Community and the Politics of Open Space: 
Reflections on a Walmart Development Controversy

by
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“The political culture of a place is not something apart from the place itself. By exactly the same token, the strengthening of political culture, the reclaiming of a vital and effective sense of what it is to be public, must take place and must be studied in the context of a very specific place and of the people who struggle to live well in such places.”

Daniel Kemmis (1990:7)
An Introductory Portrait

On an early November evening in 1992 a routine public hearing commenced in a small upstate New York city of less than 30,000 people. A local attorney, formally representing the interests of a local developer and several local land owners, began to argue appeal 2153 before the city’s Board of Zoning Appeals (BZA) and a small audience consisting almost exclusively of involved city officials and directly affected parties. The attorney’s aim was to convince the BZA to grant a variance that would permit the construction “of a mercantile building in the FW-1 (flood-way) zone”. The variance was requested to enable an “unnamed national firm” to construct a large commercial building and associated parking lot on a 14.8 acre site.

While most of the property was zoned for commercial use, the construction as proposed extended beyond the limits of the city’s commercial zoning boundary. The property was situated essentially at the city limits. As the only remaining city land in active agricultural use, it constituted a visible transition zone between the heavily developed auto-oriented commercial strip immediately adjacent to the east and nearby park land and natural areas located in opposite directions. Like a deliberately drawn underscore of the environmentally articulated controversy to follow, a flood control levy thickly demarcated the land use change on the eastern property boundary.

At the BZA hearing an extended discussion ensued. Largely technical in nature, it focused on the crucial if confusing distinctions between floodways and floodplains and the even more complex history of relationships between the city-defined FW-1 zone, the federal Flood Insurance Rate Maps, and the known physical history of flooding upon the site. After some hours, and immediately upon the heels of a 5-0 vote, the BZA chair announced the Board’s decision: “Your appeal is granted.”

More than four years later no building of any sort, mercantile or otherwise, had been constructed on the site. A critical option to purchase part of the property in question had been allowed to expire, and the Wal-Mart corporation, which had reluctantly identified itself as the national firm in question, had publicly renounced its intentions to pursue the project. Aside from the 15 acre expanse of open (but no longer cultivated) space, perhaps the most tangible reminder of the proposed 155,000 square foot development was an unresolved if highly improbable threat by the regional developer representing Wal-Mart, as conveyed through the local media, to sue the city for recovery of monetary damages under applicable federal civil rights statutes.

A convulsion of public decision making had taken place in the interim. Involved city and county public bodies had devoted all or part of dozens of meetings to deliberation of the topic. The courts had already supported city board decisions in three related lawsuits, first rejecting a challenge to the BZA’s variance permitting the project but ultimately upholding the city planning board’s authority to impose reasoned if stringent mitigating measures on the proposed development. Days of public hearings had been held, and an official public record had been compiled reflecting the views of more than four hundred
people on issues ranging from coveted tax base to the vitality and character of the downtown business district, from the quality of wetlands and the visual sanctity of park land to the glories of the free enterprise system. The full record was quantifiable in yards of documentation.

Other observations confirm the exceptional extent of the debate. Numerous front-page headlines on the controversy had boosted local newspaper sales. Local advocacy groups had organized both favoring and opposing the project, promoting countless hours of citizen involvement in public affairs and the efflorescence of opposing buttons and bumper stickers. Regional officials from the U.S. Army Corps of Engineers had traveled to town for a special public presentation to the city on flood control and wetland regulatory issues. The controversy was prominent though not obviously determinative in a close mayoral race that led to the unseating of an incumbent who had first appeared to support but then had strongly opposed the development. A post-election attempt to, in effect, downzone the commercial portion of the site failed to pass the city council. The ultimate disposition of the property remained clouded.

Sustaining Rural Landscapes

While the particular trajectory of this history is as always unique, the portrait doubtless bears the imprint of familiarity. This specific high-profile controversy is hardly singular; just involving Wal-Mart, about a half dozen other communities in New York state alone were involved in broadly similar major development controversies during the same period. In addition, local, state and national press have periodically interpreted these disputes and others elsewhere in the country to large audiences.

Typically of course, impacts of individual development projects are incontestably negligible on the landscape scale, cumulative impacts remain ill-defined and ignored, and the dimension of controversy is absent, more diffuse, or constrained to the immediately affected neighborhoods. Whether moving towards or away from sustainability, the landscape usually evolves more quietly. In contrast, these large and controversial projects are lenses focusing on emblematic physical, economic and social transactions that, site by site, dramatically transform local landscapes, frequently in rural-urban transition zones.

1 Subsequently, the new mayor was able to take advantage of a unique set of circumstance to unilaterally appoint five new members of the seven member city planning board, precipitating a struggle with the city council over his powers of appointment.

2 The term “rural landscape” evokes an image in the continuum of perceptions of the physical environment that lies about midway in the spectrum from wholly built urban core to untouched wilderness. While the “ruralness” of a property literally at the edge of the urban core might be debated, the managed -- indeed agricultural -- nature of its open space character suggests the term fits.

