Theory and practice of public hearings in urban planning

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Abstract. The author raises the issue of improving the public hearing procedure. The author analyses the established practice of public hearings in Russia, criticizes the new Urban Planning Code adopted in the Russian Federation, and expresses her concerns about the violation of its provisions regulating public hearings and discussions. These concerns are the outcome of an extensive in-depth research into the practice of public hearings, the analysis of their minutes and resolutions; the process of monitoring the course of public hearings, and sociological surveys launched among different categories of respondents in Moscow. The author analyzes the findings of the polls launched among Muscovites, as well as the expert interviews given by the deputies of the Moscow State Duma and members of urban initiative groups. The author’s conclusion is that the conversion of public hearings into an efficient public and political institute requires the reconsideration of their organization and implementation processes, let alone the assignment of a legal status to resolutions of public hearings. The author proposes a two-step public hearing model that will make it possible to expose projects to thorough expert evaluations by independent specialists and to launch extensive discussions among urban residents.

1 Introduction. Review of Literature

Today the problem of public hearings and public discussions of urban planning projects is brought forth as a top priority issue. This process is driven by the transformation of a citizen’s idea of his or her role in decision making processes in respect of the issues that they consider particularly important. A comfortable urban environment is the outcome of volitional actions and involvement of urban residents in urban design and planning. Different types of public involvement are called differently: civil jury, consensus conferences, public hearings, and public discussions. Different countries tend to practice particular types of public involvement depending on their traditions and ideas of the citizens’ role and extent of influence on urban development [1, 2]. Different countries demonstrate different achievements, successes and problems [3].

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Nevertheless, the question is how efficient these types of involvement are. Aren’t they outdated? Are any changes needed? That’s how this question is formulated by F. Friesecke, a German researcher. In his article “Public Participation in Urban Development Projects – a German Perspective” he inquires: “Must the Federal Republic of Germany keep practicing public involvement in urban planning processes? Or is it the side product of democracy in operation, when any planning processes are accompanied by protests, take more time and are more expensive than those in the countries that practice fewer involvement rights?” Having considered versatile implemented urban development projects, nevertheless, this researcher comes to the conclusion that informal and non-compulsory procedures boost the public legitimacy and the quality of planning processes. And this involvement type must be implemented not only in case of project failures, but also at early project planning stages [4].

Similar doubts about the efficiency of public involvement in the resolution of urban problems are expressed by the Russian researcher M. D. Safarova. She writes: “Instead of reducing the number of conflicts arising in the process of urban management, the number of conflict situations and litigations whereby plaintiffs contest the results of public hearings in court, goes up, and, on the whole, this process defames the institute of public hearings in the opinion of urban residents and other title holders, although it’s an efficient mechanism used to balance private and public interests in the process of decision making.” [5] Similar problems arise because of the multiplying bureaucracy and its ability to accumulate more and more power at each level of governance, let alone their violation of the laws that determine the rights and actions of urban residents exercisable within the framework of self-governance. In his article, polish researcher Ya. Zelinsky discusses the accruing bureaucratization of the executive power and separation of the authorities from ordinary citizens. Meanwhile, different forms of deliberative democracy could become an effective instrument of pressure to be exerted onto the authorities [6].

On the whole, researchers support the expansion of the citizens’ role and the variety of civil involvement. One of the instruments empowering citizens willing to influence urban planning and design consists in the application of Smart city technologies. In the article, entitled “Fundamentals of Citizens’ Involvement in Planning: from Dialogues to Intellectual Instruments”, the co-authors focus on the instruments and technologies used to ensure involvement in sustainable urban planning processes. For example, “An Active Citizen”, which is a Moscow-wide portal launched as a forum for interaction with citizens to ensure their involvement in decision making on urban planning, makes ample use of online instruments [7]. The multiplication of self-governance institutes and the involvement of ordinary citizens in the development and implementation of urban planning projects through the use of advanced digital technologies comprise an important factor making a settlement sustainable. The article authored by the Spanish researchers and entitled “On the Way towards Reasonable Sustainable Cities: a Review of the Role That the Digital Civil Involvement Can Play in Promoting Social Sustainability”, the co-authors make a conclusion that information and communication technologies, applied to processes of civil involvement, will contribute to social sustainability. They duplicate involvement mechanisms for those groups that cannot attend public hearings or civil conferences in person for various reasons, including their being too busy [8].

