



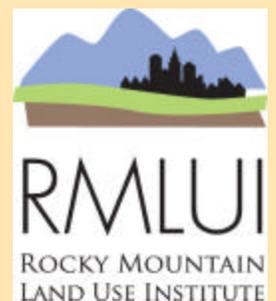
**Beyond the Environment: Socio-Economic  
Sustainability & Meaningful  
Community Input in Land Use Decisions**

*Robin Kniech*

**The Rocky Mountain Land Use Institute  
Sustainable Community Development Code**

Research Monologue Series:

*Community Identity and Governance*



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## **The Rocky Mountain Land Use Institute**

### **About the Research Monologue Series**

The Sustainable Community Development Code, an initiative of the Rocky Mountain Land Use Institute, represents the next generation of local government development codes. Environmental, social, and economic sustainability are the central guiding principles of the code. Supporting research for the code is represented by a series of research monologues commissioned, presented and discussed at a symposium held at the University of Denver in September of 2007. RMLUI and the University of Denver's Sturm College of Law extend its gratitude to the authors of the papers who have provided their talents and work pro bono in the service of the mission of RMLUI and the stewardship of the creation.

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## About the Author

Robin Kniech is an attorney and serves as the Program Director for the non-profit FRESC in Denver, Colorado. She coordinates FRESC's Campaign for Responsible Development (CRD), and works to implement agreements and policies for equity and sustainability in subsidized developments. Robin actively participates in many of Denver's planning process, sometimes serving as an advocate, other times facilitating the direct participation of vulnerable communities including low-income housing residents, renters, and working families. Robin also staffed a coalition that was successful in achieving affordable housing, community access to environmental clean-up processes, and other community benefits at the Old Gates Rubber Factory redevelopment in Denver, Colorado.

FRESC is a non-profit organization. Its mission is to ensure that Colorado jobs pay livable wages with family-supporting benefits, and that families have access to affordable housing and a good quality of life. FRESC seeks to achieve this vision by growing, fueling, and sustaining a long-term movement for economic justice through a collaboration of unions, community organizations, religious leaders, individual workers and neighborhood residents. FRESC utilizes an innovative combination of research, advocacy, non-partisan electoral engagement, and grassroots organizing to build power for working families while holding governments and corporations responsible for the creation of quality jobs, secure health care, affordable housing, and environmentally safe communities. FRESC is part of the national Partnership for Working Families (PWF).

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## Introduction

Over the past fifteen years, a new movement for community-centered land use decision-making has emerged across the country under the banner of “community benefits.” The movement extends from progressive cities on coasts like Los Angeles and Boston, to more industrial cities such as Milwaukee and Pittsburg, to large metropolitan regions facing significant sprawl pressure like San Diego, Denver, and Atlanta. Many of these efforts coordinate through the national Partnership for Working Families (PWF). Community Benefits are an effort to shape land use plans by maximizing community voices in processes that are often controlled by developers and public officials. In the model, *sustainable* is defined broadly as development that economically balances jobs and housing, environmentally balances energy efficiency and any clean-up issues, and equitably addresses challenges posed to vulnerable residents to ensure the long-term stability of families and local businesses, therefore maximizing the sustainability of the whole community. Land use decisions that achieve greater socio-economic sustainability have a powerful potential to minimize displacement or other negative impacts of development on low-income individuals, to affirmatively reduce poverty by capturing the economic opportunities that flow from development, and to achieve more resilient neighborhoods with lower risk of both gentrification and blight or disinvestment.

Although not primarily focused on zoning or community planning, the movement has had to engage these systems on a daily basis in order to achieve its goals. Land use decisions, whether related to zoning, redevelopment or environmental clean-up, are made in political contexts where not all stakeholders have equal access or power. In spite of the very best efforts of well-intentioned planners, if there are not policies and mechanisms in place to ensure attention to socio-economic factors and the involvement of vulnerable communities that may be impacted, this political process will often fail to achieve land use decisions that could be viewed as sustainable from the perspective of these traditionally disempowered groups. Based on the experience of FRESC and its PWF partners, attention to socio-economic issues *and* involvement are both critical, because not only will involvement result in better analysis and decisions on the socio-economic factors, it will also provide the political buy-in that is necessary to advance a sustainable land-use decision through all stages of the public process.

