

# Residents' right to participate and the right to appeal in land-use planning (Finland)

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# Some fundamentals of the land-use planning in Finland

## THE MUNICIPAL SELF-GOVERNMENT > "planning monopoly"

- The municipality chooses when, where and how land-use plans are made
- Minimum requirements in the Land Use and Building Act (2000)

### Representative democracy

- The council makes the final decisions on the plans
- The council is a political body elected every four years

### Direct Democracy

- Each natural or legal person resident or in possession of real property in the municipality is "member" of that municipality
- Members of the municipality have the right to give opinion on all plans and the right of appeal (*actio popularis*)

# The length of the planning process

- **The average detailed planning procedure in bigger cities was 15,6 months (2014-2015)**
  - Planned areas were larger and more complex than 10 years earlier
  - "Pending time" does not include the pre-planning
- **The average processing time of appeals in the regional administrative courts varied from appr. 10 to 20 months in 2020**
  - All kinds of land use and building cases
- **The average processing time of appeals in the Supreme Administrative Court in 2020**
  - Local master plan appeals 12,3 months
  - Local detailed plan appeals 12,2 months



# How many of the plans end up to appeals proceeding

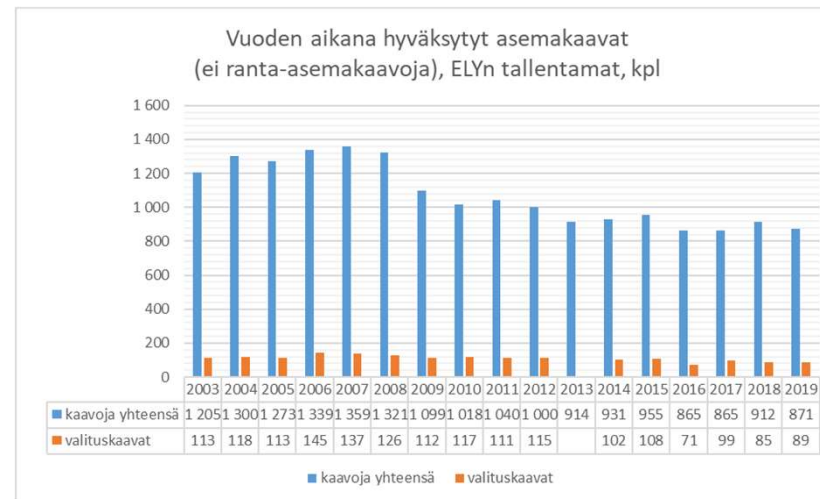
- **Local master plans 2019**
  - 23 % of the plans were appealed against (26 out of 112)



# How many of the plans end up to appeals proceeding

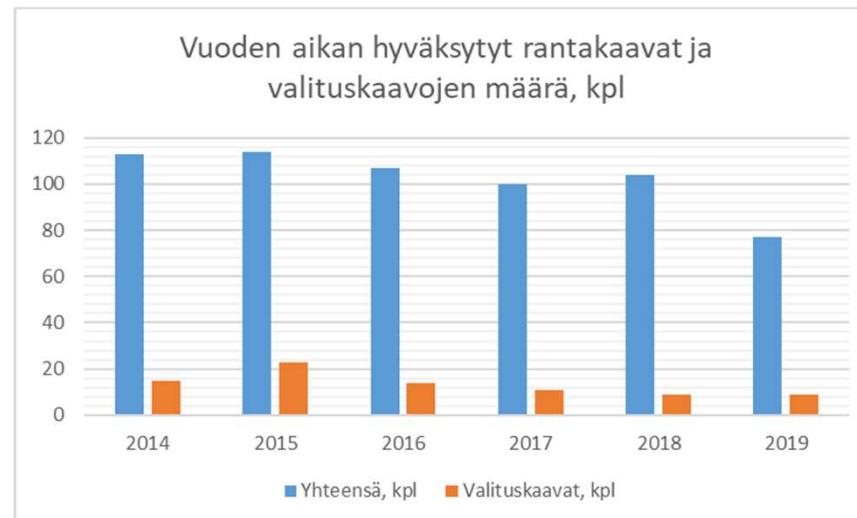
- **Local detailed plans 2019**

- 10,2 % of the plans were appealed against (89 out of 871)
- During 2003-2019 the average percentage was between 8,2 and 11,4 %



# How many of the plans end up to appeals proceeding

- **Local detailed shore plans 2019**
  - 12 % of the plans were appealed against (9 out of 77)



# Right to participate – does it work

Questionnaire survey among people who had participated in various land use cases, Ministry of the Environment 2019

- Out of 418 respondents 57 % were more or less dissatisfied with the case they had participated in
  - For instance the smooth and flexible running, confidence in the authorities and chance to influence were often dissatisfactory
  - Pseudo hearing: lawful but not to the purpose > leads to appeals
  - Difficulty to find the relevant information or to understand it (jargon, legal text)
    - Also in feedback after hearing
  - Loss of transparency
    - Old boys' network?