3 “Evolution is simply the term used by nonparticipants to denote a particular sequence of revolutions as they synthesized into a specific major social change.” (Alinsky)
The particular claim here to significance on a landscape scale rests on several key factors. First is the magnitude of the change agent itself. Founded by Sam Walton in 1962, Wal-Mart now operates nearly 3,000 stores in its four divisions, with sales growing fastest internationally. However, the company remains concentrated in small town America, where the densely spaced stores indicate its pursuit of a geographic saturation strategy. With its recent success entering Vermont, Wal-Mart has leapfrogged itself into a presence in every state. Moreover, the company is quickly closing in on $100 billion annual sales, and perhaps most symbolically is likely to become the largest corporation in America before the turn of the century, overtaking the auto, computer and petroleum companies that have been the dominant twentieth century corporate behemoths.\(^4\)

As the corporation has grown in aggregate, so has the physical size of each new prototype store and the diversity of products encompassed therein. A single store is typically the largest retail presence in town, with sales volumes and profit margins significantly exceeding those of its competitors. It is often the largest business in town by any measure. Moreover, the opening of such a large establishment repercusses throughout the surrounding countryside. The stores regularly attract significant business from a thirty mile or larger radius, with the “trade area” boundary of a new store often delimited primarily by the proximity of nearby Wal-Marts. The number of careful retrospective studies of the phenomenon are few, but those that exist confirm that Wal-Mart can significantly reconfigure the landscape of retailing on a regional scale. A small but growing number of national studies depict a related but much more general trend, namely the increasing infra-regional concentration of retail trade at the expense of the most rural places. Each of these trends is reinforced in importance by the pervasive nationwide shift to a service economy.

Though not inherently a factor, the scale and location of the development may conflict with important cultural or environmental elements of the broader landscape. This can be a critical determinant of the depth, character and power of anti Wal-Mart movements. For example, of the minority of proposed New York Wal-Marts that have stimulated vigorous or successful opposition movements, most involved real or perceived threats to exceptional environmental or cultural features of the landscape: a village downtown area that had been home to a utopian arts and crafts movement; an historic home site of a former president; a mountain resort town internationally renowned for its scenic vistas; a low-lying rural field reported to contain significant Mohican artifacts. The case featured in this essay similarly involved much controversy over the potential for impacts on a regionally significant\(^5\) state park featuring a spectacular waterfall.

Lastly, there is the landscape scale of the controversy itself. The decision about Wal-Mart became a local cause célèbre, but was also significant in a regional and national “arena”.

\(^4\) In terms of sales, the company claims rank already as fourth largest in the U.S. and 12 largest in the world. On the basis of its earnings, it ranks as the most profitable retailer and 13\(^{th}\) most profitable company in the United States.

\(^5\) Visitation survey data suggest that as many as 90\% of the annual visits are from outside the county.
involving the public relations resources of a major international corporation, a grassroots network of opponents based locally but in contact with others fighting similar battles elsewhere, and supra-local media attention. Locally and regionally at least, the dispute left a manichean legacy, and has become a touchstone that is referenced by many. For many, Wal-Mart’s withdrawal stands as a symbol of the power of community based activism to win control over local destinies. For others, the symbol is of an insular, even elitist, anti-business orientation of city government.

In my role as chair of the city planning board throughout the duration of this controversy, I was immersed in the issues of substance and of process that shaped the local debate. As a private city resident, I would likely have given little time or energy to refining my casually acquired pre-existing personal preferences regarding Wal-Mart’s location in my city. Instead, I spent several years struggling with a difficult public issue. This essay is my attempt to systematically reflect upon the growing sense of concern I felt as a local official trying to steer a complex and formally bounded process towards a fair and responsible public decision. At the heart of my concern was the sense that the planning board was complicit in a significant, systemic misuse of a scarce and valuable resource - the attention and engagement of the energies of a broad cross section of people who cared about their community. The Wal-Mart years afforded many positive, community affirming moments. However, though the course of consequences has not yet run through, I came to believe that an enormous potential investment in “social capital” had all too often merely consumed itself or, more darkly, fortified an already highly developed but highly fragmented social infrastructure.

In retrospect, three themes stand out for me as most worthy of deeper reflection for those concerned with building sustainable communities in rural landscapes: the significance of place, of timing and of related procedural constraints in the formulation and implementation of land use policies. The first theme encompasses the increasingly complicated relation in land use decisions between the geographic locus of decision-making authority (and associated formal powers) and the landscape scale distribution of “stakeholders” (and associated informal powers). The second theme touches on the endemic tension that exists between proactive land use planning, typically associated with high policy flexibility and low levels of public attention, and project specific “crisis management”, typically associated with low flexibility and high levels of public attention. The third theme pertains to the way the existing legal and institutional framework interacts with geography and timing to constrain or enable effective public investment in social capital.

Placing the Portrait in the Arena

Geography - Among the bequests of its antecedents to the Arena Society⁶ are an

⁶ “The Arena Society is characterized by complexity and uncertainty as the result of new flows and linkages of people and economies across large areas. It implies that the effects of the ‘universal rise of the service sector and the decline of primary production as the main form of rural employment in rural areas will have particular effects on small towns and villages, as well as the regional labour markets’” (Dahms 1998:300).
infrastructure of decision making powers, traditions and institutions. Perhaps the most
germane of these for analysis of landscapes are embodied in the place-delimited
institutions of state and local governance, the core of which is constituted by local
government itself. Indeed, though the territory of many municipal and county
governments was established in consideration of 18th and 19th century transportation and
communication technologies, in New York the formal powers of land use control still rest
largely in the hands of the most local of local governments (e.g. towns, villages and
cities). Despite counter trends that vary in intensity by state -- including strong traditions
of regional or statewide land use planning in states like Hawaii, Vermont and Oregon,
and the expanding scope of legislative and judicial intrusions into local land use powers –
as a rule this observation remains valid, and strikingly so in home rule states like New
York.