The following are lessons learned through the experience of one community based organization, FRESC in Denver, but the insights and suggestions are strongly informed by the experiences of other PWF partner cities and should be applicable to other cities and regions.

FRESC and its PWF partners across the country have found that there are no shortage of public processes associated with community plans, zoning approvals, and redevelopment projects. Many of these are long and costly, but still leave many stakeholders out, especially those from vulnerable communities. Those who do participate often feel like they were not a part of a meaningful, bi-directional process. Good public participation is a matter of quality, not quantity, and the recommendations

below are intended to achieve a more meaningful process where a fuller range of socio-economic and environmental justice issues are addressed earlier in the process for the most important land use decisions. These steps have proven to not only minimize conflict or potentially costly delays in planning processes, but have resulted in more sustainable practices and results in Denver and other cities.

### **Which Projects?: Progressive Levels of Analysis and Community Involvement**

Public meetings and input processes can be expensive to administer, and the longer the process, the greater delay experienced by communities and by private market actors relying on land use decisions. It is not FRESC's position that each and every land use decision warrants a vigorous public process of equal magnitude. Rather, we suggest a two tiered approach involving a straightforward regulatory tier where certain minimum standards apply to all land use decisions, and a more flexible tier that uses key criteria to determine the level of public involvement called for under specific circumstances.

The minimum standard tier may not differ greatly from existing regulations, such as notice to impacted land-owners or those in the immediate vicinity, posting on the property, and posting on an easy to find and read website that includes an optional subscription to receive notice when a new posting has been added to a particular neighborhood or area (newspaper notices are no longer an adequate form of notice). The minimum standard should also include short comment periods for concerned individuals to be heard. Such standards will generally provide adequate opportunity for resident input on an array of run-of-the-mill land use decisions: rezoning a single lot, allowing a home business, single building height or set-back variances. If the underlying concern is sustainability and meaningful input, then the rationale behind this first tier is that small decisions impact a smaller number of individuals and have a smaller impact on the overall sustainability of a community or local economy, so it is appropriate to spend fewer of a government's limited resources on the analysis and input for these land use decisions.

The inverse is also true. Where a larger group of individuals are impacted and where larger land use changes will result, it is appropriate to examine whether a greater expenditure of resources is appropriate in the planning phase to ensure socio-economic sustainability and civic engagement. An example for how to implement a flexible but principled process comes from the matrices used by some environmental clean-up professionals to determine what level of public input is required for a particular environmental clean-up process. One of the best examples is Minnesota's Draft Guidelines on Community Involvement in Risk-Based Site Decision Making.<sup>1</sup> The Minnesota guidelines consider both actual risk to populations, as well as perceptions and levels of outrage as a starting point to determine what level of input is required.

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<sup>1</sup> Minnesota Pollution Control Agency Site Remediation Section, *Draft Guidelines: Community Involvement in Risk-Based Site Decision Making* (1998), accessed at [http://www.pca.state.mn.us/cleanup/pubs/coor9\\_98.pdf](http://www.pca.state.mn.us/cleanup/pubs/coor9_98.pdf).

Where risk and outrage are low, very little process is called for. The higher the actual level of risk and/or the level of community outrage, the greater level of public process will be triggered. The guidelines include a variety of techniques along with evaluation of their advantages and disadvantages for meeting the particular level of community input desired.

