

Nolan Gray:

Howdy, I'm Nolan Gray, your friendly neighborhood city planner, research director at California YIMBY, and one of the co-leads of the new Metropolitan Abundance Project. Welcome back to the Abundance Podcast. In this episode, we chat with Anika Singh Lemar. Anika is a clinical professor of law at Yale Law School, where she teaches clinics that represent affordable housing developers, tenants, homeowners, small businesses, community development, financial institutions, fair housing advocates, and cooperatives.

Professor Singh Lemar writes about land use, zoning, and housing, and we're going to dive into all of that, including some of her really exciting work on community input. When do we do it, and how do we do it? Of course, in this episode, we are joined by my colleague, our policy director, Ned Resnikoff. Before I let you go, don't forget to like, subscribe, leave a review, leave a comment, leave feedback. We do read that, and we really, really appreciate it. With that, onto the show.

Ned Resnikoff:

Anika, you wrote in 2021 an article for the Fordham Law Review called Overparticipation: Designing Effective Land Use Public Processes, and this paper has been pretty influential on my work. Brian Hanlon, the CEO of California YIMBY and the Metro Abundance Project, and I cited it in a piece that we wrote for the Stanford Social Innovation Review, and I've continued to return to it periodically.

So before we talk about some of how you recommend designing community input processes, which is part four of that paper, let's talk about parts one through three just briefly. So what's the problem with the way we have community input processes set up right now?

Anika Singh Lemar:

Yeah. It's a big question. It's a great question. First of all, thank you for having me, and thank you for reading my writing. Nobody who writes a law review article can be 100% sure that anybody else will ever read it, ever. And so, it's always nice to hear that things have been read. So maybe it helps to just talk about the genesis of the paper a little bit, and the paper is pretty heart-on-the-sleeve in terms of being very open about where it came from.

So in the spring of... The paper came out in 2021. A couple years before that, I would say. In 2018 I spent a lot of time at land use and zoning hearings in general, but I happened to be spending a lot of time at two different series of planning and zoning hearings around 2017, 2018. One was for a client who I talked about in the article. It was a very small, completely volunteer suburban housing authority doing 67 units of family housing in a fairly tony suburb of New Haven, Connecticut, where I live and work.

And then the other was a series of planning and zoning hearings that were actually around a rezoning in my own neighborhood in New Haven. And so, they were very, very different both in terms of demographics, in terms of the types of issues people were raising, the types of concerns that people had or purported to have. But the thing that they shared in common was that they were very heated.

There was a lot of anger and vitriol in the room. And then the thing that you could not help but notice if you were a land use and zoning lawyer or an affordable housing lawyer, as I am, was that people just said things that were wrong all the time. And it went completely unmentioned on by the planning and zoning commissioners that there were, quote, unquote, "facts" being entered into the record that were just not facts and not true.

And I recall being in one of them in New Haven, actually, which I don't talk about as much in the article, but being in one of them in New Haven, and it was, again, about a rezoning in my neighborhood. I was not there in my professional capacity. I had my baby with me. I was on parental leave at the time, my youngest of three. And I turned to the person next to me, and I said, "What was just said was wrong."

And the person turned to me and said, "Oh, you should tell them." And I just remember thinking, "How? In what capacity? There's actually no place for me to correct the record." So this is a long-winded way of saying the kind of light bulb that went off in my head was: we've built this entire apparatus and structure for people to participate and provide comments and put things into the record.

And unlike when you're in a court of law and there are rules of evidence, and that include rules of relevance, and ways to get expert testimony in, there's actually nothing correct that checks for relevance, expertise, whether something is true in the first place. There's no hearsay rules in a planning and zoning hearing. It's just a lot of stuff being thrown at the wall.

And around the same time, Katherine Levine Einstein's book, *Neighborhood Defenders*, came out. And I remember reading an advanced copy in the summertime at the community pool, and thinking like, "Okay. So now you've taken this problem of having no

checks on anything," and then layered on top of it is something that I think a lot of us kind of knew anecdotally and atmospherically, that people who showed up to these hearings were not at all representative of our neighborhoods in general, and now had the data to support that.