Routinely at least, local government boards and lower courts are the formal
institutional channels through which land use controversies like the Wal-Mart debate do
and must generally flow, and as such they become both audience for and arbiter of public
debate.

Excluding all special purpose service and taxing districts (including nearly 1,000 school
districts with a stake in local property tax revenues), New York has more than 1,500
general purpose local governments with land use authority. In terms of formal planning
and zoning tools, 82% of the state’s cities, towns and villages have a planning board, 75%
have zoning regulations, 67% have subdivision regulations, 59% have site plan review
and 47% a written comprehensive plan. Smaller more rural areas are significantly less
likely to employ these tools. Counties have limited jurisdiction only.

Though frequently described pejoratively terms in terms of “fragmentation”, it is notable that in
this century, despite numerous proposals and several campaigns to regionalize land use
planning, only two New York towns and just over a dozen villages have overcome the
opposition and formally dissolved or consolidated. Only a handful share or formally
coordinate land use controls. The threatening loss of local control and local identity
remains a powerful barrier to formal mergers, even in times of fiscal stress.

Given the fact that a single local government normally has final approval authority over
land use decisions within its territory, the implications for projects with landscape scale
impacts are clear. The decision making process channels public discourse to an audience
of decision makers without an obvious “landscape constituency”. To put the point more
directly, municipal officials normally feel primarily responsible for, and give precedence
to, the interests their own municipalities. Their sense of responsibility as officials
representing particular municipal constituents may cause them to privilege these interests
beyond the point they would as mere citizens.

For the local Wal-Mart controversy, two appointed city boards played key roles, with

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7 There are some notable exceptions in New York, too; especially the regional jurisdiction of the
Adirondack Park Agency (APA) in northern New York. Interestingly enough, a controversial Wal-Mart
proposed for the town of North Elba New York (which includes Lake Placid) led to a situation precisely
reversed from the usual municipal demand for return of local control: a local Adirondack jurisdiction
requested rather than resisted a move by the APA to assume authority over the permit decision.
8 Higher units of government do preempt local authority regarding their own governmental projects.
back-up by the state courts. Framing the first phase of public deliberation, city zoning law as originally adopted by the city council was interpreted by the city’s appointed Board of Zoning Appeals. The second phase was framed by the permit requirements under the city’s site plan review ordinance, which itself triggered an environmental review consistent with the parallel city and state Environmental Quality Review acts\(^9\). The administration of each is assigned to the appointed members of the city planning board. These city officials formally represented the jurisdictional interests of the largest of sixteen municipalities in the county; the city hosts about a third of the county population.

While these primary decision makers represent a single jurisdiction, they do of course hear from voices in the broader landscape, in particular as part of the mandated environmental review. Some of these voices represent citizen opinion that is dependent solely on political influence or persuasiveness of argument for its power, while others carry formidable political and legal weight on specific topics relating to specific authorities or expertise. Thus, agencies at least formally representative of a broader constituency must often actually grant additional permits, while in other instances their “expert” or “official” positions are powerful arguments that the local board must consider but may choose to accept or reject. For example, during the local Wal-Mart proposal review, the comments of county and state bureaucrats regarding impacts on county or state roads were sometimes determinative; state and federal regulatory agencies had independent authority over controversial wetland and flood control issues; the official comments of the state park authorities provided a stronger basis for board-imposed mitigation measures designed to protect the state park, etc. However, it is in general only under highly prescribed circumstances that counties, which are the most representative “regional” government, have the authority to comment broadly on local land use decisions. This authority carries the limited associated power to force a local board to a majority-plus-one vote to overrule a county recommendation.\(^{10}\)

The geographic distribution of authority is significant because a divergence of municipal interest or “stake” is common in location decisions of this type. The most obvious involves the likely redistribution of tax revenues across municipal or at least county boundaries. In New York State, sales tax and property tax revenues are at issue. As is both typical and specific to this case, a fiscal impact study concluded that the proposal to site the Wal-Mart within the city limits, while certainly competing with other city businesses, would also draw significant new revenues into the city treasury, particularly but not exclusively from the suburban village hosting a regional mall.\(^{11}\) Not surprisingly, estimates for the city planning board of this potential revenue transfer were developed as a gain for the city rather than as a loss for the suburb. No formal consideration and scanty

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\(^9\) Environmental review is triggered by permits that require the exercise of municipal discretion, but not by so-called ministerial decisions, such as the granting of a building permit, that do not.

\(^{10}\) In the case at hand, the county had unusual power over the development because it owned a small but essential piece of the land assembled for the development. At several points during the extended review, the county legislature could have decided not to renew the developer’s purchase option. However, the county chose instead to negotiate an increased option price while deferring to the city’s permit decision.

\(^{11}\) Aware of the usual appeal increasingly scarce tax revenues held for city officials, opponents vigorously challenged this conclusion.
informal consideration was given the equity issues associated with such cross-jurisdictional revenue shifts.

