

PUBLIC PARTICIPATION IN LAND USE PROCESSES









Public Participation is Part of Land Use



DEPARTMENT OF COMMERCE
HERBERT HOOVER, SECRETARY

**A STANDARD
STATE ZONING ENABLING ACT
UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING
REGULATIONS**

BY THE
ADVISORY COMMITTEE ON ZONING

APPOINTED BY SECRETARY HOOVER

CHARLES B. BALL	Secretary-Treasurer, City Planning Division, American Society of Civil Engineers.
EDWARD M. BASSETT	Counsel, Zoning Committee of New York.
ALFRED BETTMAN	Director, National Conference on City Planning.
IRVING B. HIETT	Ex-President, National Association of Real Estate Boards.
JOHN IHLDER	Manager, Civic Development Department of the Chamber of Commerce of the United States.
MORRIS KNOWLES	From the Chamber of Commerce of the United States; Chairman, City Planning Division, American Society of Civil Engineers.
NELSON P. LEWIS*	From the National Conference on City Planning and National Municipal League; Past Presi- dent, American City Planning Institute.
J. HORACE McFARLAND	Ex-President, The American Civic Association.
FREDERICK LAW OLMSTED	Master Printer and Civic Investigator.
LAWRENCE VELLER	Ex-President, The American Society of Land- scape Architects; Ex-President, American City Planning Institute.
	Secretary and Director, The National Housing Association.

* Deceased.

JOHN M. GRIES

Chief, Division of Building and Housing, Bureau of Standards
Department of Commerce



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STANDARD STATE ZONING ENABLING ACT

Sec. 4. Method of Procedure. – The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until **after a public hearing** in relation thereto, **at which parties in interest and citizens shall have an opportunity to be heard.**

STANDARD STATE ZONING ENABLING ACT

Footnote 27 : *after a public hearing* : It is thought wise to require by statute that there should be a public hearing before a zoning ordinance becomes effective. There should be, as a matter of policy, many such hearings.

Footnote 28 : *and citizens* : This permits any person to be heard, and not merely property owners whose property interests may be adversely affected by the proposed ordinance. It is right that every citizen should be able to make his voice heard and protest against any ordinance that might be detrimental to the best interests of the city.

STANDARD STATE ZONING ENABLING ACT

SEC. 7. BOARD OF ADJUSTMENT

The board of adjustment shall have the following powers:

- 1. To hear and decide appeals ... (of) decisions made by the administrative official...**
- 2. To hear and decide special exceptions...**
- 3. To authorize upon appeal in specific cases ... variances ...**

STANDARD STATE ZONING ENABLING ACT

SEC. 7. BOARD OF ADJUSTMENT

All meetings of the board shall be open to the public.

The board of adjustment shall ... give public notice thereof, as well as to the parties in interest... .

The Standard Act's distinction between zoning decisions and adjustment decisions comports with administrative law's distinction between legislative and adjudicative proceedings. Zoning adoption and changes implicate broader interests. Adjudicative proceedings, applying a generally applicable standard to a single parcel, present narrower issues.



Types of Actions

• Legislative Action

- Adoption or amendment of General Plan
- Adoption or amendment of Land Use Ordinances
- Zonings or rezones
- Annexations
- Handled by PC and Council
- Referrable

• Administrative Actions

- Issuance of building permits
- Site plan reviews
- Conditional use permits
- Subdivision reviews
- Land use application approvals
- Handled by Land Use Authority
- Appealable

LEGISLATIVE ACTION

American Society of Planning Officials

DEPARTMENT OF COMMERCE
HERBERT HOOVER, SECRETARY

A STANDARD CITY PLANNING ENABLING ACT

BY

THE ADVISORY COMMITTEE ON CITY PLANNING AND ZONING

APPOINTED BY SECRETARY HOOVER

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LAWRENCE VEILLER Secretary and Director, The National Housing Association.
Housing Report.