And when you layer those two facts on top of each other, you end up in this very strange world where a very small slice of the population kind of gets to say whatever they want and dictate answers in predictable ways, as Katie and her coauthors point out, in predictable ways, because people are acting out of self-interest, and the self-interest is fairly predictable.

So I came at it from the lawyer's perspective, which is, "Well, how do you at least correct for the information in the record?" as opposed to the ethnographers' or political scientists' or sociologists' question of, "What can you say about the makeup of people in the room?" I'm interested in the question of, "Could you build a better process in the first place?"

Ned Resnikoff:

So what does that better process end up looking like?

Anika Singh Lemar:

Yeah. Yeah, and I still struggle with this a lot. Right? So it's a lot easier to point out the ways in which the current process is bad than it is to build a new process from scratch, or build a new process at all. That would be better. But I do think it helps to first look at what's bad about the current process. So one thing that's bad about it is that it's very passive in the sense that we hold a meeting, in a place we don't think very hard about whether the meeting time is convenient, we don't try to educate people as they walk in the door about the underlying facts and context that might inform their opinion about a thing.

We let people talk basically in three-minute snippets, one after the other. There's no dialogue involved in that process. So the incentive, really, is to come and be as passionate and angry as you can to use up your three minutes in a way that's memorable, and that people are kind of forced to hear you.

We don't tell a whole lot of people about the meetings that happen in the planning and zoning context. So if you are a property owner within a certain radius, you're probably

required by statute to get some kind of notice. But otherwise, we don't try that hard to let people know that these things are happening. And because of the substance, really, of our zoning codes, the underlying zoning, whether you're an American suburb or an American city, it's likely extremely restrictive.

And if you're doing any kind of multifamily housing anyway, you probably need to come in for some kind of approval. The bulk of these hearings are happening about individual projects rather than about the planning citywide, and the incentive to show up to a meeting that's about citywide planning is actually quite small, because the citywide plans don't have any import. They don't matter. They don't have an effect.

So that's certainly the case here in Connecticut, where every town has to do a 10-year comprehensive plan, but the comprehensive plan doesn't have any... It doesn't have the force of law. It's just a document with some words. The thing that matters is the zoning. And because the zoning is so hard to change, the thing that matters is the variances and the conditional use permits.

So rather than have a conversation about what you want your city to look like citywide, people really only come in and have these conversations when they're looking at a particular development where the harm is very particularized. And obviously, you all know this, and lots of people have written about this. But when you're talking about process, the question is, "Well then, how do you solve for those things in terms of process?" So how do you build a better process? You sort of start with the small things, and then maybe we can talk about the administrative law, structural question.

Ned Resnikoff:

Yeah. I'd also like to just interject with a small point about what you're saying, because I think this is relevant for some of the solutions you're proposing. I mean, Bill Fulton writes about this in the context of the California Environmental Quality Act, but I think it applies to site-specific public input processes in general.

If you're trying to get permission to build a structure and you're choosing between infill and a sprawl, greenfield development, any infill, just by the nature of the fact that it is closer to existing residents, is just more likely to antagonize some individual with a strong stake in that neighborhood. And so, I think part of what you're getting at here is that when you have this sort of site-specific input instead of plan-based input, you're actually structurally creating higher barriers to environmentally friendly infill development than to sprawl, car-dependent, greenfield development.

Anika Singh Lemar:

Yeah, 100%. And I do talk about that in the article a little bit in the context of farmland development. The other piece that I think is important is that infill changes that de-densify don't require approval. So that's where the public participation bit meets the way that zoning works bit. Right? So if you want to turn your... This just happened down the block from me, so it's relevant.

A four-unit townhouse, and you want to turn it back to single-family, there's no public process involved whatsoever. But if you want to take the single-family and turn it to four units, you do. So not every infill choice is subject to public participation, but the ones that would add to the housing supply are. But yeah, no, I think that's absolutely right. Right? Like, farmland doesn't show up to testify at a public hearing, but your neighbors in an existing neighborhood will.

So some of the things that I think that could be required by code or by the zoning enabling out, or that an industrious planner could do on their own, and many do, have to do simply with outreach. Right? So you could solicit public feedback outside of the hearing room. Right? You can show up at... The way I talk to clients about this, when I have clients that are looking to get public input on a project that they're working on, whether or not they have to do it.