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# Right to participate – does it work

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- **Best practices and wishes**
  - Targeted and simplified communication, for instance in certain neighbourhood
  - Debate, on-site events already before the actual planning begins
  - Don't ask my opinion if it cannot count
  - Feedback after hearing
- **The most important objectives for land use policies relate to fairness and environmental sustainability**



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# Should the right to appeal be limited

Two reports by Professor Eija Mäkinen for the Ministry of the Environment concerning the possibilities to limit the right of appeal in land use planning to parties only (2016 and 2019)

- **The municipal self-government**

- Finland is divided into municipalities, whose administration shall be based on the self-government of their residents (The Constitution of Finland, Section 121)

- **Rule of law**

- Yet, the scope of discretion in land use planning is broad and contains a lot of coordination between conflicting private and public interests > important that the residents can control this
  - In 2017, the general control by the state regional authorities was limited to matters of national or regional importance only



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- **Necessity for actio popularis cannot be deduced from the international treaties**
  - Yet the Århus Convention (the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998) is based on the aim of a broad access to review procedure
    - Finland is party to the convention directly and via the membership in the EU
- **Responsibility for the environment in the national constitution**
  - The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment. (The Constitution, Section 20)



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- **The right to fair trial and good governance without undue delay**
  - Since 2007, a local detailed amendment plan, the impact of which is minor, can only be appealed against by the interested parties
    - The law directly excludes certain impacts from being minor, such as negative impact on the values of the built or natural environment
    - The limitation has had very little practical consequence since this kind of plans usually are appealed against only by the parties
  - Since 2018 one needs a leave to appeal at the Supreme Administrative Court

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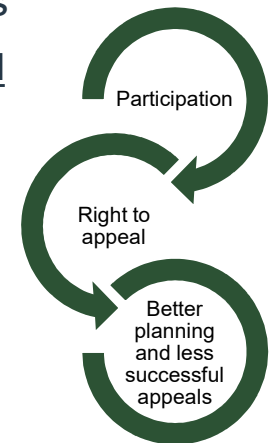
- **Review of all the decisions by the regional administrative courts 2016-2017 + interviews with several judges**
  - 76 % of the appeals were filed by only private natural or legal persons
    - 7 % (13) of these appeals did not seem to have any private interest so they were based on the rule of law control
    - The appeals without appellant's own interest were based on grounds such as environmental values, traffic arrangements or lack of impartiality >the grounds of the appeals seemed to be relevant though the appeals usually were unsuccessful
- **It depends on the perspective, which one is the problem: the appeal or the land use project**



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- **The right to appeal should anyway be based on impact analysis**
  - Most of the private appellants had interest in the case at least as neighbourhood residents
    - The right to appeal should cover at least all parties of the case (61 % of the private appeals) and all neighbourhood residents (31 % of the private appeals)
  - It would be very labour-consuming to investigate the status of the appellant at court
- **Unreasonable appeals are rare**
- **Conclusion: Replacement of the present actio popularis with a system where only parties have the right of appeal would not remove the trouble caused by the appeals**



# Case Vartiosaari

- **Nature is culture in Finland**
  - Survey "Cultural heritage barometer" 2017: Majority considered natural heritage one of the most important parts of the cultural heritage
- Vartiosaari is an insular district in Helsinki with 19th century summer villas
  - Built heritage of national importance
- Helsinki General Master Plan 2016 + separate master plan intended to turn the area into a dense urban residential district with tramway – the plans were revoked (The Supreme Administrative Court 2018:151)
- What next: recreational or urban area for the residents of Helsinki?