JAMES SPEAR TAYLOR, Secretary

JOHN M. GRIES

Chief, Division of Building and Housing, Bureau of Standards
Department of Commerce



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1928

STANDARD CITY PLANNING ENABLING ACT

SEC. 7. - ... Before the adoption of the plan or any such part, amendment extension, or addition the commission shall hold at least **one public hearing thereon**, ...

Footnote 48 – “*public hearing thereon*” : The public hearing previous to the adoption of the plan or substantial part thereof has at least two values of importance. One of these is that those who are or may be dissatisfied with the plan ... will have the opportunity to present their objections and thus get the satisfaction of having their objections produce amendments..., or at least the feeling that their objections have been given courteous and thorough consideration. The other great value ... is as an educating force; that is, it draws the public’s attention to the plan, causes some ... to examine it, to discuss it, to hear about it, and gets publicity... .

Legislative Action Utah Code

- Planning Commission required to hold one public hearing prior to recommending any general plan, amendment – 10-9a-404(1)
- Planning Commission required to hold one public hearing prior to recommending any land use regulation, amendment -10-9a-502(1)(b)

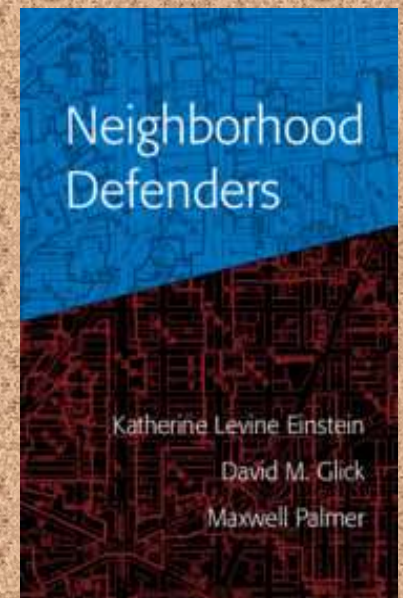
PUBLIC HEARINGS





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. ...** (E)vidence ...suggests those who attend planning meetings are more likely to be homeowners and have unrepresentative, minority objections towards new supply.

The traditional justification for public hearings ... 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.











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.

ADMINISTRATIVE ACTION

Types of Actions

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- Appealable

Administrative Actions Utah Code

- No public hearing required
- SB174 (2023 Legislature)
 - For preliminary subdivision plats:
 - May review in public meeting
 - May hold maximum of one public hearing

STANDARD STATE ZONING ENABLING ACT

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The Nature of Public Hearings



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.

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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
Gladys 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.



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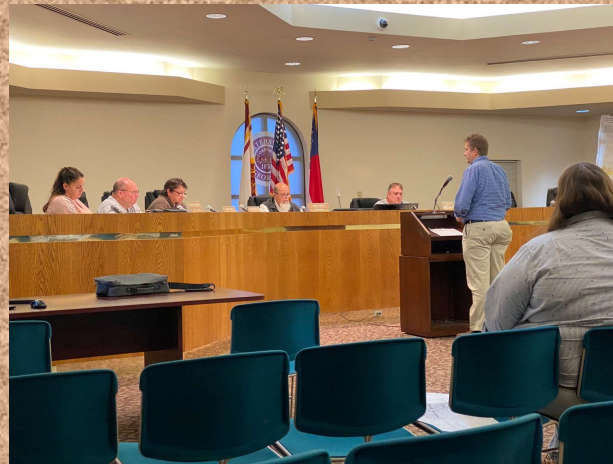
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In Considering Administrative Actions

- “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



Administrative Hearing?



Public Noticing (SB43)