My client might be an affordable housing developer, like a community development financial institution, or somebody who's trying to work on some kind of planning enterprise to get public input. They're not required to do it by statute, but they're just trying to do a good job of doing it. Everybody's instinct is to have a public meeting, like reserve the library branch or whatever, and put up some flyers and have a meeting.

And my reaction is always to say, "You can do that." And you should do that, because honestly, your funders and what all are going to ask whether you did that. So it's good to be able to say yes. But if you really want to hear from people, you need to go where they already are. So there's a public school across the street where the PTO has a monthly meeting, or you can get flyers sent home with kids in their backpacks. That's a place where people already are.

When the Minneapolis 2040 Plan was adopted, the city plan members who worked on that described just advising city planners to go out to festivals, go out to neighborhood festivals, find out where people are, go talk to them where they're at. I talk to my clients about using local churches. Anything that you can imagine as a place where people go, whether or not they have a vested interest or some irrational attachment to the built

environment. Those are the people you want to talk to.

I think it's also really important to think really carefully about what it is you're asking people. So in the article, I describe a couple of other planners and thinkers who've been pretty clear that it's really hard to ask people what they want a plan to say, because it requires folks engaging in some kind of counterfactual thinking that isn't really intuitive to most people.

So we are all generally pretty good at describing problems on the fly. On the fly, I can tell you whether my commute to work was pleasant today, but I cannot, on the fly, at a table, at a public festival, or even in a three-minute slot at a public hearing, tell you how to fix it. I can't necessarily tell you what the solutions are. And if I did, because I'm not a transportation engineer, I'd probably be wrong. Right?

So being really careful and particular about what it is you're asking people, making sure you're asking people to describe the things that are in their experience. If we're going to rely on lived experience, let's think about what those experiences actually are and what they actually can tell us about people's lives. So one thing I think is simply to go to where people are and meet them there, and then to ask the questions that are within their experience.

Second thing that I think is really important, that could be really important, that, again, is on that smaller scale, is simply providing regular notice to the kinds of think tanks and advocacy groups that might not be property owners in the neighborhood. So they may not receive the statutory notice, but their perspective would be sort of helpful and informed. It's- one thing that's really hard about local public participation processes, is that those regular kinds of interest groups can't possibly show up to every single one of these hearings in every single town all the time.

So at least making the notices available so folks know that it's happening could potentially bring some of those voices to the table, where otherwise you wouldn't have them any other way. So I do think there's a couple of these small things that local governments could do, but obviously, I don't think they'd solve the whole problem.

Nolan Gray:

Well, just, I mean, a quick question on this. I think there are a lot of cities that do this type of really robust public outreach, where they actually do go out and try to find normal people and get them to share their views in a constructive way, and host focus groups and charrettes and things like that. I mean, my hometown of Lexington, they did

that, and they produced a really nice plan, and then I think they could take that plan and say, "Hey, we actually have kind of a mandate here around some of this stuff. We actually did real public process."

I suspect a lot of jurisdictions just do the hearing with a three-minute turn, partly, I guess, because I think that's typically the minimum legal requirement for a lot of these decisions pursuant to the state enabling legislation, but also probably because it's cheap and easy to do. And I'm wondering for smaller jurisdictions with less capacity, I'm wondering how you would suggest they think about that.

Anika Singh Lemar:

Yeah. I don't actually think this stuff is all that expensive. I mean, I think the critique is more that the places that are going to be willing to do the work that is a little bit more than what the enabling act requires are exactly the places that might be most likely to engage in inclusive planning, but also relatively permissive zoning in the first place.

So there's probably complete overlap, to some degree, between places where the town planner is thinking, like, "How do I get this room to look more inclusive? How do I do a focus group of renters?" Because everybody who showed up to the public hearing was a homeowner. That town or city is probably also engaged in thinking about how they ought to liberalize some of their zoning and make things easier to build in general.

Public participation, like everything else, if you rely on local opt-in, you're just going to solve a small slice of the problem. I think that's just a given, and I don't think it's because all this stuff is super expensive. The smaller the town, the more homogenous the town, the actually easier it is to do public participation anyway. Right? Just easier to find people.

