

IDEAS

Community Input Is Bad, Actually

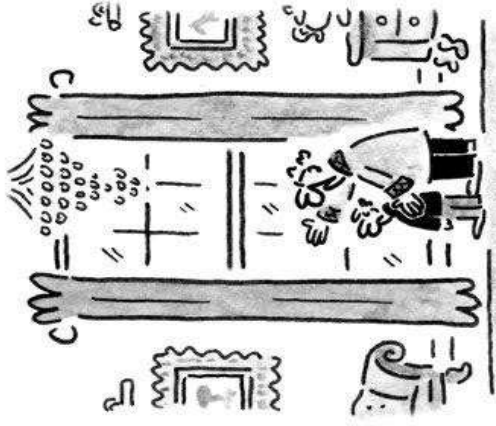
Angry neighborhood associations have the power to halt the construction of vital infrastructure. It doesn't have to be this way.

By Jerusalem Demsas

Designing Effective Land Use Processes



MATT



*'One day, son, I'll object
to you building your
own house nearby and
spoiling my view'*

MATT



*'We hope to buy the first one
and then object to the other
199 being built'*

I understand that it's on Main Street, the major thoroughfare in our town, but we don't need that. It disrupts the feel of our city, our home town. There are plenty of homes on the market now that aren't selling. Even with price reductions they continue to sit on the market. Why would we want to add more homes? If people want town homes or apartments, they are welcome to move to a different city. We need to keep our home town as special and unique as the majority of the people living here want it to be. If you continue to approve every rezone that is proposed, our town will become just like every other city.

I will continue to write and oppose every one of these proposed rezones until I feel my voice is being listened to. You may not take this seriously, but I do! I have seen what happens to a lovely, quiet community that continues to build like this and I don't want that for my family, my neighbors, my friends, or my fellow community members



I moved to this town with my family of 6 just over a year ago. We moved due to a job relocation from out of state where we had lived in a small community like our own for 10 years! During those 10 years I watched city parks be turned into townhome communities. My child's gym was torn down for senior housing. The traffic went from great to terrible because the streets were not designed for so much traffic. Crime increased significantly due to the growing number of people. There was a substantial uptick in traffic accidents and fatalities, lots of them involving innocent children.



FIXER-UPPER

How To
Repair
America's
Broken
Housing
Systems

JENNY SCHUETZ

READ BY SUZIE ALTHENS

We have this system where local
ments are the gatekeepers for new
production,” says Jenny Schuetz, a senior
at the Brookings Institution who examines
onal housing shortage in her book.
governments, in turn, have outsourced a lot
authority to existing residents, so
homeowners in particular have
ally veto power over proposals to build new
ousing.”

Researchers sometimes call this phenomenon “citizen voice.” Because I’m fond of both citizens and voices, I don’t like this term. I prefer *vetocracy*—rule by veto—which is ...systems that empower minority objectors to stop anything from happening. Local *vetocracy* sounds appropriately vomitously to describe this situation.

... you might say there’s nothing wrong with people offering feedback on construction that will affect their neighborhood. Isn’t this just democracy in action? Well, no. Democracy is government by the people—all of them. By contrast, local *vetocracy* is government by a very small group “yelling loudly with [their] lawyer on speed dial.”

When you turn over governance to the most litigious shouters, you implicitly allow older and richer homeowners to block construction for younger, poorer renters. That’s not a recipe for housing abundance. It’s a recipe for the status quo.



A Popular Latest Give a Gift

The Atlantic Newsletters My Account EXPLORE

PROGRESS
A series about big problems and big solutions

Why Your House Was So Expensive

Material-cost inflation, anti-building rules, NIMBY attitudes, and barriers to innovation have created a housing-affordability crisis.
By Derek Thompson

The traditional justification for public meetings about zoning is that commenters represent the public. The authors disprove this idea: commenters at zoning meetings are much more likely to be homeowners as opposed to renters, and are whiter, older and more male. In the towns surveyed, 73 percent of commenters were homeowners, as opposed to 46 percent of all voters. Only 5 percent of commenters were nonwhite, as opposed to 13 percent of all voters. Nonwhites were generally more pro-housing than whites; just under 15 percent of white commenters supported new housing, as opposed to 45 percent of minorities.



Responding to (comments), the applicant explained the 348 parking spots in the proposal already meet and go above the city code requirement of 335 parking stalls, but (a councilor) maintained his position that there still needed to be more parking spaces for private residents. After an hour of logistical sparring, (the councilmember) settled on approving the proposal if (the applicant) added 24 additional parking units. The applicant agreed to 20, which the rest of the council approved.