Communities often prefer detailed and inflexible regulations where their level of trust in government disclosure is low. To successfully garner legislative and public support for this level of flexibility, and to avoid a one-size-fits all approach, Minnesota had to create a culture of community input and attention to community vulnerabilities among the staff who implement these guidelines. For a similar matrix to be successful for determining levels of community input in major land-use decisions, a similar cultural shift may be required among city departments responsible for implementing any guidelines.

One way to build community trust while transitioning to a flexible matrix for public participation would be to ensure public disclosure of the written tool staff used to develop its recommendation, including their analysis of the risks for displacement, information about the jobs that will be lost or created, and an analysis of any environmental issues. Second, there should be a mechanism for the public to appeal to a higher-up or elected body for more a more intensive input process if they disagree with the staff analysis. For example, Michigan statute requires the agency to hold a public hearing upon petition of 25 community members in any case where the agency did not offer a public hearing of their own accord.<sup>2</sup>

A matrix for determining public participation in a sustainability code should include triggers for greater outreach and deeper public involvement for the following situations:

- Where low-income residents are at risk of direct displacement, or indirect risk as a result of increasing property values
- Where there is real or perceived environmental contamination that poses a moderate or higher risk to humans on the site or in the vicinity
- Where public funds or subsidies will be involved in the land use (redevelopment project, public facility or space, special taxing authority etc.)
- For land use decisions or projects exceeding a certain scope or size (for example, those involving more than 5 acres)
- For any vision plan intended to guide future land use decisions

The following specific lessons learned and proposed practices are intended to apply to those land use decisions or processes where criteria for a higher degree of public participation are met.

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<sup>2</sup> Michigan Compiled Laws, Natural Resources and Environmental Protection Act §324.20120d(1).

## Who?: Leaders and Participants

### A. Facilitation

Facilitation in land-use plans or decisions that are likely to impact vulnerable communities should be conducted by an independent entity that understands the local community, or in the case of discrete development projects where there is a supportive owner, may not require outside facilitation at all. The facilitator should not be a developer or a developer's consultant, but any known or potential developers should be stakeholders in the process. Government planners may be the appropriate facilitator in some circumstances, but the community benefits movement has found that few professional planners are adequately trained in how to facilitate a discussion involving the socio-economic impacts of land use decisions. Too often planning conversations are focused on only the physical elements of sustainability.

In spite of good intentions, many planners seem unaware of, or unable to articulate, their precise accountabilities in a given land use process, leading to frustration over differing expectations of what will really happen with public input. For example, in some land use processes the facilitator will develop a recommendation that is likely to be relied upon by legislative decision-makers who do not have the time to pursue their own detailed inquiries. In this example it will be the planner's decision which, if any, public opinions to accept or reject; that public input is unlikely to be presented to the decision makers unless individuals lobby outside of the official process. In other processes it is the facilitator's role to serve as a neutral, either to help achieve a consensus among the community as decision makers, or to collect public input and encapsulate all opinions for a separate decision-maker who will vet the input. In still other situations the facilitator is a governmental entity or land owner who already has a position, such as its desire to rezone a blighted area to attract investment; in these cases the facilitator is in the position of informing the public and fielding public input to minimize concerns and oppositions, but it is not their role to collect input for the purposes of deciding the entity's position on the ultimate land use decision. Although the role of neutral facilitator is the most ideal for garnering genuine public input and more in-line with the traditional role of a community planner, today's developer-driven and resource-limited land use planning environment may give rise to situations where the planner is playing other roles. Where neutrality is not possible, at a very minimum, greater specificity and clarity about the true weight of public input is critical. Concrete examples and lessons learned on facilitation include:

- In one Denver Transit-Oriented Development (TOD) Station Area planning process, city planners developed a vision for the kind of TOD that could be achieved at various station areas, without any community input. The city then hired an out-of-state consultant to facilitate a more specific plan for each station area that included community input. The facilitator was seen as biased toward the pre-existing vision that had been generated by city staff, and did not have adequate familiarity with the physical features of the neighborhood to provide reliable answers to questions. One particular station area included hundreds of

units of public housing with residents who had never before been involved in land use planning meetings or processes, and the community had deep concerns that the vision for a mixed-use, mixed-income TOD would result in their displacement. All parties recently agreed to start this particular station area process over, with facilitation by locally-based staff of the National Civic League as a neutral party. City staff participated as stakeholders who could offer opinions and input alongside residents, business owners and others (rather than as facilitators), and the group was able to come to consensus on a set of principles that would guide any future land use planning or decision-making at the TOD.