And I don't know of any town, even my fairly inclusive, fairly well-meaning little college town of New Haven, that's made an effort to get people from other towns to come show up to public hearings. Right? I think there are some things that you can do and some things that an industrious, well-meaning planner can do. I just don't actually think you can solve this problem at the local level, but I don't think the hurdle is financial.

Ned Resnikoff:

Yeah. Part of what I like about what you're describing, and I had this light-bulb moment when I was reading the initial paper, was it's also... I mean, really, what you're describing

is actual planning. How do we make the, quote, unquote, "planning process" in the United States more focused on developing a citywide plan where you're actually seriously balancing trade-offs and the interests of different groups? Because what we do now, and I know this is a hobbyhorse of Nolan's as well, is really not planning. It's sort of the opposite of planning. It's, you're sitting back and letting the most powerful and often the crankiest and just kind of nastiest incumbent interests decide things on an ad hoc, project-by-project basis.

Anika Singh Lemar:

Right. And I, in the piece, acknowledge that partly what I'm doing is arguing in favor of robust planning, and other folks who may have accidentally ended up arguing for that too. David Schleicher and Rick Hills have a piece where they almost sort of accidentally end up... Not accidentally, but it probably wasn't what they thought they were going to start out arguing for. I don't want to speak for them, but also end up arguing for robust planning, which is coming up with a citywide vision of what is necessary rather than doing seriatim, ad hoc, one-at-a-time kind of decision-making that ends up moving in a predictable kind of way.

So from an administrative law kind of viewpoint, the way that land use law administration happens is actually really weird. It's not just really weird, because it ends up in this massive- for all the reasons that we talk about, you have these angry meetings, and people end up making it really hard to build housing, and it's bad. But it's actually weird in that it's sort of an outlier in terms of how we do administrative law more generally, so in part the initial Standard State Zoning Enabling Act in the 1920s, but partly as a result of just how the law has developed over the last 100 years.

We've built in this expectation that there ought to be an opportunity for public participation every time a development is proposed. It's an accident of the way the administrative law has progressed, as described in the paper, and it's also a result of hyper-regulated zoning of the last 50 to 60 years. But generally speaking, in administrative law, when somebody is applying for a permit to do something, there isn't typically a public hearing. Right?

So if I am a child care provider and I want a license to run a licensed child care center, and I apply for that license, there's no public hearing on my license application. There will be a public hearing when the generally applicable rules that apply to all child care providers, and set out the general standards that apply to a child care provider. When those rules get adopted, there will be an opportunity. There will be notice and an



opportunity for public comment, and potentially a public hearing.

But nobody is going to schedule a hearing about Anika Singh Lemar's child care license permit. And that's true, generally speaking, whether it's liquor permits for your restaurant or licenses to do a variety of activities. The public input happens when the generally applicable rule gets adopted. Because our plans, for the most part, kind of sit on shelves, there isn't a lot of incentive to show up at the public hearings where plans are adopted, because we do have public hearings when plans are adopted, but they are not super well attended, and they don't always result in actionable zoning ordinances and statutes and laws. Right? So there isn't a lot of incentive to show up at those meetings.

But if those meetings were the meetings where the action happened, then perhaps there'd be more incentive to show up. Plus, you could make more robust decision-making that would look like planning, which is not what these things look like right now. So in the article, I end up suggesting what would be a fairly significant change to current planning and zoning law, which is not a particularly significant change to administrative law, which is to say that you have robust public participation processes when you're adopting the rules.

But you do not have any public participation necessarily when you're granting site-specific relief for a particular development. At that stage in the process, you ought to be able to apply the generally applicable rules to that development. That's sort of said in admin law-speak, but in zoning-speak, people know it as as-of-right development.

Ned Resnikoff:

Just one more observation about, I guess, the sort of metapolitics of what you're describing here, which is that you're also, I think in this article, in kind of an interesting way, arguing against your own class interests as a lawyer. I mean, one of the things that it seems like this sort of project-by-project review... And, I mean, especially in a place where you have also really intensive environmental review and then litigation over the environmental impact reports and everything, is it- it's creating a ton of business for lawyers on both sides of an individual project.