# Case Helsinki-Malmi Airport

- The first international airport in Helsinki, 1936
- Since 1952 a hub for e.g. pilot training, professional, business and recreational aviation
- The owner is Helsinki City
  - The airport was operated by the state until 2016 – it was decided that the aviation would end and the area would be turned into a residential area
  - Operation of the airport by an association 2017-2021
- Built heritage of national importance, listed as one of the architectural masterpieces of Finnish modernism by Docomomo Finland, one of the seven most endangered cultural heritage sites in Europe by Europa Nostra (2016)

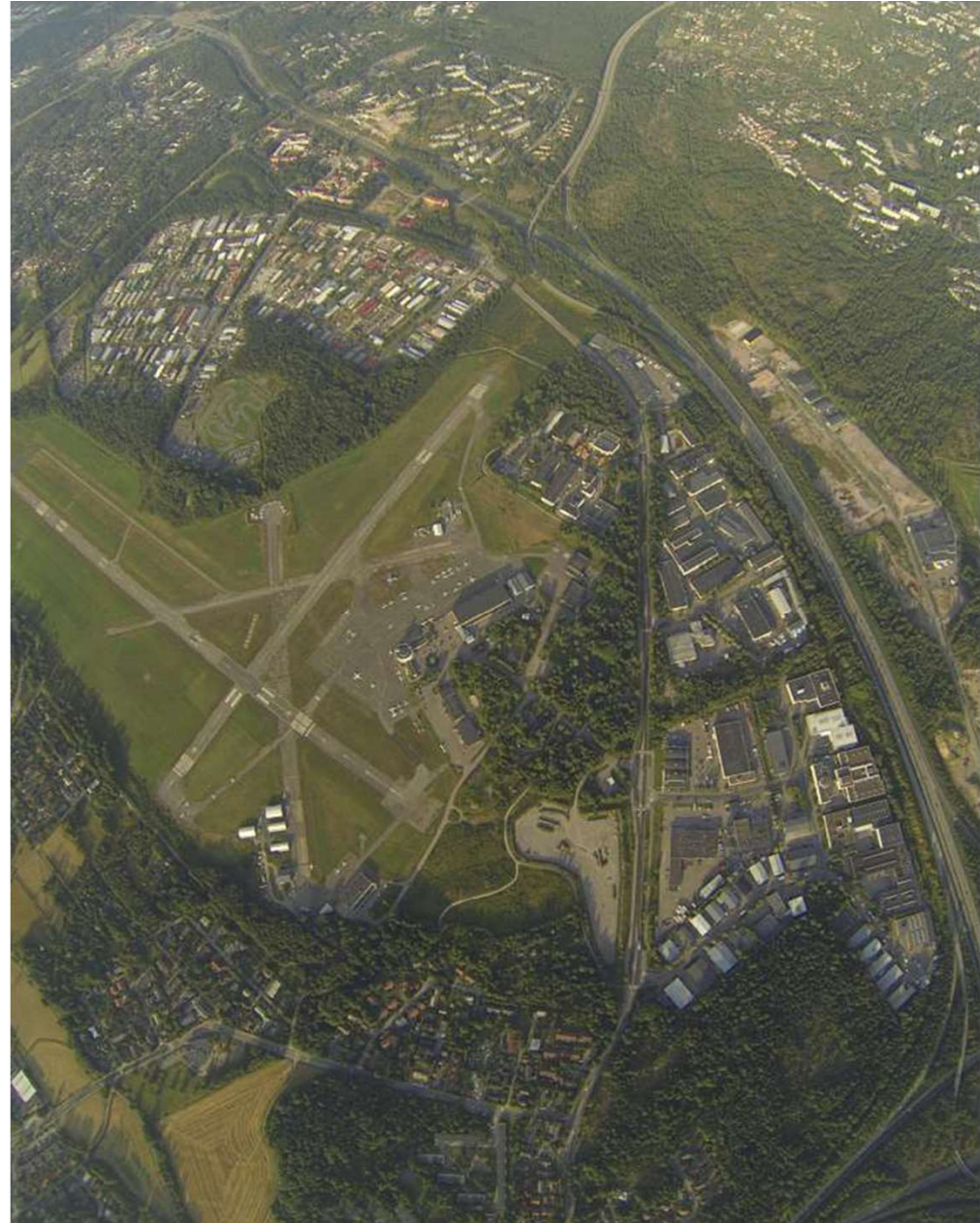


Photos: SKY-FOTO Möller 1972, Helsingin kaupungin museo and Tapio Muttunen, Suomen Ilmailumuseo

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# Case Helsinki-Malmi Airport

- Helsinki General Master Plan 2016 was found lawful for the part of replacing the airport by a residential area (The Supreme Administrative Court 2018:151)
  - The residential area will be planned in detail piece after piece
  - The airport buildings were recently protected by a detailed plan, but their purpose of use was changed
  - The runways will be turned into streets and tramlines
- Several appeals, initiatives and petitions by two associations





# Thank you

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