AUTONOMY, JUSTICE AND EXPERTISE IN LAND USE PLANNING: HOW HOME RULE SHAPES THOUGHT AND POLICY IN ONE NEW YORK TOWN

HUMBOLDT STATE UNIVERSITY

By

Jennifer Anne Mall

A Thesis

Presented to

The Faculty of Humboldt State University

In Partial Fulfillment

Of the Requirements for the Degree

Master of Arts in Social Science:

Environment and Community

December 2011

AUTONOMY, JUSTICE AND EXPERTISE IN LAND USE PLANNING: HOW HOME RULE SHAPES THOUGHT AND POLICY IN ONE NEW YORK TOWN

By

Jennifer Anne Mall

Approved by the Master's Thesis Committee

Dr. J. Mark Baker, Major Professor	Date
Dr. Yvonne Everett, Committee Member	Date
Dr. John Meyer, Committee Member	Date
Dr. J. Mark Baker, Graduate Coordinator	Date
Dr. Jená Burges, Vice Provost	Date

ABSTRACT

AUTONOMY, JUSTICE AND EXPERTISE IN LAND USE PLANNING: HOW HOME RULE SHAPES THOUGHT AND POLICY IN ONE NEW YORK TOWN

Jennifer Anne Mall

A fundamental tension pervades land use planning in New York. As a strong home rule state, New York delegates to each town, village or city the authority to approve, disapprove or modify land use planning and zoning projects. Yet under state law, county planning departments are also required to review and make recommendations on those projects that could have inter-community impacts. While municipal boards ultimately determine whether projects are approved, county planning departments' recommendations can carry significant political weight and sometimes play a major role in determining the fate of land use planning and zoning projects. This thesis will examine the tension between New York State's commitment to municipal home rule, and its insistence that county planners have input into planning and zoning decisions. Through a case study approach, the relationship between one town and its county planning department will be explored, with an emphasis on Section 239 of New York State's *General Municipal Law*. Section 239 of the *General Municipal Law* provides a lens for problematizing the notion of home rule and analyzing how this notion shapes and is shaped by concerns for autonomy, justice and expertise. This thesis seeks to create more openness among planners at all levels, and foster an environment of collaboration,

rather than antagonism, within this power sharing context. Moreover, through a critical examination of the autonomy, justice and expertise questions that surround land use planning, it may be possible to identify planning and general policymaking approaches that more fully incorporate the needs and contributions of all stakeholders, and that more holistically address environmental concerns.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF APPENDICES

INTRODUCTION

In October 2007, the *New York Times* reported on a disagreement between Chabad Lubavitch, an Orthodox Jewish organization, and the Historic District Commission of the Borough of Litchfield, Connecticut. The disagreement centered on Chabad Lubavitch's desire to renovate an existing Victorian-era building in Litchfield's Historic Landmark District, for use as the organization's new synagogue and headquarters (Stuart 2007). The Historic District Commission turned down Chabad Lubavitch's pre-application, arguing that some elements of the renovation would be inappropriate to and noncompliant with the District.

The Borough of Litchfield Historic District Commission was created to review land use projects and prevent changes that are incongruous with the Litchfield National Historic Landmark District's historic and architectural character. Such review is mandated by federal law given the area's status on the National Register of Historic Places, and the Commission is responsible for protecting and preserving the character and integrity of the district. The Commission is comprised of eight volunteers who live within the borough, and are appointed by the borough's elected officials. The Commission's jurisdiction is limited to the exterior features visible from a public way. According to the Town of Litchfield's Historic District Commission website, "even slight changes over time can dramatically alter the appearance of a building and the streetscape," (Town of Litchfield, Connecticut n.d.).

However, despite its mandate, in this case it soon became apparent that the Commission's motives were more likely rooted in anti-Hasidic prejudice than in historic preservation (Siedzik 2010). At a Historic District Commission meeting, the chairperson said that the Commission would allow a synagogue, but not a Star of David. In response to this, Rabbi Joseph Eisenbach of Chabad Lubavitch noted that the Methodist Church two doors down, in fact, featured a Star of David that had originally been part of an old synagogue in another town (Stuart 2007). Another commission member said, "this design will turn Litchfield into a factory town," and a third member, when she learned that the applicant planned to use a type of stone called Jerusalem stone, remarked, "Stone from Israel? We'll have to get the whole town out for this one." The attorney representing the town selectwoman stated that Chabad Lubavitch's plan should be "reviewed as if it were a strip joint," (*Chabad Lubavitch of Litchfield County, Inc., et al., Plaintiffs, v. Borough of Litchfield, Connecticut, et al., Defendants* 2010*)*. All of these statements were made at a public meeting, and recorded in the meeting minutes.

The dispute has resulted in a protracted legal battle that continues today. In its case against the Borough of Litchfield, Chabad Lubavitch cites the Religious Land Use and Institutionalized Persons Act (RLUIPA), a federal law passed in 2000 that provides many protections for religious groups who wish to build houses of worship. RLUIPA was passed in response to the finding that houses of worship, particularly those of minority religions and start-up churches, were disproportionately affected by local land use decisions, and moreover, that these religions were often the targets of active

discrimination. Thus, RLUIPA aims to further clarify what is meant by freedom of religion, and to reaffirm that this freedom supersedes home rule in land use planning and zoning policy (United States Department of Justice, 2007). Citing RLUIPA, Chabad Lubavitch has appealed the Commission's decision (Siedzik 2010). The case has now moved to federal court, with Chabad Lubavitch contending not only that the Commission has not considered the protections afforded by RLUIPA, but more egregiously, that the decision makers have been motivated by prejudice in turning down Chabad's application. It also seems, based on the comments of the Commission, that they misused the historic district designation to exclude a particular religious sect and promote religious segregation.

Chabad Lubavitch raises several important questions regarding decision-making autonomy, social justice and the legitimacy of local and expert knowledge in the context of land use planning. Communities attempting to chart their future courses must consider a multitude of disparate voices and conflicting data sources, and these conflicts are often negotiated in the arena of land use planning and policy-making. For this reason, land use planning is a useful lens for examining the issues identified here.

First, the importance of local autonomy in communities' attempts to chart their own courses for development is unclear, as is the degree to which state intervention infringes upon this autonomy. Although the existence of the Litchfield Historic District Commission gives the appearance of local autonomy, upon closer examination this case demonstrates multiple layers of state intervention in local affairs: federal standards

govern the Historic Landmark District, and federal law (RLUIPA) underlies the current legal battle. Yet there is a strong tradition in the United States of making local decisions at the local level. The tension between local decision makers and larger units of government is evident, and prompts an investigation into the meaning of local autonomy as both a legal and ideological concept, and its importance in land use planning and policymaking.

Second, the justice implications of a strong commitment to local autonomy can be extremely problematic. Here, the statements of members of the Litchfield Historic District Commission make it clear that the Commission was motivated by anti-Hasidic prejudice, and it appears that the legal protections afforded by RLUIPA have been an important safeguard against the whims and preferences of this local entity. As evidenced by this case, in matters of regional importance, or where basic rights such as religious freedom are at stake, it is questionable whether local actors are best suited to make policy decisions. If they are motivated by parochial concerns (here, maintaining the status quo religious segregation in the neighborhood) rather than fostering a vibrant and inclusive society, then clearly the answer is no. Thus, further examination of the frameworks and policies that are best able to achieve just outcomes is warranted.

Third, when a commitment to autonomy creates injustices, a common antidote is to insert experts and expert knowledge into the policymaking process. In *Chabad Lubavitch,* and very often in land use planning, local policymakers are volunteers who possess lay or citizen knowledge, while state and federal actors possess expert

knowledge. The latter are expected to contribute their expert knowledge, and their broader regional perspective, which is assumed to be divorced from local politics. Importantly, it is not the case that local knowledge always equals lay knowledge, or that regional knowledge is always expert knowledge. Locals can certainly possess expert knowledge, and conversely, regional sources can contribute lay knowledge, as will be shown herein. I will use the terms "expert" and "lay" to describe different categories of knowledge contributions to the land use planning and policymaking process, and I will interrogate these categorical distinctions. In a general sense, categories of expert and lay are not analogous to categories of "local" and "regional". Other researchers, however, directly juxtapose "expert" and "local" knowledge, especially when writing in the context of land use planning, where lay knowledge most often comes from local sources. Here, attorneys, the Department of Justice and others with specialized knowledge have played various roles, working to ensure that the Commission ultimately acts in the public's best interest. But the normative frameworks and approaches of expert and lay knowledge can vary widely, complicating efforts to reach optimal policy outcomes. It is clear in *Chabad Lubavitch* that the Historic District Commission was motivated by specific prejudice, but it is perhaps less apparent that experts' analyses are also based on certain normative assumptions. If it is the case that both lay and expert knowledge are value-laden, then a thorough analysis of how all knowledge is produced, vetted, and debated is necessary, in order to justify reliance on any particular piece or pieces of knowledge for the resolution of policy problems. If, in the production of knowledge, a particular value system is

present to the exclusion of others, then the resulting policies will be weak because they will fail to consider a diversity of knowledge and underlying normative frameworks. The tension between lay and expert knowledge must somehow be mediated in order to achieve land use policies that are environmentally, economically and socially sound.

Debates around autonomy, justice and the sources and legitimacy of knowledge are central to and pervasive in land use planning. Thus, the planning arena provides an opportunity to explore these issues further. Land use planning defines our communities in every way: whether racial, ethnic, economic and social groups are integrated or segregated; whether our neighborhoods are environmentally sustainable or resource- and energy-depleting; whose cultural heritage we honor and preserve; how we balance property values and public spaces; whether and how we mitigate the impacts of environmental hazards; and many other policy issues are guided by our approach to land use planning. In each of these policy issues, we must consider several questions. First, as a society, we often defer to local governments and policymakers to make planning decisions. This is reflective of our commitment to self-determination—in other words, the most local decision-making body is thought to be the most representative of individual citizens, and therefore the best able to make decisions that accurately reflect individuals' preferences. But we must consider whether that autonomy is actual or ideological, and how local autonomy really fits into an interconnected world. In other words, is local autonomy a system of legal safeguards that protects the rights of individuals and communities? And what is the purpose of those legal safeguards—must

individuals' and communities' rights be protected against the will of the state, or conversely, is protection of those rights ultimately in the best interest of the state? Or, is autonomy something different—not a legal construct but a concept to which citizens and municipalities adhere, setting themselves in opposition to the state in a philosophical or ideological sense? Is it a means or an end, and what is its import? Second, if we examine autonomy closely, it becomes apparent that local planning decisions can sometimes reflect the will of the powerful few, despite the fact that decision makers are either elected by the general population (as in the case of town and village boards) or are appointed by elected officials (as in the case of planning and zoning boards). Decision makers sometimes work to preserve a status quo that is not inclusive of all segments of the population and that does not create vibrant communities. Thus, the normative framework that underlies any local planning policy must be carefully examined to ensure that it does not have negative justice implications. Finally, because land use planning shapes every aspect of our communities, myriad experts across many fields analyze and weigh in on land use planning issues and debates. This expert knowledge is often grounded in differing normative frameworks and can conflict with local knowledge. Thus, in shaping planning policy processes, we must recognize that all knowledge is value-laden and consider whether and how expert and lay knowledge can come together to reach optimal solutions.

Land use planning takes place at many levels, but in New York it is generally the jurisdiction of individual municipalities. Consistent with New York State's Constitution

and its laws, municipal boards have the authority to approve, disapprove or modify land use planning projects, in furtherance of their right to effective local self-government. With regard to land use planning, New York State grants to municipal planning and zoning boards the authority to rule on planning and zoning projects such as subdivisions, site plans, zoning map and text amendments, and others (*Municipal Home Rule Law* n.d.).

Given the power vested in municipal boards, it is useful to understand their structure and qualifications. Town boards and supervisors are elected, and they appoint planning and zoning boards, who are volunteers. Recently, New York State amended its laws to require that members of planning boards and zoning boards receive a minimum number of hours of training a year (New York State Department of State 2007). The intent of the new training requirement is to enable board members to more effectively carry out their reviews of land use planning and zoning projects.

The legislative and judicial foundations of home rule are strong, but home rule is checked by New York's *General Municipal Law*. Section 239 of the *General Municipal Law* requires that those land use planning and zoning actions that have potential inter-community impacts be referred to county planning departments, neighboring municipalities, and other county, state, federal and quasi-governmental agencies for review. Inter-community considerations include compatibility of land uses, traffic generation, impacts of the proposed use on county, state and institutional uses, protection of community character (specifically with respect to predominant land uses, population

density, and the relation between residential and nonresidential areas), drainage, impacts on community facilities, existing plans and policies, and other similar matters (*General Municipal Law* n.d.).

County planning departments are comprised of professional planners who compete for these civil service positions. Consistent with *General Municipal Law* §239, all actions referred to the county must be reviewed and, within thirty days of receipt of a referral, the county must issue a letter recommending approval, disapproval or modification of the proposed project, or a letter stating that the project is a matter for local determination (by the municipality). Yet municipal planning and zoning boards remain the final decision making authority with respect to project approval. Upon receipt of the county planning department's recommendation, the municipal board votes on whether to act in accord with or against that recommendation. If the county recommends disapproval but a supermajority (specifically, a majority plus one members) of the municipal planning board votes against the county's recommendation, then the county recommendation is overruled and the municipal board's approval of the action carries.[1]

To shed light on questions of autonomy, justice and expertise in the context of land use planning, this study will focus on the boards of one municipality in Sullivan

---

[1] Specifically, §239-m(5) states that "if such county planning agency or regional planning council recommends modification or disapproval of a proposed action the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof," (*General Municipal Law* n.d.). The law does not require a supermajority vote for a municipal board to disapprove a project for which the county recommends approval.

County, a small county in upstate New York. Sullivan County is a mostly rural county with a land area just under 1,000 square miles, centered about 100 miles from New York City. It has long been an agricultural area, with a few small villages dotting the forested and farmed landscape. For the past century, Sullivan County has also been known as a tourist destination. It is home to the myriad boarding houses to which city dwellers of the early 1900s retreated for the summer, as well as Grossinger's, the Concord and other famed resorts of the 1950s and 60s. Sullivan County also hosted the 1969 Woodstock music festival. Today it is home to approximately 74,000 year-round residents, and many thousands of part-time residents and second home owners, most of whom come from the New York City metropolitan area.

Sullivan County's geographic location, its struggle to remain economically viable as both agriculture and regional tourism decline, and its increasingly diverse population present challenges in planning for the future. Land use planning, particularly, becomes a source of conflict as residents, government entities, non-governmental organizations, businesses and others attempt to set the course for future development patterns. The county's rural character, much prized by long-time residents, newcomers and tourists, is a major economic asset but becomes increasingly difficult to preserve as these stakeholders demand more municipal services, housing choices, access to shopping and entertainment, and other amenities. Thus, decisions about the siting of these amenities, and conversely such inconveniences as solid waste facilities and industrial parks, are often reached amid

great controversy. As the various actors negotiate the planning process, the aforementioned questions of autonomy, justice and expertise often arise.

I chose the case study town for several reasons. First, this town sees a relatively high number of planning and zoning project applications, which offer a wide array of cases for examination in the context of my research questions. Second, its planning and zoning board members are quite active, participating in numerous training sessions and other planning-related events around the county. Through regular communications with the secretary to the boards, I have the impression that board members take their roles seriously and strive to thoroughly review all project applications. Third, the attorney to the planning and zoning boards is also quite active, visiting each project site and participating in virtually every planning and zoning board meeting. He has also expressed an interest in pursuing an inter-municipal agreement with the county planning department that would expedite the planning process by exempting certain project types from review under *General Municipal Law* §239.[2] Such agreements are permitted under the *General Municipal Law,* at §239(m)(c), and I am interested in exploring whether and how such agreements would change the process in light of my questions concerning autonomy, justice and expertise.

---

[2] Specifically, Section 239-m 3(c) of the *General Municipal Law* provides that "The county planning agency or regional planning council may enter into an agreement with the referring body or other duly authorized body of a city, town or village to provide that certain proposed actions set forth in this subdivision are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section."

Based upon the high level of interest and commitment of the board members and attorney, I believed that they wanted to participate in the project and would be forthcoming during the research process. Based on personal conversations, I also knew that they shared some concerns about New York State's land use policy approach. The state seeks to create a system that incorporates the greatest breadth and depth of expertise to ensure high quality review of land use projects, and equally importantly, a system that effectively checks the power of any one policy-making body. This system of checks and balances can become cumbersome and disjointed, however, and brings to light the following concerns.

First, the *General Municipal Law*'s apparent infringement upon home rule is problematic. If a municipality is empowered to exercise its right to effective self-government, then the mandate that some planning and zoning considerations be referred to the county planning department (and, by extension, other government and quasi-governmental entities with jurisdiction) for review is sometimes conceived as the taking away of that right. While county planning departments merely make recommendations to municipal boards, there is a sense among some stakeholders that the very fact that county review is required impedes a municipality's ability to efficiently and autonomously make land use planning and zoning decisions. One goal of this thesis is to better understand the theoretical and ideological underpinnings of home rule, and assess whether and how municipal board members feel that the *General Municipal Law* §239 process is an infringement upon home rule.

Second, home rule can bring with it a commitment to the status quo, or the preservation of a particular social hierarchy in a given community. Voters elect town and village board members. These boards in turn appoint members to their municipal planning and zoning boards, and doubtless such appointments are sometimes made based upon political affinity and affiliation. It is possible that those who purport to care the most about protecting and preserving their communities (and who are seemingly ideal appointees to the planning and zoning boards) are those whose families are the most established and prominent. This leaves little room for new and emerging voices and interests.[3] Thus, we must carefully examine the justice implications of planning decisions, and assess whether a strong commitment to home rule might exclude underserved and underrepresented groups.

Third, the roles of expert and lay knowledge, and the hierarchical system in which these types of knowledge are negotiated and validated, create a division among the actors involved in land use planning. Municipal planning and zoning board members often assert that they are most knowledgeable about a given project, because they are very familiar with their particular municipalities. Town attorneys, planners and engineers are also kept on retainer, to help guide the boards in their project reviews. These experts, and in some cases the planning and zoning board members themselves, often possess a wealth

---

[3] Indeed, this is not merely a problem of elected and appointed officials who seek to preserve the status quo to the exclusion of "other" groups. It can reflect a larger problem, owing to the general populace's desire to install officials who will further their interests, which are sometimes exclusionary.

of insight and knowledge on a variety of aspects of land use planning. County planning departments, though, often have a more comprehensive or holistic understanding of the many ways in which a project could impact its surrounding area, including stormwater runoff, noise and light pollution, increased traffic levels, and community character. All of this raises questions about the utility of lay and expert knowledge—lay knowledge being the awareness of a municipal planning board member, for instance, that a given stream has not in recent memory jumped its banks during a rainstorm, and expert knowledge being the county planning department's understanding that land clearing upstream will likely exacerbate future flooding potential downstream. Moreover, if all knowledge is value-laden, then no particular source or piece of knowledge can simply be accepted as "true." Rather, it is necessary to interrogate the normative frameworks that underlie lay and expert knowledge, and the processes through which these types of knowledge are vetted and incorporated into the policymaking process. In order to ensure comprehensive, expedient project reviews in an environment of mutual respect, this study seeks to assess the possibilities for bringing lay knowledge and expert knowledge together.

These questions of autonomy, justice and expertise have practical import for land use planning. As noted above, it is possible to work within New York State law to streamline the *General Municipal Law* referral and review process through the crafting of inter-municipal agreements. Several New York Counties, including Ulster, Greene, and Cayuga, currently have in place such agreements with some of their municipalities. If

they can respect local autonomy, foster just policy outcomes, and bring together all publics and their knowledge contributions, then such agreements should be explored in Sullivan County. Thus, as a practical outcome of this thesis, I hope to apply my analysis of the three lines of inquiry identified above and recommend possibilities for working within the *General Municipal Law* §239 process and other relevant laws of the State of New York to bring together knowledge and expertise from all sectors, and use these to their fullest potential to guarantee that projects are carefully reviewed and the larger community is best served, from an environmental, economic and social standpoint. These practical considerations are the focus of Appendix E, a brief analysis of the process and potential modifications to it, which has been prepared for planning colleagues and stakeholders.

LITERATURE REVIEW

Autonomy, justice and expertise have been the subjects of extensive research across many genres. I will examine the arguments of legal scholars and planners, who explore the legal and ideological underpinnings of autonomy and home rule; feminist and environmental theorists, who examine the relationship between autonomy and justice; environmental political theorists, who seek to identify the political structures that are best suited to serve democratic and ecologically rational ends; and risk analysis experts, psychologists, political scientists, planners, and scholars of indigenous knowledge and the sociology of scientific knowledge, all of whom discuss the legitimacy of expertise. The following review interrogates this existing literature on the three lines of inquiry identified above.

First, powerful rhetoric surrounds the concept of municipal home rule as an assurance and an expression of local autonomy. Home rule is accepted and promoted as a safeguard against corrupt, inefficient government at the state or national level, and it is touted as a means for disentangling the policymaking process from corporate influence.[4] A closer examination of this rhetoric will shed light on the relevance of home rule in an

---

[4] The Community Environmental Legal Defense Fund, a leading proponent of home rule for communities around the United States, states: "The Home Rule process can serve as an important vehicle for communities that are seeking to challenge the fundamental structure of law which puts the rights of corporations over those of communities; prevents communities from saying "no" to projects that are harmful for workers, the local economy, livability, property values, or the environment; and ultimately prevents municipalities from creating the economically and environmentally sustainable communities they seek," (Community Environmental Legal Defense Fund n.d.).

increasingly interdependent world. Second, local autonomy, whether it exists as an ideology or an actual legal guarantee, has a peculiar relationship with justice. While proponents of home rule claim that it brings about just policies by responding to the specific needs of a particular community, its detractors argue that it allows parochial interests to work against justice and maintain a status quo of domination and oppression, as in *Chabad Lubavitch*. This relationship between autonomy and justice must be fully explored and understood before concluding that safeguarding home rule is the best means to achieving just policy ends. Third, a legal framework has been established to temper home rule and ensure consideration of not only local but also regional concerns in policymaking. Yet this system is dominated by various sets of experts whose analyses, like those of their citizen or lay counterparts, are fraught with normative bias. Thus, perhaps expert inquiry and analysis are not an antidote to the justice problems surrounding home rule. Rather, the entire framework within which citizens and experts operate must be reconsidered, and their various knowledge types fully interrogated, in an effort to generate policies that best solve land use problems.