And I'm kind of curious what your discussions with other land use attorneys about some of these ideas look like, because obviously... Not all lawyers. There are a lot of lawyers who are YIMBYs and who want these things to be more planned and rationalized, but I think there's also sometimes a professional inclination to think that the solution is always more process and more adversarial contestation to resolve a particular point of

disagreement.

Anika Singh Lemar:

I mean, this is a fun question. I thought you were going to say my own class interests as a homeowner, but there's that too, also as a lawyer. So as you all know, it's kind of hard. I mean, we have better tools today than we used to, but it's kind of hard to measure zoning restrictiveness across jurisdictions for a variety of reasons, like definitional and otherwise.

And there was a Brookings paper, I want to say like 2012, by Jonathan Rothwell that I cite all the time, that I really enjoy, that I think is really interesting, that talks about school test-score gaps and zoning. But for our instant purposes, I'll just mention it, because the way he measures zoning restrictiveness is by looking at land use lawyers per capita, and Connecticut comes out number one.

Ned Resnikoff:

That's amazing.

Anika Singh Lemar:

Yeah. Connecticut comes out number one on zoning restrictiveness and also on school test-score gaps, and look at Jonathan's paper to learn more. So yeah, here in Connecticut, yes, there's a lot of people making good money off of this crazy process, which I, uh, you know- not infrequently describe as a full employment program for lawyers and planners.

The land use lawyers who I tend to spend a lot of my time with, including members of the private Connecticut bar, nevertheless think the process is crazy. And I think, for us anyways, there's just lots of other things we could do. There's a lot of lawyering to be done for decent lawyers. So I'm not concerned about the possibility of putting myself out of business. I think it's really hard, unless you're super self-interested and really enjoy driving to far-flung suburbs of Connecticut at 1:00 AM, which is part of how I made a living before I became a full-time teacher.

It's really hard to look at this and say, "Yeah, this is how it should be." Right? So I suppose it's possible to be selfish enough to be sitting through a five-hour-long public

hearing on 67 units of affordable housing and knowing that there are four more meetings to come, and think like, "This is great, because I get to bill for every minute." But it's not in my nature and, frankly, just not in the nature of... Most of the people I'll talk to will say, "This doesn't make a lot of sense," even though their self-interest, even more than mine, is in having these meetings happen.

And I don't think a better process necessarily means that there would be less stuff for lawyers and planners to do. I think it would just happen at a more sensible point in the process. But you might be right that this is against my self-interest, and that's entirely possible, but nevertheless...

Nolan Gray:

Yeah. I mean, obviously, there's a little bit of self-selection, but I feel like most of the land use attorneys that I've worked with have been eagerly, like, "Yes, these institutions are insane. These rules are nuts. We need to reform this." I know it would mean fewer billable hours on one margin of my work, but I don't know. Most people, I don't think, are quite so cynically sort of positioned with their work.

Anika Singh Lemar:

Yeah. I mean, I will also say that before I started teaching full-time, I did land use, but I was mostly a dirt lawyer. I mean, I was just like an all-purpose real estate lawyer, and I would have been thrilled to spend less time on the land use and more time on deals. Right? That would have been good too.

Nolan Gray:

This is a big-picture question that I've been wanting to ask, and you touch on it a little bit in the paper, but the culture within planning still very much seems to be, participation, always good. The more, the better, as much as possible. We'll think about the form that that takes, and, "Oh, yeah. We know that certain crazy people show up, but that's okay. We just need to do as much of it as possible."

One of the things I think that might guide, I think, a lot of your recommendations is, what is the point of public participation? Why do it? You have a lot of great recommendations on when we do it, how should we do it. But one of the things I think about that I'm sure

you have thoughts on as well is, what is the purpose? What are we trying to do? Presumably, we're not trying to get the crazies to come out and yell at our local civil servants and planning commissioners. What information are we trying to get? What are we trying to do? Are we trying to get buy-in for a project? Are we trying to learn something? How do you think about that?

Anika Singh Lemar:

Yeah. So I talk a lot about this in the paper, and I think it might be section two, which... I don't remember what it is. But I don't actually think that we're trying to serve a function of the type that you're describing. I think we're trying to correct historical ills that we trace back to a failure to listen to communities and people in the past.