Less self-evident perhaps than tax implications are the issues associated with uneven geographic distribution of shopping preferences, social class, and related rural-urban political and demographic dynamics. National market research (by the Simmons Market Research Bureau) based on survey data has characterized typical Wal-Mart shoppers in demographic terms as more likely to have lower incomes, less education, be fifty-five or older and to live in rural areas. Application of these results to a census tract analysis (using the “PRIZM Lifestyle Clusters” constructed by Claritas-NPDC) suggested that typical Wal-Mart customers would be more likely to live in several rural parts of the county, and especially in less affluent neighboring rural counties. A local newspaper’s randomized phone survey of county residents elicited direct information about local attitudes with the question, “Do you want Wal-Mart to build a store in [this] county”. The responses revealed statistically significant differences between city residents and those outside the city, with a narrow plurality of city residents answering affirmatively (43% yes, 39% no, 18% undecided) compared to an absolute majority favoring the store in the rest of the county (55% yes, 24% no, 21% undecided). Additional analysis indicated support for Wal-Mart was strongest among males of middle income, middle age, with fewer years of education.

It should be noted that the phone survey did not frame the question with respect to the actual decision at hand (a specific proposal for a particular location). Nor did it attempt to differentiate responses by intensity of preference or knowledge of the issues. Still, in view of the balance of surveyed opinion pro and con, it is striking that participants in the public hearing and public comment process were overwhelmingly opposed to the store. The opposition was strongly inclusive of downtown businesses, as all but a few volunteered signatures on a special business petition opposing Wal-Mart. (A smaller number of businesses near the proposed store site registered their support; while few or no businesses from outside the city submitted comments.)

In the near-term aftermath of the Wal-Mart decision, rural-urban differences surfaced publicly when several rural towns objected to a proposed county contribution to a new downtown business improvement district; one supervisor explicitly cited the city’s position on Wal-Mart as a reason for his opposition. Certainly, a number of the active opponents to Wal-Mart lived in rural areas. However, though the only local evidence is impressionistic, all indications are that the Wal-Mart controversy reinforced pre-existing class, ideological and rural-urban schisms in the larger community.

Timing - Time is a critical factor conditioning the allocation of resources and powers that affect land use decisions, especially in the face of controversy. Over a long enough time horizon many critical time-dependent variables are likely to change, a fact frequently transparent to and of strategic importance to each protagonist. During the course of the Wal-Mart review, which was replete with unusually long delays (see timeline), most of the following typical examples actually happened and several were undoubtedly significant in the final outcome. Interest rates changed. Through resignation or the
expiration of terms of appointed officials, key decision makers were replaced. The election cycle affected the pressures on elected politicians, highlighted different issues, and changed the tone and dynamic of city government. The developer’s purchase options expired more than once and had to be renegotiated in an increasingly politicized atmosphere. Similar development controversies in other places started, ripened, reached conclusions, were publicized. Financial and political circumstances affecting the developer and the Wal-Mart corporation shifted. Legal precedents were altered or clarified. Alternative development parcels became available or were made unavailable. The strength and durability of opposition and support groups waxed and waned. Legally mandated time clocks were started and sometimes exceeded with differential and partially uncertain consequences for the affected parties. Conditions in the local land market, the labor market, and the product markets shifted. All the involved parties were exposed to and sometimes learned from or responded to new information.

One tension is endemic and important in the relation between timing and possible public investment in social capital. Clearly, a development decision that takes many years to reach is a sign of dysfunctional process, whatever the outcome. From a project advocate’s (e.g., a developer’s) perspective, extended public decision timelines normally signify the threat of greater risk and uncertainty, higher costs of borrowing, more significant opportunity costs and delayed and overall lower returns on private investment. However, from the perspective of public education and meaningful involvement in decision making, adequate time is essential. While partisans of project delay for its own sake can and do successfully manipulate timelines to no broader public purpose, serious public participation cannot be fast-tracked. Formal review procedures establish timetables with limited attention to these needs, but an appropriate balance is elusive.

For example, partly in response to a history of perceived dilatory abuses, recent revisions of New York state’s Environmental Quality Review law have imposed new responsibilities on the reviewing board (with implications for all participants in the process) to focus its project reviews. In particular, the law now directs more forcefully that the “lead agency” articulate at the beginning of the review process the “scope” of issues it believes may be associated with potentially significant environmental impacts. In addition, it requires a higher level of justification than previously for any later departures from this scope in the analysis of impacts the lead agency requires. The lead agency, normally comprised of volunteer public officials with no special training, now has a greater need to both anticipate and judge the importance of environmental issue areas early in the review process. Strengthening the quasi-judicial nature of the review process, there is now less of an obvious concession accorded the normal evolving stages of public issue development. At the time of “scoping” under the Wal-Mart review, for example, there were no organized grassroots groups favoring or opposing the project.

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12 Large developers with deeper pockets tend to be advantaged over smaller developers if all else is equal.
13 The organized opposition to Wal-Mart first emerged publicly in early 1994 to critique the draft Environmental Impact Statement. The smaller group supporting the Wal-Mart proposal was organized later and seems to have been formed mostly in an attempt to counterbalance the voices of resistance.
In general, the appropriateness and potential for measured and open deliberative process is greater when establishing general land use policies than when implementing particular policies in specific instances. However, the typical conundrum of planning is that incentives for potentially interested members of the public to get involved are normally significantly greater for specific controversial projects, particularly as an issue builds or a decision with tangible consequences seems imminent. For example, if a hearing had been held 10 years prior regarding a proposal to protect the eventual “Wal-Mart” property through rezoning, it is unlikely that anywhere near 400 people would have been interested enough to comment.