Home Rule as an Expression and an Assurance of Local Autonomy

Home rule has a long history throughout western civilization, and especially in the United States. Thomas Jefferson was an early home rule advocate, driven by a commitment to the ideal of individual sovereignty. To approximate this ideal in a practical sense, he envisioned a decentralized agrarian republic made up of small “wards”

akin to New York's towns. He believed that each ward, because of its small size and relatively low population, was best able to respond to its residents' individual needs and preferences. Each ward, as the governing body closest to the individual, would allow each resident to act directly and personally (Viteritti 1995). Thus, Jefferson believed, these wards were best able to act in the name of individual freedom.

The movement toward home rule flourished again in the early twentieth century, as representatives of rapidly growing cities fought against state control of their growth and development policies and projects. In a paper for the United States Advisory Commission on Intergovernmental Relations, Michael Libonati asserts that this push for home rule was part of a broader national scene, wherein citizens were fighting for legislative reforms that would grant them the ability to express their preferences within their communities (United States Advisory Commission on Intergovernmental Relations1993). Local officials argued, often successfully, that they were better able to understand and deal with their local issues than state lawmakers who were lived and worked far away in state capitals (Schaller 1961).

Joseph D. McGoldrick, a leading early twentieth century scholar of home rule in the United States, described the twofold justification for municipal home rule, saying that "the case for home rule has centred in the incompetence of our state legislatures on the one hand, and the simple wisdom of leaving local affairs to local disposition on the other," (1933, 299). Thus, home rule is both a legal concept (codifying the authority of

localities to make local decisions) and an ideological concept (freeing communities from the oppressive or incompetent state and its rules).

Today, as a legal concept, home rule in New York serves to ensure the autonomy of local governments. New York's *Municipal Home Rule Law* authorizes local governments to pass local laws as long as they are consistent with the State's interests, as expressed by the State constitution and statutes (*Municipal Home Rule Law* n.d.). It also limits the State's authority to interfere in matters that are of local concern (Stinson 1997). But discussions of home rule and its efficacy often assume a fixed and agreed-upon understanding of what is meant by local affairs. For legal scholar Richard Briffault, the very concept of local is highly contestable, and contingent upon legal definitions of local units that are the direct outcome of struggles among various local interests (Briffault 1990). Illustrations of Briffault's argument are abundant—one powerful example is the creation of gerrymandered legislative districts that separate communities along artificial lines, to serve political ends. Districts are reapportioned following each decennial census, following the "one person, one vote" maxim outlined in the US Constitution and subsequent laws. Yet politicians have a history of attempting to draw districts, and therefore define "local," in ways that are politically favorable, rather than striving to ensure that individuals and communities are fairly represented (University of California-San Diego Social Sciences and Humanities Library 2000). In this and other instances, it is clear that the definition of "local" can change over time and across distances—for example, in a densely populated area where several municipalities abut one another, is

any land use planning decision purely local? The impacts of one municipality's land use decisions can hardly go unnoticed by its neighbors.

Given the complexity that surrounds the concept of localness, it becomes clear that local autonomy is, in reality, tempered by regional concerns. Writing in support of a regional planning approach in California, Teitz, Silva and Barbour address this point, arguing that the systems that define our society—watersheds, foodsheds, transportation networks, and others-- are regional, rather than local, in nature, and that decisions made by one level or unit of government often affect others (2001). Indeed, in New York regional planning efforts and entities are many. These include the Delaware River Basin Commission, an interstate commission created to manage and oversee water resources, and regional projects like the Columbia University Urban Design Research seminar's 2010 study to examine New York City's foodshed, which encompasses many counties in New York and neighboring states (Delaware River Basin Commission n.d, Columbia University Urban Design Research Seminar 2010). These initiatives clearly indicate the growing recognition that the legal concept of home rule, as an assurance of local autonomy over local issues, must be tempered when environmental, social, and economic impacts transcend the political boundaries on a map. In other words, in practice, some decisions must be made on a state or regional scale, because policies affect more than just one municipality. Recognizing this, McGoldrick's "simple wisdom" argument is far less compelling today than it was seventy years ago.

Despite its limitations as a legal assurance of autonomy, home rule remains a powerful philosophical or ideological concept, an expression of freedom from interference by the state. In recent years especially, federal and state government budgets and staffing levels have been cut, impeding their abilities to oversee the workings of local governments. Critics point out the failure of state and federal governments to adequately address policy issues.[5] As a remedy, they argue that local policymaking arenas are the best (if not the only) means for addressing local concerns. By this logic, home rule is often seen as the best means for ensuring the resolution of local policy issues.

Yet little analysis is given to what home rule means for those who support it, and how home rule can do a better job of addressing policy issues. Home rule and local autonomy are phrases that are set in opposition to state rule, but it remains unclear exactly what these phrases mean in a philosophical or ideological sense. Citizens and

---

[5] For example, Pete Grannis, Commissioner of the New York State Department of Environmental Conservation, was fired late in 2010 after being accused of leaking a memo regarding DEC staff cuts. Hundreds of positions were eliminated, making it impossible for the agency to oversee local projects and leaving the State vulnerable to major environmental problems, in Grannis' view. In an interview after his departure from the DEC, Grannis said "There's a real risk that these great strides we've made in cleaning up the environment will start to slip," and warned that "slippage in these areas, in water and air and some of the leakage problems from landfills and other things… if they start to slip they could be generational problems," (North County Public Radio 2010).
Similarly, leaders in many New York State counties have begun to rally against the State's policy of imposing property tax caps while failing to fund mandated programs, forcing counties to shoulder the burden of paying for state-mandated programs without additional tax revenues. In an August 5, 2010 press release issued by the County of Sullivan, the County Legislature urged that the State eliminate unfunded mandates and take over those State mandated programs (including Medicaid) that are funded by county property taxes (County of Sullivan, New York 2010).

leaders claim a right to home rule, or a lack of it, but what do they mean by this? The arguments above do more to address the legal guarantees and shortcomings of home rule than to enhance our understanding of what home rule means on a philosophical or ideological level. While the theorists seem to focus their discussion of local autonomy on its justice implications (as will be detailed next), I contend that it is important to first understand how local actors view their autonomy in relation to the state. In the context of land use planning, then, discussions of home rule will shed light on what this concept means to municipal board members—specifically, whether and to what degree they feel their local autonomy is threatened by interference from county, state and federal agencies, and whether and how they conceive of home rule as a safeguard against this interference. The research that follows will explore this question, and will help to address the obvious tension between arguments in support of home rule and arguments favoring regional approaches to policymaking. This interrogation of the concept of home rule is a necessary first step in discussions surrounding the justice implications of local autonomy.

Autonomy and Justice

When policy actors tout home rule as a claim to absolute sovereignty, they not only miss the reality that individuals and communities are connected and interdependent, but they may also (knowingly or not) strengthen patterns of inequality and injustice. Enrique R. Silva notes that "[h]ome rule can reflect territorial, economic and social

inequalities and reinforces them with political power," (2004, 34). *Chabad Lubavitch,* wherein the Historic District Commission used its power to deny the rights of a religious community, is a good example of this phenomenon. Likewise, Michelle Wilde Anderson, a scholar of local government law, land use planning and civil rights, asserts that in California's case, the state's continuing ethnic, racial and economic segregation is partly due to the persistence of local control over land use planning and zoning policies, which ensure the provision of services and amenities for residents of a particular city, while those living in unincorporated areas outside the city boundaries are marginalized (2010). Anderson points out that the victims of such marginalization are the racial and ethnic minorities who were pushed to the edges of the city perhaps a century ago (2010). Thus, a commitment to local autonomy further marginalizes them by excluding them from the benefits of the city's services and amenities.

It is important to note that, unlike California, all land in New York State is incorporated, where counties are broken down into towns, which encompass all land area outside of villages and cities. Thus, as units of government, towns, villages and cities all have equal powers and duties. But the inequity cited by Anderson can occur anywhere—municipalities that abut each other are distinct units of government, making decisions that are perhaps optimal for those within their boundaries, but that may have negative justice implications for those living outside the boundaries.

This sort of inequality is precisely what Richard Briffault warns about, in his explication of variations in the scope and degree of local autonomy in the United States

today. For Briffault, local political life has become increasingly private. He situates his analysis of recent local government reforms and local legal power in a city-suburb context, and argues that the law has been "suburbanized," (1990, 5). The suburb, which generally comprises homes but not a thriving and diverse political scene, has become our "paradigmatic locality" (1990, 5). So, politics and law increasingly reflect home and family values, and are aimed at the preservation of suburban ideals of home and family, as opposed to traditional public ideals and goals (Briffault 1990). Briffault notes that "given the private focus of local politics, local autonomy may erode rather than enhance the possibility of creating a vigorous public life," (1990, 6). The potential for this type of injustice, stemming from a commitment to local autonomy and privileging private, rather than public values, is borne out in *Chabad Lubavitch*, where freedom from religious diversity seemed to trump freedom of religion.

This privatization of public life is rampant across the United States. Recent decades have witnessed the rise of common interest developments (CIDs), in which individuals own housing units or parcels while sharing the right to use common areas and facilities, under a system of private governance (generally a homeowners association to which each homeowner pays annual dues). Today CIDs are common in many parts of the United States—for example, in 2002 CIDs housed approximately 24 percent of California's population (California Research Bureau 2002). CIDs are more restrictive than traditional land use planning and zoning policies, imposing additional private regulations aimed at preserving order and homogeneity. Because of this, some worry that

CIDs represent the privatization of what was once public life. Evan McKenzie argues that the rise of CIDs "promotes a two-class society of haves and have-nots, the former enjoying a privatized set of what were formerly public services, and the latter struggling to survive in cities faced with increasing responsibilities and shriveling revenues" (1993, 32). If left unchecked, the parochial focus of local autonomy, as envisioned by Briffault, Anderson, McKenzie and others, will continue to segregate our communities and subjugate the least powerful.

This public/ private dichotomy has long been a focus of feminist thought. Iris Marion Young warns against conceptions of an ideal community, which commonly connotes similarities in race, ethnicity, and other group identifications (1993). Young tackles the conception of community that dates back to Jefferson, wherein local governments are perceived to be most responsive to the needs of individuals, because their relationships are based on face-to-face discussion and expression of preferences. This ideal of community is certainly reflected in today's common interest developments, where common traits draw people to live together and separate themselves from those who are different. It is also reflected in *Chabad Lubavitch*, where a shared concern for historic preservation masked a shared anxiety regarding religious difference. Young acknowledges that this preference for face-to-face relations understandably arose in reaction to the alienation and domination produced by state and national governments and corporations (1993). But for Young, as well as Briffault, Anderson and McKenzie, this very local conception of community only works to exclude others who are different, and

to effectively deny, rather than improve upon, political life. To combat this, Young urges that politics "must be conceived as a relationship of strangers who do not understand one another in a subjective and immediate sense, relating across time and distance" (1993, 234). In the context of land use planning, then, the needs and preferences of those outside of a particular locality, (whether separated by space or time) must be considered, to ensure just policies are achieved. [6]

Moreover, even within a particular community, historically marginalized groups will continue to be shut out unless community members re-think notions of public and private. Young asserts that contemporary social etiquette dictates that race, sex, class status, religion, and similar characteristics must have no bearing on how people treat one another in public, so these characteristics are excluded from the public discourse, ostensibly as a means for ensuring that prejudices do not influence policy decisions. But these prejudices do exist, are often revealed privately, and do indeed shape policy. Rather than simply excluding discussions of race, class, and gender from the public discourse, social etiquette actually excludes these fundamental aspects of people, and the people themselves. This happens through a process of erasing the "other"—Young

---

[6] Such a relationship among strangers becomes complicated in small communities like those that make up most of Sullivan County. Young describes an ideal of city life that would offer several virtues to help ensure meaningful participation for all citizens. For instance, she argues that "deviant or minority groups find in the city both a cover of anonymity and a critical mass unavailable in a smaller town," (1993, 238). While Sullivan County's small towns are more diverse than might appear at first glance, it is unlikely that they could possibly offer such anonymity or critical mass. Perhaps, then, it is even more challenging for small communities than for urban areas to foster a politics based upon relationships among strangers.

asserts that dominant groups "project their own values, experience, and perspective as normative and universal," (1990, 123). For example, in a white, patriarchal, heterosexist community, those who fall within these categories are constructed as normal or universal, and their experiences are assumed to be the experiences of the entire community. "The dominant groups need not notice their own group being at all; they occupy an unmarked, neutral, apparently universal position," (Young 1990, 123). Those who fall within different categories are "others" and must identify themselves in opposition to the dominant groups, as black, lesbian or poor, for example. Applying Young's thesis to McKenzie's assertions, then, it seems that the rise of CIDs continues the expansion of the private sphere, adding community development to the list of excluded topics by relegating it to the realm of the private (the homeowners association). As the public sphere continues to shrink, so do the opportunities for meaningful participatory democracy that includes all persons.

The Legitimacy of Knowledge

A possible remedy for the justice problems surrounding local autonomy is the infusion of experts and expert knowledge into the policymaking process. *Chabad Lubavitch* illustrates this phenomenon. Experts in law, planning and perhaps other fields were called in to review the issue without considering local political agendas. Ideally, in cases like this, where local decision makers are often lay people, experts bring forth their knowledge, which is detached from a particular location or context and offers technical

insights that locals cannot provide. They apply their knowledge to the specific problem in a scientific manner, ultimately reaching a comprehensive and unbiased policy solution. But the proliferation of experts of all types raises important questions about what knowledge we value, how that knowledge is produced and by whom. The concept of "risk society" is a useful lens for examining the evolution of the role of expertise in policymaking.

Ulrich Beck posits that the driving force behind policymaking in a risk society is the possibility of destroying the natural environment and, ultimately, society as a whole (1995). To weigh the risks associated with a given set of policy options, decision makers must have a full understanding of how those risks were calculated. Thus, in his work on risk analysis, Beck describes the evolution of expert knowledge and its relationship to lay knowledge. His work is a useful tool for understanding the potential problems associated with relying on experts for the resolution of policy problems.

Beck is concerned with scientization— the general treatment of any problem or concept with a scientific approach, using the scientific method (1992). With its roots in the English Enlightenment, the scientific method was promulgated as an objective method of inquiry, to replace the subjective claims of metaphysics (Baranov 2004). Early positivists employed the scientific method to the social sciences, adhering to specified steps (observation, hypothesis, experiment, theory, law) in their efforts to solve problems. In doing so, positivists believed they could "erase all subjective bias from the study of society" (Baranov 2004, 3).

Beck's issue with positivist thought and scientization is the now widely accepted recognition that all actors bring their own biases to the scientific method. Even expert knowledge is underlain by some normative or political bias or agenda, and this can create problems for reaching just policy solutions. Positivist thought contends that scientization provides us with a standard framework for addressing not only problems that occur in what one might call the "given" or "natural" world, but also problems that arise in society. For Beck, scientization begins when experts apply their specialized knowledge to a given problem. Of course, once citizens recognize that even expert knowledge is underlain by some normative or political agenda, they begin to argue that this process is biased. In particular, when experts' bias differs from that of the citizens, the latter protest that the expert knowledge is inadequate to solve the problem. In contemporary society, a multiplicity of norms and value systems are present and underlie a wide array of policy inquiries. Citizens are bound to clash with experts and each other, and each begins to analyze the others' analyses, once again using a standard scientific approach. In other words, the sciences are applied once again, this time to themselves (Beck 1992). Beck says that "in the course of the scientization of protest against science, science forces itself to run its own gauntlet" (Beck 1992, 161). Thus, Beck argues, criticisms of and protests against science, rather than turning us away from science altogether, actually provide an opportunity for the expansion of science (1992). This constantly replicating process of scientization means that science is not strictly a tool to minimize risk—rather, it causes, defines and solves risks (1992).

So what is the consequence of this application of science to science? For Beck, it creates a new autonomy among citizens as they begin to reject the claims of scientific experts and undertake their own scientific analyses (1992). "The new autonomy here of the target groups (administrators, politicians, businesspeople and the public sphere) is based not on ignorance but on knowledge, not on underdevelopment but on differentiation and the hyper-complexity of possible scientific interpretations" (Beck 1992, 172). Thus, citizens become empowered as they dispute the claims of experts, and explore and apply new knowledge sources to address problems.

For Beck, however, this pluralization of expertise is not without problems, and it does not (as one might imagine) create a policymaking framework wherein knowledge claims are vetted democratically. On the contrary, for Beck, the proliferation of knowledge and expertise becomes politically driven. Those with the political and financial power to influence policy will simply find a group of experts who can furnish a set of arguments and findings that are advantageous to them (Beck 1992). Expertise, meanwhile, is turned back on itself so many times that it becomes possible to draw and justify any conclusion. The end result, for Beck, is that "it is not uncommon for political programs to be decided in advance simply by the choice of what expert representatives are included in the circle of advisers" (1992, 173). So if, as Beck supposes, policymaking boils down to the whims and political leanings of a particular set of experts and their backers, then the power of citizens is indeed limited. Moreover, it seems that in Beck's view this pluralization of knowledge creates an environment in which we cannot

trust that our policies are based on any sort of credible, comprehensive or well-reasoned information.

Beck's frankness regarding the political underpinnings of scientific or expert knowledge is important and reminds us that there is no such thing as pure, unbiased information. But the conclusion he draws from this observation, namely, that the political agendas of the powerful necessarily dictate policy, warrants some further examination. His scientization model is useful for our understanding of the potential trappings of expert analysis, but the interplays between expert and lay knowledge are more complex than the model allows. Shedding light on these interplays, other theorists examine the possibilities for rethinking expertise, by more fully analyzing the role of citizens and citizen or lay knowledge in the planning process. As has been discussed, Teitz, Silva and Barbour (2001), and Briffault (1990) argue that lay actors' parochial interests often fail to produce just policy solutions. And Beck has shown that the infusion of expert knowledge into local policymaking is not a sufficient remedy for the parochial nature of lay knowledge, because the former is as value-laden as the latter. Recognizing that both lay and expert knowledge must contribute somehow to the policymaking process, the task now is to find a way to reconceive both types of knowledge and relieve the tension between them. The goal is to build upon the foregoing arguments and begin to break down the divide between lay and expert knowledge. A fundamental shift in how expert and lay knowledge are understood, and an integration of the two into something that is more applicable in the real world, is thus necessary.

Frank Fisher, in his work on public policy and democratic political theory, asserts that the local knowledge contributions of citizens are absolutely necessary for effective problem solving (2000). Fischer advocates joint policymaking processes because they serve two functions. First, the process of joint inquiry gives citizens a meaningful opportunity to participate in the formation of those policies that will affect their lives. And second, citizen involvement in policymaking is actually very useful for solving real world social problems (Fischer 2000). In other words, the procedural contributions of citizens in policymaking processes—for example, public hearings that allow citizens to share their information and opinions about a given policy being debated—are important from a procedural justice standpoint. But this commitment to procedural justice can degenerate into a simple show to placate citizens and misses the tremendous contributions that their actual lived experience can make to the substance of policy debates. Thus, Fischer insists upon the substantive contributions that citizens can make to the policy process. For him, incorporating lay knowledge and all its contributions—both procedural and substantive-- into the arena of expert inquiry shifts the process and takes away the privileged status of expert knowledge (Fischer 2000).

Writing specifically about local knowledge in urban planning, Jason Corburn distinguishes between two existing models of community or local knowledge—deficit and complementary models—and these models serve as useful illustrations of Fischer's

argument (Corburn 2003).[7] In the deficit model, experts claim that the public can only participate in environmental decisions once it understands the knowledge and practices of the experts (Corburn 2003). In this vein, Steven Yearley examines the contributions of lay actors (whom he terms "public discontents") with expert knowledge, focusing on an air quality model in Sheffield, England and how locals assess the model's effectiveness in monitoring air quality and serving as the basis for air quality alerts and bulletins (2000). Local residents, who are involved in transportation and health care work, offer suggestions for improving the model, based on their own expert knowledge. For example, they point out that the model only tracks the emission of single pollutants, and not the chemical reactions that can occur when these pollutants mix. Thus, the locals here bring their own understandings of air quality and epidemiology to the table, and offer insight into types of pollution that the model builders did not take into account (Yearley 2000). This is a useful illustration of what Corburn's deficit model, where lay actors can contribute meaningfully in the decision making process as long as they have been educated in expert knowledge and practice (2003). In other words, unless citizens

---

[7] As noted earlier, the distinction between "local" and "regional" is not the same as the distinction between "lay" and "expert." Locals often possess expert knowledge, and regional knowledge contributors can certainly be characterized as "lay" actors. In the context of land use planning in New York State, however, local planning decision makers are generally characterized as "lay people" while county, state and federal decision makers are characterized as "experts." In light of this, and to honor Corburn's model and argument, I will use his terms: local knowledge and expert or professional knowledge. The descriptions and distinctions between the two are detailed later in this section.

essentially become experts, there is really no place for their knowledge in the deficit model.

The second existing model that Corburn highlights is the complementary model, wherein the public can contribute to decision making in a procedural context, offering values, political insights, and equity concerns. Paul Slovic (1991) seems to espouse this model in his discussion of communicating risk with lay actors. Slovic asserts that experts must exercise care when communicating risk with citizens, because of the range of reactions that are possible-- citizens might have inaccurate information about risks; risk information may frighten and frustrate them; their existing strong beliefs may be difficult to modify even when accurate information is presented; or conversely, their weak beliefs may be easily manipulated (1991). Thus, Slovic urges experts to pay great attention to citizens' perceptions of risk, and how citizens are influenced by their perceptions. Nowhere does he discuss the possibility that citizen understanding of risk might also contain useful substantive information. Rather, Slovic concludes by acknowledging that lay people sometimes lack basic information about hazards, but that they have a rich conceptualization of risk in general, and this conceptualization reflects legitimate concerns that experts must take into account (1991). This seems to illustrate Corburn's notion of the complementary model, wherein the experts remain the authority over technical or scientific issues, and the public's contribution is limited to letting them voice their concerns and respecting their fears (2003). In sum, the deficit model ignores local knowledge in planning policymaking, unless the locals essentially become experts, while

the complementary model takes into account the procedural democracy contributions of local knowledge but ignores the technical insights that local knowledge can offer.