I think what we are doing, frankly, is being very conservative. I think that's what we're doing with public participation, as we're saying, "Let's do no harm. Let's do no harm. So let's go talk to as many people as we can and make sure that we're not doing any harm." And I, as a lawyer even, am very sympathetic to that. Just had a conversation with somebody yesterday, where they said, "Why are you calling that person?" And I said, "Oh, I'm going to call that person to make sure I didn't screw up. I want to make sure that I didn't miss something." And they're like, "Do you think you missed something?" I was like, "No, I don't think I missed anything, but if I did, this person will know."

And I think that's what we're doing. I think we're trying to minimize harm, and we're just making sure we checked with everybody. I think that's part of why we do public participation, because we have a lot of scars, physical, visible scars in the built environment and in our communities, where we wonder all the time, like, "How did we get that so wrong? What did we fail to do? How did we mess that one up?"

So part of what we're trying to do with public participation is just check with folks. I think the other reason, and this is sort of cynical, but I think the other thing we're trying to do is avoid some kind of hard questions, because some of the questions are really hard. They require some knowledge of science and engineering and environmental questions that most of us are not well-trained or well-equipped to think through.

They require, again, anticipating and trying to imagine certain counterfactuals that we really don't know the answer to, "What would happen if we built this road this way versus building it that way?" And there aren't enough people who are smart enough about some of those things to really think them through. It is easier to say, "Hey, you know what? The people who live there already know the best. Let's just ask them," without then

interrogating whether that's even true.

So I guess part of the motivating worry is that we're not doing public participation for the right reasons, or doing them for some of these reasons that are not coming out of bad intentions, but are not necessarily the right reasons to do it this way.

Ned Resnikoff:

I know we wanted to talk a little bit about Connecticut, and you referenced the craziness of the Connecticut land use process. So I want to dig into that in a second. But first, I have a very important non-land use Connecticut question for you.

Anika Singh Lemar:

Okay.

Ned Resnikoff:

As a born and raised Connecticutian who's now in exile in California, we all know that New Haven, Connecticut, has the best pizza in the country. What's your New Haven pizza spot?

Anika Singh Lemar:

This is a good question, not a simple answer. So I am a Modern person. That said, my family moved from East Rock neighborhood of New Haven - this is really minutia - to Wooster Square, which is the heart of Connecticut's pizza-ness, about 10 years ago. And we are creatures of walkability and proximity, and we go to Pepe's more often than anywhere else. It's too close not to. But probably, I'm a Modern, Sally's, Pepe's person, if I'm honest.

Ned Resnikoff:

Okay. Yeah. Well, I mean, there's no wrong answer here. I think I'm more of a Pepe's person, but Modern is obviously totally respectable.

Anika Singh Lemar:

Yeah.

Nolan Gray:

When my best friend in high school moved from New Haven to Lexington, he visited me in New York, and we had to make a trip up to New Haven, and we went to Modern. Yeah. As a nobody with no dog in this fight either way, yeah, it actually probably was some of the best pizza I've ever had.

Anika Singh Lemar:

I'm glad to hear it. You're not allowed to say differently in current company, I think.

Nolan Gray:

So let's talk about Connecticut a little bit. Connecticut, famously affordable, famously equitable, no zoning restriction issues there. Is that a good assessment, Anika, of the situation?

Anika Singh Lemar:

Somebody once described Connecticut to me as like a walking, living, breathing Fair Housing Act violation. I think that's probably about right. It's an interesting spot. I think that Connecticut has a lot to recommend it, but we are set up in such a way as to create extremely hyperlocal decision-making around land use, around transportation, and around schools.

And as a result, sort of predictably, we are hypersegregated, and we do it in ways that your average Connecticut resident will valorize as small-town living. But we're not really a small-town state for the most part. We are a largely suburban state of New York and Boston and, to some degree, the smaller cities in Connecticut, and we really epitomize the ways in which suburban exclusion has developed in this country, unfortunately.

Nolan Gray:

But it does seem like it's working from a pretty low baseline, which, in California, we sympathize with. But it does seem like there's a lot of discourse in Connecticut, and there's a lot of reform energy in a way that there isn't in many states. Do you want to talk about some of the stuff that's happening?

