# **Board of Aldermen**

ITEM NO.D(2)

# AGENDA ITEM ABSTRACT MEETING DATE: Tuesday, October 2, 2012

TITLE: Discussion of the Use of Mediation in Land Use Matters

DEPARTMENT: <b>PLANNING</b>	PUBLIC HEARING: YES _ NO_X_
ATTACHMENTS:	FOR INFORMATION CONTACT:
A. Resolution Patricia McGuire – 918-7327	
B. Staff Memo	Marty Roupe – 918-7333
C-H. Additional References Listed in Staff	
Memo	

# **PURPOSE**

The purpose of this item is to discuss how mediation and other dispute resolution strategies might be used in land use matters.

# **INFORMATION**

See staff memo and attachments (Attachment B - H).

# FISCAL AND STAFF IMPACT

There is no impact associated with acceptance of the report.

# **RECOMMENDATION**

The staff recommends that the Board of Aldermen accept and discuss the materials and consider whether further action is needed (*Attachment A*).

# A RESOLUTION ACCEPTING AND COMMENTING ON THE STAFF MEMO AND ATTACHMENTS RELATED TO THE TOPIC OF MEDIATION AND OTHER DISPUTE RESOLUTION OPTIONS IN LAND USE MATTERS

## Draft Resolution No.13/2012-2013

BE IT RESOLVED by the Board of Aldermen of the Town of Carrboro that the Aldermen have received the staff memo and attachments related to the topic of mediation and other dispute resolution options in land use matters and provide the following comments:

- 1.
- 2.
- 3.



# TOWN OF CARRBORO

#### NORTH CAROLINA

## TRANSMITTAL

## PLANNING DEPARTMENT

**DELIVERED VIA:** MAIL FAX EMAIL

To:

David Andrews, Town Manager Mayor and Board of Aldermen

From:

Patricia J. McGuire, Planning Director

Date:

**September 26, 2012** 

Subject:

Mediation and other dispute resolution options in land use matters

The topic of mediation has been raised recently as a potential means of clearly defining and reaching resolution of a conflict related to the operation of a business in Town and the enforcement of the Town's land use regulations. The Board of Aldermen has indicated that it does not see a need for its participation in the former situation, but that it is interested in having a general discussion about when it may be appropriate for staff to suggest mediation as an option. This memo provides a general description of mediation and the Town's experience with it, summarizes methods recommended for or in use by other local governments and lists some questions that might guide a discussion on the use of mediation.

# Overview and Town's Experience with Dispute Resolution

Mediation, which may also be described as an alternative dispute resolution or a facilitated discussion, is an informal and confidential way for people to resolve disputes with the help of a neutral mediator who is trained to help people discuss their differences. The mediator does not decide who is right or wrong or issue a decision. Instead, the mediator helps the parties work out their own solutions to problems.

Carrboro Vision2020, adopted in December 2000, includes the following policies under the topic heading of "Town Services:"

- 1.45 The Town should continue to encourage the active participation of its citizens in community planning.
- 1.46 Carrboro should continue its efforts towards community building by encourging the use of facilitation and conflict resolution. The town should also seek alternatives or supplements to the traditional public hearing format when controversial issues are before the Board.

Disputes arise in relation to many planning and land use issues and range from situations that involve defining the impact that one property owner's action is having on another's to differences of opinion regarding the interpretation of a regulation to conflicts over the details of a development proposal. Staff engage regularly with members of the development community and the public on difficult topics and utilize dispute resolution strategies to make these interactions as effective as possible. The Town has some experience with alternative dispute strategies in response to or in anticipation of conflicts and there are several examples. It should be noted that the bulk of these experiences fall into the category of facilitated discussions, rather than mediation, per se.

<u>Lake Hogan Farms</u> – In April 1994, the Board of Aldermen voted to deny the conditional use permit for the Lake Hogan Farms subdivision and a legal challenge was initiated. It was suggested that litigation might be avoided if an alternative proposal was submitted that complied with the Land use Ordinance. Discussion between Lake Hogan Farm representatives and the Board of Aldermen was identified as a way to help to develop an alternative development proposal. Agenda materials from May and August of, 1994 outline the Board's interest in reaching a consensus; the process and outcome of those efforts was included as (*Attachment C*) of the agenda materials. The conditional use permit for the Lake Hogan Farms development was ultimately approved on September 27, 1994.

Facilitated Small Area Plan for Carrboro's Northern Study Area (NSA Plan) - A 31-member planning work group worked on the Small Area Plan from 1992 to 1996. Public hearings were held in February 1996 on the draft plan and also on a temporary development moratorium on the issuance of conditional use and special use permits in the study area to allow time for implementation regulations to be developed and adopted. comments from citizens, the Board of County Commissioners requested that the Board of Aldermen delay its decision and conduct a facilitated meeting on the draft plan. A steering subcommittee consisting of three members of the Board of Aldermen was established and charged with developing a facilitated meeting process and next steps. A report on the steering subcommittee's efforts was provided in September 1996; an outline of a possible three-day meeting format was included (Attachment D). With the assistance of the Orange County Dispute Settlement Center and Conservation Planner, Randall Arendt, a two-day facilitated meeting process was finalized. The process called for 100 percent consensus by meeting participants. Full participation in both days was required in order for an individual to 'vote' on plan elements that had been identified as needing revision. The two day sessions were held in 1997 on April 19th and May 31st. 189 citizens participated in the meetings.

<u>Carrboro Vision2020 -</u> Anne Davidson, of the [then-titled] UNC Institute of Government, assisted a 14-member steering committee with design and facilitation of a community forum to gather ideas about the future of the Town. The steering committee met from January to December of 2000 evaluating past policies and drafting and revising new ones. The community forum was held on March 25, 2000, with 84 citizens participating. A copy of the Steering Committee's Process Instructions for the forum are included as *Attachment E*.

described in Sach's summary (attached above) could require two hours per participant. With 10 participants in a dispute, completion of the pre-mediation session information gathering can be expected to cost several thousand dollars. Additional costs would accrue with program design and the mediation sessions.

