objective 4: Catalyze Innovation in Core and Emerging Industries.
– Objective 5: Increase Opportunity Through Education and Workforce Development.

US EDA and The Comprehensive Economic Development Strategy (CEDS)

Why Plan?

– It shapes a community's future.
– It provides a structure for mutually accepted goals and a common agenda.
– It defines the purpose of the community group.
– It balances community goals with realistic local resources.
– And…YOU HAVE TO!

US EDA and The Comprehensive Economic Development Strategy (CEDS)

“CEDS are designed to bring together the public and private sectors in the creation of an economic roadmap to diversify and strengthen Regional economies. The CEDS should analyze the Regional economy and serve as a guide for establishing Regional goals and objectives, developing and implementing a Regional plan of action, and identifying investment priorities and funding sources”.

- Section 303.7 Requirements for Comprehensive Economic Development Strategies.
CFR Title 13, Part 301 “Eligibility, Investment Rate and Application Requirements”
Subpart C – Economic Distress Criteria; Section 301.3 “Economic Distress Levels”:

1. An unemployment rate that is, for the most recent twenty-four (24) month period for which data is available, at least one (1) percentage point greater than the national average unemployment rate;

2. Per capita income that is, for the most recent period for which data are available, eighty (80) percent or less of the national average per capita income; or

3. A Special Need, as determined by the EDA.


- Section 303.1: Purpose and Scope
- Section 303.3: Application Requirements and Evaluation Criteria
- Section 303.7: Requirements for Comprehensive Economic Development Strategies

CEDS Component Parts, Section 303.1

- “…must be part of a continuous process involving the active participation of Private Sector Representatives, public officials, and private citizens…”

- Include: (a) analyzing local economies, (b) defining economic goals, (c) determining project opportunities, and (d) formulating and implementing an economic development program that includes systematic efforts to reduce unemployment and increase incomes.
CEDS Component Parts, Section 303.3
Planning Investment Awards:
1. Proposed scope of work.
2. Qualifications of the Eligible Applicant.
3. Involvement of the Region’s business leadership at each stage of the CEDS.
4. Broad-based representation/involvement of the Region’s civic, business, labor, minority and other interests.
5. Feasibility of the scope of work to “create and retain higher-skill, higher-wage jobs through implementation of the CEDS”. (Typically excludes Retail and other Service-Sector jobs)

CEDS Component Parts, Section 303.7
Technical Requirements:
1. Background of the region’s economic development situation.
2. Economic and community development problems and opportunities.
3. Regional goals and objectives (more employment does not equal a goal or objective; SPECIFIC).
5. Suggested projects and jobs created (SPECIFIC).
6. Identifying/prioritizing VITAL PROJECTS.
7. Regional economic clusters.
8. A plan of action (SPECIFIC – Year 1, Year 2, Year 3, etc.; Dollars spent per project; No. of Jobs created; Responsible agency).
10. Methodology tying the CEDS with a State Plan.

CFR Title 13, Part 304 – “Economic Development Districts”
• Section 304.1: Designation of Economic Development Districts: Regional Eligibility
• Nevada Assembly Bill (AB) 449 (2011)
• Nevada Assembly Bill (AB) 182 (2011) and NRS 277B; Inland Port Legislation
“General” Steps in the Process:

Step 1: County Commission/Municipality authorizes staff to proceed with the development of a CEDS (update to the Economic Development Element of your General Plan). A Resolution.

Step 2: Determine whether or not to use a consultant (hire a consultant) or develop CEDS internally.


Step 5: Two Public Hearings, 30 days apart with notification posted 30 days prior to both Public Hearings. Two readings of the same Ordinance.

Step 6: Upon adoption of the CEDS (Economic Development Element), wait for mandatory “Challenge Period”.
Funding Economic Development – Some Approaches

- Redevelopment (NRS 279)
- General Improvement Districts (NRS 318)
- Special Assessment Districts (NRS 271)
- Tax Increment Areas (NRS 278C)
- Tourism Improvement Districts (NRS 271A)

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Economic Development – Approaches

“...economic developers are fast learning the lesson that they must collaborate to compete successfully. Collaboration can take a variety of forms: two local communities partnering to cut costs and pool resources, a multicounty region banding together to increase its economic critical mass and enhance its status as a player in the global marketplace, or several contiguous states uniting to protect and leverage a high-value natural resource (often called interregionalism), among other examples.”

- “Economic Development Strategies for State and Local Practice”
  Steven Koven and Thomas Lyons

Organizing Economic Development

- Economic Development is REGIONAL.
  - Regional Transportation Authorities
  - Regional Convention and Visitors Authorities
  - Regional Utility Companies
  - Regional Councils of Governments

- Markets organize themselves regionally.
Strategic Economic Development Planning – Why go Regional

- Being competitive in a global economy.
- Need to leverage the resources of one community with the resources of others.
- Need to focus on Mutual Goals and Mutual Challenges.

Some Examples of Regional Economic Development

- Wisconsin Economic Development Association:
  "Collaboration is a high degree of COMMITMENT to working with others. It goes far beyond cooperation, which features mutual respect and a lassiez-faire approach to development."

- TriadWorks (North Carolina):
  - Regional goal of improving individual and business quality of life.
  - Understanding of the assets and strengths of each partner.
  - Facilitative approach among government agencies.
  - Collaboration among private/public sectors.
  - Planning that meets present/future education/training needs of individuals/employers in the region.
Finally...Beyond Organization

- Get “wins” on the board.
- Celebrate economic development successes.
- Be honest – this is going to take time.
- Be honest – this is going to be hard work.