Rejecting both of these models, Corburn is committed to including both the technical insights of local actors (and not merely those local actors who have "expert" knowledge, as espoused by the deficit model) and the values and preferences of local actors (the procedural contributions consistent with the complementary model). Corburn argues that planning professionals need to learn new ways to take into account local knowledge, which has heretofore been inadequately considered (2003). He argues that, first, local knowledge makes procedural contributions to planning—in other words, inclusion of local knowledge fosters procedural democracy by recognizing a multitude of voices, which are often otherwise repressed or ignored. So, the social justice aspects of planning policymaking are better satisfied when citizens' voices are incorporated, than when policy is dictated by experts alone. Second, Corburn argues, local knowledge also offers crucial technical insights into planning issues and questions—insights that experts, who are distant from the particular situation, often lack. Thus, local knowledge lends substantive help to project analysis as well as making procedural contributions.

This discussion of incorporating various knowledge types into the policymaking process prompts an inquiry into how these types of knowledge are produced to begin with. For both Fischer and Corburn, a major problem in expert inquiry is the manner of production of expert knowledge. For Fischer, expert knowledge is inherently flawed because experts and professionals understand policy problems in the same way as the

elite institutions for which they work (2000). So, beyond being biased, expert knowledge is actually flawed because it arises from elitist institutions and is therefore necessarily exclusionary. Fischer asserts that the infusion of local knowledge, vetted through a democratic process, is the means for breaking down this elitist framework (2000).[8]

The problem with both Fischer's and Corburn's arguments is that, as *Chabad Lubavitch* illustrates, local knowledge can lead to policy outcomes that are totally unjust. Corburn's model perhaps presumes the type of vigorous political life that Briffault espouses. That vigor appears to have been absent in Litchfield, Connecticut, where obviously the voices of the Chabad Lubavitch community were not heard or respected by local decision makers. Instead, it seems that the "best" policy outcome in their minds was the one that preserved the status quo and maintained homogeneity in the community. Thus, the model only works if there is meaningful participation from all stakeholders at the local level.

This commitment to deep democracy underlies political scientist Robyn Eckersley's model for a critical political ecology. Eckersley contends that such a system must specifically seek out and give voice to those who are oppressed or silenced (2004).

---

[8] Fischer feels that this new equality of expert and local knowledge status is especially important in the field of social policy (2000). This, he says, is because social policymaking relies less on technical information, and experts in social policy are thus more like ordinary citizens in terms of their access to such information whereas, for example, experts in biotechnology have a level of technical expertise that ordinary citizens do not have (2000). This is an interesting point because it reveals Fischer's recognition that, even when we bring expert knowledge down from its pedestal, the experts in certain fields can still access some information that the rest of us cannot.

To ensure that participation is meaningful and inclusive, as Eckersley urges, a clearer understanding of expert and local knowledge is necessary. In this way, stakeholders can begin to understand what it is they value about knowledge and more effectively evaluate knowledge claims and contributions.

Patrick Novotny offers insight into the conceptual distinctions between local and expert knowledge, with specific reference to the field of epidemiology. Novotny describes classical epidemiology as a scientific endeavor that studies the statistical significance of environmental health problems, while remaining disconnected from communities and the repercussions that such problems have on the people living in those communities (1998). In response, community activists have begun practicing popular epidemiology, which asserts that community residents are indeed experts—their lived experience and common sense give them the expertise to weigh in on environmental health problems, and to contest the claims of corporations and governments (Novotny 1998). Through mechanisms like community health surveys and assessments, Novotny asserts, they are able to codify and organize their findings and challenge the analyses of classical epidemiologists (1998).

Indeed, practitioners of popular epidemiology directly challenge the legitimacy of experts' risk analyses and risk assessments, two standard research methods for classical epidemiology. For popular epidemiologists, publicized levels of "acceptable risk" are meaningless when community members watch their family members suffer as a result of exposure to toxins (Novotny 1998). Moreover, adherents of popular epidemiology

question whether and to what degree risk analyses serve the economic interests of capital and the state, a concern raised by Beck in his scientization discussion (1992). Steven Yearley shares this concern and insists that not only must we understand that scientific knowledge is value-laden, as Beck asserts, but also that our very notions of risk and uncertainty are contested and unevenly distributed (2000). Thus, both citizen and expert knowledge must be accessed and accounted for at the very outset, when policy problems are initially defined, if problem solving processes are to be just and equitable.

Importantly, Novotny asserts that local community groups' knowledge is not limited to the affective. He argues that many environmental justice advocates pursuing popular epidemiology are well-versed in scientific, epidemiological and environmental health research (1998). These advocates force us to re-think categories of "expert" and "local." Corburn helps to shed more light on the characteristics of local and expert knowledge, defining knowledge in general as firsthand experience (2003). Rather than two distinct categories of actor (expert and local) and two distinct sets of knowledge with different subjects and content, Corburn says the difference lies in some of the characteristics of knowledge (2003). In other words, we cannot recognize local or expert knowledge just by looking at its owner or even its content. We must look at how that knowledge is produced.

Corburn asserts that local knowledge is shared by those with a certain identity, while professional knowledge is shared among people of a certain field (2003). Using Novotny's popular epidemiology example, then, perhaps a community group that creates

and administers a survey to gauge the incidence of asthma gains local knowledge, while a group of traditional epidemiologists who run a clinical trial gain expert knowledge. Also, for Corburn, evidence to support local knowledge is gathered through life experience and cultural tradition, while evidence to support professional knowledge is gathered by experimental methods and formal education in a particular field (2003). Novotny recounts a community wherein residents rejected a health study conducted by a waste incinerator company (an example of expert knowledge)—one woman noted that some cancers have a thirty-year latency period, and asked whether the company would still be in the community when the effects of exposure began to show up in residents (an example of local knowledge) (1998). Corburn identifies characteristics of local and expert knowledge as well: local knowledge is tested for credibility through years or generations of experiences, and these experiences, over time, become common sense.[9] Meanwhile, professional knowledge is tested for credibility using instruments like surveys (2003). Finally, local knowledge is tested in a public forum, whereas professional knowledge is tested in labs or other private spaces only accessible to professionals (Corburn 2003). One can imagine community meetings where the results of a popular epidemiology public health survey are discussed and debated by residents, in

[9] In general, the notion of common sense can be problematic—it is so subjective that it is hard to justify. But, if we think of common sense as the culmination of many years of lived experience, it becomes more meaningful and credible. Corburn asserts that "local knowledge is rarely a hunch or spontaneous intuition, but rather evidence of one's eyes tested through years if not generations of experience" (2003, 421).

contrast with a risk assessment developed in a university lab and debated among a group of statisticians.

While the institutions that promulgate expert knowledge (hospitals, universities, corporations, government agencies) and local knowledge (community groups, individual residents) remain, following Novotny and Corburn, we can now broaden the definition of expertise to include lived experience and all of the knowledge that flows from it. Citizens become experts not because they educate themselves in the ways of experts as traditionally defined (as in Corburn's deficit model, illustrated by Yearley's discussion of the air quality model), but because their own knowledge and experience *is* expert knowledge. Stated thus, the importance of knowledge produced in all of the ways described above becomes apparent. Based upon this rethinking of knowledge, Corburn offers a third model of community knowledge, called "co-production," where "science is understood as dependent on the natural world, as well as historical events, social practices, material resources, and institutions" (2003, 423). In their examination of citizen participation models in Europe, Susskind and Elliott identify co-production as a pattern in which "decisions are made through face-to-face negotiation between decision makers and residents claiming a major stake in particular decisions," (1983, 6). An interesting feature of the co-production model is that citizens are sometimes required to shoulder some responsibility for delivering the services and policies they help to create (Susskind and Elliott 1983). The co-production model thus allows for both the procedural and substantive contributions of local knowledge, as Fischer insists.

It is important to distinguish between Corburn's co-production model (and Novotny, who appears to espouse it), and Fischer's desire to de-privilege expert knowledge. Fischer seems to accept the traditional structure of expert inquiry, as long as we infuse local knowledge into that structure. Meanwhile, Corburn goes a step further and advocates the creation of an entirely new space, in the grey area between expert and local knowledge. For Corburn, this new space becomes the forum for policymaking, a new social space where "all publics are understood as potential contributors to all aspects of environmental-planning decisions because hard distinctions between expert and lay, scientific and political order, and facts and values are rejected" (2003, 423). While the difference is subtle, Fischer seems to shift the hierarchy between local and expert knowledge, while Corburn further radicalizes the policymaking process by essentially taking away ownership of any particular kind of knowledge from any particular group of actors.

Arun Agrawal also warns against reifying traditional concepts of local and expert knowledge, and examines the historical interplay of these types of knowledge. Most importantly, Agrawal asserts that any effort to maintain hard distinctions between local and expert knowledge will fail because such an effort supposes that the two types of knowledge are independent from one another, and that they are stationary and unchanging (1995). Agrawal uses different terms—western and indigenous rather than expert and local—but his argument lends credence to and builds upon the others advanced here. For Agrawal, there is no pure local or indigenous knowledge. He argues

that contact among different cultures, including between Asia and the Americas, dates back thousands of years (1995). If it is the case that experts on one continent and locals thousands of miles away have for millennia regularly contacted and influenced one another, then certainly experts at the federal, state and local government levels, and locals in a given community, have at least as much interaction. Thus, argues Agrawal, rather than categorizing knowledge as indigenous or local and western or expert, we must acknowledge that there are both differences and similarities among these categories, which are constantly in flux (1995).

Judith Innes, a scholar of city and regional planning, further explores the dynamic nature of knowledge with specific regard to land use planning. In particular, Innes argues against the positivist position that informed decisions, based on expert analysis and carried out by policymakers, lead to specific actions (1990). Rather, Innes argues (and this is borne out by the analyses above) that policymaking is much more complex and reflexive than positivists suppose, and that formal, identifiable decisions are only one component of "all that leads to public action," (1990, 3). In other words, many non-experts also contribute knowledge to the policymaking process.

For Innes, communication is another critical component in policymaking. In her work on communicative planning, Innes argues that talk constitutes meaningful action, because dialogue itself changes people and situations (1998). She echoes Agrawal's contention that knowledge is not fixed in time or space, arguing that in planning, as policy actors "communicate and agree on new meanings of issues and data, their actions

change, often without any moment of conscious decision," (1998, 53). Thus, it is the process that actors (regional, local, expert and lay actors together) go through, rather than the particular moment of decision, that forms the central and underlying basis of policymaking. As actors exchange ideas and information, their views and selves are transformed. Categories of knowledge become less meaningful through this exchange of information, because the reality is that all types of information are shared among all stakeholders involved.

Questions of Autonomy, Justice and Expertise in Land Use Planning

The foregoing literature review has served several purposes: it has established that the legal concept of local autonomy is limited in an interdependent world while recognizing that many questions remain regarding how local actors conceive of autonomy; it has brought to light the justice implications of an absolute commitment to local autonomy; it has shown that all knowledge is produced, tested and promulgated within some normative framework, and is subject to political influence; and it has offered some guidance for rethinking the production of knowledge to help bring a broader array of policy actors to the table, and help them to more carefully deliberate their policy options and ensure that the solutions reached are as sustainable, equitable, efficient and just as possible. In the context of land use planning, though, several questions remain.

First, it is important to fully understand how much autonomy municipal boards desire or demand as they make land use planning policy. Some measure of local

autonomy is guaranteed by New York's constitution, laws and judicial precedent. How do municipal boards perceive the limitations that *General Municipal Law* §239 places on this autonomy? Is the relationship between municipalities and other levels of government (in particular, county planning departments) as adversarial as the literature suggests? Or, in practice, is the relationship more complex, and if so, what are its nuances? This is critical because if local boards feel that their autonomy is threatened, a possible crisis of legitimacy looms for the agencies that check home rule.

Second, there is no doubt that a commitment to local autonomy can work against just policy outcomes. If policies are to be jointly crafted by technical experts and lay actors in the local community, then we must be able to trust that all of this knowledge is fully vetted in a democratic environment. There is tremendous potential for the local powers to make only their local knowledge heard, and as a result the voice of the few can become the driver of policy. Limitations on local autonomy exist, though. How can these limitations help to safeguard justice in land use planning and policy, and to what degree are they effective in doing so?

Finally, it has been made clear that land use planning and zoning draws on scientific expertise from a wide array of fields, and that this expertise (like all knowledge) is politically driven. Land use planners are experts in understanding and promoting policy, developed and promulgated by professional organizations and agencies like the American Planning Association, the American Institute of Certified Planners, the New York State Department of State, and others. During their review of projects,

planners are joined by experts in the technical aspects of projects (conservation biology, hydrology, geology and other sciences). Each of these types of knowledge is developed within a specific context and normative or political framework. However, questions remain regarding whether and to what degree it is possible to sort through the political aspects and understand the contributions of all knowledge to the land use planning policy process. On a related note, as the barriers between lay and expert knowledge are broken down, how well do the various actors work together to reach policy solutions? Perhaps planners are well positioned to play a mediating role between "citizen" and "expert," or, more ambitiously, to facilitate the co-production of knowledge that comes from a rejection of these hard categories and a consideration of the input of all publics without regard to their position as laypeople or experts. The theoreticians put forth models for the co-production of knowledge, and this study aims to test their models in the context of land use planning.

METHODS

Sullivan County is comprised of fifteen towns and six villages. For this study I conducted a case study of one Sullivan County town, which is representative of the county as a whole in terms of demographics, commerce and industry, and landscape. However, there is more planning and zoning activity in the case study town than in most others in Sullivan County, thus providing an abundance and variety of projects from which to draw for research purposes. The town's planning board attorney is active in the review process, visiting each project site before the planning board meets, and attending virtually every planning board meeting. Anecdotal evidence reveals that few other municipalities' planning and zoning board attorneys are engaged in the process to this degree. This attorney has also requested an examination into the possibility of a streamlined process for *General Municipal Law* §239 review of project referrals. Conversations with him revealed his feeling that the county planning department rarely offered new insights that the planning and zoning boards had not considered; therefore, in many cases the *General Municipal Law* §239 review was a poor use of time for all concerned. His request became the foundation of this research project, which developed more fully as questions of autonomy, justice and expertise came to light.

General Municipal Law §239

In the words of the State, *General Municipal* Law §239 is intended "to bring pertinent inter-community and county-wide planning, zoning, site plan and subdivision

considerations to the attention of neighboring municipalities and agencies having jurisdiction." Some planning considerations are very small in scope and local in nature, and these need not be referred to county planning departments or other agencies for review. But those projects that are deemed to have potential inter-community or county-wide impacts must referred to county planning departments, as well as county public works departments, the New York State Department of Health, the New York State Department of Environmental Conservation, the Delaware River Basin Commission, and other county, state, regional and federal agencies, depending on whether each of these has jurisdiction with regard to the particular project.

General Municipal Law §239-m(3) enumerates those projects that are more likely to have inter-community or county-wide impacts, and are therefore must be referred to outside agencies and neighboring municipalities. Some are deemed to have potential impacts due to their substance (for example, the adoption of a town's comprehensive plan, which could alter patterns for development for the entire town and have secondary impacts on neighboring towns), and others are deemed to have potential impacts due to their location (for example, and subdivision occurring within 500 feet of a farm that is located in a New York state Agricultural District, which could fragment the Agricultural District and possibly jeopardize the area's agricultural economy).

In his work on the role of counties in land use planning, Jeff LeJava elaborates on the stated intent of the *General Municipal Law,* arguing that the most important land use function of a county planning board (or, in the case of Sullivan County, planning

department) is its authority to review actions for potential inter-community and countywide impacts. LeJava contends that county planners bring an intercommunity perspective that municipal boards generally lack, and that county review provides an opportunity for nearby municipalities to express their concerns with a potential project's broader impacts (1998).

Positionality

About three years ago, as a new hire at the county planning department, I was charged with reviewing planning and zoning referrals that my office received pursuant to *General Municipal Law* §239. As a county planner, I have found myself in a position to make recommendations to municipal planning and zoning boards regarding the possible inter-community impacts of project proposals. While municipal boards always have the final authority to approve or disapprove projects, I realize that they may base important development decisions on my office's input. Thus, the *General Municipal Law* §239 review process not only gives the county planning department a real means for influencing land use planning policy, but it can become a sort of crucible in which municipal leaders examine my office's competence, credibility and professionalism.

Currently, the county planning department is comprised of three staff planners, the Assistant Commissioner and the Commissioner. Sullivan County is made up of twenty-one municipalities, and covers a land area of approximately 970 square miles, so we five cannot possibly know the particular conditions of each community. Thus, we

base our recommendations on our educations as planners, some basic research on each site and project, the degree to which the project is consistent with local zoning laws and land use plans, and the general principles and best practices put forth by professional planning associations.[10] An important benefit to our project reviews is that, although we are certainly guided by particular values, we are perhaps better able than municipal planning and zoning boards to remain outside the political debates that surround any given project, and therefore can offer a somewhat more objective review based on the merits of each project. Conversely, the inherent risk is that we might lack the "on-the-ground" knowledge required to give a practical recommendation. When this becomes obvious, we can lose credibility and generate friction with local planning and zoning boards. Thus, from a professional standpoint, I am motivated by the possibility that the relationship between the county planning department and the municipal planning and zoning boards could be improved, perhaps through re-thinking concepts of autonomy, justice and expertise as they shape the *General Municipal Law* §239 review process.

If this project succeeds in fostering a climate of respect among planning and zoning boards and the county planning department, it also has the potential to serve other practical needs. County and municipal officials have expressed an interest in pursuing

---

[10] In general, unless a county planner is lacking some piece of information required under the *General Municipal Law* or is confused by the material included in the project referral packet, we have no contact with the municipality during the review process. Further, as outlined in the *General Municipal Law,* county planning departments have no contact with project applicants—if we require clarification from the applicant, the municipal board or code enforcement officer serves as a liaison between the county and the applicant.

inter-municipal agreements that would exempt certain projects from county review. This would decrease the workload of the county planning department, which is an especially important consideration at a time when budgets and staffing are much lower than they were just a few years ago. This arrangement would also reduce project costs for municipalities and applicants. An applicant must furnish a set of plans to each body reviewing his or her project, and the applicant's municipality must compile a full referral packet and submit it to the county. There is potential for significant cost savings to applicants and municipalities if county referral and review are eliminated for projects that meet specified criteria. Finally, inter-municipal agreements could expedite project review and approval at the municipal level. By law the county planning department has thirty days to review and make recommendations on a project, which can mean an additional month of waiting between the time when a project is presented and when it is voted on at the municipal level. Through my research I hope to further explore these possible benefits, and weigh them against any potential problems and costs.

On a more fundamental level, I am motivated to examine issues of autonomy, justice and expertise as they relate to local land use planning because I am not only a planner, but also a student of the social sciences, and a person who has lived in many regions of the country, and recently returned to my native Sullivan County. I hope that these identities and experiences will enable me to bring various perspectives to the research project and enhance my methodology. I am also aware that my research methodology is a product of my own situated knowledge—each of my identities, and my

social and physical locations (past and present), are integral to what I know and how I approach this project. This situated knowledge is the central concept of feminist epistemology—my knowledge reflects my particular perspectives and positionality (Anderson, E. 2011). In particular, my location in space and time shape my knowledge, so that the information I have is different from that of my colleagues at the county planning department. This is the concept of embodiment, whereby my body serves as the vehicle for my observations and experiences of the world (Anderson, E 2011).

Thus, as I undertake this research project, I recognize that my knowledge is situated and directly impacts how I approach my research. As a person with training in land use planning, garnered through graduate coursework, on-the-job training and professional development seminars, I bring professional and institutional knowledge to this project. By this I mean that I am to some degree versed in generally accepted doctrines of land use planning—the standards and practices that planners advance throughout the United States and much of the world. Thus, I identify myself as a planner, and share a common lexicon and perspective with other planning professionals. My research subjects are people with an interest in land use planning and varying degrees of formal education in the field. Our perspectives and information relative to planning overlap in some ways. In this project, I view myself and my research subjects as co-researchers working together. In her analysis of the many types of reflexive research, Linda Finlay refers to this type of reflexivity as mutual collaboration, and notes that, in practicing it, researchers like myself "argue that as research participants also have the

capacity to be reflexive beings, they can be co-opted into the research as co-researchers" (2002, 218). Finlay points out a possible pitfall of this type of reflexivity, which is its potential to disguise essentially unequal relationships through a rhetoric of shared realities (2002).

I hope to avoid this pitfall through recognizing that, in addition to my professional identity as a planner, I also identify as a native of Sullivan County with a particular interest in land use planning decisions as they shape my home. In this way, my knowledge and information are perhaps similar enough to those of my research subjects to warrant my assumption that our relationship is equal and mutual. Indeed, I recognize that many of my research subjects have far more practical land use planning experience than me, and to date my relationships with planning and zoning board members have (in my perception) been characterized by a process of shared learning and equal exchange of ideas.

These relationships influence my approach to this project in every way—as a planner, I situate myself within the *General Municipal Law* §239 process, but somewhere at its edge, due to my relative lack of professional planning experience. I am also firmly situated within this particular geographic place, my family having lived in Sullivan County for at least five generations. Indeed, having left Sullivan County at seventeen and spent most of my adult life in various parts of the southeastern and northwestern United States, I have struggled to identify any other place as home. More importantly, I have struggled to feel genuine or legitimate in my attempts to influence policy in those places

where my experience as a resident was limited by time. Upon my return to Sullivan County, I immediately recognized that I know this place better than any other, yet my knowledge comes from the limited perspective I had as a child and I can never really "know" it fully (nor can any of us, given that we can only experience the world through our particular bodies, locations and contexts). I hope that this recognition will assist me in this research project, as I work with my research subjects to produce new knowledge and information that may enhance our common understanding of issues around the *General Municipal Law* §239 process. As Finlay asserts, any knowledge produced will be imperfect and partial, based upon our particular positions as researchers (2002). Yet the foregoing look at my positionality in relation to this project and my research subjects is a necessary exercise in disclosure and sets out the framework within which we operate together. Such disclosure is of fundamental importance for readers, who deserve to understand what constitutes my knowledge and information.