Board of Aldermen members communicated on this topic recently and some of the questions raised in that communication have been excerpted here.

- 1) Are there other police powers of the town that might be subject to mediation? Would this option be only for zoning compliance or more broadly applied?
- 2) What is the responsibility of the Board of Aldermen for conflict resolution within the community?
- 3) What is the standard for triggering this sort of mediation?

The Board of Aldermen adopted the *CarrboroVision2020: Policies through the year 2000*, on December 5, 2000.

Northern Study Area Plan Implementation Review Committee Design Workshop - Review of the implementation of the NSA Plan and a moratorium on development in that area was recommended by the Planning Board in 2006. A review committee was established in early 2007, with two community forums scheduled. The Board of Aldermen expressed an interest in having consultants with expertise in planning issues assist the review committee's work; the Town contracted with the Orange County Dispute Settlement Center for facilitation services (*Attachment F*).

# Mediation Strategies Recommended and/or Used by Other Local Governments

An article published in the November 2011 issue of *Planning* magazine describes municipal mediation strategies in use Berkeley, California and Albquerque, New Mexico and a state program in Massachusetts (*Attachment G*). Since 1988, the City of Berkeley is reported to have referred hundreds of public disputes to the SEEDS Community Resolution Center. Benefits are reported to include a success rate of about 50 percent, lack of opposition at zoning board meetings, and the improvement of communication. The City of Albuquerque is reported to have utilized an alternative dispute resolution program for some time in which independent, paid consultants facilitate public meetings between applicants and affected parties. The program is seen as saving a lot of staff time, reducing misunderstandings, and resulting in more focused comments. Staff is seeking additional examples and will report on any identified during the meeting Tuesday evening.

# Considerations of the Use of Dispute Resolution

Staff located two resources that may be helpful in framing a discussion of the use of dispute resolution techniques, *The Benefits of Alternative Dispute Resolution for Resolving Municipal Disputes* (Esterman, Kenneally, and Protter, January 2011) and *General Information about Using DSC's Public Disputes Program* (Andy Sachs, September 2012) (*Attachment H*).

As has been briefly noted already, staff routinely participates in and/or facilitates discussions that seek to resolve conflicts. Some of these situations are determined to ultimately fall outside of the Town's area of responsibility, which means that the conflict resolution lies with the affected parties (e.g. property owners between whom a conflict about fencing, trees, stormwater, or the like, has arisen). Whether the Town has a direct role or not, costs for the participation of Town staff, Town attorney, and the Town engineer are absorbed in existing budgetary categories. The time spent on such activities can be extensive, and reduce the time available to complete other duties.

The most successful mediations require time for the facilitator to gather information in the nature of the dispute and the parties' interests, develop a process for discussing the matter, and time for the discussions to take place. The costs can be expected to vary with the number of participants and the complexity of the problem. A situation assessment, as

# **BOARD OF ALDERMEN**

ITEM NO. F(7)

# AGENDA ITEM ABSTRACT MEETING DATE: May 10, 1994

SUBJECT: Resolution Expressing Desire to Attempt to Reach Consensus About an Appropriate Plan of Development for the Hogan Property Through a Facilitated Process

DEPARTMENT: Administration	PUBLIC HEARING: YES NO _x_
ATTACHMENTS: Resolution	FOR INFORMATION CONTACT: Mike Brough, 929-3905

# **Purpose**

On April 19, 1994, the Board of Alderman voted 4-3 to deny a conditional use permit request for a proposed development on the Hogan property. A legal challenge to that permit denial is forthcoming. Litigation could be avoided if an alternative development proposal were submitted for which a conditional use permit could be issued under the land use ordinance. Direct discussion between representatives of the Board and the Hogans might help to develop such an alternative development proposal.

# Summary

A focused discussion session involving three Board members, four representatives chosen by the Hogan family, one facilitator, and one professional planner, might produce a consensus upon a development plan for the Hogan property that could be approved under the land use ordinance. The discussion session would be limited to a one to two day period. The results would be reported to the Board and the Board could then vote on whether to encourage the Hogans or their representatives to submit a revised conditional use permit application. The Board could also decide whether to establish an expedited review schedule if a new CUP were submitted.

### Recommendation

The administration recommends adoption of the attached resolution.

## **Action Requested**

Adoption of the attached resolution.

# A RESOLUTION EXPRESSING THE BOARD OF ALDERMAN'S DESIRE TO ATTEMPT TO REACH CONSENSUS ABOUT AN APPROPRIATE PLAN OF DEVELOPMENT FOR THE HOGAN PROPERTY THROUGH A FACILITATED PROCESS

WHEREAS, at its meeting on April 19, 1994, the Board of Aldermen voted 4-3 to deny a conditional use permit for a proposed development on the Hogan property; and

WHEREAS, the Board believes that it may be useful to establish a process wherein discussions could take place between representatives of the Hogan family and members of the Board on an appropriate plan of development for the property in question, in the hope that a consensus might emerge about a development plan for which a conditional use permit could be issued under the Town of Carrboro's land use ordinance:

NOW THEREFORE, THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO RESOLVES:

Section 1. The Board endorses the following process and encourages the Hogan family to participate in this process:

- (a) The discussion session will extend over a one or two day period and will be conducted as soon as possible.

  Concluded in letter by June 30,1994.
- (b) The participants in the discussion will be:
  - (1) Three members of the Board, namely Jay Bryan, Jacquie Gist, and Frances Shetley;
  - (2) Four persons selected by the Hogan family;
  - (3) One facilitator, whose function will be to keep the discussions focused on the issues and otherwise assist the group in attempting to reach a consensus; and
  - (4) A professional planner, whose function will be to assist the group in understanding the planning issues and to prepare sketches of proposals under discussion as well as any decisions reached.
- (c) The objective of this discussion group will be to attempt to reach consensus about a proposed development plan for the Hogan property. for which a conditional use permit could be issued under the Town of Carrboro's land use ordinance.
- (d) At the conclusion of the discussion process, the discussion group will report back to the Board of Aldermen as to the extent to which consensus was reached by the group on any or all aspects of a development plan for the Hogan property.
- (e) After receiving the report of the discussion group, the Board of Aldermen will vote on whether to encourage the Hogans or their representatives to submit to the Town a new conditional

use permit application and whether to establish an expedited review process if a new conditional use permit application is submitted.