Those articles that cover the theory and practice of public hearings in small towns and big cities of Russia are of particular interest; in particular, if these articles focus on the organization of public hearings depending on population figures and density, modes of life and employment rates in particular towns [9, 10].

Those publications are particularly valuable that cover the theory and practice of consensus conferences in the countries of Europe, primarily, in Denmark as the developer of the model currently used to assure the civil involvement in decision making on relevant
urban issues. Each project of ecological significance is subject to public consultations in Denmark [11].

On the whole, numerous theoretical research projects, reviews, descriptions of practices and procedures focus on public hearings.

2 Objectives and Methods of Research

The mission of this article is to demonstrate the need for the further improvement of public hearings and discussions in Russia. Towards this end, the author has analyzed the Urban Planning Code of the Russian Federation, brought into force in 2019. The author has also completed a comparative analysis of public hearing procedures adopted in Denmark and other European countries.

Besides, in October through December 2018, a group of researchers from the National Research Moscow State University of Civil Engineering (NRU MGSU) launched a set of sociological surveys collectively entitled “Improvement of Public Hearings: Social and Legal Aspects”. This project encompasses interviewing, observation, questionnaires, and focus groups. Muscovites, employed with the Genplan Institute of Moscow and the Research and Design Institute of Urban Planning of the Moscow Region, MGSU master students, majoring in urban planning and architecture, deputies and Moscow civil activists were among the respondents. This article will demonstrate some findings of the sociological survey and interviews given by the deputies of the Moscow State Duma and Moscow activists.

3 Research Findings

3.1 Analysis of Legislative Acts

Public hearings have been an obligatory component of particular decision making processes for over ten years. The initial law, adopted in 2004, was revised several times. By virtue of Federal Law № 455-FZ, issued on December 29, 2017, the procedure of public hearings was changed, thus, another type of public involvement in urban planning was supplemented: these were public discussions held electronically. Public discussions held via Internet and public hearings are separated and explained in the text of the law as independent legal institutes.

On July 1, 2019, a new RF Urban Planning Code came into effect with account for the changes introduced by Federal Law № 455-FZ. According to Article 5.1 of the RF Urban Planning Code, public discussions and public hearings apply to draft master plans, draft land use rules and development standards, draft land planning projects, draft area demarcation projects, draft land improvement projects, draft resolutions to issue permits for conventionally authorized types of land use or construction of capital facilities, draft resolutions to issue permits authorizing deviations from extreme parameters of authorized construction works, and the restructuring of capital construction facilities.

Public hearings, initiated by residents or executive authorities of a municipality, are appointed by the authorized executive authority, and if they are initiated by Head of Municipality, they are appointed by Head of Municipality. According to paragraph 4 of Article 28, organization and execution of public hearings must comply with the Charter of a municipality and (or) regulatory acts issued by the executive body of a municipality. Municipality residents must be notified about the time and place of public hearings, and other actions must be taken to assure their participation in public hearings.
The period of public discussions or public hearings shall commence on the day of publication of a notice about their commencement and it shall last through the publication of their resolution. This period shall last between one and three months. Its exact duration shall be available in the charter of a municipality and (or) the regulatory act issued by the executive authority of a municipality.

Public hearings and discussions encompass a pre-set succession of actions; they are differentiated in the law: each contemplates a specific procedure. Moreover, each municipality may add some individual features, identified in the resolution of a municipal authority. For example, the government of Moscow issued Resolution “On Approval of Procedure of Organization and Execution of Public Discussions within the Framework of Urban Planning Activities in Moscow and on Making Amendments to Regulatory Acts of Moscow (of April 30, 2019, № 448-PP)” [10]. These events contemplate the employment of the official Internet website and (or) the state-run information system identified by the Moscow Department of Information Technologies [12].

In compliance with the RF Urban Planning Code, resolutions of the Moscow government specify obligatory events that comprise public discussions:

1) notification of commencement of public hearings;
2) making a project available on the official website and provision of access to the project exposition;
3) project exposition;
4) drafting and issuance of minutes of public discussions;
5) drafting, issuance and publication of the resolution of public discussions.