Table 1. Wal-Mart Project Review Milestones

1992

Fall - Developer contacts city, submits permit application
November - BZA grants conditional variance to developer

1993

February - Court upholds BZA decision on variance
May - Developer submits application for site plan permit
June - Planning board declared “lead agency” for environmental review
July - “Positive declaration” of environmental significance declared; full environmental impact statement (EIS) required.
August - Scoping session held to establish scope of EIS content

1994

February - Draft EIS submitted to planning board
April - Planning board decides draft EIS is inadequate for public review
July - Revised draft EIS submitted to planning board
August - Planning board determines draft EIS is still inadequate for public review
November - Newly revised draft EIS submitted to planning board
December - Planning board determines draft EIS adequate for public review

1995

February - Public hearing held, written public comment on draft EIS received
April - Content and structure of final EIS established
September - Final environmental impact statement accepted
October - Planning board rejects application for site plan review permit

1996

Winter - Court upholds planning board decision
Legal & Institutional Frameworks - While there was certainly a profusion of informal debate in the community, the nature of formal public deliberation was strongly imprinted by the way the relevant zoning appeals, environmental and site plan review laws are implemented in New York State. The two city bodies making these kinds of land use decisions do so in a quasi-judicial capacity, administering the relevant ordinances in a legal tradition of regulation that privileges private property insofar as it is designed to protect property rights against the possibility of arbitrary and capricious whims of the public. “Facts” are privileged over “emotion”. Thus, unlike several states which allow public referenda for similar land use decisions, New York proscribes this option. Decisions of the two kinds of appointed bodies are protected from the direct intervention of local elected officials and must be appealed directly to the state courts.

Moreover, case law under the state’s environmental review statutes limits both the weight that can be placed on generalized, speculative comments and opinions of residents and the type of issues that are legitimately part of the formal deliberations of the reviewing board. For example, two issues that became central elements of the public debate and were addressed by the judge in the developer’s lawsuit challenging the planning board’s ruling were a) concerns about negative social and economic impacts on the city’s downtown shopping district and b) concerns about the visual and aesthetic impacts of a store located within the viewshed defined by a perspective looking out across the valley floor from state park trails.

In this case, despite a forceful dissenting board member’s challenge to the substantive significance of the alleged visual impact and the plaintiff’s allegation of the application of arbitrary standards, the judge upheld the board majority’s imposition of strong landscaping and siting restrictions designed to minimize impacts on the viewshed. On the other hand, while clear and present threats to “community or neighborhood character” are legitimate subjects for consideration under the law in principle, the judge added his decision to a growing list of cases that strictly limit the authority of local boards to consider negative social and economic impacts under environmental review, particularly those that are transmitted indirectly through markets with no analogous physical transmission mechanisms.

There are additional frequently noted procedural parameters that stamp the character of the public review that is typical in this framework. Among the most important is the traditional unidirectional flow of commentary and debate, particularly in the (legally optional) open public hearing. Public comment of course varies widely in character and content, and may bring new information to light and other issues into focus. However,

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14 Any required mitigation measures under environmental review must be based on a considered evaluation of impacts, preferably documented by “substantial evidence”; public opinion unsupported by such evidence is insufficient grounds for permit denial or restrictions of property rights under the state environmental law (WEOK NYCA 1992). The US Supreme Court’s much commented upon Nollan and Dolan decisions (Nollan v. California Coastal Commision, 483 US 825, 1987; Dolan v.City of Tigard, 1994 ) limit municipal powers under takings law to measures that evince a “rational nexus” and a reasonable “proportionality” between an identified impact and the mitigation imposed.
the effectiveness and balance of participation is left entirely to the initiative, organizing abilities, and verbal skills of the involved stakeholders. Regardless of who shows up, commentary on controversial topics is typically delivered in a marathon series of mini-speeches. These are often rhetorically flamboyant, lambasting opposing arguments and (at least presumptively) directed at influencing the vote of the mostly impassive board members who hold the decision making authority.\textsuperscript{15}

In fact, the term “public hearing” is a misnomer, as the conditions are normally riper for venting into the official tape recorders than they are for the kind of listening a true “hearing” would require. The capacity of most board members (or audience members for that matter) to absorb and process endless hours of speeches is limited. Few are eager to jump into the verbal fray, and there are certain disincentives for a board member to too overtly display his or her prejudices before all the “facts” are on the table. The avoidance of any visible response to public comment is a conscious if informal rule adhered to by many board members. Normally, a board’s formal response to public comment under environmental law is supplied in writing at a later date, mostly in the context of establishing the grounds for a decision about to be announced. There is a formal obligation of the board to respond only to legally relevant or “substantive” comments. These are generally not inclusive of such admittedly heart-felt and important issues as the benefits of free trade or the concerns about the loss of locally owned businesses. This fact may be explicitly stated but it is rarely understood or even accepted by the public.

In sum, while “public participation” is important to the process, opportunities for investment in social capital through deliberative public dialogue or arriving at shared understanding of the issues, much less collaborative problem solving or decision making, are constrained at best.\textsuperscript{16}

Towards a “Fairer Creation Than We Know”

“In landscapes the painter should give the suggestion of a fairer creation than we know.”  
Emerson

Like major geologic events that re-shape the physical land form, the public resolution of highly contested land-use decisions simultaneously disturbs the existing strata of “social capital” while laying down the base upon which future accumulation must rest. Though the energies that are released by controversial proposals can be a powerful force for restructuring and building social capital, most communities seem ill-equipped for the task. Many suffer destructive consequences. Still, it is an empirical question, not always easily ascertained in the instance, whether the quotient of “reciprocity and mutual trust” that builds community (Flora) has increased or decreased.\textsuperscript{17}