Section 2. This resolution shall become effective upon adoption.

The following resolution was introduced by Alderman Jay Bryan and duly seconded by Alderman Randy Marshall

A RESOLUTION EXPRESSING THE BOARD OF ALDERMAN'S DESIRE TO ATTEMPT TO REACH CONSENSUS ABOUT AN APPROPRIATE PLAN OF DEVELOPMENT FOR THE HOGAN PROPERTY THROUGH A FACILITATED PROCESS

Resolution No. 52/93-94

WHEREAS, at its meeting on April 19, 1994, the Board of Aldermen voted 4-3 to deny a conditional use permit for a proposed development on the Hogan property; and

WHEREAS, the Board believes that it may be useful to establish a process wherein discussions could take place between representatives of the Hogan family and members of the Board on an appropriate plan of development for the property in question, in the hope that a consensus might emerge about a development plan for which a conditional use permit could be issued under the Town of Carrboro's land use ordinance;

NOW THEREFORE, THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO RESOLVES:

Section 1. The Board endorses the following process and encourages the Hogan family to participate in this process:

- (a) The discussion session will extend over a one or two day period and will conclude no later than June 30, 1994.
- (b) The participants in the discussion will be:
  - (1) Three members of the Board, namely Jay Bryan, Jacquie Gist, and Frances Shetley;
  - (2) Four persons selected by the Hogan family;
  - (3) One facilitator, whose function will be to keep the discussions focused on the issues and otherwise assist the group in attempting to reach a consensus; and
  - (4) A professional planner, whose function will be to assist the group in understanding the planning issues and to prepare sketches of proposals under discussion as well as any decisions reached.
- (c) The objective of this discussion group will be to attempt to reach consensus about a proposed development plan for the Hogan property.

(d) At the conclusion of the discussion process, the discussion group will report back to the Board of Aldermen as to the extent to which consensus was reached by the group.

Section 2. This resolution shall become effective upon adoption.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 10th day of May, 1994:

Ayes: Michael Nelson, Randy Marshall, Hank Anderson, Eleanor Kinnaird, Frances Shetley, Jacquelyn Gist, Jay Bryan

Noes: None

Absent or Excused: None

# **BOARD OF ALDERMEN**

ITEM NO. F(4)

# AGENDA ITEM ABSTRACT

**MEETING DATE: August 09, 1994** 

SUBJECT:

REVIEW AND ACCEPTANCE OF THE REVISED LAKE HOGAN FARMS

SUBDIVISION SITE PLAN

<b>DEPARTMENT: PLANNING DEPARTMEN</b>	T PUBLIC MEASING: YES	NO	
ATTACHMENTS: Sheet #1 Lake Hogan Farms Site Plan Resolution #52/93-94	FOR INFORMATION CONTACT:  Roy M. Williford, 968-7713		
THE FOLLOWING INFORMATION IS PROVIDED:  (x) Purpose (x) Action Requested (x) Analysis			
(x) Summary	(x) Recommendation		

# **PURPOSE:**

The Board of Aldermen will receive the revised Lake Hogan Farms Subdivision Plan produced through the facilitation process from the Town's Hogan Farm Facilitation Subcommittee. At the conclusion of the review, the Board will vote on the approval of the revised site plan along with revised conditions and authorize the town attorney to use the approved plan and conditions as an agreement with the Hogan Farm property owners for the settlement of the litigation brought against the Town.

# **SUMMARY:**

- ⇒ On May 10, 1994, the Board of Aldermen adopted a resolution expressing their desire to reach consensus about an appropriate plan of development for the Hogan Property though the facilitated process [Resolution attached].
- ⇒ On June 20 21, 1994, the Hogan Farm Facilitation Group met and produced a sketch plan.
- ⇒ The developers of Lake Hogan Farms have produced a revised site plan (sheet 1) that has in turn been reviewed by the Town's Hogan Farm Subcommittee with input from the Hogans on July 19, 1994 and July 26, 1994.
- ⇒ The Board of Aldermen will review and vote on the revised site plan, conditions, and greenway proposals and vote to authorize the town attorney to use the approved plans and conditions as an agreement with the Hogan Farm property owners for the settlement of the litigation brought against the Town.

# **BACKGROUND:**

On April 19, 1994, the Board of Aldermen voted to deny an application for the Lake Hogan Farms Subdivision. The conditional use permit (CUP) application proposed a 420-lot architecturally integrated subdivision for single family, detached housing on a 310-acre tract, to be developed over seven phases. As a result of the Board's vote, the applicant petitioned and received from the Superior Court an order, dated May 26, 1994, for the Town to produce and certify a complete record of the CUP denial proceedings for review by the Court. Prior to the receipt of the Court Order, the Town, on May 10, 1994, adopted a resolution expressing a desire to attempt to reach consensus about an appropriate plan of development of the Hogan Property through a facilitated process.

The facilitation group met on June 20, 1994 and June 21, 1994. From these meetings, a consensus on an appropriate sketch plan of development for the property was reached; with the exception of issues associated with the dedication of greenways which was referred to the full Board for open discussion on August 09, 1994.

The sketch plan developed through the facilitation process was reproduced in a CUP site plan format by the applicant. The site plan was then reviewed by the Town's Hogan Farm Subcommittee for refinement on July 19, 1994 and July 26, 1994.

The final step in the facilitation process is for the Board to receive the site plan recommended by the Town's Hogan Farm Subcommittee and to authorize the town attorney to use the site plan and associated documents as a basis of agreement between the parties.