The resolution of public discussions or public hearings must be published in accordance with the procedure specified for the official publication of municipal legal acts, and it must be posted on the official website. On top of the resolution, minutes of hearings must also be published, as all objections are available there. The minutes also comprise recommendations given to the Head of the urban administration in terms of the draft project: whether it should be accepted, revised or it needs minor changes. The same pattern of actions is applied to public hearings, although here a meeting or meetings of participants of public hearings are identified as a separate stage of the process. Resolutions of public discussions and public hearings are of advisory nature.

Therefore, one of the most important problems of public hearings and public discussions is their legal status. A local self-governance authority may take account of the objections and return the document for revision. The local self-governance authority may take account of the objections and return the document for further development (for example, a draft master plan), but it can also ignore the opinion and proposals made by urban residents and holders of rights to real estate. According to the Urban Planning Code, the Head of the local administration takes account of the resolution of public discussions or public hearings and makes a resolution:

1) to approve the draft master plan and to send it to the representative authority of a municipality;
2) to decline the draft master plan and to return it for revision.

In many countries, results of public hearings also have advisory nature [13]. However, there, the opinion of residents deserves respect; their needs and concerns are taken account of. For example, in many countries of Europe, urban planning projects that fail to obtain support from urban residents, cannot be implemented [14]. In Russia, the execution of the law in respect of public hearings is a formality.
3.2 Findings of the sociological survey

The sociological survey was launched in Moscow. The overwhelming majority of respondents, members of focus groups and experts criticized the Urban Planning Code and the established practice of public hearings. Many respondents expressed their mistrust in respect of this political institute and explained the lack of public willingness to participate in public hearings by this mistrust: “the opinion of urban residents will be ignored”, “the authorities will have it their own way”. The respondents believe that solely economic criteria, including the project investment value, capital gain in respect of residential and commercial real estate, compliance between land use and urban concerns, matter whenever an urban planning project is being approved. These factors matter for the municipal authorities (see Fig. 1):

![Fig. 1. The response to the question: “What criteria are taken account of by the municipal authorities when making decisions in favour of the implementation of urban planning projects?”](image1)

The respondents were given a scale of five, where 5 meant very efficient and 1 meant very inefficient, to assess the efficiency of public hearings. The majority of the respondents, belonging to four social categories, assessed public hearings as deserving a grade of 3 (see Fig. 2).

![Fig. 2. Public hearing efficiency as assessed by different groups of respondents.](image2)
The results of the interviews given by five deputies of the Moscow State Duma and members of the action groups (the interviews were given in October 2018) comply with those of the questionnaires.

All experts focused on the violations made in the process of organizing and executing public hearings:

1) Frequently the package of signed valid documents is unavailable by the time when the hearings are to be launched. These documents include the resolution issued by the Urban Planning and Land Commission; resolutions issued by the Moscow Committee for Architecture and Urban Planning; resolution made by the Urban Planning Commission; a reconciled draft project (some drafts have substantial mistakes); explanatory notes to the draft project; the feasibility study.

2) The preparation process lacks any due notification of local residents. Many local residents obtain no information about public hearings, and, therefore, they can make neither any comments, nor any objections. Sometimes the organizer of public hearings prevents the distribution of any information about them;

3) Sometimes those people who have nothing to do with a particular area take part in public hearings (“fake extras”, according to one of the experts). Another violation consists in vesting the right to participate in public hearings in those individuals who work in the area rather than own realty there. According to the experts, this is done for “win-win” resolutions to be issued.

4) Public hearings are never as effective as they should be. One of the experts asked the following question: “Why are public hearings held? What is their mission? If public hearings are held to inform residents about a new construction project or about any transformations of the environment, that’s clear to us. If residents gather together to give their opinion about a project, its relevance, etc., that’s a different story. The main violation is not the procedure of public hearings, but the fact that they generate no meaningful results. Their resolutions are not binding.”

The majority of experts gave low scores to public hearings, earmarked their little efficiency and emphasized the need to study the best European practices.

4 Discussion

The practice of public hearings in Denmark is of interest in the context of their rational organization.