\textsuperscript{15} Many speakers are more effective at rallying their supporters in the audience at public hearings.
\textsuperscript{16} The local Wal-Mart public hearings did include much substantive commentary that was an important part of the formal legal record. The hearings themselves eventually achieved an almost festive tone. This would have been unlikely had not the hearing room been filled for many hours by an overwhelmingly like-minded group of Wal-Mart opponents. Few supporters spoke at the hearing.
\textsuperscript{17} In these terms I suspect that locally the many beneficial aspects of partisan organizing were outweighed
At least as difficult is sorting through the missed opportunities associated with roads not taken. In fact, the cost to “the capitals” of taking the well-traveled way may be high. Robert Putnam (1993a) underscores the extent to which the growing of social capital is interdependent with the quality of public decision making: “Social capital is not a substitute for effective public policy but rather a prerequisite for it and, in part, a consequence of it.” The economist Robert Reich (1987) observes more pointedly that, “The failure of conventional techniques of policy making to permit civic discovery may suggest that there are no shared values to be discovered in the first place. And this message—that the ‘public interest’ is no more than an accommodation or aggregation of individual interests—may have a corrosive effect on civic life. It may invalidate whatever potential exists for the creation of shared commitments and in so doing may stunt the discovery of public ideas.” Putnam’s (1993b) empirical study of Italian regionalism, which reaches the signal conclusion that social capital may be even more important than economic capital in explaining variations in regional prosperity, becomes alarming in this context.18

One of the defining attributes of the emergent Arena Society is the extent to which it problematizes the relationship between community and place, and hence the ability of “the community” to make decisions. Certainly, the cogently labeled “Short Distance Society” was pervasively disrupted as new external and increasingly global forces were introduced into rural landscapes. Enabled and structured ever more powerfully by transportation and communication technologies, “communities of interest”—whether casual or intense—have suffused throughout “communities of place”. What are the implications? Daniel Kemmis raises the issue in relation to the fundamental problem of public identity, and thus of community itself: “But what ‘we’ do depends upon who ‘we’ are (or who we think we are). It depends, in other words, upon how we choose to relate to each other, to the place we inhabit, and to the issues which that inhabiting raises for us. All of those ‘we’ questions are about our way of being public.”

For Kemmis, the importance of proximity and the physicality of presence cannot be ultimately displaced - there will always be a “there” there. Despite our technologically expanded horizons and ever increasing capacity, indeed imperative, within these horizons to screen, control and select the people, information and environment with which we interact, it is still the shared physical places in which we live that most condition our daily, routine experiential interactions with the world. It is still place that most literally forces us to come to terms with the reality and consequence of a “common ground”.

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18 The Tupelo, Mississippi experience chronicled by Vaughn Grisham makes a similar case (Mathews 1996).
Like Kemmis, the late anthropologist Janet Fitchen eloquently asserted the social importance of the “land”, especially in the rural landscape. “The landscape is a constant space in which people operate, a backdrop against which the activities of daily living are carried out, a space that is both setting and symbol of rural life. And this space has the power to modify activities that take place within it, to transform essentially mass-society activities and objects into rural life. The land is also the space in which social relationships are grounded... The space as a whole, as well as each individual parcel of land, has a social history known and referenced by local people, and the very term ‘locals’ or ‘local people’ is a way of affixing people in relationship to space.” (Fitchen 1991:250-253)

In light of the importance of place, of Kemmis’ questions of community identity, and of the particular institutional parameters within which land use decisions are now being made in New York, what suggestions might help us reconstitute our landscapes as a “fairer creation than we know”? Fuller (1994) implicates the importance of the capacity for public decision making in the Arena Society: “Much will depend on the readiness of rural communities to examine their circumstances and to decide for themselves how to make the best of the diverse conditions.”

The discussion so far leads me to three broad, inter-related suggestions or goals. None are easy, none are new; in sum they require a pragmatic commitment to the principles of community organizing and participatory democracy. They imply intensive and coordinated but decentralized effort, with success to be measured incrementally in community-based change. They require hard work and can be exhausting, so must be approached judiciously, persistently and opportunistically. Like the philosophy they echo, they require the affected communities to, with some help, “come alive in a willingness to take responsibility and act together” (Mathews 1996).

The first goal is to foster a cooperative approach to intermunicipal regionalism. The second is to strengthen local attention to an anticipatory, comprehensive planning process. The third is to build the institutional mechanisms and community skills that can support collaborative community problem solving. In many ways, the success of the latter project may condition the success and importance of the first two.

**Regionalism:** Regionalism responds, at least minimally, to the sweeping geographic realignments of the Arena society. Regionalism takes landscapes seriously. It is an assertive recognition that environmental and economic forces don’t stop at existing political boundaries.

The first critical step in the regionalists’ project, as Tony Hiss (1990:205) puts it in describing the work of Robert Yaro, is that of “revalidating connectedness and helping it to find voice”. Regionalism builds on a strong identification of the public with the environment, and on one of environmentalism’s most fundamental lessons - the web of interconnectedness and the importance of systemic thinking. It capitalizes on the
increasingly institutionalized attention given to watershed management. 19

Economic regionalism is fostered by the growing economic attractiveness of eco- and agri-tourism in rural areas. It brings landscape perspectives to the critical opportunities provided by progressive intermunicipal transportation planning organizations (mpo’s), and the obvious importance of transport systems that physically link one place to another. It minimizes the structural incentives for interjurisdictional competition by building local economic development on a foundation of priority for local assets and support for existing business, rather than reflexively turning to the one-big-winner, long-shot/high risk recruitment of outside resources (Kretzmann and McKnight 1993; Kinsley 1997). It sees opportunity as well as threats in the fiscal stresses impressing many local governments and their constituents; and it treats each major public investment decision as an opportunity to explore intermunicipal cost sharing. It studies the positive and negative lessons provided by the very few areas (largely metropolitan) that have implemented some form of regional tax base sharing, and the few others that have formally coordinated planning and economic development efforts across municipal boundaries.