# **ANALYSIS:**

The attached Hogan Farm Subdivision Site Plan, as recommended by the Town's Hogan Farm Subcommittee, is characterized as follows:

# **General Description:**

A 438-lot architecturally integrated subdivision on 310 acres of land with an overall density of 1.4 units per acre

# Lots by Type:

Town Homes	60 lots
Village	91 lots
Cluster Lots	29 lots
1/3 acre	84 lots
1/2 acre	96 lots
> 1/2 acre(estate lots)	78 lots
TOTAL	438 lots
	MATERIAL DESCRIPTION OF STREET,

The allowable density is 644 unit; 2.07 units per acre.

# **Open Space:**

The site plan shows Nine-six (96) acres or 30.9% of the tract as open space that generally includes floodplains, wetlands, Hogan Lake, power and gas line rights-of-way, steep slopes, a portion of an undisturbed buffer adjacent to the Stony Hill Subdivision, community gardens, and approximately 5 1/2 acres of open play fields and landscaped walkways in the center of the village.

# **Active Recreation:**

Points Required:

4,363

Points Provided:

6,708.5

# **Recreation Facilities:**

Clubhouse, swimming pool and patio, child's pool, hot spa, four (4) tennis courts, basketball court, volleyball court, hiking/bike trails, play equipment, gazebo and deck, and picnic shelter.

#### Access:

Primary access to and form this site includes Old 86 and Homestead Roads which are State-owned and maintained arterial facilities. A trail along Bolin Creek will provide access for pedestrian and bikers as well as collector road bikeways and internal sidewalk/trail systems. Five connector road stub-outs are provided for future access to adjacent properties.

# Other Information:

There is a single structure of approximately 6,000 square feet shown o the plans as retail. This use will require a separate land use permit that will not be issueable unless and until the area is annexed by the Town, rezoned along with its associated parking area to a zone which allows commercial uses.

The applicant has indicated that an area will be needed during Phase I near the proposed clubhouse recreation area for the temporary collection of stormwater, pending approval by the Town's engineer. This stormwater collection area will be needed to control stormwater runoff during the period that the lake and dam rehabilitation activities are underway.

# **ACTION REQUESTED:**

The Board is requested to approve the revised Lake Hogan Farms Subdivision Site Plan and conditions, and authorize the town attorney to use these as the basis for the settlement of the litigation.

# **RECOMMENDATION:**

The Administration recommends that the Board of Aldermen approve the conditional use permit in accordance with the site plan revised through the facilitation process with the following conditions:

# A. PREVIOUS CONDITIONS/MOTIONS

- 1. The applicant shall complete the development strictly in accordance with the plans submitted to and approved by this Board, a copy of which is filed in the Carrboro Town Hall. Any deviations from or changes in these plans must be submitted to the Zoning Administrator in writing and specific written approval obtained as provided in Section 15-64 of the Land Use Ordinance.
- 2. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect.
- 3. That the land owner (applicant) petition for voluntary annexation on a phase by phase basis prior to final plat approval of each phase.
- 4. That the location of the trail and the corresponding 50 foot easement to the Town of Carrboro be adjusted in the field to avoid overlapping lots if possible, and to avoid conflicts with OWASA manholes. That OWASA approve the location of the trail during the construction plan approval process. The applicant must remove the word future from the description of the six foot wide bike and pedestrian trail.
- 5. That additional information be submitted to, and approved by, the Town's consulting engineer for lots 20 and 21, 19 and 20, to ensure that the proposed drainage system will render these lots as buildable lots. This shall be done during the construction plan approval process.
- 6. That joint maintenance agreements between all lots served by the private driveways be established prior to construction plan approval, and that the details for the private driveways be approved by

the Public Works Director and the Fire Chief during the construction plan approval process. The driveway design must include mountable curbs around the landscape islands and the vegetation within the islands must be limited to grass.

- 7. That Duke Power and North Carolina Natural Gas approve the crossings of their easements by roads, pedestrian/bike trails, and storm water and/or sewer pipes prior to construction plan approval, and that any necessary modifications be made to the plans as required by these utility companies.
- 8. That any office/retail use in, or around, the recreation complex, shall require annexation of the phase that the site is in (i.e.-phase 1), then a rezoning and a CUP amendment must be obtained from the Board of Aldermen.
- 9. That the recreation point requirements of the Land Use Ordinance be verified, and adjusted if necessary, during the construction plan approval process, and that children's playground equipment must account for at least 10 percent of the total recreation points which are required for this project (via the recreation points table in the Land Use Ordinance or the dollar value equivalent of those points as provided for in Appendix G of the Land Use Ordinance).
- 10. That the detailed design of the creek crossings must be provided during the construction plan approval process, and that all road crossings must meet the federal standards established for "bridges" under ASHTO HS-20. "and that the low impact bridge design be used, i.e., an arch span crossing".
- 11. That an application for a permit for the repair and reconstruction of the dam be made to the appropriate state agency upon issuance of the Conditional Use Permit, and that the lake not be refilled until such time as deemed safe and appropriate by the responsible state agency.
- 12. That the applicant relabel the open play fields as open play fields and associated parking.