Anika Singh Lemar:

Yeah.

Nolan Gray:

I mean, as I understand, there is already a 40B-style mechanism in Connecticut.

Anika Singh Lemar:

There is.

Nolan Gray:

I don't know if you want to explain how that works.

Anika Singh Lemar:

Yeah. So 40B is a reference to a Massachusetts law that... 40B has been around since 1969. So it's sort of Mount Laurel era. And the idea is that if an insufficient percentage of your town's housing is considered affordable as defined in statute, there is an easier mechanism by which an affordable housing developer can get approvals.

So I'll speak to the Connecticut version of it, just because Connecticut is a little bit simpler than the Massachusetts version, and also because I know it a lot better because I actually do it. So the Connecticut statute, which passed in 1989, says that if your town has fewer than 10% of its units are affordable, again, as defined in the statute, then a

developer, any developer, nonprofit, for-profit, governmental, that's looking to build something that is at least 30% affordable, again, as defined in the statute. So you've got to deed restrict 30% of your units for 40 years. There's a mix in the statute between 60% and 80% of AMI, then you are entitled to whatever zoning approvals you might need.

So variances, conditional use permits, site plan, whatever, so long as your proposal doesn't create a hazard for health and safety. The statute's way longer than that, but that's essentially the short of it. 8-30g has been around in Connecticut, with some minor revisions at various points in time, for 35 years. And to the extent that there's multifamily housing in some of the tonier suburbs in Connecticut that have been built in that time, it's probably because of 8-30g.

Either somebody filed an 8-30g lawsuit, or somebody threatened to, or a town was trying to avoid the implications of 8-30g and built something itself. There are some suburban housing authorities that basically that's why they exist, is to do that. And so, it's been a useful tool. Obviously not a solution, not a complete solution, but it's resulted in thousands of units in towns that never would have permitted them otherwise.

Ned Resnikoff:

Yeah. Something that I think is important to this conversation that people outside of Connecticut often don't know is, I think people tend to... If they have any thoughts about Connecticut at all, which, on the West Coast, people often do not, people in New York or other areas, for example, might think of Connecticut as consisting more or less exclusively of Yale University and Greenwich County, like very wealthy suburbs of New York.

But, I mean, for a small state, there's a lot more to it. Right? So you also have these often very impoverished postindustrial towns, I mean, including the state capital, Hartford, where I think the median income is something like \$35,000 a year. I mean, you've talked a little bit about some of the exclusionary jurisdictions, but, I mean, what does land use politics look like in your Hartford or your Bridgeport or Willimantic?

Anika Singh Lemar:

That's a great question. Yeah. So, I mean, a lot of Connecticut, those urban centers, are exactly what you said. They're postindustrial, basically old factory towns that had their own kind of... Some of them made hats and others made carriages. And in New Haven,



we made guns. So did Hartford, actually. They've got this rich kind of history, were all, through the Great Migration, really important hubs for Black families leaving the South to come up north. Those were the kind of welcoming spots that ballooned in population during that time, and then those were the spots that largely white Connecticut residents just fled from in the postwar period.

I know New Haven best. So New Haven today is about 30% white, 30% Black, 30% Latin, and about 10% either Asian American and whatnot. So these are quite diverse places that are a lot more than wealthy exclusion plus the Ivy League. There's more to them than that. There's 10 or so of these smaller cities in the state. The Hartfords and the Bridgeports and the New Havens of the world have been quite happy to permit the construction of this not insignificant amount of multifamily housing over the last 10 years, where anybody has wanted to build that.

Nobody wanted to before. I mean, I can tell the story of the first apartment building that got permitted in New Haven in recent memory, in downtown New Haven, and that then kind of demonstrated there was a market for this thing. So at least over the period of time where there's been private market interest in building things here, the city has been pretty open to having people build things here. That has not necessarily extended to the kind of toniest, single-family neighborhoods in town.

I mean, we're no different than any other city in the country where those fairly well-off, single-family neighborhoods... I mean, much of Connecticut, a ridiculous amount of Connecticut is known for minimum two-acre lots. That doesn't exist in the city of New Haven or the city of Hartford. But you do have neighborhoods where the existing built environment is largely a single-family house on a quarter acre, and people are pretty resistant to changing that fabric inside of those neighborhoods.