- In situations where there is a high level of community concern and some community element or organization capable of coordinating diverse interests, a constructive negotiation approach may eliminate the need for an outside facilitator. This has been the model for most projects where community benefits have been achieved. A group of community stakeholders facilitates their own process of discussion with the developer, and any public entities that need to be involved. These groups work with developers or public entities to set agendas and ground rules, and they meet regularly on a set of topics of concern. Community stakeholders work together on their own to come to unified principles and to negotiate compromises they are willing to trade off when all goals cannot be achieved. This shifts power and responsibility from the traditional planning process, where a public entity or facilitator collects diverse and sometimes opposing opinions and is charged with selecting the answer or recommendation that will move forward.
- A task-force or process co-chaired by an elected official who is seen as accountable to the community is one way to ensure a more responsive process because of sensitivity to constituent input, where elected officials have the time to truly listen and participate. This model would be most appropriate in the early stages of a land-use vision plan process, and may be legally barred for more specific land use or development planning where elected officials are bound by limitations on ex parte conversations.
- At least one Denver neighborhood organization (Capitol Hill United Neighbors) has had success using a “Study Circle” process for creating meaningful dialogue--rather than a more traditional open forum that only allows for one way vocalization of positions--on neighborhood issues such as the location and nature of services for the homeless.
- Interest-based negotiation has been used in many settings and can be a good model for guiding discussion in a way that avoids the “we want”/“we can’t do it” position-based back and forth of some planning processes. Parties identify values and all possible options, begin with overlapping areas, and proceed toward agreed upon values rather than based upon positions

- In processes where environmental contaminants are at issue, community groups must be provided opportunities to consult with outside experts to achieve confidence in the scientific information provided by government officials/land owners.

## B. Stakeholders

Stakeholders should include representatives of any formal neighborhood associations, but the ordinances of many cities, including Denver, make the city legally accountable to only these formal groups and nearby landowners. This is deeply problematic, as many formal neighborhood associations are disproportionately representative of homeowners, and may not include more vulnerable populations who might be renters, speak languages other than English, etc. Where neighborhoods have institutions that represent under-represented segments of the community, such as community-specific community development corporations, community centers, or organizations serving homeless individuals or unemployed job seekers from the area, these organizations should also be included as stakeholders. These organizations may not be a part of formal neighborhood associations and so may be overlooked when notice is provided only to formal associations. Community based organizations may work with residents or have experience with how land use decisions have impacted this community in the past, or other similar communities. They can also be helpful in reaching out to and including individuals who may not be as responsive to invitations from government entities or developers.



We urge caution for processes that appoint a group of representatives early in the process and then do not include newer individuals as equal stakeholders/voices later in the process. For example, Denver uses an “advisory committee” model frequently in high profile land use processes and projects, such as the redevelopment of the Union Station Transit Hub. The model provides slots for individuals to represent the full

geographic and neighborhood diversity that will be impacted, but rarely reserves slots for those attentive to socio-economic interests. Latecomers and those who do not fit a recognized stakeholder group are allowed to attend and receive the same public information, but only advisory committee members can vote. The results of these restricted votes are then presented to decision makers as the official input of the community.