Methodological Approach

A case study approach, focusing on two research methods, was employed in this project. The first research method entailed extensive research in planning and zoning primary documents, including the town's planning and zoning board meeting minutes, the information that the town submitted to the county planning department for those projects requiring review under *General Municipal Law* §239, and the county's own project files and recommendation letters in response. Second, a focus group session with

the town's planning and zoning board members and code enforcement officer was conducted, to investigate how participants perceive the *General Municipal Law* §239 process in relation to New York's home rule law. The focus group was also intended to assess how participants perceive the expert knowledge that comes from the county planning department and other government and quasi-governmental agencies as part of the *General Municipal Law* §239 process.

A third research method was attempted but abandoned for lack of response. I sought to learn how professional planners from other county planning departments perceive their role in the *General Municipal Law* §239 process. I chose to contact six county planning departments, representing counties that are similar to Sullivan County in population, population density, and general development patterns. I was only able to make contact with three (two by phone and one via e-mail), and while our conversations yielded interesting insights, they were not systematic enough to provide solid results. As such, the results and analysis of these conversations will be reserved for Appendix E to this thesis, and will offer specific information on the *General Municipal Law* §239 process to municipal and county planning officials. The interview protocol for these interviews with county planners is included in Appendix C.

The focus group session, phone interviews and e-mail correspondence were confidential and the names of participants are withheld by mutual agreement. Additionally, information identifying the case study town will not be cited herein, to preserve confidentiality.

Primary research in county and municipal records

To understand the land use patterns and trends in the case study town, county and municipal documents were examined. First, the county planning department's referral database was queried. This database contains information about projects referred to the department, and the department's recommendations in response. While county records reflect those projects determined to have possible inter-community impacts, and provide insight into the priorities of the county planning department, they merely reflect the recommendations of that body. To learn the final outcomes of the projects reviewed by the county, the minutes of the municipal planning, zoning and town boards were also reviewed. These documents not only indicate whether the town ultimately approved, disapproved or modified each project application, but they also provide the context for those decisions, in that they contain transcripts of each board meeting.

To assess and record the county's recommendations and the town's final decisions, a simple table was set up. This table indicates the number of referrals received for a two-year period (July 1, 2008 through June 30, 2010), and the types of actions referred during that period (for example, subdivision reviews, site plan reviews, special use permits, and others). The table also indicates the recommendations of the county planning department (approval, disapproval, modification or local determination) for each referred action. Then, the name of each project referred in the county database was searched for in the relevant municipal board minutes, to learn the final action taken by the municipality. This table is included in Appendix A.

The primary documents provide insight into the type and frequency of actions coming before the planning and zoning boards, and reveal common themes and issues that emerge during project review. Some projects are brought before a municipal planning or zoning board several times over the course of a year or more. Discussions become very specific as the board examines maps and supporting documents, and requests further information and clarification. For the purposes of this study, seven of the 40 projects referred to the county planning department were chosen for analysis. These seven best illustrate the issues of autonomy, justice and expertise, and related concepts of roles, responsibilities, authority, and procedure raised in the literature review and the focus group.

Focus group session with municipal board members

A focus group was convened to ascertain municipal planning and zoning board members' understanding of and attitudes about the *General Municipal Law* §239 process. Focus groups are useful for developing a general understanding of how a particular group views a given process. Much more importantly, however, focus groups help to more clearly articulate the meanings that underlie these views, to unpack any ambiguities or inconsistencies in the group process from which meanings are derived, and to reveal the normative assumptions that form the basis of a group's views and judgments (Bloor, Frankland, Thomas and Robson 2001). It is important to note that a potential drawback to the focus group approach is that intra-group variations will be under-reported (Bloor, Frankland, Thomas and Robson 2001). In other words, when a group convenes,

individual preferences are likely to be masked by group assessments. In determining the best research methods for this study, this risk was weighed against the potential of the focus group method to develop a richer understanding of the entire group's views and processes. Because planning and zoning boards act on land use projects as a group, the focus group approach was determined to be the best method for observing and ascertaining the group dynamics and meanings that inform the boards' actions.[11]

The original research plan was to conduct separate focus group sessions for the planning and zoning boards. However, ultimately the two boards were asked to participate in a single combined session. The sessions were combined in part for the convenience of participants. Also, because the boards are small, the joint participation of both boards was intended to reveal a broader range of issues and opinions, and to encourage a cross-pollination of ideas. Finally, the joining of these two groups was an attempt to bring to light and clear up any misunderstandings between the boards regarding their different roles and mandates.[12]

---

[11] Another consideration was the fact that, as a staff member of the county planning department, I have developed a positive professional relationship with many participants prior to undertaking this study. This fact enabled me to gain entrée into the group, and made it relatively easy to schedule, coordinate and execute the focus group session.

[12] This Town's planning board is quite active, and generally there are several actions on its monthly agenda. The zoning board, like most zoning boards, meets far less frequently, because fewer types of actions come before a zoning board than a planning board. Zoning boards most often hear appeals from applicants whose building permit requests were denied by the town's code enforcement officer. Most commonly, appeals are for what is known as an area variance—for example, a proposed building will infringe on the yard setback or lot coverage standard. Appeals may also be for a use

One potential drawback to this approach was the difference in the time and involvement required of the planning and zoning boards, and the effects of this difference on the focus group outcomes. While the planning board generally meets once or twice a month, the zoning board sometimes goes for several months without meeting. This is simply because there are fewer types of actions to be reviewed by a zoning board, and those actions are less common than subdivisions and special use permits, which are the domain of the planning board. Thus, planning board members spend more time on this work than do zoning board members, and they are perhaps a more cohesive group. Also, planning board members were much more vocal during the focus group than were the zoning board members. There was certainly conversation among planning and zoning board members, but planning board members participated more in the discussion, and only two zoning board members spoke at all.

During July 2010 I reached out to the town planning and zoning board attorney, the town clerk and the town planning and zoning secretary to assess their interest in participating in this project and ask their help in coordinating the focus group session. Following these discussions, the planning and zoning board secretary contacted the board members in early August 2010. The focus group session was scheduled for August 17,

---

variance, where an applicant wishes to conduct a certain type of operation that is expressly prohibited in the zoning district. For example, an applicant may seek a use variance to conduct a business in a residential area. Zoning boards, in granting or denying such variance requests, set important precedent for the future interpretation of the town's zoning code. Thus, while they usually refer fewer projects, zoning boards are arguably more powerful than planning boards in guiding the future development of the town.

2010 at the town hall, immediately following a regular meeting of one of the boards, to encourage participation. There are seven members of the planning board, including the chairperson and two alternates. All were present at the focus group session. There are five members of the zoning board, including the chairperson. Four members were present at the focus group session. Also present was the town's code enforcement officer.

The protocol developed for the focus group session included questions that were qualitative in nature, aimed at assessing participants' understandings and assessments of the *General Municipal Law* §239 process and the roles of the various parties involved. The focus group protocol is included in Appendix B. As will be discussed, participants were not hesitant to critique the *General Municipal Law* §239 process, or the roles and practices of the county planning department with respect to this process. However, participants very rarely mentioned specific projects during our discussion. This may have been to protect the names of individual project applicants, or to avoid appearing to blame or directly criticize any particular reviewer at the county planning department. In general, participants were more likely to critique certain procedural aspects of *General Municipal Law* §239, especially regarding the timing of county reviews and recommendations, as will be discussed further below.

The August 17th focus group session was tape recorded and transcribed. Each participant signed a consent form prior to the start of the focus group session. Each participant was assigned a number, which was used to identify him or her in the

transcription process. Following transcription, which occurred on August 20th, the tape was erased.

Several concepts emerged through the transcription process, and these were coded. Other codes were derived from key concepts revealed during the review of the relevant literature, and expressed during the focus group. In this study, because the sample was relatively small and the data obtained was not voluminous, the coding process was intended to expand and complicate the data, providing a more deep and nuanced understanding and interpretation of the participants' statements. This process of decontextualizing and recontextualizing, reducing, expanding and reorganizing the data, allows a researcher to more effectively think about and with the data (Coffey and Atkinson 1996). Through this process of decontextualizing and recontextualizing, a richer analysis of focus group responses becomes possible. Analysis of the data obtained yielded the following codes:

Expertise: This refers to the expertise of the municipal planning and zoning boards, the county planning department, and other state and federal planning agencies. It describes the particular subject knowledge of an individual or entity, as well as the origins of that knowledge (training, education, political orientation, economic foundations, or others).

Responsibility: This conveys the sense of obligation that participants feel toward their communities, and often underlies their reasons for volunteering as board members. Participants describe what they feel responsible to do, ensure and promote, which reveals

important insights about their priorities and preferences for community planning and development. These statements reveal much about not only *for what* they feel responsible, but also *to whom* they feel responsible. Statements about responsibility are especially useful in this study because they shed light on the public and private values that participants seek to uphold, and inform my investigation into the justice implications of local autonomy in planning and zoning. As will be shown, participants expressed a sense of responsibility to their town, to the county planning department, to developers, and to neighboring towns.

Autonomy: Participants made statements regarding their boards' ability to make binding decisions without interference from the county or other entities. While participants made statements regarding municipal autonomy, these are distinguished from statements coded under "Roles" which acknowledge that some decisions require the input of other entities, such as the county planning department or other planning agencies.

Roles: Participants' discussions of their roles vis-à-vis the county planning department and other agencies reveal a great deal about how they view their relationships with these entities. In other words, discussions of roles can take the form of a hierarchy, a linear review structure, or an egalitarian, cooperative review process.

Procedure: Many participants expressed their views on the *General Municipal Law*§ 239 review process and related planning processes, developed at the state, county or municipal level. Statements regarding procedure are important in that they concern the process itself, and can help to separate the process from its participants, thereby

potentially defusing some conflicts between participants. Frustrations with the process were many, as will be discussed.

Authority: Statements assigned this code concern enforcement of relevant laws and regulations. Authority differs from autonomy in that, while participants making statements about authority might not feel their autonomy threatened by another entity, they are concerned with a general lack of enforceability of the rules or standards they impose. Authority could be seen as a subset of the Procedure code, because it is possible that procedural measures could be taken to rectify authority issues.

All statements made during the focus group session were coded and are included in Appendix D.

While the focus group process was useful for revealing general concerns about autonomy, understanding the type and level of expertise of board members, and articulating participants' understandings of the *General Municipal Law* §239 process, it was not a sufficient method for detailing specific projects and how the relationship between the boards and other entities shaped and was shaped by those projects. This detailed information was garnered through the in-depth review of projects via meeting minutes and county planning department recommendations, as described above.

Bloor, Frankland, Thomas and Robson (2001) note these shortcomings of focus group research and suggest guidelines for integrating focus groups into multi-method studies. The authors note that in focus groups, intra-group variations can be underreported, which is one reason for using them in conjunction with other research

methods (Bloor, Frankland, Thomas and Robson 2001). They also point out the usefulness of focus groups as an ancillary method, to "provide an interpretive aid to (or critical appraisal of) survey findings," (Bloor, Frankland, Thomas and Robson 2001, 17). In this study, focus group findings helped to contextualize and interpret the data revealed in the meeting minutes and county recommendation letters for specific projects. Together, these two methods yielded an abundance of qualitative and quantitative information, placing particular projects in a larger context.

RESULTS AND ANALYSIS

Research into primary planning and zoning documents focused on the meeting minutes of the planning, zoning and town boards, the referral packets submitted to the county planning department for review under *General Municipal Law* §239, and the county planning department's recommendation letters. This yielded information on common themes and issues in planning projects, as well as insight into the review process itself, and provided the basis for the focus group structure and lines of inquiry. For the two-year time period between July 1, 2008 and June 30, 2010, the Town referred a total of 40 projects to the county planning department for review.

Table 1: Municipal and County Review of Land Use Projects

Referral Type	**Number of Referrals**
Special Use Permit	28
Subdivision Review	9
Zoning Map Amendment	2
Area Variance	1
Total Number of Referrals	**40**
Recommendation by County Planning Dept.	**Number of Recommendations**
Approval	4 (3 special use permits, 1 zoning map amendment)
Disapproval	3 (1 subdivision, 1 special use permit, 1 zoning map amendment)
Modification	1 (1 special use permit)
Local Determination	31 (22 special use permits, 8 subdivisions, 1 area variance
Incomplete	1 (1 special use permit)
Total Recommendations	**40**

The vast majority (31 of 40, or 77.5%) of referrals were found by the county planning department to be matters for local determination. In other words, these projects were

deemed unlikely to have inter-community or county-wide impacts and therefore lay outside the scope of county review. Twenty-two of these, or 71%, were special use permits. Uses that require special use permits are those that the municipality determines to be appropriate for the zoning district, but that merit individual examination on a project-by-project basis by the municipal planning board to ensure consistency with the character of the community.

For this two-year time period, the county planning department recommended approval of four projects. The county planning department's criterion for an approval recommendation is that the proposed project is likely to have positive inter-community impacts. Two projects recommended for approval were designed to promote local agriculture, which is a major economic development initiative for the county. One project recommended for approval was for expansion of cellular phone coverage and service, which is also an important initiative for this largely rural county. The fourth project recommended for approval was an amendment to the town's zoning map which would make zoning district boundaries align with parcel boundaries, enabling planners, developers, residents and businesses to more easily understand what kinds of land uses are permitted on a given parcel and whether proposed projects are complementary to land uses in adjacent districts and municipalities.

One project was recommended for modification by the county. This was a special use permit wherein the applicant wished to convert an existing storefront to apartments. The county recommended that the location of the apartments be moved to a different

building on the parcel, also owned by the applicant, which was safer for future residents and preserved the availability of storefront space for future businesses wishing to locate in this hamlet. Ultimately, this proposal was withdrawn by the applicant.

Three projects were recommended for disapproval. The county planning department felt these projects were likely to have adverse inter-community or county-wide impacts. One was a special use permit, which was recommended for disapproval because the referral materials did not illustrate such features as road access to new buildings, which could cause emergency response issues. The second project recommended for disapproval was a zoning map amendment that would allow expansion of a particular development beyond what the county felt the site's topography and hydrology could accommodate. The third was a subdivision, which raised many questions concerning future use of the new parcel, compliance with the town's zoning code, and other issues.

Project Analysis in the Broader Land Use Planning Context

The above data become more meaningful when the individual projects are situated within the context of the municipal boards' relationships with the county planning department. To provide this context, I examined the minutes for all planning, zoning and town board meetings within the two-year time frame. Next, I reviewed the coded focus group responses to draw more general conclusions about the projects and participants' involvement in the process. Detailed tables indicating project type, county

recommendation and final local action taken by the municipality are included in Appendix A. The following analysis explores the various themes presented in the literature review, drawing on the documents for seven projects and the coded focus group responses.

The Case for Local Autonomy: Constructing Additions and Improvements to Religious Buildings.

Sullivan County is home to many religious camps, which were constructed several decades ago and pre-date most local zoning laws. Still in use, they often need repairs and upgrades, and the owners must undertake these improvements in conformance with current laws and regulations. One such camp submitted an application to the planning board, to add on to some of its buildings and renovate portions of others. When the applicant first appeared before the board, he was instructed that his maps were insufficient and was asked to furnish revised maps, clarifying building locations and features. The following month, revised maps were provided and the planning board deemed them sufficient. In the third month, the public hearing was held.

While the planning board felt the application was now complete, the county planning department disagreed. Central to the county's disapproval recommendation was the lack of circulation and emergency access shown on the maps. The applicant proposed to build new bunkhouses and an infirmary but did not illustrate roads and other ancillary features. The county argued that, if such details of the project site were not important to review, then this project would be permitted as a matter of right (requiring no review),

rather than a special permit use. Following the public hearing and a discussion of the county planning department's comments, a supermajority of the municipal planning board voted against the county's recommendation and approved the special use permit. The planning board attorney cited the town's zoning code, which states that the planning board may waive any required formalities with regard to the maps. In this case, planning board members had visited the site and had seen the existing road network, and felt satisfied that the proposed improvements would be feasible and that emergency access would be possible if necessary.

This case embodies the logic that underlies McGoldrick's (1933) "simple wisdom" argument— McGoldrick would likely argue that the planning board, as the governing body closest to the individual applicant, is the most appropriate to make decisions that affect the applicant. He might also argue that the county planning department, which in this case reviewed maps but did not visit the site, is not competent to effectively recommend the best course of action. In a legal sense, this case also illustrates the protections afforded by New York's *Municipal Home Rule Law*, codified in the town's zoning code and giving the planning board the discretion to waive map requirements.

Discussions of local autonomy, specifically based upon the planning board's greater familiarity with local issues and projects, arose during the focus group session. One focus group participant indicated that he and his colleagues gain critical information when they visit project sites, "because there are things that don't always come through on

the maps." In the case at hand, the county planning department recommended disapproval of a special use permit, citing inadequate detail on the project maps and a concern about emergency access. Because the planning board members had visited the site and had seen the location of the proposed construction, and because their zoning code allows them the discretion to waive any formalities with regard to maps, they approved the special use permit, having determined that circulation and emergency access to the proposed improvements were adequate. Had the county planning department visited the site as well, their staff would likely have drawn a similar conclusion regarding the adequacy of the circulation and emergency access features. Thus, here McGoldrick's argument is borne out and it appears that in situations such as this, the most local governing body is the best fit to make local decisions. Yet local autonomy is not always the answer for solving local policy issues, as the next case demonstrates.

Problematizing Home Rule: Special Use Permit to Install and Operate a Cider Press at an Existing Business.

In this case, the applicant owned a business that included a farm market, walking trails, and other tourist attractions. The applicant sought a special use permit to install and operate a cider press, which would require regrading and reconfiguring an existing parking area. The county planning department recommended approval of the project, finding that it would have positive inter-community impacts based on its consistency with the stated goals of the county's open space and farmland protection plans.

The project site lies on the boundary between two towns. The adjacent land, in the neighboring town, has a history of flooding problems. At the public hearing the planning board chairman from the neighboring town asked that the case study town's planning board consider storm water runoff as the business continues to develop. Board members had visited the project site, and were satisfied that the proposed parking was an improvement over existing conditions and would likely alleviate flooding problems. The applicant's engineer described various other improvements on the site, and stated that the regrading, cleaning out of an existing pond and changes to the impervious surface were "ten times better than what was there." The planning board addressed and satisfied the neighboring planning board chairman's concerns, citing these improvements regarding runoff and flooding, and noting that no further development had yet been proposed. Based on this information and their own visits to the site, the planning board approved the special use permit.

This case was one of many instances of possible inter-municipal impacts between the case study town and neighboring towns, especially with regard to flooding. Sullivan County has witnessed several devastating floods in recent years, resulting in tremendous property damage and multiple deaths. Focus group participants discussed this at length, in the context of how land use projects can exacerbate flooding problems in their own and neighboring towns. In discussing another project, a 35-unit subdivision, one participant noted that that particular project was located near the town boundary, stating "the neighboring town is very sensitive." Interestingly, participants noted, the county

planning department offered no comments on the stormwater design in the subdivision project plans. When the stormwater design was found to be lacking, another participant said, the neighboring town "made a big stink."

During the focus group session, the conversation on regional concerns evolved into a discussion of the county's responsibilities in the *General Municipal Law* §239 review process. Still on the topic of flooding impacts upon neighboring towns, one participant said that "it would be better if the county had more teeth to put [stormwater systems that were designed in accordance with New York State Department of Environmental Conservation requirements] in place." In other words, plans are drawn up and presented correctly, but sometimes they are not carried out as drawn. Another participant asked, "Isn't that the whole point of the county review? If something is going to affect a neighboring town?" She is correct on this point—the county reviews projects for possible inter-municipal impacts. However, the county does not have the "teeth" to enforce state and local regulations. Each municipality's code enforcement officer is responsible for this task, which becomes much more complicated when project impacts cross municipal lines.

Moreover, when a project does not trigger county review under *General Municipal Law* §239, the county is unlikely to weigh in and offer comments unless specifically asked by the municipality. One participant cited the obvious flaw in this process:

> In 2006, there were three dams that let loose within fifteen minutes of each other, took out houses and killed someone. Plus how many

> other dams that we didn't even know about. That's all private land, no inter-community impacts for review by the county.

When a project triggers review under *General Municipal Law* §239, the law is clear that it is a municipality's responsibility to notify other municipalities within 500 feet of the project site. But this discussion raises questions about those projects that do not trigger review. In these instances, as noted above, it is quite likely that the county planning department itself will not be aware of the project, and thus is not in a position to inform neighboring municipalities.[13]

In the cider press case, the importance of regional concerns was apparent, even though the size and scope of the project were relatively small. The simple regrading of a parking lot can have large-scale impacts, though it may seem to be a minor project. This case thus reflects Teitz, Silva and Barbour's assertion (2001) that local autonomy is necessarily tempered by regional (or, in this case, inter-municipal) concerns. Thus, while McGoldrick might argue that such a small-scale project should be left to the local governing body, here it becomes evident that such a course of action could lead to unjust

---

[13] To remedy this, one participant suggested an additional responsibility for the county planning department:

> What about emailing a copy of the [planning or zoning board meeting] agenda to the county? That way they can get an overall picture of what's going on in neighboring towns, and if they want to get involved, the meeting is open to the public so the county can come sit in and see what's involved at the beginning stages, and comment and follow it right on through.

impacts on neighbors, who would likely suffer the flooding effects of poorly engineered grading work.

Focus group members recognized the potential justice implications of such inter-community impacts. While they seemed to be most motivated by a sense of responsibility toward their own town, they also acknowledged the importance of respecting neighboring towns. Focus group members were very concerned with ensuring that projects are adequately reviewed to avoid negative inter-municipal impacts. Perhaps due in part to the fact that this town and its neighbor have a history of projects that impact one another, participants sought ways to ensure that the concerns of their neighboring municipalities are addressed. Whatever its origin in this instance, a sense of responsibility toward neighbors is especially critical given that the county planning department's role is to assess inter-municipal and county-wide impacts, and make recommendations to minimize any adverse impacts. This task is made easier if municipal boards also view projects in such a holistic sense. Importantly, project impacts can and should be evaluated not only across municipal boundaries, but across greater distances and even over time, to truly provide a comprehensive review. Such a long-range evaluation is central to the concept of land use planning, and to a degree it is built into the project review process, as described next.

Community Across Space and Time: Residential Subdivision to Separate Existing Home from Existing Storage Building.

This residential two-lot subdivision generated much discussion among both the planning board and the county planning department. The applicant sought to subdivide his lot, separating his house from an existing storage building and selling the new lot containing the storage building. When this applicant first appeared before the planning board, he was asked to reconfigure the driveway placement to allow for greater sight distance, and to place orange cones at the new location so that planning board members could easily see it when they visited the site. This was done, and a public hearing was held after board members conducted site visits.