VOTE: AFFIRMATIVE FOUR, NEGATIVE THREE (NELSON, GIST, BRYAN)

#### **APPROVED MOTIONS:**

MOTION WAS MADE BY RANDY MARSHALL AND SECONDED BY FRANCES SHETLEY THAT THE TRANSPORTATION ADVISORY BOARD'S RECOMMENDATION DATED APRIL 7, 1994 BE APPROVED WITH AN ADDITIONAL STUB-OUT TO BE LOCATED ON THE SOUTH OF THE PROPERTY TO BE DEDICATED TO THE TOWN AND THAT SIGNAGE FOR THE STUB-OUTS AND BIKE FACILITIES BE INSTALLED WHEN THE ROAD IS CONSTRUCTED. VOTE: AFFIRMATIVE FOUR, NEGATIVE THREE (NELSON, GIST, BRYAN)

MOTION WAS MADE BY RANDY MARSHALL AND SECONDED BY HANK ANDERSON THAT CONSTRUCTION PLANS FOR PHASE 1 OF THE DEVELOPMENT MAY NOT BE GRANTED UNLESS AND UNTIL THE DEVELOPER HAS DETERMINED WHETHER AND TO WHAT EXTENT IMPROVEMENTS OF THE DAM WILL BE REQUIRED AND, IF A STATE PERMIT FOR SUCH IMPROVEMENTS IS MANDATED, SUCH PERMIT IS OBTAINED FROM THE STATE. VOTE: AFFIRMATIVE FOUR, NEGATIVE THREE (NELSON, GIST, BRYAN)

MOTION WAS MADE BY FRANCES SHETLEY THAT A 50-FOOT UNDISTURBED BUFFER BE REQUIRED ALONG ALL LOTS. VOTE: AFFIRMATIVE FIVE, NEGATIVE TWO (BRYAN, NELSON) [NOTE: Buffer is shown on the site plan, this motion is no longer needed.]

MOTION WAS MADE BY RANDY MARSHALL AND SECONDED BY FRANCES SHETLEY TO ACCEPT THE DEVELOPER'S PROPOSAL TO AMEND THE SITE PLAN AS PRESENTED BY THE PLANNING DIRECTOR. VOTE: AFFIRMATIVE FOUR, NEGATIVE THREE (NELSON, GIST, BRYAN) [NOTE: Townhouses are shown on the plan; motion is no longer needed.]

MOTION WAS MADE BY FRANCES SHETLEY AND SECONDED BY RANDY MARSHALL THAT THE RECOMMENDATIONS OF THE N.C. DEPARTMENT OF TRANSPORTATION IN A LETTER ADDRESSED TO TOWN'S ZONING OFFICE REF. IMPROVEMENTS TO HOMESTEAD ROAD AND OLD 86 BE OBSERVED. VOTE: AFFIRMATIVE FOUR, NEGATIVE THREE (NELSON, GIST, BRYAN) [NOTE: Has been included on the plan; motion is no longer needed.]

# B. THE FOLLOWING NEW CONDITIONS ARE RECOMMENDED:

- 1. Public access will be provided along the Duke Power easement south of lots 28 and 31 from the Bolin Creek Trail to the eastern property line of the tract with curb cuts.
- 2. Note on the plans that the six-foot paved trail will be constructed by the developer as shown with the pavement material to be approved prior to construction plan approval for Phase I by the Board of Aldermen.
- 3. Continue the following road stub-outs to the property line a) the stub-out south of the Old 86 entrance, and b) the stub-out shown between Lots 335 and 336.
- 4. Work with OWASA to minimize the removal of trees within the sewer easement along the south side of Lake Hogan by maintaining a clearance no greater than 20-feet in width.
- 5. The 50-foot bike/pedestrian trail easement should be shown on the plans to clearly differentiate the public access trails from other private trails. [Shading has not been labeled.]
- 6. Re-calculate the open space (acreage and percentage) and the number of lots.
- 7. That the applicant show on the Phase I construction drawings the area that will be needed during Phase I near the proposed clubhouse recreation area for the temporary collection of stormwater.

The following resolution was introduced by Alderman Jay Bryan and duly seconded by Alderman Randy Marshall

# A RESOLUTION EXPRESSING THE BOARD OF ALDERMAN'S DESIRE TO ATTEMPT TO REACH CONSENSUS ABOUT AN APPROPRIATE PLAN OF DEVELOPMENT FOR THE HOGAN PROPERTY THROUGH A FACILITATED PROCESS Resolution No. 52/93-94

WHEREAS, at its meeting on April 19, 1994, the Board of Aldermen voted 4-3 to deny a conditional use permit for a proposed development on the Hogan property; and

WHEREAS, the Board believes that it may be useful to establish a process wherein discussions could take place between representatives of the Hogan family and members of the Board on an appropriate plan of development for the property in question, in the hope that a consensus might emerge about a development plan for which a conditional use permit could be issued under the Town of Carrboro's land use ordinance;

NOW THEREFORE, THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO RESOLVES:

Section 1. The Board endorses the following process and encourages the Hogan family to participate in this process:

- (a) The discussion session will extend over a one or two day period and will conclude no later than June 30, 1994.
- (b) The participants in the discussion will be:
  - (1) Three members of the Board, namely Jay Bryan, Jacquie Gist, and Frances Shetley;
  - (2) Four persons selected by the Hogan family;
  - (3) One facilitator, whose function will be to keep the discussions focused on the issues and otherwise assist the group in attempting to reach a consensus; and
  - (4) A professional planner, whose function will be to assist the group in understanding the planning issues and to prepare sketches of proposals under discussion as well as any decisions reached.
- (c) The objective of this discussion group will be to attempt to reach consensus about a proposed development plan for the Hogan property.
- (d) At the conclusion of the discussion process, the discussion group will report back to the Board of Aldermen as to the extent to which consensus was reached by the group.

Section 2. This resolution shall become effective upon adoption.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 10th day of May, 1994:

Ayes: Michael Nelson, Randy Marshall, Hank Anderson, Eleanor Kinnaird, Frances Shetley, Jacquelyn Gist, Jay Bryan

Noes: None

Absent or Excused: None

# **BOARD OF ALDERMEN**

ATTACHMENT D

# AGENDA ITEM ABSTRACT

**MEETING DATE: September 17, 1996** 

SUBJECT: Steering Committee Recommendations: Facilitation Meeting Process for Study Area

DEPARTMENT: PLANNING	G DEPARTMENT	PUBLIC HEARING:	YES _	NO	X
ATTACHMENTS: Steering Committee Record Areas of Consensus as		FOR INFORMATION Aldermen Bryan Lisa Bloom-Pro	n, Gist, aı	nd M <sup>c</sup> Duf	fee or
THE FOLLOWING INFORMAT (X) Purpose (X)	CION IS PROVIDED: ( ) Summary	(X) Recommendation	ı (Σ	( ) Action	Requested

#### **PURPOSE**

The Mayor and Board of Aldermen may consider the Facilitation Steering Committee's Areas Of Consensus for a Facilitated Process for the Small Area Planning study area and provide comments.