- Local Utah news story



Types of Actions

• **Legislative Action**

- Adoption or amendment of General Plan
- Adoption or amendment of Land Use Ordinances
- Zonings or rezones
- Annexations

• **Administrative Actions**

- Issuance of building permits
- Site plan reviews
- Conditional use permits
- Subdivision reviews
- Land use application approvals

For Administrative Actions

- “the opposition of neighbors is not one of the considerations to be taken into account” when determining whether to issue a development permit.

• - Davis County v. Clearfield City

- “the consent of neighboring landowners may not be made a criterion for the issuance or denial [of] a conditional use permit.”

• - Thurston v. Cache County







It is important to remember the purpose of evidentiary zoning hearings. Unlike legislative hearings, they are not designed to solicit broad public opinion about how the board should vote on the matter before it. Rather, they provide an opportunity for the board to gather the facts it needs to apply policies already set in the ordinance. Therefore ... the standards on gathering evidence are much more strict than they are for legislative hearings.

...This includes decisions on variances, special- and conditional-use permits, and appeals of administrative determinations.

UNC SCHOOL OF GOVERNMENT
About Public Officials Topics Courses Publications Blogs Resources Giving Knapp Library
MPA Degree


Resources | Legal Summaries

Zoning Hearings: Knowing Which Rules to Apply

David W. Owens
January, 1997
Legal topic(s)

Summary:
Armed with petitions, lapel pins, and lawyers, 200 agitated citizens crowd into the courthouse to voice their objection to a proposed rezoning. They have been writing and calling the county commissioners ever since the notice of the hearing appeared







David W. Owens
Greigys Hall Coates Professor of Public Law and Government

Since the purpose of an evidentiary hearing is to carefully gather relevant facts to aid in decision making, restrictions on what can be heard and how it can be heard are applied to these hearings. ... it is inappropriate in an evidentiary hearing to consider nonexpert personal opinions or hearsay testimony.



UNC SCHOOL OF GOVERNMENT
About Public Officials Topics Courses Publications Blogs Resources Giving Knapp Library
MPA Degree


Resources | Legal Summaries

Zoning Hearings: Knowing Which Rules to Apply

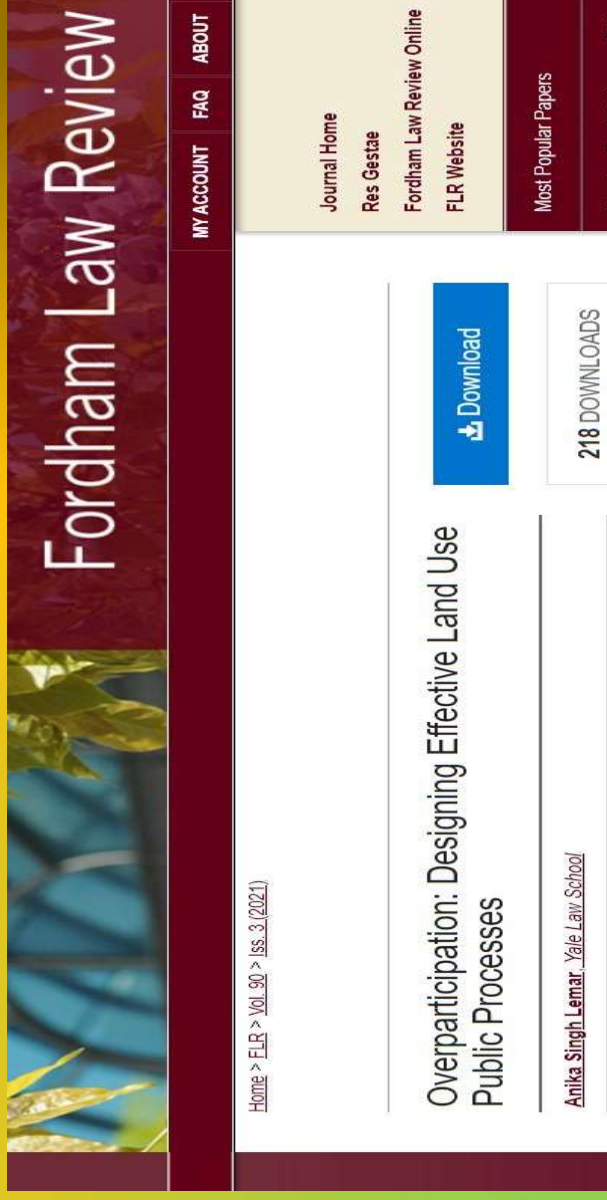
David W. Owens
January, 1997
Legal topic(s)