At the public hearing, residents expressed concerns that the buyer of the new lot would use the storage building for commercial purposes that do not fit the surrounding residential neighborhood. They also questioned the driveway's location and sight distance, and the possible inadequacy of existing culverts to accommodate increased runoff. Some residents feared future commercial use of the site, which the applicant stated would be sold to a purchaser with the intent to use it for residential purposes (specifically, for storage of a private collection of antique cars and boats). Such fears were apparently based on prior dealings, perhaps with this or other applicants. At the public hearing one speaker said, "When you tell somebody one thing and all of a sudden it blows into something else, it's almost like it's pre-conceived."

The proposal generated much discussion at the municipal level. Following the public hearing the planning board discussed at length whether a residential storage building could be a principal use on a lot. Because "residential storage" had not been defined in the town's zoning code, the board felt it was important to discuss this matter to inform future project reviews. The board also decided to include a note on the map, indicating that the building was for residential, rather than commercial, use. Legally, the applicant and future purchasers of the property are bound to conform to this note.

The board also discussed the county planning department's letter, which recommended disapproval of the subdivision. The county raised the following points: a storage building for vehicles is not compatible with low and medium density residential development, which is the intent of this zoning district; the existing storage building is therefore a nonconforming accessory use and should not be permitted to become a primary use, which will happen if a new lot is created; and any future development on this new lot will not be allowed, because it will mean an expansion of a nonconforming use, which could create a hardship for the new owner, who might wish to expand in the future. In response to this letter, the planning board determined that it would be unreasonable to rescind the original permitting of the storage building at the time it was constructed. Further, strict interpretation of accessory use laws is a policy issue that the town may or may not wish to pursue. The planning board attorney pointed out that it is common for an applicant to construct a garage before constructing a home, and in some cases the home is never built. Whether a town wishes to take action against the applicant

is a policy decision, and depends on the particular town's priorities and capacity. Regarding the possibility of hardship on a future owner who learns that he may not expand on the new parcel, the board addressed this by adding another note to the map, indicating that such expansion is not permitted. In the course of any real estate transaction, any purchaser would find this note in the course of doing his due diligence. The applicant appeared at one more meeting following the public hearing to supply further information on the new parcel's well and septic, and once satisfied, the board approved the subdivision.

In this case, both the county planning department and the municipal planning board recognized that the impacts of a seemingly simple action can transcend time. This begins to get at Iris Marion Young's contention that, to be just, politics must be understood as a relationship among strangers who exist in different times and places, not just as a face-to-face conversation among a small group of neighbors (1990). Here, concern for potential future purchasers of the newly created lot drove the board to require clarification regarding future expansion on the parcel.

This case also illustrates the competing information and expertise that underlie and motivate project reviews. The county planning department cited accessory use laws and codes, noting that by definition an accessory use such as a storage building cannot be the principal use on a lot—it must be second to some other principal use. Therefore, argued the county, a lot could not contain only a storage building and no principal use. Certainly the county planning department's recommendation that the planning board

refuse to allow the storage building as a primary use was motivated by a concern for the future of the zoning code, which is weakened each time a precedent such as this is set. The planning board rejected this argument as a matter of policy, noting that it has the flexibility to set its own priorities regarding enforcement of accessory use laws. While the county is correct, in a legal sense, that the zoning code does not allow for a storage building as a principal use, the town chooses as a matter of policy not to systematically enforce this regulation. While the county's recommendation is correct from a legal standpoint, it is cumbersome if not impossible for the town to enforce this regulation on the ground. Despite its rejection of the county's recommendation, the planning board did in fact uphold the intent of the zoning code in another respect-- by prohibiting any future expansion of the parcel's use for storage, the planning board's decision protects the interests of current and future stakeholders.

Thus, in illustration of Beck's contention that all knowledge is value-laden, here two different analyses of the same zoning code led to two different conclusions, each one based on a particular set of interests and values. It also begins to explore concepts of community that transcend a particular moment in time or geographic location. Concern for future stakeholders is central to land use planning, and is illustrated here by the planning board's efforts to protect potential future purchasers of the property by making known the use restrictions on the property.

Justice and the Meanings of Community: Special Use Permit to Convert Existing House to a Synagogue.

In this controversial project, the applicant sought to convert an existing two-story house on a major road into a small synagogue to serve about fifteen people. When the applicant appeared before the planning board, he was asked for more information on the number of parking spaces to be supplied, the interior layout of the synagogue, and the proposed landscaping on the lot. At the next meeting, the applicant had addressed many of these issues but a new issue arose: whether a mixed use building (the applicant wished to have a dwelling unit on the first floor, below the synagogue) was permitted in this zoning district. The applicant argued that a mixed-use building is permitted, and the planning board asked the applicant and his attorney to research this question and bring back some case law and other supporting documentation. When the applicant failed to produce sufficient support for allowing the mixed residential/ religious use, the planning board advised him to either abandon the dwelling unit or apply for a use variance from the zoning board, to allow the mixed use. In response, the applicant decided to abandon the residential use.

The concerns of the board were shared by the county planning department in its review of the project. The county found the project to be a matter for local determination, but stated that this finding was based on the understanding that there would be no residence in the building. The county also asked the board to encourage the applicant to install a vegetated buffer to separate proposed parking spaces from the road,

and asked the board to verify that the number of proposed parking spaces would accommodate the amount of seating proposed in the synagogue.

At the public hearing, there were many comments from the public urging disapproval of the project. Reasons for this included the following: if converted to a synagogue, the parcel would become exempt from property taxes, increasing the cost of community services borne by taxpaying residents; there was already a synagogue in the hamlet, less than one mile away, and another was not needed; and traffic and congestion problems would likely result if this synagogue were to become a reality. One member of the public stated in a written comment read at the hearing that "I [sic] a TAX PAYING citizen am TOTALLY AGAINST ANY TAX EXEMPT Organizations being placed anywhere in my Taxed area of Sullivan County." While the potential to remove the property from the tax rolls seemed to incite the most opposition from the public, the planning board recognized that property tax law is set by the state and, is not within the purview of the planning board to decide projects based on of their tax implications.

The issue of community character caused the planning board much more concern. According to their zoning code, the board must consider the impact of a proposal on the character of the neighborhood, and has the latitude to make a decision on that consideration alone. The issue of the appropriateness of this synagogue in this neighborhood remained, and was exacerbated when the board learned that the synagogue would also host educational workshops and sessions, which could mean much more traffic than was originally anticipated.

As the process moved forward, the issue of the residential unit resurfaced when a neighbor submitted a letter stating that she had been shown the interior of the building, and had met with the son of the owner, who indicated that a downstairs apartment was available for himself and his father when they needed to stay there. The board requested that the owner and his son attend the next meeting to clarify this issue.

At the next meeting, the owner stated that the on-site classes and workshops would be held on weekends only, and would only accommodate a small number of people. Also, he stated that the conversation between his son and the neighbor had been misconstrued, and there would be no residence on site. Based on this information, the planning board approved the special use permit subject to several conditions: the synagogue use would be on the main floor only, and there would be no residence on the downstairs floor; there would be no street parking allowed; there would be a maximum of five parking spaces on the site; and the synagogue would have a maximum occupancy of fifteen persons. In placing these conditions on its approval, the planning board sought to minimize traffic and safety issues, and maintain compliance with the letter and spirit of the zoning code.

When asked what he does as a planning and zoning board member, one focus group participant said, "properly control growth in the town, and make sure codes are followed, before it becomes an enforcement issue." Analysis of this project problematizes what is meant by "proper" control of growth. Certainly the municipal boards are very well acquainted with the town's zoning code. Here, the board asked for

verification that the size of the synagogue was reasonable, and that the number of seats in the synagogue corresponded to the number of parking spaces provided (this is standard practice for planning boards because in general, uses such as this require one parking space for a given number of seats, as directed by the zoning code). Community character is also governed by the zoning code, but is much more difficult to define and regulate. At the meeting, one planning board member discussed the section of the zoning code that permits the board to decide a special use permit application solely on the basis of whether it will have a substantial or undue negative impact on adjacent properties. Here, the board member was concerned that the primarily residential character of the neighborhood might be affected by a new synagogue, particularly in terms of traffic congestion and illegal on-street parking.

To add to the controversy surrounding this project, there were a number of public comments objecting to the synagogue. The planning board was thus charged with hearing all comments, separating those that were actual planning and zoning concerns from those that were outside the scope of this process, and ensuring that all relevant concerns were addressed. As described above, local autonomy can result in a protection of the most powerful local interests and the status quo, and can actually work against justice and inclusion, as in *Chabad Lubavitch.* Here, faced with many public comments concerning the removal of the parcel from the tax rolls, some that questioned the need for another synagogue in a hamlet that is already home to at least two synagogues, and several others that more vaguely objected to the project (one written comment read at the

public hearing said simply "I do not approve of converting the first floor of (Address) into a synagogue,"), the planning board had to separate any possible prejudices from actual planning concerns. This was particularly tricky because often such prejudices are veiled under the guise of "community character." Ultimately, the board conditioned its approval on certain parking restrictions, which address many community character concerns, and on the requirement that there be no residential use on the parcel, consistent with the town zoning code's prohibition on mixed-use buildings.

The complexities of this case illustrate Iris Marion Young's contention that, by removing particular attributes of people from the realm of public discussion, policymakers risk losing sight of the fact that a vigorous public sphere must include all of those attributes (1990). For example, discussions surrounding religion are kept to a minimum, probably in an effort to avoid allowing prejudices to be expressed and enter into the decision making process. Here, some members of the public argued that the hamlet already houses two synagogues, so another is not necessary. This argument perhaps oversimplifies the reality that differences among religious sects are often pronounced, and one synagogue is not the same as another. Ultimately, because the topic of religious freedom is kept out of the discussion, pre-existing prejudices are not resolved. This is not to say that the applicant should need to defend his right to create a synagogue before the planning board—certainly no person should be asked to defend that right. But as communities relegate religion, ethnicity, race, sex, age and other fundamental aspects of people's lives to the private sphere, they further marginalize

people. Thus, while it lies outside the purview of planning board review, a dialogue on religious difference seems to be an important prescription for this town and the entire county, where misinformation and misunderstandings often fuel hostilities among various religious groups.[14]

The Production and Legitimacy of Knowledge: Zoning Map Amendment to Extend Water District.

In this case, the owners of a private residential development sought to expand, and applied to the town board for an extension of the municipal water district. The extension would allow the residential development to construct new residences and serve them with municipal water. The county planning department recommended disapproval of the extension, noting that the existing development could not be expanded without adversely affecting the site's topography and hydrology. In other words, any new construction within this development would likely lead to erosion and runoff problems. The town board rejected the county planning department's recommendation and approved the request for the water district extension, noting that expenses incurred in doing so would be paid by the residents within the water district. Thus, no additional

[14] Such a dialogue will be most successful if it is spearheaded by citizens and community groups and supported from within the community. Possible organizers include the Rural and Migrant Ministry, a regional non-profit focused on changing a wide array of unjust social systems and structures in solidarity with the disenfranchised, or any of several local development corporations focused on community development in towns across the county.

expense would fall upon the other residents of the town. The board also investigated potential environmental impacts resulting from the proposed extension and found none.

In this case, as in the case of the storage building above, the assessments of potential impacts conducted by the county planning department and the municipal board led to opposite conclusions. Neither of these bodies employ professional hydrologists (although the town does employ an engineer), yet both submitted opinions. This case illustrates that knowledge can be contributed by experts and non-experts alike, but all knowledge must be vetted fully and democratically to determine its usefulness and ultimately produce just outcomes. Without knowing the basis of either body's opinions, it is impossible to ascertain whether and how environmental impacts were evaluated. Neither the town board meeting minutes nor the county planning department's letter indicate the basis for their conclusions. As Beck might argue, this case illustrates that all knowledge is built upon some normative framework, and divergent conclusions can be justified, depending on the particular experts who conduct the analyses and how they perceive the risks (1992). One can speculate as to the possible normative biases that guided the town board (perhaps it desired to draw in population, boost tax revenues, construct needed new housing, or other goals) and the county planning department (which could have been motivated by a desire to protect and preserve existing open space rather than encourage further residential development). But no documentation exists, so there is no real way of knowing how the final decision was reached.

It is possible that no one with professional expertise in hydrologic engineering reviewed this project. This could be legitimate, because as Corburn (2003) and Fischer (2000) have argued, the distinctions between expert and non-expert knowledge are fuzzy at best, and perhaps the knowledge that gave rise to these conclusions was fully analyzed and openly debated, and deemed to be sufficient. However, without documentation or other evidence, it is impossible to know whether and how knowledge was produced and tested, and thus whether the conclusions of either party are valid and just from environmental, social and economic perspectives.

Clearly, then, a better method for recording and disseminating information on policy debates and discussions should be implemented. For its part, the municipal planning board should be certain that all relevant information be discussed and recorded at its meetings, which are open to the public. Municipal board members in Sullivan County seem well aware of the requirements of open meetings laws, and based on my experience with the case study town, I doubt that this board discussed this matter privately in violation of those laws. Perhaps reasons for their decision were given at their meeting, but not recorded in the minutes. Or perhaps they received advice from their engineer or another consultant, and accepted it without any discussion. Regardless, substantive reasons for project approval, disapproval or modification should be recorded. With regard to the county planning department, *General Municipal Law* §239 does not require that the department provide reasons to support its recommendation. This is generally a policy decision made by the planning commissioner, who might provide

much rationale to assist municipalities, or provide little or no supporting information to avoid the perception that the department is interfering in the municipality's right to home rule. Regardless, the county planning department should at least document in its own records the rationale for any recommendation. By law, these records are always available for review by the public.

Focus group discussions touched on accepted planning policies and expertise, and addressed not only the content of expert knowledge, but its normative underpinnings and, consequently, its validity as expertise. For example, during a discussion of the utility of the county planning department's comments on project referrals, one participant said that in his recollection, most county comments "were not on the project itself. It was philosophy—like cluster housing." Another participant agreed: "Right, not necessarily technical comments on the project. More philosophical." This is interesting because cluster housing and conservation subdivisions, in which housing units are clustered in one small section of a development area, leaving contiguous open space in another section, are generally preferred by professional planners. They are touted as a means of preserving open space and fostering community cohesion. Conversely, developers fear lower demand and market values for homes in these alternative development layouts. Moreover, one participant noted "that subdivision over by the back of town. After a year of planning and redoing the roads and the plan, when we sent it for review, the county said, why don't you use cluster housing and put all the houses in one section. It was like… no." While the county planning department might view such a recommendation as

an offering of expertise, in this instance municipal board members viewed it as a philosophical difference.

The focus group discussion reveals that planning board members recognize that expertise offered by the county planning department is built upon a normative framework and is designed to achieve certain ends (here, cluster subdivisions help to protect open space, a policy goal that is generally accepted among planners but perhaps not shared by local policymakers). In another discussion, one participant recalled a county comment and the discussion that followed: "Should we have planned a *cul de sac* rather than a hammerhead. But we've already decided that we like dead end roads to end in a certain way, whereas the county likes something different. There's a conflict every time we send one in." Planners often prefer a hammerheads to *culs de sac*, because the former reduce the amount of impervious surface. However, highway departments and emergency responders often prefer *culs de sac*, because they allow road crews and emergency vehicles to maneuver more easily. Thus, in these instances the biases that drive knowledge production are brought to light and made explicit.

Interestingly, in discussions of expertise, focus group participants did acknowledge that they lack expertise in some areas. Participants were asked about areas in which they felt their expertise was lacking or in which they would like assistance. Many technical aspects of project review were cited—one participant felt that his board needs "some real technical training, for example, this is what is required in a biodiversity

study. We have a consultant come in here and say, here it is. Our knowledge deficit is so large that we have to take it on faith. And they represent the developer."

During a discussion of stormwater from a large subdivision, which impacted a neighboring municipality, one participant said that this "speaks directly to the training issue. I don't know if you could train the planning boards on that. I do think that's something that the individual planning boards look to the county for." More broadly, one participant requested "some real technical training." He went on, "most of the training I've taken has been very generic, very vague. Certainly for folks who have been sitting here for 30 years, you're not going to teach them anything in a generic course."

Interestingly, professional planners are usually not experts in engineering, biology, hydrology, geology or other technical fields. So, the county planning department must rely on other experts to provide this type of training. This has happened in the recent past, with staff from the New York State Department of Environmental Conservation hosting a discussion of non-point source pollution, for example. But based on my personal experience with the county planning department, most recent training sessions offered by the county have focused on the roles and functions of the planning and zoning boards. Relatively few have focused on technical aspects of projects.

Several focus group participants expressed concern about their lack of technical expertise. One acknowledged that "we have nowhere near the expertise to know if an engineer's stormwater runoff calculations are correct." Another pointed out that experts sometimes make simple mistakes, saying "I found a simple arithmetic error (in an

engineer's analysis), but I don't understand the actual calculation." Sometimes these calculation mistakes by experts, or even intentional misrepresentations, can derail the project review process. One focus group participant, who also sits on a planning board in a different municipality, said,

> we just had one in (other municipality) that really was not good. The information that we approved it with was bad. There isn't anything you can do once they approve it. I made it well known that I and some other board members were totally upset about this. The lawyer said there's nothing we can do.

Indeed, concerns regarding municipal authority arose throughout the focus group session—in other words, the legal ability of the municipality to enforce the conditions and regulations they put in place. As one participant noted, "under the law, the planning board can't call a developer back if he fails to adhere to the plans he presented and we approved." Rather, it is the code enforcement officer's role to ensure developer performance through regulations and penalties. Code enforcement officers are trained and capable of carrying out this duty, but participants felt that it is a flawed process that allows one body to make and execute an agreement, and forces another individual to be responsible for ensuring that the agreement is honored. On the other hand, this is most likely written into state law to serve as a check on the power of any one entity.

Another problem related to authority is that, if the town wishes to take action against a developer for breaking his agreement with the board, this means a costly and time-consuming legal process. As one participant noted, "you can take somebody to court, but is it worth it? A judge might say, this is so minor, and throw it out." When I

suggested that the services of a mediator or arbitrator could be employed to resolve such conflicts, one participant responded, "we couldn't even agree who should send the letter telling [the developer] to do it [perform the development in conformance with the signed and sealed plans]." Another agreed: "He's being honest. We couldn't get past who should send the letter." This reflects internal disagreement within the board and the town, but also suggests an opportunity for clarifying what authority municipal boards do have, and how they might most effectively exercise that authority.

Participants' frustration with flawed expertise, and their desire to gain more technical expertise of their own, further illustrates their recognition of the biases that underlie the production of scientific knowledge. This follows Beck's scientization model, wherein citizens gain scientific knowledge in order to contest the knowledge that experts have produced, and ultimately produce new scientific knowledge to counter the old (1992). It also brings attention to Beck's concern that, through this process of scientization, any conclusion can be made plausible, depending on the expert knowledge that produces that conclusion. In the focus group session, it was clear that participants seek expert knowledge on technical matters so that they can critically engage with engineers and other experts who work for project applicants. In doing so, they hope to conduct their own analyses, for the stated reason that they want to ensure the best type of development in town.

This immediately raises the question of what kind of development is best, and brings to light the fact that each planning board member has a particular view of what is

best. So, simply ensuring that local actors are equipped with the means to conduct expert analyses is not enough to ensure just outcomes. As Eckersley urges, a specific substantive commitment to seeking the voices and contributions of those who are powerless must accompany any procedural commitment to democracy (2004). While the land use planning review process in New York does build in several safeguards against injustice (the public hearing process, review by attorneys educated in planning and zoning law, referral to outside agencies for assessment of broad-scale impacts), it is still possible (as in *Chabad Lubavitch*) to make patently unjust decisions unless the particular decision makers are committed to a deeper, more substantive democracy.

Throughout this research project, it seems clear that the participating planning and zoning board members are committed to fairness and equity in their project reviews. But other boards might not share that conviction. And the procedural mechanisms ensuring justice—notice requirements and public hearing protocols—are fairly weak, especially in cases where neighbors have unequal access to publications and transportation, or are generally unaware of their right to participate or even discouraged from participating. Thus, the current system, like Fischer's (2000) and Corburn's (2003)models, only works if the particular actors involved are committed to just policymaking. A better system would, as Eckersley urges, somehow build deeper and more meaningful opportunities for participation into the process (2004).

Sharing Expertise: Special Use Permit to Replace Residential Buildings in a Religious Camp.

In this project, the applicant wished to replace several existing buildings within a religious camp. The planning board asked the applicant to move one building to meet the zoning code requirement for minimum distance between buildings, and this was done. The project was referred to the county planning department, which found it to be a matter for local determination. However, the county encouraged the development of a master plan for the camp, to prevent haphazard or piecemeal future development. The board approved the special use permit, and at the recommendation of their attorney, they told the applicant that they would not entertain any further permit applications without a master plan.

The documents do not reveal whether the county planning department's recommendation influenced the planning board to require a master plan. In this case, the county and the planning board did agree that the applicant should develop a master plan for the camp before proposing further improvements. While it is unknown whether the planning board had considered this before reading the county's letter, it is useful to see that the two bodies agreed, especially on an aspect of the project that falls squarely within the realm of the county planning department's review for inter-community impacts. Without a master plan, haphazard development could lead to safety issues, environmental problems (runoff, erosion and others) and negative impacts on the character of the surrounding area. It is interesting to note that the planning board felt that these

considerations were important as well.

To uncover the planning board's opinions regarding the usefulness of the county's letters, focus group participants were asked to describe any instances in which the county planning department had offered comments that were particularly helpful or influential. This was an effort to identify those areas in which municipal board members feel the county has expertise that can assist in ensuring a thorough project review. Interestingly, no participants could describe a particular area of expertise or cite an instance where they found the county's comments to be especially insightful. When asked whether they could think of any comments the county planning department has made that they hadn't considered and found interesting and useful, the only response was this: "It's happened but I can't think of any instances."

During the focus group session, participants were asked how they would view increased county involvement, especially in those projects where county review is not mandated but is instead an informal process of offering feedback. When I suggested that the county planning department is leery of being perceived as overstepping its authority, one participant responded, "that's strange." Another said, "we don't perceive it as a threat or something." Finally, when I told them that there is no mechanism in place for a formal, regular review upon which the municipal board must vote, if not triggered by *General Municipal Law* §239, one participant said, "that could be a problem. What we're saying to you is that we actually need that… You're saying an informal review, but does that actually have any teeth." Of course, it does not, and it was instructive to learn

that some participants found this to be a hindrance to effective, thorough project review.