### **SUMMARY**

The Small Area Planning Work Group submitted their proposed draft *Plan* for the Board's consideration on September 12, 1995. The Board of Aldermen requested that copies of the proposed draft *Plan* be sent to the advisory boards for their comments and that the Small Area Planning Work Group hold an *Open House* to receive comments from residents who live in the *Study Area*.

During a work session on December 19, 1995, the Board of Aldermen viewed a presentation of key concepts in the proposed draft *Plan*, followed by a presentation from the Planning Board Chair, John Rintoul, which included written comments from the advisory boards and a composite of comments made by residents as a result of the November 9, *Open House*, along with a request from the Small Area Planning Work Group for a moratorium in the *Study Area*. Subsequent to considerable discussion, the Aldermen set the date for *two separate public hearings* on February 06, 1996.

The Board of Aldermen held both a public hearing of the proposed *Plan* and a public hearing to consider establishing a temporary development moratorium on issuance of conditional and special use permits within the *Study Area*. During the public hearing to consider a moratorium, the Mayor stated that the Orange County Board of Commissioners had requested that the Board of Aldermen delay any decision on the matter for one week. During the public hearing of the proposed *Plan*, the Board of Aldermen received a brief presentation of the Small Area Planning Work Group's proposed *Plan for Carrboro's Northern Study Area* including *revisions* generated from comments by residents, citizens, and advisory boards.

Then on February 12, the Orange County Commissioners recommended during their meeting that a facilitated meeting be conducted, involving the residents of the Northern Transition Area, the Small Area Planning Work Group, the Board of County Commissioners, and the Carrboro Board of Aldermen. A Facilitated Meeting was recommended to provide an opportunity for addressing the concerns of area citizens about the proposed draft of the Small Area Plan.

On February 13, 1996, the Mayor and Board of Aldermen received the Orange County Commissioners' recommendation for a Facilitated Meeting to address concerns about the proposed draft Small Area Plan.

Then on February 20, the Aldermen established a subcommittee consisting of Diana McDuffee, Jacquelyn Gist and Jay Bryan to work with the town staff to plan a facilitated meeting process and outline the next steps in the planning process.

The Aldermen's subcommittee met several times with the most recent meeting taking place in consultation with Mr. Andrew Sachs, Public Disputes Coordinator with the Orange County Dispute Settlement Center. The Public Disputes Program assists groups to collaborate by providing mediation and meeting facilitation services. The subcommittee recommended securing Mr. Sachs assistance as a competent neutral with both the steering committee and the facilitated meeting.

On March 19, 1996, the Aldermen's subcommittee recommended that the entire Board establish a *Facilitation Steering Committee* to formulate the facilitation meeting process; propose a budget; determine the composition of the facilitation participants such as area residents, County Commissioners, Small Area Planning Work Group members, Chapel Hill Town Council, Carrboro Board of Aldermen and others.

On April 2, 1996, after receiving the list of neighborhoods requested by the Board on March 19, the Aldermen specifically directed staff to publish notices and mail letters soliciting nominations for membership on the Facilitation Steering Committee.

The Board of Aldermen established the Facilitation Steering Committee to determine how the facilitation process could be conducted. On June 04, 1996, a total of 27 people were appointed to the Facilitation Steering Committee, including neighborhood representatives, two representatives from the County Commissioners, two representatives from the Chapel Hill Town Council, three representatives from the Carrboro Board of Aldermen, and one representative from the Small Area Planning Work Group who lives in the study area.

The Facilitation Steering Committee began meeting on July 8, 1996, and has developed the attached information with the assistance of Andy Sachs and Jennifer Goldman from the Dispute Settlement Center.

Charge for the Facilitation Steering Committee (which was revised and adopted on March 19,1996).

- Meet and agree on the goals of an inclusive process for the facilitated meeting.
- Plan a facilitated meeting process by *consensus* that enables the participants to reach agreement among the interested parties.
- Prepare a *budget* recommendation that addresses the issue of sharing the costs for the facilitated meeting with the jurisdictions having an interest in the planning process.
- Coordinate the logistics of scheduling and setting up the facilitated meeting.
- Review the time-line for adoption of a plan for the area.
- Identify specific groups or individuals affected by a plan for the area.

The Steering Committee last met on August 29, 1996, to discuss areas of consensus and produce recommendations for a facilitated process for presentation to the Board of Aldermen September 17, 1996.

#### RECOMMENDATION

The Administration recommends that the Board of Aldermen accept the attached information, move forward with a facilitated meeting process, encourage additional public comment and continue discussion of a Plan for the Study Area. In addition, the Administration recommends that the entire Board of Aldermen comment on the attached information and provide further direction to the *Steering Committee*.

# **ACTION REQUESTED**

The Administration requests that the Board of Aldermen consider the following action.

⇒ Direct the Town Manager to secure Andrew Sachs' assistance with future meeting of the Facilitation Steering Committee through a revised contract and a budget revision, if necessary. The Town made a total of \$3,500 available for assistance from the Dispute Settlement Center. Approximately one-half of those funds have been spent to date.

# I. RECOMMENDED GOALS OF THE FACILITATED PROCESS (AREA OF CONSENSUS)

- 1. Produce a plan within a reasonable amount of time.
- 2. Conduct a fair and open process.

Objectives for Goal #2 are:

- a. Ensure that everyone has a voice and feels heard.
- b. Ensure that all affected areas are represented.
- c. Ensure that, during the facilitated process, the views of Residents of the Transition Area and the Town of Carrboro have *priority*.
- d. Keep communication channels open, with several public presentations of each stage of development, and a commitment to the evolution of ideas.
- e. Take into consideration the needs and values of people living in the area, and create a plan that accommodates all economic and social groups.
- f. Make decisions by 100% consensus.