Summary:
Armed with petitions, lapel pins, and lawyers, 200 agitated citizens crowd into the courthouse to voice their objection to a proposed rezoning. They have been writing and calling the county commissioners ever since the notice of the hearing appeared



David W. Owens
Gleaves Hall Coates Professor of Public Law and Government

- *Evidentiary hearings are public but not generally open to public participation. One may seek to intervene if the applicable statute expressly permits or if one has an interest that may be adversely affected by the proceeding. ... The Model State APA requires that evidence be relevant and material: “The presiding officer may exclude evidence ... if the evidence is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds”*



Fordham Law Review

MY ACCOUNT FAQ ABOUT

Journal Home
Res Gestae
Fordham Law Review Online
FLR Website
Most Popular Papers

Home > [FLR](#) > [Vol. 90](#) > [Iss. 3 \(2021\)](#)

Overparticipation: Designing Effective Land Use Public Processes

Anika Singh Lemar, [Yale Law School](#)

Download

218 DOWNLOADS



The Salt Lake Tribune

Can neighbors actually stop that gas station near Sugar House Park?

Reflecting constituents' sentiments as well as her own personal views as a Sugar House resident, she said: "This is not what is wanted. It is not the best use for that corner."

"Why are we even at this point with this project if it's a conditional project?" he asked in an interview. "No one in the community is for it, and that seems to me to be enough of a 'condition.'"

The city's criteria for reviewing the project, the park authority's board president wrote, requires it to decide whether the gas station matches the "character of the site" and is consistent with "adjacent uses."
"The gas station's proposed use," she said, "cannot meet those requirements."

The City Council member meanwhile, has vowed to vote against the Kum & Go proposal if it comes before the council — but as conditional use permit, turns out that is unlikely to happen.

Chapter 9a Municipal Land Use Development and Management Act

Part 1 General Provisions

Part 2 Notice

Part 3 General Land Use Provisions

Sections 301, 302 – **Planning Commission**

Part 4 General Plan

Part 5 Land Use Regulations

Part 6 Subdivisions

Part 7 **Appeal Authority** and Variances

Part 8 District Court Review

Part 9 Vested Critical Infrastructure Materials Operations

Part 10 **Land Use Authority and Land Use Decisions**

NOW, BACK TO
THE LEGISLATIVE
HEARINGS...

DOES PUBLIC INPUT MAKE DECISIONS WORSE?

You get public input from meetings, phone calls, emails, social media, online surveys or other online engagement. Maybe all of the above.

But how often does the public input **sentiment** from these channels **go against** what the majority of the public actually thinks? **What's that error rate?**

We looked through 300 surveys for answers. **It's bad news** for decisions and trust.

Data for Decisions	Error Rate	Trust Grade
 Make decisions based on public input sentiment	70%	F
 Flip a coin	50%	F
 Make decisions opposite to public input sentiment	30%	C-
 Make decisions based on scientific survey data	<5%	A

3 tips to help ignore the noise, but not the public

Research also shows that **97% of governments** have their decisions influenced by these **unrepresentative** voices. So what can you do differently, to do better?

- Listen only for useful facts you didn't know – that are new, true, and for you
- Ignore personal preferences you hear, or claims about community preferences
- Only use scientific community survey data – for true community sentiments

 **FlashVote** The scientific way to survey and engage communities.



Sometimes the objections to new homes from Nimby campaigns stress issues such as congestion, public services, and the character of the local neighbourhood. But wealth inequality grows regardless of the stated aims of activists.

The core problem is that although the planning system goes to great lengths to incorporate the views of existing residents..., **the interests of future residents and renters are under-represented in the planning process.** British homeowners are more likely to oppose new homes in their neighbourhood, and evidence from the US suggests those who attend planning meetings are more likely to be homeowners and have unrepresentative, minority objections towards new supply.



PUBLIC HEARINGS – PROBLEMS AND OPPORTUNITIES

**PAUL ALLRED, RETIRED, M.S. AICP (1994), COMMUNITY
DEVELOPMENT DIRECTOR, CENTERVILLE CITY & HOLLADAY,
UTAH**

ADMINISTRATIVE HEARINGS PROBLEMS:

- Unnecessary
- Expensive
- Misleading
- Confusing
- Time consuming
- Frustrating and harmful to Staff and hearing bodies

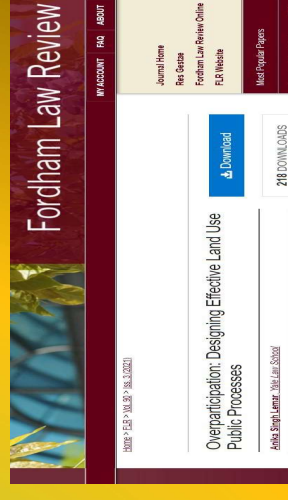
OUR SHARED RESPONSIBILITIES (HEARINGS CONT.)