Not all participants agreed, however. When it was noted that in a neighboring county, a staff member from the county planning department attends each municipal planning and zoning board meeting and participates, this participant stated "I don't want the county commenting on every single thing. Because not everything is their business." The tone and context of the conversation surrounding this remark indicated that this participant was referring to those actions that are usually found by the county to be matters for local determination. Another participant agreed: "If it's a lot improvement with no development… you shouldn't have any comments on that."

Focus group results seem to indicate that participants feel that they take part in a sharing of knowledge and information with the county planning department. The above discussion, concerning more county involvement in early stages of project review, reveals some participants' perception that the process is and should be collaborative, rather than hierarchical. There is little in the board meeting minutes to demonstrate that this is the nature of the process at present, but ample evidence in the focus group results indicates that municipal board members would like to see a more collaborative process in the future. At the very outset of the focus group session, one participant stated that

> if there's no planning board to set guidelines, state and local code can't allow for some of the necessary things to be put on a site plan, that are community related. The code enforcement officer can't ask for it once the plan is stamped without it. The county and the town must work together to come up with a good format to start with.

Thus, while *General Municipal Law* §239 sets forth certain review criteria for the county planning department, this participant felt that the county and town should work within those criteria and guidelines to create a system that can better ensure thorough project reviews.

This relationship is perhaps akin to what Frank Fischer advocates, in his argument that the knowledge that drives policy must not be limited to that produced inside the walls of traditional elitist institutions, but rather must also include the knowledge and expertise of citizens (2000). During the focus group session, one participant articulated this egalitarian relationship, noting that his board makes its decisions based upon its members' expertise and information, plus the expertise and information of the county planning department, if the latter is deemed useful. In general, then, it appears that focus group participants perceive themselves to be peers with the county planning department when it comes to expertise as broadly defined, exchanging knowledge and information equally between each other.

Breaking Down the Walls Between Local and Expert Knowledge: Special Use Permit to Construct an Addition onto a Residential Building.

Residential building additions, including porches and sunrooms, are quite common and often very straightforward. In this case, the applicant proposed to construct front and rear porches onto her home in an existing residential development. When she first appeared before the planning board, she was instructed that the proposed front porch intruded into the front yard setback, and would need to be reconfigured or eliminated.

She brought revised maps eliminating the front porch to the next planning board meeting. During the third month a public hearing was held. Following the public hearing, the planning board discussed the county planning department's letter, which found this to be a matter for local determination and made no additional comments.

However, the planning board had some concerns. Of primary concern was a manhole in the development, which took on too much water and caused flooding at the town's sewer plant. Board members and the code enforcement officer felt that an increased building footprint and additional grading would likely exacerbate the flooding problem. Moreover, at the time this was one of three special use permit applications from residents of this development, all for construction of residential additions. Thus, the manhole would likely take on additional water resulting from all three construction projects, rather than just one. The planning board approved the application, but the approval was conditioned upon resolution of the flooding issue. The residents of the development (through their homeowners association) would be responsible for fixing the problem.

While arguably outside the domain of planning board approval or disapproval, this project also brought to light problems with emergency 911 access. Many dwellings within the development are improperly numbered, or not numbered at all. Sullivan County, not the individual municipality, is responsible for coordinating 911 addresses for the entire county, and each 911 address must be located on a named road. The project maps showed a series of paths and trails, and having visited the site, the planning board

knew some of these to be actual named roads, while others were not. The planning board asked their code enforcement officer to work with residents of the development and Sullivan County to clarify and resolve 911 addressing issues. This had been a problem in the past, it was noted, causing ambulances to spend an hour driving around the development searching for an address where an emergency was taking place.

This case illustrates the importance of various types and sources of knowledge in land use planning. Specifically, it points to the valuable technical contributions of a wide array of stakeholders, including planning board members, the code enforcement officer, the sewer plant operator, emergency medical services providers, and residents of the development. Without the insights and contributions of each of these, the planning board could not have arrived at a comprehensive solution to the problem. In the previous case, no information is provided regarding how policy decisions were reached concerning the water district extension. By contrast, in this case it is apparent that the decision was based on the input of many stakeholders.

This project also illustrates Novotny's contention that definition of expertise must be broadened to include the lived experience of lay actors. Focus group discussions further clarify the importance of such knowledge and information. One participant indicated that the planning board "deals with concrete problems" such as providing for garbage and snow removal. Indeed, the county planning department's purview is limited to those facets of a project that are likely to have inter-community impacts, and things like garbage and snow removal, on-street parking, and others are often limited in scope to

a particular community. One focus group participant classified these considerations as "mundane" but it is obvious that they are important to residents and the board must devote significant time to them. In this case, for example, the board discussed at length the issue of the manhole that becomes inundated and floods the town's sewer plant. While this certainly is an inter-community impact, it is not an issue that the county would likely be aware of, so the expertise of the planning board, code enforcement officer and sewer plant operator is critical to ensure a thorough project review. Similarly, this project brought about a lengthy discussion of 911 addresses in this particular development. Having heard directly from emergency responders that they struggled to locate a patient during a medical emergency, municipal staff and board members were well aware of the real-world impacts of poor project planning.

Finally, this case begins to illustrate Corburn's (2003) co-production model. Before making a decision, the planning board discussed the project at length with various community members, not only to get their input but also because many of them would also have active roles in the resultant policies. Emergency medical services providers, the sewer and water department, the code enforcement officer, and local residents would all be required to take part (to varying degrees) in enhancing the 911 addressing system within the development, mitigating the existing flooding problem, and ensuring that in the future water runoff would be assessed holistically. In other words, with the power to contribute knowledge and influence policy comes the responsibility to participate in enacting the agreed-upon policy. And, following Corburn, here the planning board goes

a step beyond incorporating local knowledge in the policymaking process—it moves away from categories of "expert" and "local" or "citizen" in favor of a model where all knowledge is considered and evaluated. This only makes sense, argues Agrawal (1995), because pure categories of knowledge do not exist. Rather, those who hold knowledge and information communicate with and influence one another, so that all actors possess a wide array of knowledge that is constantly in flux, and does not conform to any particular category. Moreover, as Innes (1998) posits, it is the communication process that drives policy. Communication, rather than simply informing action, is actually a form of action itself. Focus group members recognized this phenomenon. One participant stated,

> It's a waste of time for me to send a 239 to you and you send it back saying that you have no comments. We don't always want to hear what you have to say, and we don't want to hear what we have to say to each other, but there are so many times that the conversation brings out the best solution, that it's worth hearing. I'm never offended by somebody saying, 'you're wrong.'

So, for him, the ultimate action is less meaningful without communication between the county planning department and the planning board. The sometimes uncomfortable process of communicating in fact changes our perceptions and definitions of policy problems, and changes ourselves. This is central to the communicative nature of land use planning and policymaking.

DISCUSSION

Discussions of autonomy, justice and expertise must be central to land use planning, because decision makers' understandings and framings of these concepts directly shape the ways in which their communities develop. Based on my research, several key findings have emerged.

First, as the world grows evermore interdependent, local autonomy requires critical examination. A rhetorical commitment to autonomy, often expressed through home rule statutes, remains strong, but my research reveals that in practice land use policymakers indeed recognize that their decisions have broader environmental, social and economic impacts, which must always be considered. Local decision makers in Sullivan County view themselves as peers of other government and quasi-governmental agencies, and appreciate input from these outside agencies on land use planning and zoning issues. There is little evidence that they feel such input and review threatens their local autonomy.

Second, the impacts of a strong commitment to local autonomy can be profound, and policymakers must work to ensure that just ends are served by the planning process. Justice in land use planning is best served when a multiplicity of actors have meaningful opportunities to participate in the definition of policy problems, and the search for solutions. Injustice is hard to recognize, though, and can stem from all levels. There is no guarantee that a multi-layered project review will lead to more just outcomes; rather, the particular actors involved at all levels must have a normative commitment to justice.

Finally, it is apparent that policy is driven by not only laypeople but by experts as well, and the framework within which these various decision makers operate must take a form that allows the greatest possible opportunity for participation by all citizens. Local decision makers have a great deal of knowledge, which transcends categories of "expert" and "lay" and contributes in important ways to land use planning. But they desire more technical knowledge from sources traditionally conceived of as "expert," to help them more fully understand and challenge the experts with whom they work. The infusion of expert knowledge, however, is not enough. The pluralization of expertise must go even further, as policy actors recognize that all knowledge is potentially valuable, regardless of who produces it, by what methods, or how it is tested. This is perhaps the most difficult task, and requires a radical rethinking of the roles of expert and lay actors. Small steps toward this transformation are taking place but rely mainly on weak procedural safeguards.

The stakes are high—without a commitment to these concepts and practices, patterns of alienation and disenfranchisement will continue to repeat themselves, not only in our ways of thinking but also on the ground as we plan and develop our communities.

Local Autonomy and the *General Municipal Law* §239 Review Process

As currently implemented in Sullivan County, the *General Municipal Law* §239 review process represents a legal check on municipal autonomy. In the broader context of land use planning, concern for local autonomy drives arguments for municipal home

rule across the country. Thus, a closer examination of how local planning and zoning board members perceive the process, as it affects their autonomy, was undertaken to learn whether autonomy concerns are a valid reason for altering the process.

The research indicates that perceived threats to local autonomy are minimal among planning and zoning board members in the case study town. Indeed, while the rhetoric that surrounds home rule can lead us to believe that processes like *General Municipal Law* §239 review are a danger and a threat to municipal autonomy, my research has not borne this out. If a municipal board disagrees with the county planning department's recommendation, a supermajority vote will overrule that recommendation. This was the case in two projects described above, the proposed water district extension and the subdivision to separate a residence and storage building. In both cases, after considering the county planning department's disapproval recommendations, the municipal boards voted to approve the proposed projects. Meeting minutes do not reveal that the municipal boards were frustrated by the county's comments, but rather that they were committed to careful discussions incorporating a breadth of knowledge and expertise.

Thus, it is apparent that, based on this research, municipal board members do not feel that their local autonomy as decision makers is threatened by the *General Municipal Law* §239 process and its requirement that the county (and other state and federal agencies with jurisdiction) review land use projects. Indeed, focus group participants noted on several occasions the importance of understanding the potential inter-municipal

impacts of projects. Participants in this study seem acutely aware that they are not completely autonomous, but rather are part of a larger system of governments and regulatory bodies. Moreover, they seem unthreatened by other agencies with jurisdiction, instead seeing themselves as an equal player and, ultimately, the sole authority in approving or disapproving land use projects.[15]

Importantly, while land use planning is regional in scope and impact, the dynamics of planning practice and policymaking are specific to each locality. Thus, similar research should be done in other municipalities to assess the characteristics of their boards and their relationships with the county. Contrary to popular rhetoric and beliefs among planners, participants in this study seem to want more, not less, involvement from others during the project review process.[16] In this case, the data suggest that municipal board members desire informal reviews and input from the county planning department when *General Municipal Law* §239 is not triggered. In fact, it seems that the main concern with *General Municipal Law* §239 itself is the potential for large-scale impacts that stem from projects that do not trigger review by the county.

---

[15] During the focus group session, we did discuss Article 78 of the New York State *Civil Practice Law and Rules*. Under Article 78, if an agency makes an improper decision or allows a project that is subject to New York's State Environmental Quality Review to start, and fails to undertake a proper review, citizens or groups who can demonstrate that they may be harmed by this failure may take legal action against the agency (*Civil Practice Law and Rules* n.d.). Participants are well aware that Article 78 actions can be brought against them for improper project review, and thus that their authority is not unlimited.

[16] Based upon my personal conversations with county planners.

This runs counter to traditional thinking on local autonomy, which argues that the state is not competent to weigh in on local issues, and that there is a simple wisdom in leaving decisions to local bodies. More traditional thinkers like McGoldrick (1933) and his followers today might attest that local land use planning should be the exclusive domain of individual municipalities.[17] But this study has lent support to the arguments of Teitz, Silva, and Barbour (2001) that land use planning is inherently regional in nature. Certainly, as is shown here, the municipal planning and zoning boards have a more intimate knowledge of each particular project than the county planning department. In that respect, they are more competent and qualified. But they do acknowledge that the county planning department plays an important role and sometimes lends valuable expertise. And, regarding the simple wisdom of leaving local matters to local authorities, participants in this study seem to feel the opposite—most projects are regional, not local, in scope, and the wisest course of action (the best way to ensure that a project will not have adverse impacts) is to solicit and review the recommendations of a variety of bodies at the local, county and state levels. However, this involvement needs to occur in an

---

[17] Note that the context in which home rule advocates operate today is very than in McGoldrick's time. As Libonati noted, in 1933 locals sought reforms that would allow them to express their preferences at the local level (United States Advisory Commission on Intergovernmental Relations 1993). In contrast, according to Silva (2004), today home rule advocates are on the defensive against proponents of regionalism, who contend that local autonomy has led to the justice problems described throughout this paper. Yet Silva argues that home rule advocates continue to invoke McGoldrick's "simple wisdom" argument, supporting his claim through analysis of a series of columns that appeared in the League of California Cities' monthly journal, *Western City*, between 1997 and 2001 (Silva 2004).

atmosphere of respect and equality. Each municipal board in Sullivan County has a different level of skill and expertise, and a unique relationship with the county planning department. Thus, the best course of action for one municipality will not fit all others.

Working Toward Justice in Land Use Planning

Potential problems concerning the justice implications of unchecked local autonomy, expressed by various theorists including Briffault (1990) and Silva (2004), are more difficult to observe but do not seem to materialize in this study. In *Chabad Lubavitch*, it is clear that the local governing body sought to preserve the status quo and the exclusion of a particular religious group. While it is impossible to know whether planning and zoning board members participating in this study have personal biases against any particular group, there is no evidence that those biases, if they exist, drive the policy decisions made by the boards.

Based on this study, there are some possible ways to alter the structure and process of land use planning project reviews to avoid the injustices that were apparent in *Chabad Lubavitch*. For example, it is possible that in that case the Litchfield Historic District Commission members were not aware that their meeting was public and was being recorded. This forced transparency can be an important means of ensuring that such unlawful and unjust actions and statements do not pervade municipal board meetings. In the case of the conversion of a residence to a synagogue here in Sullivan County, I suspect that some stakeholders (whether board members or residents) were

motivated by bias against the applicant based on his religion. But, from a procedural perspective, the recording and transcription of the public hearing likely served as a deterrent to any overt expression of religious bias.

Of course, substantive as well as procedural mechanisms must be built into the land use planning and policymaking system, to ensure that just ends are reached. Briffault argues that participation in the process must be meaningful—that is, it is not enough to give people time to speak at a public hearing. Rather, decision makers must be committed to fully considering and vetting citizen input. Participants in this research project seem to be committed to creating and maintaining a vigorous public life, a commitment that is evidenced by those cases in which the boards held numerous public hearings, requested specific information from applicants, and deliberated at length the merits of a particular project. In other words, they value careful, comprehensive project reviews over expediency, when a rush review could lead to unjust results (for citizens or the environment, now or in the future).

This is not to say that there is no room for improvement in the system. Robyn Eckersley, in her work on developing a critical political ecology, contends that any procedural innovations to safeguard justice must be part of a larger, more fundamental structural shift in how societies conceive of the role of the state (2004). Thus, for her, the state must take an active role in seeking out the voices of those whose voices are generally silenced, and give those voices greater weight or preference than the voices of the already powerful (2004). As noted above, the municipal boards in this study seem to

express their preference for justice over order and expediency. This preference could be strengthened, codified and expressed by an affirmative commitment to seek out the voices of those who are silenced. Certainly this would further complicate and delay the project review process, and would possibly generate little interest or reaction. As one participant noted, education and outreach sessions, designed to bring citizens into the planning and zoning process, are generally attended by the same small group of interested people. However, an honest and aggressive campaign to bring people into the process might be the only way to achieve the green democratic state that Eckersley envisions.

Rethinking Expertise in Land Use Planning

The problem of expertise as a political tool, articulated by Beck in his work on risk analysis, is apparent in land use planning projects. Participants repeatedly stated their lack of faith in the scientific experts who devise project plans and assess the impacts those plans will have on the environment. This awareness, that the experts are sometimes mistaken, and are sometimes perhaps willfully deceitful, is an important recognition and puts the local boards in a better position to thoroughly evaluate proposals. Participants rightly note that it is unreasonable to expect them understand the details of hydrologic processes that impact runoff and erosion potential, for example. They lack the time and the technical background to become "expert" in this or related fields.

Study participants realize that a useful method for combating this cult of expertise is to foster an informed debate of possible project alternatives. Rather than viewing

county recommendations on projects as combative or authoritarian, board members seem to consider the county's point of view and weigh it against other perspectives. And this occurs not only between the town and the county, but also among towns (as in the cider press case, wherein the neighboring town's planning board chairman shared his concerns on a project), and between the town and its residents (as in the case of the resident who visited the proposed synagogue and gained information that conflicted with the information originally presented to the planning board).

A glance at the projects proposed for the two-year period analyzed for this study reveals a definite bias for approving projects. Of 40 projects brought before the municipal boards, 39 were approved and one was withdrawn. But a closer examination of the data shows that projects often change dramatically between the time they are first presented and the time they are approved. This happens because board members, the board's attorney, the code enforcement officer, residents, the county planning department, officials from neighboring municipalities and others all lend their expertise and help to create a final version of the project that is acceptable to all stakeholders.

This diversity of knowledge makes both procedural and substantive contributions to land use policy. The fact that every project requires a public hearing ensures that lay people will have the opportunity to comment.[18] This might satisfy the procedural aspects

---

[18] This is at least true in theory. As noted earlier, in practice, the public hearing format can be less successful. While everyone is given a chance to speak, there is no informed debate during the hearing. It is simply a forum for concerns to be voiced. In the case of the conversion of a residence to a synagogue, the public hearing was held at the usual

of a just project review. But as some theorists note, this procedural justice can still place lay knowledge in a different, perhaps lower, realm than expert knowledge. More important, then, are the substantive contributions of lay knowledge. In the case regarding stormwater drainage and emergency circulation, detailed above, emergency responders informed the municipal planning board and code enforcement officer of problems with 911 addressing in the development. The county planning department, on the other hand, had no knowledge of the 911 issue. In this case, local knowledge (which is arguably lay knowledge, not expert knowledge) helped to ensure that a very real problem—potential lack of emergency access—was resolved. The expert knowledge of the county planning department alone would have led to a less comprehensive review and decision.

As illustrated in several of the above cases, the expertise of local policymakers, county planning departments, state and federal agencies, and citizens are all integral to reaching just and sound land use planning policy solutions. Any efforts to expedite the project review process would also serve to restrict land use decision making to a smaller set of policymakers, and to exclude particular voices. While it is likely that any narrowing of the range of acceptable expertise will expedite project reviews, it seems equally likely that the decisions reached will be less informed. In direct contrast,

---

time, which happened to be during Passover. Several residents wrote and mailed their comments to be read at the hearing, citing the fact that as observant Jews it was impossible for them to attend the hearing in person. Perhaps a better course would have been for the municipality to postpone the public hearing until after the Passover holiday, so that observant Jews would be able to attend. Municipalities often schedule meetings and hearings to accommodate religious observances, although they also owe a duty of expediency and efficiency to project applicants.

participants in my research repeatedly stated their desire for more involvement (especially in terms of technical assistance) from county level planners and other entities, rather than less. Such a broadening of acceptable knowledge is in keeping with the justice concerns of Corburn (2003), Fischer (2000), and others, and is more likely to bring about the type of deep democracy that Eckersley (2004) imagines.

Even with this proliferation of knowledge, however, concerns of justice remain, because knowledge and expertise often become politically motivated. To combat this, municipalities and counties should work together to educate residents about their opportunities to participate in the land use planning process, and should be explicit in their commitments to include all segments of the population in their outreach efforts. The built-in transparency of the planning process, and its procedural guarantees of notice and participation, are steps toward ensuring justice, but a strong commitment to valuing all types and sources of knowledge, from expert analyses to lived experiences, must accompany this outreach campaign and the entire project review process.

Toward an Integrated Model

Drawing on the research findings described above, what follows is a brief outline of those aspects of planning processes that can serve three interrelated goals: a respect for autonomy, a commitment to environmental, social and economic justice, and a regard for the broadest and deepest possible range of knowledge and expertise.

The process of review under *General Municipal Law* §239 is itself a useful procedural mechanism for serving these three goals. The review process grants to various entities with different areas of expertise the ability to review projects, and requires that citizens have the opportunity to participate in a public hearing, while leaving the final decision making authority in the hands of the municipality. But, as has been shown, relationships, power structures, and ways of knowing and communicating form the foundation that guides the *General Municipal Law* §239 review process. The ability of land use planning processes to integrate autonomy, justice and expertise is directly dependent on how these relationships, power structures and ways of knowing are conceived and constructed. Two fundamental characteristics of a land use planning process that respects autonomy, serves justice and incorporates the broadest and deepest possible range of expertise are described below.

First, all planning policymakers must make an affirmative commitment to seek out silenced voices as they undertake project reviews. This would foster autonomy at the individual level, consistent with Jefferson's original intent. It was with individual autonomy in mind that he promoted home rule for each ward because, he contended, small local governments are best able to respond to individual needs and ensure individual freedom. With specific regard to land use planning today, municipal boards are entrusted with the responsibility to conduct sound project reviews on behalf of all citizens. Thus, land use planners at all levels must recognize that autonomy is a goal for individuals, not just for municipalities. The current system, in which municipal boards

represent citizens, is far more expedient than a system in which each stakeholder represents him- or herself, but it also truncates the process and denies opportunities for participation. Recognizing that *all* stakeholders must have the opportunity to participate meaningfully and voluntarily on their own behalf would serve to protect the autonomy of every individual, in keeping with Jefferson's intent. I would argue that this is a more meaningful conception of autonomy than a simple commitment to home rule at the municipal level. A guarantee of autonomy for individuals is more meaningful than a commitment to municipal home rule because it forces an examination of the legitimacy of the power held by existing municipal boards. These boards might otherwise (intentionally or not) fall into a pattern of preserving the status quo rather than integrating new voices. A commitment to including diverse voices would also reinvigorate the policymaking process, recognizing that participants' race, class, gender, sexuality and other characteristics, which are currently relegated to the private sphere, are fundamental in determining how they approach public policy issues. Over time, this commitment has the potential to completely reshape politics, making it more inclusive of diverse ways of knowing and recognizing that marginalized voices have much to contribute, from lived experiences and anecdotes to technical expertise and insight that would otherwise be overlooked. Their inclusion not only grants to them some measure of justice, but also helps everyone to reach policy solutions that are environmentally, socially and economically optimal.