# II. INTERESTS/VALUES/GROUPS TO BE INCLUDED IN THE PROCESS

The Steering Committee generated a list of 37 items which the Details Subcommittee took under consideration during their meetings. A copy of this list is available in the Planning Department.

# III. PROPOSED CONFERENCE AGENDA (AREA OF CONSENSUS)

#### DAY 1

FULL GROUP SESSIONS (9 AM - 12:00)

- 1. Welcome and orientation to the conference.
- 2. Education Session

LUNCH (12:00 - 1:00)

SMALL GROUP SESSION (1:00 - 3:00)

3. Form mixed groups (transition area residents, Town residents, elected officials, large landowners, subdivisioners, etc.) of about 10 people each. These small groups discuss and identify concerns about the future of the transition area.

FULL GROUP SESSION (3:00 - 5:30)

- 4. Each small group makes a presentation identifying the main concerns about the future of the transition area.
- 5. Conference participants suggest Topic Areas (e.g., "flooding," transportation,") for in-depth discussions.

END OF DAY 1: Over the next two weeks, the Conference Committee refines the suggested Topic Areas and identifies technical resource people who will assist participants in each Topic Area.

### DAY 2

(TWO WEEKS LATER)

SMALL GROUP SESSIONS (9 - 11:30 AM)

6. Conference participants attend whichever Topic Area group interests them. Each Topic Area group clarifies concerns about the future of the transition area and generates alternatives for addressing the concerns.

LUNCH and Prepare for Presentations (11:30 - 1:00)

# FULL GROUP SESSION (1:00 - 3:00)

- 7. Topic Area groups present their alternatives to the full assembly of participants.
- 8. Participants ask questions to peers and/or resource people to understand the alternatives.

# SMALL GROUP SESSIONS (3:15 - 5:00)

9. Synthesis: Mixed groups (transition area residents, Town residents, elected officials, large landowners, subdivisioners, etc.) of about 10 people each create packages from among the alternatives generated by the different Topic Area groups.

# COMMUNITY-STYLE DINNER (5:00 - 6:30)

## FULL GROUP SESSION (6:30 - 9:30)

- 10. Small groups present their packages of ideas to the full assembly of participants.
- 11. Participants ask questions to understand the different packages.

# DAY 3 (THE NEXT DAY)

# FULL GROUP SESSION (9:00 -12:00)

- 12. Participants discuss the strengths and weaknesses of different packages.
- 13. Participants use "sticky dots" to identify the two packages they think best address the community's concerns about the future of the transition area and the one package they think least addresses community concerns.
- 14. Credible, Out-of-State land use planning expert provides commentary on the results of the "sticky dot" activity and dialogues with participants to further clarify community priorities and evaluate the alternatives against those priorities.

#### LUNCH (12:00-2:00)

15. The planning expert uses the information generated at the Conference thus far to develop an outline of how to fit the elements of a Small Area Plan in a way that balances community priorities.

# FULL GROUP SESSION (2:00 - 3:45)

- 16. Planning expert presents the outline.
- 17. Fishbowl discussion among all participants (including the land use planner): "Can the proposal be improved further? How?"

# REFRESHMENT BREAK (3:45 - 4:00)

## FULL GROUP SESSION (4:00 - 5:30)

18. Final proposal by the expert and test for consensus among Conference participants.

#### ADJOURN (5:30 - 6:00)

- 19. Convener thanks participants and explains next steps.
- 20. Meeting participants evaluate the conference.

#### IV. CONFERENCE COMMITTEE

The Steering Committee recommends that a small Conference Committee (CC) assume responsibility for addressing the rest of the logistical and protocol questions, as well as issues which arose out of the Steering Committee meeting 8-29-96. Additionally, the CC will determine what and whom to include in the education sessions, and will select the planning expert as well as resource people for the conference. The CC expects to take about one month to complete their preparatory tasks for the conference, at which time they will report back to the Steering Committee to finalize their recommendations.

Additional information needing to be addressed includes the following: a list of 23 logistical questions; the protocol recommendations of the Details Subcommittee; and issues raised by the Steering Committee on 8-29-96.

Copies of these items are available from the Carrboro Planning Department.

#### V. TIMELINE

The Steering Committee agreed that the conference should happen as soon as possible, as long as it was done carefully and considerately. Even though the Steering Committee was not able to complete the facilitated process by 8-20-96, as requested by the Board of Aldermen, the Steering Committee decided to keep working as fast as it could. The Steering Committee acknowledged the need to clarify what is a "reasonable" amount of time.

#### VL RECOMMENDATION FOR FACILITATION

The Steering Committee recommends the use of the Orange County Dispute Settlement Center for facilitation of the conference and for the next Steering Committee meeting(s).

# CARRBORO VISION2020 the Process Instructions (for Steering Committee Members)

- 1. Participants will sit at tables of 6-8 people, selected randomly when they arrive. Please help us move the process along and get started on time by inviting people to have coffee when they arrive and then go to a table.
- 2. Following the "Looking Back/Moving Forward presentation, Facilitator Anne Davidson will lead the entire group in a short exercise asking people to visualize Carrboro in 2020. Following Anne's comments, each person will be asked to take some time on his or her own to write or draw the key elements of their future image of Carrboro. Then each person will be asked to transfer some of their ideas to a large piece of paper taped up on one wall that will become a community "mural" or random collection of thoughts and images. Participants will be asked to take a little time to scan the ideas others have posted.
- 3. After participants post their ideas on the community mural, please help them gather back in their small groups at their tables. Then ask the group to briefly consider each of the discussion questions provided by the committee, using ideas from their future vision and ideas they saw posted on the mural. The group should conduct their responses as a brainstorming session, generating as many ideas as possible without critiquing them. Help them follow the guidelines for brainstorming listed below. Write key words for as many of their ideas as possible on a sheet of flip chart paper.
- 4. After all ideas in your group are listed, go back over the list very quickly to see if any item needs clarification.
- 5. Ask one or two people to volunteer to be "hosts" for the next round of brainstorming. This means that they will remain at their present table and will summarize the group discussion for new people who will move to that table.
- 6. After lunch, we will conduct a second round of brainstorming. The host(s) will remain at their Round 1 tables. Participants not serving as hosts will move to a new table and form a new group.
- 7. Hosts will briefly summarize the ideas generated at their table during Round 1. Participants new to the table will add ideas from THEIR Round 1 tables. Then the group will build upon the ideas already generated and/or add new ideas. Write new ideas on the flip charts.
- 8. When instructed by the facilitator, ask the group to identify the common themes they see emerging from all of the ideas they have heard during the day. Write these up on a sheet of flip chart paper. Ask one group member to volunteer to be a spokesperson for the group. That person will report to the full group at the end of Round 2.
- 9. Please thank participants for attending and sharing their ideas.