At the same time, a modern pragmatic regionalism accepts that boundaries persist in part because they manifest a strong local interest and a local identity. At the governmental level, it eschews unit consolidation and formal redistribution of authority in favor of functional cooperation. While not shying away in principle from the rare new opportunities provided by supra-local authority, regionalism is incrementalist; it is opportunistic; it is flexible, and it is thoroughly, perhaps continuously, negotiated. Regionalism begins to supplant the vocabulary of constituency with that of stakeholder.

Regionalism reflects an understanding of the hierarchy of networking, cooperation, coordination and collaboration (Cigler 1992) as a strategic progression. It seeks out, understands, publicizes and builds on the foundation of a widespread and healthy (if largely invisible) existing tradition of intermunicipal cooperation. In adapting to the globalizing forces of the Arena Society, it promotes the importance, in weaker rural areas especially, of the political strengths of coalitions as well as the driving force of scale economies. And it approaches each development controversy with impacts on a landscape scale as an uncommon opportunity to bring stakeholders who would otherwise be blind to each other’s position in the landscape into a dialogue on their common stake in place.

Regionalism also seeks opportunities for shared celebration and festival to extend the boundaries of community. Festivals and community markets that highlight regional produce, regional economic heritage, prominent regional landscape features, regional history, regional music and other arts and crafts, and so on all step in this direction. The official designation or unofficial organization of art trails, wine trails, scenic routes, 19

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19 Local officials with their intense awareness of political boundaries will need help from their own populations to find this voice. As has been found in a study of New York watershed organizations (Neville), such organizations tended to achieve the most when there was a symbiosis between officialdom and local advocacy groups.
parks, and heritage corridors that cross municipal boundaries often provides the organizational infrastructure that facilitates these opportunities for reshaping local/regional identities. Official heritage corridors, for example, help resident and visiting populations interpret and make visible the natural, cultural, historic and recreational resources that collectively combine on a regional basis to form a “cohesive, distinctive landscape arising from patterns of human activity shaped by geography.”

Comprehensive, anticipatory planning: A recent “practical guide to comprehensive planning in New York” lists eight benefits that accrue to communities that work effectively on comprehensive planning (Traub and Church, 1996: 2-3): 1) attracting the “right” future and avoiding the “wrong” future; 2) establishing a community vision; 3) protecting valuable natural and cultural resources; 4) ensuring economic stability and predictability; 5) providing direction for other agencies with local jurisdiction; 6) avoiding surprises by understanding community assets and liabilities; 7) improving access to financial and technical assistance; and 8) providing a legal back-up to specific land-use tools. Only about half of New York municipalities have written comprehensive plans, and many of these are not the kind of living document that provides the full range of benefits listed. However, recent legislative buttressing of comprehensive planning in the state represents one more step in a long term but contested agenda to help municipalities move in a more proactive and less reactive direction.

Given an admittedly idealized implementation of a comprehensive plan, the protracted Wal-Mart controversy described above would not have happened. The community would have given serious prior consideration as to whether or not a store like Wal-Mart conformed to its vision of itself, both in the proposed location and elsewhere. The debate would have taken place in more generic and less focused terms, to be sure. The resulting comprehensive plan would have reflected a sense of broad community consensus, and the municipality would have translated this consensus into clear land use regulations. An up-to-date plan would have supported up-to-date zoning regulations which, much more forcefully and appropriately than environmental or site plan reviews, are designed to govern allowable land uses. Wal-Mart as well as the community and its leaders and decision makers would have gotten a clearer sense from the beginning whether the proposed development was approvable or not.

Comprehensive planning does, of course, require substantial amounts of energy, effort and funds. It also requires intensive time commitments and periodic maintenance to maintain relevance. It can be difficult to build support for this kind of planning process. Indeed, one of the benefits of controversial development proposals can be the extent to which they highlight the value of keeping comprehensive plans up to date. While achieving meaningful participation of citizens and major stakeholders can be difficult, a serious effort once underway is usually taken seriously by the citizenry. And while consensus is not always achieved, that which is achieved carries weight. In any event, some degree of consensus is often more feasible away from the immediate stakes of specific proposals. Strategies may be less likely to overwhelm principles.

The value of a plan is usually directly proportional to the investment of social capital put
into it. Aside from its not insignificant legal status as a basis of support for land use regulations, a plan’s legitimacy as a guidepost for community decision making is largely based on the community’s sense of shared effort at having created it in the first place.

**Collaborative community problem solving** - The capacity for collaborative community problem solving is at the heart of social capital. It involves a variety of deliberative approaches that take stakeholders more constructively into and through a decision making process. Many of these approaches involve facilitated neutral third-party intervention - though functional levels of neutrality/fairness can often be achieved by certain participants. All approaches are really structured forms enhancing participatory democracy.