It has not been completely smooth sailing to even do an ADU ordinance in the city of New Haven. The first version of it had an owner-occupancy requirement and some other requirements that resulted in basically zero units being built in the first couple years of its existence. So I don't think it's a very different story from a lot of other places in the country.

It'll sound familiar to pretty much anybody who's tried to do land use reform inside of an urban environment, which is to say that, "Yeah. Do you want to build an apartment building on what's currently a parking lot, or do you want to convert an old existing factory? You're probably going to do pretty well in city hall, and people are going to be pretty welcoming. But those neighborhoods over there, they're not sure or ready to go there yet." It hasn't necessarily happened just yet, and I think that's probably true across

all those places.

And I don't know how to put it in a politics sort of way, but some of those neighborhoods in those cities, they have a chip on their shoulder about the Greenwiches of the world. They don't really feel like this is their problem to solve. They're like, "Go get those people to do something before you come to me." I think that probably is some of the reigning ethos as well, and may be understandable, maybe, but definitely not helpful.

Nolan Gray:

Well, to that first point, I mean, about many of the Connecticut cities being pretty welcoming to growth, I mean, Buffalo gets all the credit, but I think Hartford, basically, was the other city that eliminated parking requirements first at the same time. And so, a little bit of love for Hartford.

Anika Singh Lemar:

Yeah. Absolutely. That's right. And New Haven's basically done it at this point. If you do, I think, 3% inclusionary anywhere in the city, you don't have to have any parking. I don't want to be misquoted on that, but I think that's basically where we're at right now. Not misquoted. People should look that up before they go on that, but I believe that that's where we're at.

Yeah. Absolutely. No. I think that the Connecticut cities, for the most part, have been welcoming to growth. I don't know what the curve is. There is a place on the curve where people start to get resistant, right? And I think part of it is that desire by the private market to build in some of these places is still a relatively recent phenomenon. And I do think you do get to a point where people start to say, "Maybe it's a little too much." And I can see a little bit of that happening here in New Haven.

Nolan Gray:

But I think to your point, I mean, even in the best of circumstances, many of those more exclusionary suburbs, there's got to be more state action or state oversight, I would assume. Right? And I'm wondering what-

Anika Singh Lemar:

There's no way to do it otherwise. Yeah.

Nolan Gray:

Yeah.

Anika Singh Lemar:

There's no solution to the problem here in Connecticut that does not involve significant state action. And to date, the things that the state legislature has been willing to do have all included local opt-in provisions. We don't need to pass statutes with local opt-in provisions, because the whole, entire, stinking Zoning Enabling Act is one big local opt-in provision. Right?

I'm not sure what it's going to take for us to get over that hump. People ask me all the time, like, "Do you think we're going to solve this problem? Do you think this is going to pass?" And I think, "Yeah, we're going to do some stuff." I think the question is, how bad do things have to get before a majority of our state legislature feels motivated to act? And we can point to California as to like, "Don't let it get quite that bad before you all feel motivated to act."

When 8-30g passed in 1989, it came out of a blue-ribbon commission study that was sparked by the housing affordability crisis of the late '80s, and 8-30g was one of 10 or 12 recommendations in that report. It was the only one that really came into being in a way that then had impact. And I do worry about that. Real estate is cyclical. Our understanding of these problems oftentimes comes up once in a generation. We get an opportunity to do something, and what is it that we're going to be willing to stomach and willing to do?

Today, in Connecticut, we've got a governor from Greenwich, a largely suburban legislature, and they are a housing committee of the legislature that's largely made up of landlords. We're not well-situated to take really serious action of the sort that's really required here in the state with what is oftentimes the lowest vacancy rate in the country, and which was recently cited as being the worst state in the country for renters based on various sorts of census data. We have to do something, but we have a really gnarly political environment, again, very suburban, very homeowner- and very landlord-led, that

we need to tease through.

Ned Resnikoff:

Well, that might be a good place to end. So, Anika, thank you so much for joining us.

Anika Singh Lemar:

Thank you again for having me.