This commitment to seek out silenced voices is not written into the *General Municipal Law* §239 process, and my research has not revealed any steps that the case study town has taken to codify and act on this commitment. In the cider press case, the neighboring town's planning board chairman was notified of the project (as required by law), and he spoke on behalf of his town at the public hearing. This case can be contrasted with the 35-unit subdivision that was discussed during the focus group session, where there was no requirement that the neighboring town's board be notified, and they protested the project when they learned about it, because of the potential flooding impacts their town might sustain upon buildout of the subdivision. Yet in both of these cases it was the elected and appointed officials of the neighboring town who took part in the process, not the individual residents who might be most impacted by the decisions made. In this research project and in my experience with the *General Municipal Law* §239 process, there is little evidence that any group is specifically excluded, but there is also little evidence that a wide diversity of views and interests is affirmatively sought out and included. As Iris Marion Young points out, these others are often erased, as dominant groups project their own experience as universal (1990). Thus, it is not surprising that there is no evidence of exclusion in the projects analyzed for this project—it is quite likely that policymakers do not feel they are failing to include diverse voices, because those voices have been silenced through repeated patterns of domination and oppression. These patterns must be broken to bring to light diverse interests and ensure justice in land use planning processes.

In addition to the existing requirement to notify members of the public of project reviews, and give them an opportunity to participate in public hearings, a model planning process would make this opportunity more meaningful by working harder to reach out to marginalized groups and solicit their input—perhaps at a more convenient time and location than the standard public hearing. Moreover, municipal boards could require that their members come from diverse geographic areas, represent an array of professions and trades, or are diverse in some other meaningful way that might help to ensure that boards can effectively reach various communities.

In addition to seeking out and integrating all stakeholders into the process, planning policymakers must take steps to improve their relationships with one another and foster an environment of mutual respect and collaborative problem solving among themselves. Doing so would serve several ends. First, policymakers at all levels feel a meaningful sense of autonomy when they know that they have the respect of their counterparts. In my research, the case study town and the county planning department seemed to have a generally positive and respectful relationship, and focus group participants repeatedly expressed that they appreciate receiving input from the county, rather than viewing it as a threat. Based on my experience, it is difficult to cultivate such a collaborative process in the absence of mutual respect among municipal and county planning policymakers. Relationship building also serves justice, because meaningful discussions among policymakers must include an exchange of ideas about facts and values, which forces a shift in the perception and thinking of each person involved. A

necessary outcome of this shift is the meaningful attempt to understand, appraise and integrate the knowledge of the other. Relatedly, the creation of strong relationships forces an examination of expertise, and allows for the inclusion of all types and sources of knowledge, from technical expertise as traditionally conceived, to knowledge based on lived experience. A model planning process would be borne out of relationships that respect all knowledge equally, without regard to distinctions of "expert" and "lay" or "local," as the particular situation may warrant. Recognizing that all knowledge contributions have the same weight implies two necessary corollaries—first, the recognition that all knowledge claims are value-laden, and second, the recognition that all claims must be thoroughly and democratically vetted. When policy actors feel respected, they are more likely to view themselves as collaborators in a process aimed at solving a particular problem, rather than as combatants in a contest of wills. As a result, they are better positioned to thoughtfully and respectfully examine their own and others' knowledge contributions, as tools to overcoming policy issues.

County planners recognize the importance of relationship building for the success of planning processes. To that end, they have in recent years orchestrated "meet and greet" sessions early in the year to encourage planning and zoning board members to get to know each other and the staff of the county planning department. Such efforts should be continued and strengthened, and municipal board members should be encouraged to provide feedback to the county planning department throughout the year. When new board members are appointed, it has been my experience that they often defer to more

seasoned board members and the county planning department. Perhaps the county planning department could encourage all municipal board members, regardless of their experience with the discipline of land use planning, to contribute to the process more vocally and frequently. My research has shown that the inclusion of the lived experience and contributions of all stakeholders makes the process much richer and better informed, and it is the responsibility of professional planners to recognize and foster these contributions.

CONCLUSION

A commitment to individual autonomy, social, environmental and economic justice, and respect for difference in knowledge and expertise must underlie any deliberative, participatory democracy. The *Chabad Lubavitch* case is just one illustration of how land use planning can go awry when local autonomy becomes a guise for injustice, and it reinforces the importance of seeking and incorporating various ways of knowing into the planning process. There are myriad other examples, though, and I hope that the model advanced here can help policymakers in land use planning and other policy arenas to understand the inextricable links among autonomy, justice and expertise, and work to consider all three as they deliberate policy options. This project also gives rise to suggestions for further research.

Autonomy, Justice and Expertise in Broader Policy Issues

The increasing interrelatedness of communities and societies, and the rising stakes of land use decisions in an era of resource scarcity and environmental degradation, demand that concepts of autonomy, justice and expertise are fully explored and thoughtfully integrated into land use planning processes. The substance of many of the projects highlighted in this project is relatively small in scope, but the guiding principles of project review translate to larger scale projects and issues as well.

For instance, current debates surrounding natural gas drilling, which have captured the national spotlight in recent years, illustrate the relevance of these principles.

Like much of the northeast, Sullivan County sits atop the Marcellus Shale Formation, which is believed to contain vast quantities of natural gas that could provide energy, create jobs, boost tax revenues, and turn government budget deficits into surpluses. Drilling for gas could also industrialize the landscape, harm the water supply, bring increased noise and traffic, damage roads, and lead the county into a doomed boom-bust cycle typical of natural resource extraction-based economies around the world.

As stakeholders attempt to navigate this uncharted terrain, and make choices that could affect the entire region for decades to come, they must seek out the broadest possible diversity of voices and incorporate all value systems into the policymaking process. Gas drilling presents a particularly difficult problem, because it is regulated at the state level, and municipalities have little opportunity to set policy for themselves. More fundamentally, the autonomy of individuals who seek to lease their land to gas companies must be weighed against the autonomy of their neighbors, who risk exposure to polluted water should a well casing fail or processing fluid spill. If we are to truly respect autonomy, we must take affirmative steps to seek out silenced voices, and to integrate the interests of others across time and space. This includes considering future residents of Sullivan County, who will need jobs and housing as well as clean water, and residents of the faraway places that currently supply our coal and oil energy, who suffer the consequences of our resource-consumptive lifestyle.

Inextricably linked to this commitment to inclusion is a commitment to meaningful communication among all stakeholders. Currently, meaningful

communication is sorely lacking, and discussions of drilling generally set large landowners who wish to lease their land against visitors and second home owners who wish to preserve a landscape that they perceive as "pristine," or set municipalities wishing to zone out drilling against state agencies pursuing energy independence and fiscal health for New York. These dichotomies ignore a broad range of stakeholders and oversimplify the complex and multifaceted nature of the debates, and they focus on opponents' positions rather their true interests and needs. There is little exchange of facts, ideas and values, so diverse stakeholders are unable to meaningfully communicate with or learn from one another. As such, the notion of expertise goes unexamined—not only is existing knowledge not shared among parties, but new sources of knowledge are shut out as the most powerful interests continue their emotionally charged campaigns against one another. Much research and analysis has been conducted, and many people across the United States already live with hydraulic fracturing, but these sources of expertise are quickly co-opted and used for one or another party's gain. As communities throughout the northeast prepare to make a major economic, social and environmental policy decision, it is critical that they fully examine concepts of autonomy, justice and expertise and make strong efforts to include and respect difference, and to communicate honestly about needs rather than positions.

Gas drilling is just one of many large-scale policy conflicts that require a critical examination of autonomy, justice and expertise. Another policy conflict facing Sullivan County is the debate surrounding casino gambling, which has for decades been touted as

the economic savior of the region but faces opposition from community preservation groups and is constantly plagued by private funding and financing difficulties. On a broader scale, national agricultural policies have a tremendous impact on rural communities across the United States. As trade imbalances, commodity pricing schemes and subsidies to large farms continue to push smaller farms out of existence, rural communities struggle to maintain their character and quality of life as former farmland is sold for development. In this case, the quest for capital at the national and international levels seems to take precedent over the economic viability of local farmers and the areas in which they live and work. These and many other land use planning issues require a more meaningful commitment to inclusive and open debate.

Study Limitations and Suggestions for Further Research

Analysis of broad land use planning issues such as the three briefly described in the previous section should be undertaken with a deliberate and critical examination of autonomy, justice and expertise.

In the context of *General Municipal Law* §239, future research should be directed at each municipality, and can serve to gauge each board's perceptions of the project review process. Moreover, perhaps the greater utility of such targeted research is its potential to forge relationships between the county planning department and each board. As noted above, this research project began with a positive relationship between the county planning department and the case study town. Future efforts to convene similar

focus group sessions offer the potential to enhance the credibility of the county planning department, ascertain the values of the municipal boards and begin a dialogue among all policymakers.

The characteristics of an integrated planning model put forth above are applicable in a much broader sense as well. In rural areas like most of Sullivan County, marginalized populations are often physically distant from those in power—living in crowded apartments outside of town, and working in service industries with little visibility. Because of this physical distance, it is easy for residents and visitors alike to assume that these communities are homogenous in terms of race, class, ethnicity, gender and other human characteristics. Yet our communities are in fact very diverse, and this diversity must be recognized and honored. Indeed, according to the participants in this research project, a commitment to inclusion and diversity is necessary for reaching just policies. To ensure that this commitment is expressed through actions and not just words, researchers should ask specific questions about race, class, gender, ethnicity, and others. My research was limited to planning officials at the county and municipal levels, but a targeted approach including citizens who are not closely involved in the process, but are directly impacted by its outcomes, would have strengthened my analysis. To improve on my methodology, future researchers should ask a broader diversity of stakeholders for their insights and perceptions of the process. For example, in the case of casino development, future researchers should ask citizens and policymakers to consider not only a project's potential to generate jobs, but who will get those jobs, whether those jobs

will provide a living wage, where employees will live, whether there exists transportation to work, whether their families will have health insurance, and other relevant questions. These questions should be asked of the developers and decision makers, and of the potential employees, to be sure that proposed projects will have the greatest possible benefit socially, economically and environmentally. Such explicit discussion of these often hushed topics will foster learning and transformation on the parts of all stakeholders, and ultimately create a political sphere where politics is conceived in the broadest possible sense.

REFERENCES

Agrawal, Arun. 1995. Dismantling the divide between indigenous and western knowledge. *Development and Change* 26, no. 2: 413-439.

Anderson, Elizabeth. Feminist epistemology and philosophy of science. In *The Stanford Encyclopedia of Philosophy* (Spring 2011 Edition), ed. Edward N. Zalta. http://plato.stanford.edu/archives/spr2011/entries/feminism-epistemology/ [accessed August 20, 2011].

Anderson, Michelle Wilde. 2010. Mapped out of local democracy. *Stanford Law Review* 62, no. 4: 931-1004.

Baranov, David. 2004. *Conceptual foundations of social research methods.* Boulder, CO: Paradigm Publishers.

Beck, Ulrich. 1992. *Risk society: Towards a new modernity.* London: SAGE.

---. 1995. *Ecological enlightenment: Essays on the politics of the risk society.* Amherst, NY: Humanity Books.

Bloor, Michael, Jane Frankland, Michelle Thomas and Kate Robson. 2001. *Focus groups in social research.* London: SAGE.

Briffault, Richard. 1990. Our localism: Part I-the structure of local government law. *Columbia Law Review* 90, no. 1: 1-105.

California Research Bureau. 2002. *Common Interest Developments: Housing at Risk?* by Julia Lave Johnston and Kimberly Johnston-Dodds. CRB 02-12. Sacramento, CA: California Research Bureau.

Chabad Lubavitch of Litchfield County, Inc., et al., Plaintiffs, v. Borough of Litchfield, Connecticut, et al., Defendants, No. 3:09-CV-1419(JCH), 2010 U.S. Dist. LEXIS 45677.

Civil Practice Law and Rules. N.d. *New York Consolidated Laws Service* (2011). http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS (accessed December 6, 2011).

Coffey, Amanda and Paul Atkinson. 1996. *Making sense of qualitative data: Complementary research strategies.* London: SAGE.

Columbia University Urban Design Research Seminar. 2010. *Ground up: Cultivating sustainable agriculture in the Catskill Region.* New York: Columbia University.

Community Environmental Legal Defense Fund. Home Rule. http://www.celdf.org/section.php?id=40. [accessed June 27, 2011].

Corburn, Jason. 2003. Bringing local knowledge into environmental decision making: Improving urban planning for communities at risk. *Journal of Planning Education and Research* 22: 420-433.

County of Sullivan, New York. 2010. County legislature urges state to eliminate unfunded mandates that cause property tax increases and urges the state to take over state mandated programs and services. http://www.co.sullivan.ny.us/Default.aspx?TabId=2206&ArticleId=104&FromTabId=36. [accessed August 5, 2010].

Delaware River Basin Commission. DRBC Overview. http://www.state.nj.us/drbc/over.htm [accessed February 20, 2011].

Eckersley, Robyn. 2004. *The green state: Rethinking democracy and sovereignty.* Cambridge, MA: MIT Press.

Finlay, Linda. 2002. Negotiating the swamp: the opportunity and challenge of reflexivity in research practice. *Qualitative Research* 2, no. 2: 209-230.

Fischer, Frank. 2000. *Citizens, experts, and the environment: The politics of local knowledge.* Durham, NC: Duke University Press.

General Municipal Law. N.d. *New York Consolidated Laws Service* (2011). http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS (accessed December 6, 2011).

Innes, Judith E. 1990. *Knowledge and public policy: The search for meaningful indicators.* New Brunswick, NJ: Transaction Publishers.

---. 1998. Information in communicative planning. *Journal of the American Planning Association* 64, no. 1: 52-63.

LeJava, Jeff. 1998. The role of county government in the New York State land use system. *Pace Law Review* 18, no. 2: 311-375.

McGoldrick, Joseph D. 1933. *Law and practice of home rule, 1916-1930.* New York: Columbia University Press.

McKenzie, Evan. 1993. Trouble in Privatopia. *The Progressive* 57, no. 10: 30-33.

Municipal Home Rule Law. N.d. *New York Consolidated Laws Service* (2011). http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS (accessed December 6, 2011).

New York State Department of State. 2007. *Annual Training for Planning Board and Zoning Board of Appeals Members.* www.apa.state.ny.us/local_goverment/training/DOS Annual Training Article.pdf [accessed October 14, 2011].

North Country Public Radio. 2010. Grannis says DEC cuts leave NY environment vulnerable. By Martha Foley. http://www.northcountrypublicradio.org/news/story/16798/grannis-says-dec-cuts-leave-ny-environment-vulnerable. [accessed August 28, 2011].

Novotny, Patrick. 1998. Popular epidemiology and the struggle for community health in the environmental justice movement. In *The struggle for ecological democracy: Environmental justice movements in the United States*, ed. Daniel Faber, 137-158. New York: The Guilford Press.

Schaller, Lyle E. 1961. Home rule—a critical appraisal. *Political Science Quarterly* 76, no. 3 (September): 402-415.

Siedzik, Jason. 2010. Chabad Lubavitch, Litchfield, dig in heels for long legal battle over renovations. *The Register-Citizen.* September 20. http://registercitizen.com/articles/2010/09/20/news/doc4c96dbe19a097304773165.txt?viewmode=fullstory [accessed January 30, 2011].

Silva, Enrique R. 2004. Unpacking municipal home rule: Can California regionalists and locals talk to one another*? Berkeley Planning Journal* 17: 29-55.

Slovic, Paul. 1991. Beyond numbers: A broader perspective on risk perception and risk communication. In *Acceptable evidence: Science and values in risk management*, ed. Deborah G. Mayo and Rachelle D. Hollander, 48-65. New York: Oxford University Press.

Stinson, Joe. 1997. The home rule authority of New York municipalities in the land use context. http://ww.pace/edu/LawSchool/landuse/stinso.html [accessed August 8, 2010].

Stuart, Christine. 2007. In historic district, synagogue plans are criticized. *New York Times*. October 9. http://www.nytimes.com/2007/10/09/nyregion/09litchfield.html [accessed January 30, 2011].

Susskind, Lawrence E. and Michael Elliot. 1983. *Paternalism, conflict, and co-production.* New York: Plenum.

Teitz, Michael, J. Fred Silva and Elisa Barbour. 2001. *Elements of a Framework for Collaborative Regional Decision-Making in California.* Occasional Paper prepared for the Speaker's Commission on Regionalism, September 2001. Public Policy Institute of California. www.ppic.org/content/pubs/op/OP_901MTOP.pdf [accessed February 20, 2011].

Town of Litchfield, Connecticut. Borough of Litchfield Historic District Commission. http://www.litchfieldct.com/twn/lhdcomm.html [accessed January 30, 2011].

United States Advisory Commission on Intergovernmental Relations. 1993. *Local Government Autonomy: Needs for State Constitutional, Statutory, and Judicial Clarification,* by Michael E. Libonati. Washington, DC: US Advisory Commission on Intergovernmental Relations.

United States Department of Justice. Civil Rights Division. 2007. A Guide to Federal Religious Land Use Protections. http://www.justice.gov/crt/spec_topics/religiousdiscrimination/rluipa_guide.pdf [accessed February 19, 2011].

University of California-San Diego Social Sciences and Humanities Library. 2000. Baffling Boundaries: The Politics of Gerrymandering. http://sshl.ucsd.edu/gerrymander/ [accessed August 28, 2011].

Viteritti, Joseph P. 1995. Municipal home rule and the conditions of justifiable secession. *Fordham Urban Law Journal* 23: 1-68.

Yearley, Steven. 2000. Making systematic sense of public discontents with expert knowledge: two analytical approaches and a case study. *Public Understanding of Science* 9: 105-122.

Young, Iris Marion. 1990. *Justice and the politics of difference.* Princeton, NJ: Princeton University Press.

APPENDIX A

Land Use Project Referrals to the Sullivan County Division of Planning and Environmental Management, July 1, 2008 – June 30, 2010.

Projects highlighted in bold were studied in detail.

Referral #	Project Type	County Planning Recommendation	Final Local Action
1	SUBD (residential two lot)	LDT	Approved
2	SUBD (expansion of residential development)	LDT	Approved
3	SUP (expansion of residential development)	LDT	Approved
4	SUBD (residential two lot)	LDT (rec'd after municipal approval)	Approved
5	SUP (expand residential development)	LDT	Approved
6	**ZMA (extend water district for residential development)**	**DIS**	**Approved**
7	AV (commercial construction setback)	LDT	Approved
8	SUP (addition of roof to shed)	LDT	Approved
9	SUP (replacement of mobile home with larger home)	LDT	Approved
10	**SUP (additions and improvements to religious buildings)**	**INC**	**Approved**
11	SUP (religious building construction)	DIS	Approved
12	SUBD (residential two lot)	LDT	Approved
13	SUBD (religious two lot)	LDT	Approved
14	ZMA (re-zone portions of parcels)	APP	Approved
15	SUP (construction of residential building addition)	LDT	Approved

Referral #	Project Type	County Planning Recommendation	Final Local Action
16	SUP (construction of residential building addition)	LDT	Approved
17	**SUP (construction of residential building addition)**	**LDT**	**Approved**
18	SUP (construction of residential building addition)	LDT	Approved
19	SUP (construction of religious building addition)	LDT	Approved
20	SUP (construction of pool)	LDT	Approved
21	SUBD (two lot residential)	LDT	Approved
22	SUBD (two lot commercial)	LDT	Approved
23	SUP (open gun shop in existing home)	LDT	Approved
24	SUP (residential addition)	LDT	Approved
25	SUP (convert storefront to apartments, sell cars)	MOD	Withdrawn
26	**SUBD (residential two lot)**	**DIS**	**Approved**
27	SUP (cellular telephone pole construction)	APP	Approved
28	SUP (reconfigure parking and add warehouse space to existing commercial building)	LDT	Approved
29	SUP (replace and expand residential deck)	LDT	Approved
30	SUP (replace home that burned down several years ago)	LDT	Approved
31	SUP (install cider press)	APP	Approved
32	SUP (new religious building construction)	LDT	Approved
33	SUBD (two lot commercial)	LDT	Approved
34	**SUP (convert house to synagogue)**	**LDT**	**Approved**

Referral #	Project Type	County Planning Recommendation	Final Local Action
35	SUP (construct new staff buildings at religious camp on adjacent parcel)	LDT	Approved
36	**SUP (construct barn for horses-commercial stable)**	**APP**	**Approved**
37	**SUP (replace religious residential buildings)**	**LDT**	**Approved**
38	SUP (construct new religious building)	LDT	Approved
39	SUP (replace office building with office trailer)	LDT	Approved
40	SUP (construct residential addition)	LDT	Approved

Key to Project Types
AV: Area Variance
SUBD: Subdivision
SUP: Special Use Permit
ZMA: Zoning Map Amendment

Key to County Planning Recommendations
APP: Approval
DIS: Disapproval
MOD: Modification
LDT: Local Determination

APPENDIX B

FOCUS GROUP PROTOCOL

Date: _____ Tape #: _____

1. What is your position title? How long have you held this position?
2. What do you see as the role of this board, in general?
3. What factors influenced your decision to serve in this position?
4. In what way are you involved with the GML-239 review process?
5. In reviewing land use planning and zoning projects, are there subject areas (stormwater, landscape guidelines, water and sewer infrastructure, etc.) that you especially enjoy or dislike?
6. Are there subject areas in which you would like more expertise to help evaluate projects?
7. Are there subject areas in which you feel this board as a whole could benefit from further training to assist in project evaluation?
8. Overall, how effective do you think this board is at its work?
9. What do you see as the county planning department's role in relation to the board's work?
10. Overall, how effective do you think the county planning department is in its review of planning and zoning projects?
11. In general, what is your opinion of the comments and recommendations made by the county planning department in its review letters?
12. Have there been times when the county planning department raised concerns or questions that the board had not considered, and that you feel were valuable to the board in conducting its review?