Asking for a commitment and continuity makes sense to maximize the level of information and dialogue, but after a new individual expresses interest and involvement, they should sit at the same table and have the same voice as those who began the process earlier. For organizations or individuals without the resources to be involved at the highest frequency, there should still be opportunities to be briefed on the information and a mechanism to ensure that any on-going body is accountable to hear and address feedback coming from these sources. Examples of non-traditional stakeholders to include:

- Disability organizations who can often detect unforeseen challenges in pedestrian access and physical design to prevent problems after construction.
- Labor unions and community workforce providers are likely to understand the employment/training needs of the community and may help capture greater economic benefit and deliver a better workforce to employers where the employment implications of land use decisions are factored into discussions and decisions.
- Local schools or children's centers in the area are often more aware of dangerous "short-cut" routes or other pedestrian issues that could be addressed in zoning and site design decisions.

### **When?: At What Point are Community Issues Addressed?**

Community buy-in will be maximized when development codes call for community input early, including in the process of visioning prior to any land use decisions. Too many zoning codes and planning processes utilize community input at the point of reaction to a proposal. Early buy-in helps government and developers in several ways, such as by helping them to discover and investigate potential unexpected ideas early in the process, and by giving them an early opportunity to educate the community on constraints, rather than waiting until the end when tensions and stakes are higher. This also means not waiting to begin public participation until the point of design, which may be too late for community input into sustainability of housing, jobs or other socio-economic elements.

### **What?: Content That Addresses the Full Range of Sustainable Principles**

Planning that involves "charettes" that guide participants through a process of visualizing the physical environment is a very popular trend in many cities. Although an important opportunity for community input on physical design, this is far too-limiting of a method for community to raise the social, economic and health/safety aspects that are

typically of high priority, especially for low and moderate income residents, renters, those representing populations who typically have less of a voice in the development process, etc.

A better process would be one that begins with open ended questions intended to solicit everything that stakeholders like or do not like about the current site or neighborhood under consideration. This allows a wider range of values to emerge. For example, stakeholders may like that there are a lot of children, that it is a diverse neighborhood and there are ethnically targeted groceries and restaurants. They may say that they do not like the fact that kids cut through yards to get to and from school, that there are few job opportunities, and that there is a lot of crime in their alleys. There may be physical solutions to these values such as ensuring new housing is family-appropriate, lighting in the alleys, or maintaining small retail space that is affordable to minority-owned small businesses. But the values will drive the physical discussion, rather than the other way around. Furthermore, some concerns do not lend themselves to a design-based solution. For example, imagine a process that begins with physical issues and stakeholders say they do not want tall building or lots of traffic. If design is dominant, it will make it difficult to consider zoning that would allow a hospital to move in, because hospitals have tall buildings and result in more cars. If, however, the process begins with wider values discussion, and creation of new jobs emerges as a major concern, any discussion of a potential rezoning for hospital uses could proceed quite differently, with discussion of the socio-economic benefits weighed alongside any physical drawbacks.

A resident service-driven discussion can provide similar drawbacks where the process does not begin with values. A process that asks only what kind of businesses individuals would like to see, without examining the kind of jobs that will be created and whether there is a workforce to run those businesses, or housing affordable for that workforce, is going to miss an opportunity to evaluate the socio-economic sustainability of the land use options presented. Where jobs are going to be created as a result of land use changes or decisions, it is appropriate to discuss how low-income stakeholders could benefit from those jobs and the steps that would be required to capture any potential benefit (such as training, local hiring provisions, etc.).

Whether or not required by law to involve the public, a community has a strong right to be aware of planned environmental remediation, or to understand why certain remediation might not be required in spite of the presence of some questionable material.

### **When & Where?: Maximizing Access**

All community input opportunities should be accessible to those who work, those who speak languages other than English, and those with disabilities. Community input sessions should not conflict with other important meetings in the same community. But in cases where there are higher levels of risk, wider impact, or where community sentiment runs strong, processes might need to include more intensive efforts to

increase participation, such as door-to-door canvassing to advertise events, offering food and child care, or other appropriate steps.