Notices Required				
63G-28-101 and 102				
	CLASS A	CLASS B	OPEN MTGS ACT	
Notice Required:	63G-28-102(1)	63G-28-102(2)	52-4-202(3)	
Public Notice Website (pmn.utah.gov)	x	x	x	
Notice to Newspaper			x	
Post at Principal Office or Meeting Location			x	
Local Public Body Website (\$250,000+ bud	x	x		
Notice Posted in Affected Area	x	x		
Notice Within Designated Area		x		
Content of Notice Summary Statement:				
Title - Subject of Notice		63G-28-101(3)		
Name of Public Body or Government Official				
Clear Statement of the Matter				
General Description of Related Area				
Dates and Deadlines Applicable				
Where to Get a Copy of Complete Notice				
Website - pmn.utah.gov				
Website - Entity Publishing Notice				
Physical Address to Get Notice				
Telephone Number				
Public Location:				
Open to Public - Can Be Privately Owned		63G-28-101(5)		
Closed to Public - But Notice is Visible				
Must be Reasonably Likely to be Seen by Residents				
Notice within designated area:		63G-28-101(1)		
If the area is not described in the ordinance, the entire county or municipality is the area.				
Designated Area Notice - Use First Option Practical to Use:		63G-28-101(3)		
Mail or Deliver to Current Address, or				
Mail or Deliver to Last Known Address. Or				
Post on Property of Owner to be Noticed				
Note: Must verify that notice remains on property				
Particular Notice Requirements		63G-28-102(1)		
If Affected Area is a Street, on or near the Street.				
If Affected Area is an Easement, on or near the Easement.				
If Interlocal Area, within each jurisdiction				
Timeliness		63G-28-102(5)		
Post notice at or prior to the beginning of the period of time required				
Public body or official is not to remove notice during the required time period				
Public body or official verifies the notice remains through the time period and				
replaces the notice if it is removed or damaged.				
Mail notice before the beginning of the period of time.				

Public Noticing (SB43)

49								
50	Specific Notice Required							
51	Every Public Meeting					OPMA		24 hours
52	General Plan - Prepare					A		10 days
53	General Plan - Hearings to Adopt or Amend					A		10 days
54	General Plan - Meetings to Discuss Adopt or Amend					A		24 hours
55	Ordinance - Hearings to Adopt or Amend					B	"area directly affected"	10 days
56	Ordinance - Meetings to Discuss Adopt or Amend					A		10 days
57	Zoning Map - Hearings to Adopt or Amend					B	"area directly affected"	10 days
58	Zoning Map - Hearings to Adopt or Amend					*	"owner of affected property"	10 days
59	Vacate Street - Hearing					A		10 days
60	Planning Advisory Areas - Hearing to Establish					A		1 week
61	Planning Advisory Areas - Hearing to Withdraw Area					B	"area proposed to be withdrawn"	3 weeks
62	Planning Advisory Areas - Dissolve					A		3 weeks
63								
64	*Code requires separate written notice to each property owner - see statute for details.							
65								

APPEALS

- Appeal Authority
- Quasi-Judicial (Utah Code 10-9a-701)
- Notice, public meeting not required unless AA is a body



SB382 – Montana Land Use Planning Act

- A local government shall provide continuous public participation when adopting, amending, or updating a land use plan or regulations
- Public participation in the adoption, amendment, or update of a land use plan or implementing regulations must provide for, at a minimum:
 - (i) dissemination of draft documents;
 - (ii) an opportunity for written and verbal comments;
 - (iii) public meetings after effective notice;
 - (iv) electronic communication regarding the process, including online access to documents, updates, and comments; and
 - (v) an analysis of and response to public comments.

SB382 – Montana Land Use Planning Act

- THE LOCAL GOVERNING BODY SHALL ADOPT A PUBLIC PARTICIPATION PLAN DETAILING HOW THE LOCAL GOVERNMENT WILL MEET THE REQUIREMENTS OF THIS SECTION

SB382 – Montana Land Use Planning Act

- If a proposed development, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning regulations or map and all impacts resulting from the development were previously analyzed and made available for public review and comment prior to the adoption of the land use plan, zoning regulation, map, or amendment thereto, the application must be approved, approved with conditions, or denied by the planning administrator and is not subject to any further public review or comment

SB382 – Montana Land Use Planning Act

- Any final administrative land use decision, including but not limited to approval or denial of a zoning permit, preliminary plat or final plat, imposition of a condition on a zoning permit or plat, approval or denial of a variance from a zoning or subdivision regulation, or interpretation of land use regulations or map may be appealed by the applicant or any aggrieved person
- "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.