13. Have there been times when you feel that the county planning department's comments and recommendations were misinformed, impractical, or otherwise lacking in value?

14. Can you name some actions that have been most contentious among board members? Was county input valuable in ameliorating those issues or disputes?

15. Can you name some action types that are generally "easy" approvals or disapprovals, and therefore good candidates for exemption from review by the county planning department?

16. Does the board ever work with the county planning department outside the GML-239 review process (for example, for technical or informal assistance)? If so, is this valuable?

17. Moving forward, how would you like to see the GML-239 review process change, if at all?

18. Moving forward, how would you like to see the board's review process change, if at all?

19. Are there any other comments, concerns or questions that you have on the subject of the GML-239 review process?

APPENDIX C

INTERVIEW PROTOCOL FOR COUNTY OFFICIALS

Date: _____ Code #: _____

1. What is your position title?

2. In what way are you involved with the GML-239 review process?

3. How would you describe your office's relationship with the various municipal boards?

4. How would you describe your role in the process, and how is it different from the role of municipal boards?

5. What do you see as the most positive or beneficial aspects of GML-239 review?

6. Do you see any shortcomings with the GML-239 review process? If so, please describe them.

7. Has your agency taken any steps to mitigate these shortcomings or otherwise modify the process to better suit your needs? (examples: attendance at municipal board meetings; provision of training sessions for municipal boards to help them more thoroughly review projects; exemption of certain project types from GML-239 review by the county; etc.)?

8. If you have taken any such steps, please describe their effects.

9. What suggestions do you have for other counties and municipalities, to improve the GML-239 review process?

APPENDIX D

Coded Focus Group Responses

Code: Autonomy.

Sub-category: Autonomy of the Municipal Board

- I don't want the county commenting on every single thing. Because not everything is their business. (Referring to a comment from another county where County planners attend each municipality's planning and zoning board meetings and participate in them).
- The point of county review is to review projects that could affect a neighboring town.
- We have an engineer and we're supposed to send projects to him for review.
- I'm never offended by somebody saying, you're wrong (re: county comments on 239 review).
- It's strange that the county would be concerned with being perceived as stepping on toes or infringing on the final authority of the town (re: comment on informal review and whether the county can make recommendations with teeth).
- We don't perceive it (county review and comment) as a threat or something.

Code: Expertise

Sub-category: Municipal Board- areas of expertise

- Properly control growth in the town
- Ensure consistent application of rules
- Deal with concrete problems such as providing for snow and garbage removal
- Decide whether county planning's comments are relevant and choose to incorporate them or not
- County planning's comments are sometimes vague and lack sufficient background or substantiation
- Planning board members visit project sites, gaining information that county Planners do not get from the maps
- Our board is a diverse group of people, with a variety of expertise
- Well educated, and we can usually get to the best solution
- Planning board has discussed dividing up areas of expertise, so that each member can focus on one aspect
- We make our decisions based on our expertise and information, plus yours, if we think your comments are useful

Sub-category: Municipal Board- areas lacking expertise

- We lack the knowledge to adequately address storm water, sewer, biodiversity; must rely on outside consultants
- Training offered by the county planning department, to build our expertise, is too general for veteran board. We need real technical training, so that we don't have to rely on consulting experts hired by developers.
- The knowledge deficit is so large that we have to take it on faith that technical experts are correct and honest
- We need more training
- We would like training from attorneys, including case studies
- We don't have the time and expertise to go see how a project will impact the next town
- We have nowhere the expertise to know if an engineer's stormwater runoff calculations are correct
- The engineers sometimes make mistakes too. I found a simple arithmetic error
- case studies on private septic system failures that become the taxpayers' responsibility to maintain would be good

Sub-category: County planning department- Areas of Expertise

- It's happened where we found your comments useful, because we hadn't considered a particular issue or aspect. Can't think of any instances.

Sub-category: County planning department- Areas Lacking Expertise

- County review of projects could be more holistic re: impacts on neighboring municipalities
- County did not make runoff comments on a recent 35 unit subdivision that did not show holding basins
- County once made comment that site plan did not show a septic system, but the project was on municipal sewer
- Makes us question whether you even look at the plan, and whether any of your comments are meaningful
- We sometimes disregard county comments because they offer no background
- We disregard if we can't understand why the comment was made—please explain your suggestions
- Fire commissioner should review land use project proposals. He has training on all sides of the safety issue
- The county should really encourage compactors rather than dumpsters. They're more efficient and much neater

Sub-category: Consultants- areas lacking expertise

- Sometimes consulting experts lack adequate technical expertise to provide accurate information.
- We sometimes find out later that we approved a project based on bad data from consultants.
- Focus on training surveyors, architects and engineers
- These experts say things that I'm just laughing at, thinking, that isn't going to happen.

Subcategory: Expertise—Sources and Validity of Knowledge

- Re: stormwater: I don't know if you could ask the county to be experts on this, or train the planning boards on it. We're sitting here with a professional engineer who is saying that this is okay, and don't worry about it, and he's got it signed, and what are you going to do. He's legally bound to be doing the right thing, but there are several cases where it hasn't worked out the way the plan has said it should. It would be nice to have a public authority who could say, time out, this is not the best method.
- County planning comments are often philosophical, not technical. For example, cluster housing, or a hammerhead rather than a *cul de sac*.
- We've already decided that we like dead end roads to end a certain way, because our highway department prefers teem for plowing and maintenance. The county likes something different. There's a conflict every time we send one in.
- We would like a formal, regular review of projects even when 239 is not triggered. There might be a problem where we're going to pave an entire mountain and water is going to go into the adjacent town and cause problems for them. We need someone with teeth to review and make recommendations on projects like this.

Code: Roles.

Sub-category: Cooperation to ensure thorough project reviews

- County and town must come up with a good format to ensure that necessary things are put on site plans and are developed, regarding community concerns.
- It's remiss of us not to tell the county that, for example, we are going to take a lead from our roads department and encourage a road to end in a *cul de sac* rather than a hammerhead, which is what you prefer.
- Would the county perceive it negatively, if we sent you preliminary plans, then changed them based on your comments and sent them again for 239?
- It's strange of the county to think that you might be perceived as stepping on toes, if you conduct an informal review and make comments (in response to my statement).

- It would be better if the county included some justification for the statements and recommendations that they make. Sometimes, without this, we decide that a comment is of no consequence, and this may be a mistake.
- We never disregard your letters entirely—we always read your comments, not just your recommendation of approval, disapproval, modification or local determination.

Sub-category: Municipal Understanding of and Suggestions Concerning the County's Roles

- County might have the teeth to recommend tying in to a municipal sewer system, rather than putting in a septic, which could benefit everyone. Don't think the municipality can recommend this.
- Do county planners feel they are wasting their time with 239, duplicating what we do?
- Isn't the whole point of county review to ensure that projects do not negatively impact neighboring towns?
- It would be better if the county had more teeth to ensure that, for example, our engineer's stormwater calculations meet DEC criteria.
- It's not the county's place to make comments on something simple like a lot improvement with no development. But almost any other action has impacts.

Code: Responsibility.

Sub-category: Responsibility of Municipal Board Members toward their Town

- I became a planning board member because I'm interested in helping shape the future land use of the town.
- Once you start seeing things develop, and start to understand what should be happening, it's nice to know what is happening.
- People rise to the occasion—they want and try to do a good job.
- I was always interested in what was happening in my neighborhood, and being on the ZBA allows me to participate, rather than just complain.
- Members of the public often have no clue how the process works—and if you tried to hold an informational session, the same dozen people would show up who always attend our meetings.

Sub-category: Responsibilities of Municipal Board Members toward other Towns

- Neighboring towns are very sensitive to potential impacts from projects occurring in our town, and in the past they have complained.
- We should send projects to neighboring towns' engineers, so they know we're not screwing something up for them (for example, paving something that washes a bridge out in their town). Even if it doesn't trigger 239.

- Re: dam failure and its consequences. Some of these dams are a quarter of a mile away from the town boundary, so the neighboring town would never know about construction or approval. But it doesn't matter, because when that dam goes, the town line doesn't mean anything.
- There is a burden on this board to say, this project doesn't trigger 239, but it's going to impact a neighboring town. And we probably need to get better at involving that town.

Sub-category: Municipal Board Members' Understanding of and Suggestions for the County's Responsibilities

- Re: fire safety: the county should look at fire safety for the overall community—layout of buildings, accessibility between what's existing and what's proposed. Make suggestions for improving existing infrastructure and work, in order to go forward into a new phase. County fire commissioner should review projects for these reasons. He understands these things on a larger, battalion level.
- If the county feels a project will have no inter-community impacts, then you should include a statement about why that is.
- It's a waste of time for me to send a 239 to you and you send it back saying that you have no comments. We don't always want to hear what you have to say, and we don't want to hear what we have to say to each other, but there are so many times that the conversation brings out the best solution, that it's worth hearing. I'm never offended by somebody saying, you're wrong.
- If the county could let other towns know about projects, instead of us, that could be a benefit.
- If you had our agendas, you could see all of the projects and monitor what's going on in each town and have a complete understanding of the large-scale impacts.

Code: Procedure.

Sub-category: Flaws in the *General Municipal Law* §239

- One problem is that if the 239 isn't triggered, a project might still have some county-wide issues, but county planning never sees it at all.
- In 2006, 3 dams let loose within 15 minutes of each other, took out houses and killed someone. Those are all private dams on private land, with no 239 trigger.
- There is no mechanism for a formal, binding review by the county for projects that do not trigger 239. We actually need that. Something with teeth.

Sub-category: Flaws in the County's Timeframe and Procedure for Review

- I think we get your comments too late.
- Yes, we get your comments way too late in the process.

- If we could do that sooner somehow, so that the county could be involved in the initial phases. Yeah, at that point we've told them what we want changed several iterations over.
- We've already had somebody go through a year's worth of planning, and then when it's all done we send it to them, and we were already happy with the project, so whatever comments they make, unless they were logistic-type comments, we're just going to outvote them anyway.
- Sometimes county letters aren't received until the night of the meeting, when we need to vote on a project.
- The majority of the time, we get your comments so late that we can't go back to an applicant who has spent six months working on a project and tell him to change it.
- The county should get referrals earlier in the process.
- We receive your comments too late in the process for them to help ameliorate disputes over a project.
- It would double your workload if we sent you referrals early on, for an initial review, and then again for formal, final review after incorporating your comments if we choose to do so.
- Re: a recent subdivision: After a year of planning and redoing the roads and the plan. When we sent it for review, the county said, why don't you use cluster housing and put all the houses in one section. It was like, …no.
- In the case of the recent subdivision, you (the county planning department) were unaware there had been a year of development with the developer saying this is collectively what we think is the best way for that piece of property.
- The public hearing is a shotgun affair. We had one tonight, and no one was there. Had we sent it to you, and gotten it back, then we could've approved and been done. But if there had been comments, it would be a different story.

<u>Sub-category: Streamlining the review process</u>

- Possible actions to exempt from county review: any subdivision of less than four units, lot improvements.
- County should look at any major subdivision, even if it doesn't trigger 239.
- If we exempt special use permits, what happens to the one or two that do have impacts?
- If we exempt an action, it's impossible to make exceptions in a consistent manner, to address those special cases where impacts are likely and send them to the county.
- I think special use permits always deserve county oversight.
- Maybe minor residential subdivisions are a good candidate for exemption, because they don't cause major issues.

Code: Authority.

Sub-category: Municipal Boards' Authority to Enforce Development Agreements

- Under the law, the planning board can't call a developer back if he fails to adhere to the plans he presented and we approved.
- Applicant's engineer is legally bound to do the right thing, and the plan conforms to regulations, but it doesn't always get built that way. It would be nice to have a public authority who could say, time out, this is not the best method.
- The board ought to be able to have some authority to call back developers who fail to adhere to the agreements they make with us. The only enforcement authority is the code enforcement officer, but he doesn't make the agreements.
- Our minutes and discussion should be binding—so that we can hold people to the agreements we make, because some things we discuss and agree upon don't get on to the map and become binding.
- Our CEO can't hold up future projects proposed by developers who have shown themselves to be bad developers.
- The planning board has no enforcement power at all, and I think we should.
- We can't make people comply with what they've agreed to do.
- You can take somebody to court, but is it worth it? A judge might say, this is so minor, and throw it out.
- I think we can pull a special use permit and suspend it, but according to our attorney, if it's not on the map, it becomes a grey area.
- We could try to bond projects. Give the bond back if the project isn't completed as approved.

Sub-category: Exercising Authority of Municipal Boards

- In one instance, it took a year and a half to get an approved site plan out of the bonding issues. It took DEC calling the developer and shutting them down.
- In one instance, we couldn't even agree who should send a letter to a developer, telling them we want to hold them to the agreements they made with us. So it's unlikely we could agree upon using a mediator or arbitrator, rather than taking a developer to court.
- The town board should be prepared to spend some money on legal action, to set a couple of examples and set a precedent. A couple of examples, I think, could go a long way.

Sub-category: Consequences of a Lack of Authority

- If people can just ignore what the planning board says, then why even bother coming in front of us.
- We end up with crap all over this town and other towns, because the planning boards have no teeth. And we ought to have some teeth.

APPENDIX E

General Municipal Law §239 Review Process Assessment and Recommendations[19]

This research project began with an interest in assessing the feasibility of forging inter-municipal agreements between Sullivan County and its various municipalities, exempting certain planning and zoning actions from county review. From this practical concern arose more theoretical questions of autonomy, justice and expertise, which formed the basis of the final thesis. To ensure that the county and the municipalities move forward in a way that is mutually beneficial, and that addresses land use planning concerns from every aspect, these theoretical concerns must be incorporated into any potential changes to the *General Municipal Law* §239 review framework.

To ascertain the possibilities for streamlining the *General Municipal Law* §239 review process, I reached out to several county planning departments. I made contact with three counties and spoke with one planning director and one senior planner via telephone, and one planning commissioner via e-mail. In two of the counties, the review process is largely the same as in Sullivan County, while the third county has a county

---

[19] This information is provided for the use of my planning colleagues at the municipal and county levels. Their stated interest in the possibilities for an expedited review process under *General Municipal Law* §239 prompted my research project. It has been my hope throughout this project to generate some practical suggestions for improving the process, consistent with my larger theoretical questions surrounding autonomy, justice and expertise. This section is intended to provide a synthesis of those suggestions and related practical considerations, drawing mainly on my interviews with county planners but also integrating the key theoretical arguments advanced in the body of this thesis.

planning board in addition to a county planning department. The review process in that county is explored below.

On the subject of local autonomy, planners from all three counties were adamant that they make recommendations only, and were respectful of municipal home rule. Planners from two counties indicated that they always keep in mind that they are to act in an advisory capacity, providing assistance only when it is requested or when there is an obvious procedural defect in a municipal board's review. Two specifically noted that they most often provide technical or procedural comments, rather than substantive input, to the municipal boards. One of these planners stressed that 99 percent of referrals are found to be matters for local determination, and her department has no comments. Another planner said that she could not remember one instance where a project was found to have county-wide impacts, during her tenure at the county planning department. She acknowledged, though, that her county is much more rural than Sullivan County, so large-scale projects of a commercial or industrial nature, and large residential developments, are very rare. While her office receives an average of 25 to 36 referrals annually, Sullivan County's planning department receives well over 100 referrals each year, so it makes sense that the number of projects with potential inter-community or countywide impacts is higher here in Sullivan County. In the third county, the planner did not speak to the substantive or procedural nature of his department's reviews, but did state that when asked, almost all municipal boards in his county indicated that they appreciated project review by the county planning department.

Both of the planners who were interviewed by telephone stated that the most beneficial aspect of the *General Municipal Law* §239 review process is its utility as a communication tool—through it, county planning departments are kept apprised of development occurring throughout the county. Moreover, it provides a foundation for building relationships between county planning departments and municipal boards, creating a space for exchange of ideas and information. Similarly, interviews did not reveal that county planning departments desire to have control over local development, but rather that they value the *General Municipal Law* §239 process as a means for monitoring the degree to which development projects mesh with one another and with larger patterns of open space protection, downtown revitalization and other more holistic plans.

As noted above, one planner interviewed works in a county where there exists a third layer of project review, the county planning board. The county planning board appoints its members with recommendations from the county planning department. In this particular county, municipal planning boards submit project referrals to the county planning department, whose staff scans the documents and sends them to the county planning board for review. Prior to the next meeting of the county planning board, the county planning department checks project referrals for completeness, often adding features like flood plains or agricultural districts to the project maps. At the county planning board meeting, a representative of the county planning department offers technical advice as needed. The county planning board makes a recommendation to the

municipal planning board, which can overrule the county planning board by a supermajority vote under *General Municipal Law* §239. Thus, the county planning department's involvement in project review is limited to the provision of technical assistance to help inform the county planning board's review, unlike in Sullivan County where the county planning department conducts a full review and makes recommendations directly to the municipal planning boards.

My phone conversation with the planner from this county revealed concerns around both justice and expertise. I learned that a county-level elected official had asked the county planning department to research the possibility of abolishing the county planning board. This would create a process more like that of Sullivan County, where the municipal board refers projects to the county planning department, which makes recommendations that the municipal board may vote to accept or reject. According to the planner with whom I spoke, the elected official's desire to abolish the county planning board stemmed not from his or her belief that the review process is cumbersome or infringes upon home rule, but rather from a particular recommendation that the county planning board had made, which apparently the local official found objectionable.

My research has lent support to the claim that all expertise is value-laden, and here the political nature of decision making is made apparent as an entire body of policy actors is slated for removal from the process because of a single decision that they made. While county planning departments seem to strive to use the *General Municipal Law* §239 process to foster relationships with municipal boards, it seems apparent that in this

case there is a lack of respect and meaningful communication among all policymakers, and as a result the process stands to suffer as opportunities for participation are curtailed. Regardless of which person or entity may have acted improperly in this instance, the abolition of the county planning board is not likely to be the most effective solution to enhancing project reviews in the future. Rather, a dialogue regarding the roles, responsibilities and contributions of all policymakers would perhaps do more to ensure that a commitment to justice and the inclusion of a broad range of expertise are integrated into the review process.

The question of whether and how to streamline the *General Municipal Law* §239 process must take into account these considerations of autonomy, justice and expertise. As a practical outcome of this study's research on expertise, some type of training curriculum for municipal board members, municipal officials, consulting experts and planners could go a long way toward streamlining the planning and project review process. One planner whom I interviewed indicated that her office provides training sessions for municipal boards, to better enable them to conduct thorough project reviews. None of the planners interviewed commented on the success of training sessions in achieving this goal.

In Sullivan County, any exemption of certain projects from review under *General Municipal Law* §239 would likely be granted on the condition that municipal board members complete a set training curriculum to enable them to adequately review those actions that are exempt. Municipal board members participating in this study clearly

have ample expertise with regard to their town's zoning code, but they state that they lack expertise in technical matters. They should be provided with meaningful opportunities to receive training and education in the technical aspects of land use planning, to help them break free from the hierarchical nature of the expert/ local knowledge divide. Here in Sullivan County, the county planning department has traditionally provided training sessions for municipal board members, either drawing on its own staff expertise or inviting other experts to speak. Municipal board members in this study stated time and again that they feel powerless to challenge developers' experts, because they lack the technical knowledge to engage in informed debate. It is important to remember that most municipalities also have their own attorneys, engineers and planners, so boards are not left to fend entirely for themselves. But any expert can make a mistake, and a proliferation of knowledge among board members will likely serve to enhance the planning process and empower its participants.

County planners interviewed for this study offered widely divergent opinions on the possibilities for exempting certain projects from review under *General Municipal Law* §239. One planner noted that inter-municipal agreements are an effective means for eliminating project referrals for area variances and other actions that are unlikely to have broad impacts. She also cautioned me to look at several examples before drafting and finalizing any such agreements. Another planner stated that it is difficult to judge the impact of agreements on her staff's workload. She stated that, while many agreements are in place, one very active town has never expressed an interest in signing an agreement

with the county planning department. She also noted that, given the high rate of turnover among municipal boards, often new board members are unaware that such agreements exist, so they submit referrals unnecessarily. She concluded that, if such agreements are to be pursued, they must be built upon a good relationship and open lines of communication between the county planning department and the municipality. The third planner, with whom I corresponded via e-mail, stated that his office had cancelled all agreements because they were poorly constructed. Specifically, agreements were written between the county planning commissioner and the chief elected official of the municipality. Thus, they were non-binding on any subsequent county or municipal official, because they were not approved by the full legislative bodies. Agreements were sometimes lost and often misunderstood, and neither the county planning department nor the municipal boards were certain of which projects needed to be reviewed. To eliminate the confusion, all agreements were cancelled. He advises that county planning departments retain their full jurisdiction and power under *General Municipal Law* §239, rather than exempting any actions for review. If a given project is not a matter of county concern, then the department may issue a review letter indicating that the project is a matter for local determination. If the county planning departments lacks the staff or political support to interest in a referral, the department may simply let the 30 day review period expire, effectively approving the project by default.

I also asked focus group participants for their opinions regarding a streamlined review process. Several indicated that, under certain circumstances, they might prefer to

have projects exempted from county review under *General Municipal Law* §239. Specifically, they noted that perhaps lot improvements and minor subdivisions with no new development would be good candidates for exemption, as they are very unlikely to have inter-community impacts. Research into the meeting minutes and county planning department records offers additional support for this perspective. Of nine subdivision referrals received by the county planning department between July 2008 and June 2010, eight were found to be matters for local determination. The ninth was a controversial project that was approved by the planning board after much clarification of outstanding issues, and contingent upon the applicant's meeting several conditions. If the county planning department intends to enter into inter-municipal agreements, its staff should not only examine the number and type of referrals in each municipality, but should also ask the municipal board members should also be asked for their input and suggestions.

If such arrangements are pursued, it should also be remembered that efficiency is not the goal of the *General Municipal Law* §239 process. In drawing up agreements, there is never a "one size fits all" solution, and efficiency can work against fairness and justice. In this study, it is apparent that participants are committed to the integrity of the process, and to ensuring that all voices are heard during project review. The detailed conversations, repeated appearances by applicants, and long public hearings are certainly not efficient—but they can lead to the best outcomes for the environment, the municipality, its residents and its neighbors. These benefits and costs must be carefully weighed against the benefits and costs of a streamlined review process.