While certain kinds of conflicts based in irreconcilable and deeply held values may not solvable on their own terms, these approaches increase the possibility of finding mutually acceptable solutions. Most importantly, they enhance rather than destroy social capital even if resolution of specific conflicts is not forthcoming. In the highly polarized and value-laden Wal-Mart debates, this might have been the primary benefit.

Primary advantages over traditional legalistic or top-down approaches to decision making include a major refocussing of stakeholder energies on the goal of “civic discovery” - an active, collaborative search for workable solutions. The procedural emphasis on broad involvement of all legitimate stakeholders tends to clarify realistic power relations, add new and more creative thinking to the mix of ideas, move in the direction of greater equity as attention is given to stakeholder power imbalances, and build a foundation of “reciprocity and trust” between participants that carries beyond the confines of the specific dispute or decision. Ultimately, as stakeholders build stake in finding workable solutions, the solutions are more sustainable. Applying these approaches to the comprehensive planning process minimizes the likelihood of producing a document that serves best as a paperweight. Applying them to project based conflicts decreases the likelihood of costly, protracted, and cyclically divisive patterns of decision making.

The issue then is how to grow a new form of community habit, one that can take root through practice. In order to encourage the habit, it is important to identify and build upon the incipient capacity found in local institutions such as community dispute resolution centers, cooperative extension systems, schools and colleges, citizen’s, environmental and landowner groups, progressive officials and interested planning staff. In land use planning, the attitudes and roles of the professional planners who orchestrate much of the process is probably critical, though in rural areas without staff lay board members are more likely the providers of procedural direction and institutional continuity. Deliberate, self-conscious development of social capital is needed and has already progressed in the environmental arena. Much more training, mentoring and case-based learning is necessary (Sirianni 1995).

There are many specific institutional sites for the opportunistic injection of innovative processes into the land use planning process. Nolan (1997) has identified a handful of key “mediation moments”. These can include moments in comprehensive planning,
when designing conservation and development areas, while determining the scope of inquiry early in environmental reviews, in mediation sessions prior to public hearings, and in considering options to pass local laws encouraging stakeholder participation. Despite the many specific constraints and limiting timelines, there remains in fact great flexibility possible during environmental review - which, considering the number of projects reviewed annually, is probably the most powerful land use tool for public participation yet devised, despite the sometimes dysfunctional bounds placed on its routine application. By mutual and formal agreement with the developer, most procedural and timeline constraints are flexible during environmental review. As Nolan points out, though existing law often mandates certain procedures and formal decision making authorities, the actual procedural barriers to supplemental use of collaborative problem solving techniques are more perceived than real.

In order to encourage new habits around project reviews, it will also be necessary to explore ways to graft new procedures onto the public hearing model. Formats that promote dialogue rather than diatribe exist, and need not interfere with opportunities to allow public hearing comment to get on the formal record. There also needs to be a conscious and proactive rather than a passive effort to involve reticent or less organized but key stakeholders. This effort may need to begin seriously at the stage of environmental impact scoping, but is unlikely to be over at that point.

By moving deliberations into the realm of the voluntary rather than the mandatory, no topic is a priori off-limits, and the options for creative problem solving increase. While within this model of action governmental bodies move towards more of a facilitative and review capacity and away from a judicial one, the formal and political responsibility to make project permitting decisions remains with government. This responsibility does not disappear, and is always in place as an alternative to collaborative decision making.

As is the case with regionalism and comprehensive planning, there is growing grass roots interest in collaborative decision making, especially around environmental issues. There are also a growing number of successful case studies to turn to. Nevertheless, as Hicks (1997:217) recently observed with some impatience, “The wheels of change are slow moving… and the movement into the future is moderated by the inherent drag in the system. The degree of resistance is, perhaps some measure of the implications that these collaborative processes hold for social decision making.” He reached these conclusions about the slow uptake of collaborative processes after cataloguing literally dozens of points of resistance.

Hick’s long list and the slow history of change are indeed sobering. There are, finally, no panaceas. There are only visions, hard work, and Alinsky’s concept of evolution (p. 3 above).
The contested site discussed in this paper’s Introductory Portrait was never developed as a Wal Mart. However, the then recent mayoral election, as referenced in the Introductory Portrait, led to a sustained effort to attract big box stores to the region of the city in which the Wal Mart had been proposed. The adoption of various comprehensive planning documents and a generic environmental impact statement set the stage for substantial big box development during and after this mayor’s two four year terms. On December 27, 2001, the city planning board approved a site plan for 189,444 square feet of retail featuring a Home Depot Store on a somewhat larger, but including the original, site than had been proposed for the Wal Mart. Few if any of the most significant site plan conditions that had been imposed on the earlier developer were sustained by the fully reconstituted planning board. In Fall of 2002, about a mile away, heading downtown along the state highway, the city planning board approved a site plan in the heart of the city’s auto-oriented commercial strip for approximately 430,000 square feet of retail including a Lowe’s and Wal Mart. By the time these permits were issued, much of the controversy ignited by the initial Wal Mart proposal had already exhausted itself.

As of 2008, the pendulum had swung in a different direction. With a new mayor and again substantially reconstituted planning board, the city had committed to its first full scale review of its comprehensive plan since the early 1970’s. Moreover, it was planning development of a 62 acre city-owned property immediately behind the new Wal Mart. This development was intended to be a primarily residential, densely built, walkable, urban neighborhood informed largely by New Urbanist and environmental principles. Whether controversy would envelope this project as it took more tangible form remained to be seen.
REFERENCES


Conflict Management seminar series.