- ❑ PUBLIC SERVANTS INCLUDING P.C. / C.C. HAVE AN OBLIGATION TO:
 - ❑ BE INFORMED ON MECHANICS OF PUBLIC HEARINGS
 - ❑ BE OPEN-MINDED AND TEACHABLE
 - ❑ UNDERSTAND BASICS OF LAND USE LAW, FACTS AND TRENDS
 - ❑ CONSIDER PROFESSIONAL RECOMMENDATIONS OF STAFF
 - ❑ BE WILLING AND ABLE TO MAKE DIFFICULT RECOMMENDATIONS AND DECISIONS IN THE FACE OF PUBLIC PRESSURE
- ❑ LEAD, LEAD LEAD!!

THOUGHTS ON PUBLIC COMMENTS, NIMBYISM,

- NIMBY = PERHAPS THE MOST CONSISTENT TYPE OF PARTICIPANT AT HEARINGS. EXAMPLES, ANYONE???
- OUTRAGEOUS, ILL-INFORMED, COMMENTS MUST BE MINIMIZED, REDUCED, MAGINALIZED AND/OR NEUTRALIZED THROUGH PROPER MEETING MANAGEMENT AND INJECTION OF COUNTERING INFORMATION WHERE AND WHEN POSSIBLE BY COMMISSIONS, COUNCILS, BOARDS AND STAFF.
- HEARINGS/DECISIONS **MUST** BE MADE WITH PERSPECTIVE OF THOSE WHO ARE NOT PRESENT – THE VERY YOUNG, THE OLD, THE WHO ARE STILL TO COME – NOT JUST FROM THE PERSPECTIVE OF THOSE “”HAVE’S”, THE WELL-ESTABLISHED, THOSE WHO SHOUT THE LOUDEST, THOSE WHO THREATEN.
- OBJECTIVE THINKING AND OBEJCTIVE DECISIONS ARE THE ENEMY OF NIMBY AND ASSIST IN SUPPORTABLE DECISION-MAKING.
- URBAN PLANNING FAILS WHEN IT ALLOWS, OR EVEN PERPETUATES, THROUGH IMPROPER PROCESSES, MEETINGS AND ORDINANCES, DECISIONS WHICH DO NOT TAKE INTO ACCOUNT THE RAMIFICATIONS AND CONSEQUENCES OF SUCH DECISIONS ON FUTURE POPULATIONS.
- OUR ACTIONS OF TODAY SHOULD CONSIDER AND INCLUDE A “WHOLISTIC” VEW OF THINGS AS THEY ARE NOW AS WELL AS HOW THINGS MAY BE WELL INTO THE FUTURE. THIS IS CALLED “PLANNING”!
- TOUGH DECISIONS SHOULD NOT BE “KICKED DOWN THE ROAD” FOR THOSE WHO FOLLOW US TO MAKE.

AFH rubric requires agencies to “[i]nclude a summary of any comments or views not accepted and the reasons why.” The requirement that the agency explain its reasoning and respond to the arguments is key. Narrowing the scope of testimony, ... does not address the problem of veracity. Therefore, rather than allow an individual’s testimony—whether or not true—to stand on its own, the process ought to require bureaucrats and commissioners to address in writing the substance of all comments made, thus limiting a comment’s effect and impact if it is irrelevant or untrue or a resident overstates its importance. Requiring planners and commissioners to issue reports elucidating the results of public participation and the planners’ and commissioners’ responses to those comments serves an important documentation role, as well. ... Planning and zoning laws should require planners and commissioners to explain their decisions rather than simply say that members of the public supported or did not support a particular choice. If an explanation is not required, there is no protection against the possibility that a proposal simply lost a public hearing popularity contest.



The screenshot shows the top navigation bar of the Fordham Law Review website. On the left, there are links for 'Journal Home', 'New Cases', 'Fordham Law Review Online', and 'F.L.R. Website'. In the center, there is a search bar and a 'Download' button. Below the search bar, the article title 'Overparticipation: Designing Effective Land Use Public Processes' is displayed, along with the author's name 'Anna Sophia Lemay, NYU Law School'. On the right side, there is a '218 DOWNLOADS' counter and a 'Most Popular Pages' link. The Fordham Law Review logo is visible in the top right corner.