Many citizens are involved in law making in this country. Public discussions represent a widely spread practice. Any Danish citizen can initiate a public discussion. Ecological construction is one of the main issues. Many urban planning projects, having ecological value, become subjects of public discussions. Authorities launch public consultations to take advantage of the opinions and knowledge of citizens. The objective is to minimize the mistakes that may involve unfavorable impacts, and to have it done in the process of the project development. Hearings have two steps, each lasting for eight weeks. The first public hearing is launched at the initial stage of the project development, the second one is held at the stage when the project can be presented as the final report. At the initial stage of public consultations, the customer issues a booklet in which the project is presented together with all its environmental problems, as well as the schedule of public consultations. All materials are made available in the Internet and in the library designated for public hearings. Any comments and alternative options, submitted by the public, are used to change the project. At the second stage of public hearings, the initial stage report is discussed and made available in the Internet and in the libraries designated for public hearings. Comments are used at the second stage to verify whether each rational proposal is taken account of or
anything else is to be done before the final approval. Final versions of all approved documents are made available in the Internet [15, 16].

Some Russian experts suggest holding two-stage public hearings: one at an early stage of drafting an urban planning project and the other after having made corrections to accept the project.

This proposal is particularly relevant for the projects that may have negative ecological consequences. Ill-considered and hasty solutions, pre-determined by the willingness to generate cash, cause the urban biosphere to deteriorate. The respondents think it necessary to expose each project of ecological significance to public hearings. The overwhelming majority of respondents gave a positive response to the question whether they believed that urban projects that could cause environmental damage to the city were to be exposed to public hearings. 86% of the respondents chose the “yes” answer to this question.

Besides, the established format of public hearings does not contemplate enough time for a substantive and serious discussion of projects. The search for experts who could work for free, who could examine the project, look deep into the question, and make any necessary comparisons takes a lot of time. Familiarization of local residents with the project, their analysis and study of supplementary sources and examples is also time-consuming. In this connection, the two-step model of public hearings, used in Denmark, could serve as an example. This procedure is more time and effort consuming, however, it we want to develop an ecologically and socially sustainable urban environment, and we must convert public hearings into a truly effective, useful, and democratic instrument of public policy. The UN Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) says: “The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.” [17].

The proposed two-stage model of public hearings, based on the Danish model, comprises the following actions:
1. Development of a draft area plan with account for the potential of co-designers.
2. Project exposition, meaning familiarization of local residents with a project.
3. Appointment of public hearings. Notification of local residents by SMS messages and outdoor ads.
4. Execution of the first hearing. Collection of comments and proposals.
5. Processing of comments. Involvement of independent experts.
6. Modification of the project.
7. Submission of the modified project for exposition.
8. Notification of local residents and other concerned participants.
9. Execution of the public hearing.
10. Collection of comments and proposals, their analysis and registration.
11. Assessment by independent experts.
12. Decision making. Resolution publication.
This sequence of actions, including a discussion and approval of an urban planning project may vocalize the will of urban residents and serve as an effective vehicle for their involvement in the management of urban development.

5 Conclusions

Indeed, the completed sociological survey enables us to make a conclusion that the effective legislation of the Russian Federation, including Federal Law FZ 470 of December 27, 2017, and the Civil Code of the Russian Federation have substantial drawbacks that
prevent citizens from exercising their rights in full, whenever formation of the environment is concerned. The main critical comments deal with a weak legal framework for the involvement of citizens in discussions on and approval of urban planning solutions. The legislation lacks any law that makes results of public hearings binding; therefore, any substantial objections concerning urban planning projects are disregarded. Heads of municipalities take account of minor and secondary objections, which can neither introduce major changes into projects nor improve them.

Processes of preparing and executing public hearings are full of violations, whereby disregard basic rules are disregarded, for example, civil activists are not admitted to public hearings, they cannot get the floor, and unauthorized citizens are invited into the hall where public hearings are held. All these violations were mentioned by the respondents.

The study of the practice of public hearings executed as consensus conferences in the countries of Northern Europe may serve as a substantial positive example for Russia. The discussion of environmental issues in Denmark that the author refers to may help to improve this democratic institute in Russia. The author proposes to customize the Danish model to the Russian context.

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