### **How?: Transparency and Accountability**

Many local governments have plans or priorities addressing socio-economic matters such as affordable housing, economic development, job creation and family stability while treating zoning decisions and planning processes as if they are disconnected from these issues. Every land use decision contributes to the sustainability balance between jobs and housing in a community, just as the use of materials and design impact the region's air quality and energy consumption. To achieve greater sustainability, it must be made clear that zoning codes and planning processes are accountable to these other plans and priorities.

As previously noted, greater transparency and accountability is required by those who lead community input processes. If a consultant has been retained by a government entity to draft a plan to redevelop a community, they cannot facilitate a process where a community has a meaningful voice in whether or not the area *should be* redeveloped. Examples of the kind of disclosures and accountabilities that should be made transparent to participants include:

- What has the developer already decided, or what parameters do they already know they face (don't pretend something is open for discussion if it really isn't).
- What accountability will the developer or government have to the community input it receives? Is the community's support required? Is the community's input merely being taken into account and final decisions are made by someone else?
- Is the facilitator required to accurately report majority and minority sentiments to decision-makers down the line and to elected officials, even when these disagree with the views of the government agency/staff person/developer?
- Many environmental clean-up documents are available upon request if someone knows where to look and what to ask for and can pay for open records copying fees, but a better process is one where affirmative notice of clean-up plans is provided, critical documents are centrally and freely available, and on-going progress is reported.

### **Sustainability Measures**

- Degree of transparency and accountability of government staff
- Level of participation from all stakeholders, especially vulnerable
- Limitation of direct displacement or indirect displacement of low-income or other vulnerable populations (linguistically isolated, elderly, disabled, etc.)
- Mechanisms to direct economic opportunities to community members with most need (local hiring, job training opportunities, right of first refusal for non-profit to purchase parcels etc.)

- Degree to which wages for any jobs created match the price points of any housing created (inclusion of low-income affordable housing to mitigate mismatch between low-wage jobs and high end housing)
- Availability of independent scientific or environmental results for high risk, high outrage projects
- Degree to which land use decisions strengthen a community's ability to resist unwanted change, such as ability to resist skyrocketing property values leading to gentrification, or ability to resist concentrations of poverty that leave the area at risk for blight or disinvestment
- Inclusion of locally owned businesses that retain and build community wealth

## **Regulatory Code Strategies**

### ***Eliminating Barriers***

- Remove provisions that require longer/costlier public input processes for single property variances, so more attention and resources can be spent on larger scale land use decisions

### ***Incentives***

- Speed approvals for developments that have entered into a community benefit agreement that includes legally binding provisions on jobs, housing, and the environment

### ***Regulations***

- Require independent facilitation for redevelopment projects
- Establish a minimum level of public disclosure and input for small scale land use decisions
  - Website postings along with an option for someone to subscribe to get a notice any time something new is added in their designated area of interest (e.g. a particular neighborhood, anything relating to water quality, etc.)
  - Notice to residents and landowners (not just landowners) in the immediate vicinity; notice to those who may be directly impacted
  - Short opportunity for public comment
- Establish a matrix for government staff to evaluate environmental, social and economic risk factors and level of public sentiment associated with a particular land use plan or decision, along with a progressive range of public input processes to ensure greater community input opportunities on those projects with the highest degree of risk
  - Require public disclosure of the analysis

- Permit community members to petition for an enhanced public participation process (such as a public hearing) upon petition by 25 interested persons in the impacted area
- Require a “Community Impact Report” or Assessment as the guide for conducting public participation prior to any large-scale change in land use or development that could come with potential impacts (i.e. prior to rezoning, street vacation, public subsidies, etc.). Applicants would be required to cover a range of topics associated with their project including:
  - Project Overview
  - Fiscal
  - Employment
  - Affordable Housing
  - Smart Growth
  - Environmental Quality & Amenities (Green Space)
  - Community Business and Services
  - Accessibility (disabled community, pedestrians, children etc)