# <u>Guidelines for Brainstorming</u>

- Everybody in the group contributes something, if only one idea.
- One person speaks at a time.
- Nothing is challenged or criticized during brainstorming.
- It is okay to add to ideas others contribute.
- It is okay to pass when you have nothing more to offer.
- Add brief, clarifying points to ideas after brainstorming but do not critique ideas or consider their feasibility.
- "Wild" ideas are welcome and encouraged the more ideas, the better.

# Questions for Brainstorming Carrboro's Future.

- 1) How has technology changed life in Carrboro in 2020?
- 2) In 2020 you have an exchange student living with you. Where do you take her, what do you show off about Carrboro?
- 3) In the year 2020, what is your favorite thing to do in Carrboro on a Saturday afternoon? How do you get there?
- 4) What do your kids do during the day in Carrboro in the year 2020? After school?
- 5) In 2020, what happens to your garbage?
- 6) During the first two decades of the 21st century, the Board of Aldermen reduced the tax burden on residential property owners while maintaining a high level of service. How did they accomplish that goal?
- 7) What is it like being a senior citizen in 2020 Carrboro?
- 8) You want to go to the Museum of Art in Raleigh on a Saturday afternoon in the year 2020. How do you get there? How do you get to the Farmer's Market?
- 9) As you are biking north of Calvander on Old 86 in the year 2020, what do you see around you?
- 10) When you visit downtown Carrboro in 2020, what products can you buy in the store?
- 11) In the year 2020, what is the one thing you'd want to make you and the other citizen's of Carrboro happy? Make a wish.

# ATTACHMENT F ITEM NO. C(7)

# **BOARD OF ALDERMEN**

# AGENDA ITEM ABSTRACT MEETING DATE: March 20, 2007

TITLE: A Request to Approve a Budget Amendment for Facilitation Services from the Dispute Settlement Center

DEPARTMENT: Management Services	PUBLIC HEARING: YES NO _x_
ATTACHMENTS: A: Budget Ordinance B: Proposed Contract with Dispute Settlement Center	FOR INFORMATION CONTACT: Steve Stewart, Town Manager (918-7315)

#### **PURPOSE**

The Board is requested to approve a budget amendment transferring \$4,000 from contingency to the Planning budget to provide sufficient funds for the facilitation of the Northern Study Area Plan Implementation Review Committee (NSAPIRC) process to be held during the spring and summer of 2007.

### **INFORMATION**

The Board of Aldermen, at a regular board meeting on February 20th, 2007, discussed having consultants with expertise in planning issues assist with the Northern Study Area Plan Implementation Review process discussed and approved at the same meeting. Staff put out feelers in several directions, particularly (at the Board's request) to Mr. Andy Sachs at the Dispute Settlement Center (DSC). Though Mr. Sachs was not available to be the primary facilitator for this process, he worked with the DSC and put together a proposed contract based on Mr. Sachs working in an advisory role and Ms. Robin Langdon and Mr. Will Dudenhausen acting as the primary facilitators. Town staff also received a separate proposal from a Wilmington consultant and a resume from a Durham facilitator, but the DSC proposal was deemed superior for a number of reasons.

Even prior to the contract being signed, Ms. Langdon attended the first NSAPIRC meeting on the evening of Thursday, March 15<sup>th</sup>.

If the Board approves this budget amendment, town staff will also move forward with executing the contract with the Dispute Settlement Center for facilitation services for the NSAPIRC

# FISCAL IMPACT

Upon approval of the budget amendment, contingency balance would be at \$8,250.

# STAFF RECOMMENDATION

Town staff recommends that the Board approve this budget amendment and approve the execution of the facilitation agreement with the Dispute Settlement Center.

# AN ORDINANCE AMENDING FY'2006-07 BUDGET ORDINANCE

WHEREAS, the Town Board of the Town of Carrboro on June 6, 2006 adopted the annual budget for the fiscal year beginning July 1, 2006 and ending June 30, 2007 and

WHEREAS, it is appropriate to amend the expense accounts in the funds listed to provide for increased expenses for the reasons stated.

NOW, THEREFORE, BE IT ORDAINED, that in accordance with authority contained in G.S. 159-15, the following expense and revenue accounts are amended as shown and that the total amount for the funds are herewith appropriated for the purposes shown:

FUND	ACCOUNT TITLE	INCREASE			
		(DECREASE)	AMOUNT	FROM	TO
General Fund					
Expenditures	Planning	INCREASE	\$4,000	\$1,196,645	\$1,200,645
General Fund					
Expenditures	Nondepartmental	DECREASE	(\$4,000)	\$605,328	\$601,328

REASON: To appropriate funds for the facilitation of the Northern Study Area Plan Implementation Review committee process.

# Proposed Memorandum of Agreement Between the Town of Carrboro and the Dispute Settlement Center of Orange County (DSC)

- 1. DSC will provide facilitation services in support of the Town's process to review and update its Northern Study Area.
- 2. DSC designates Mr. Will Dudenhausen and Ms. Robin Langdon as the lead facilitators for the Community Forums and relevant meetings of the NSA Plan Implementation Review Committee (NSAPIRC). Public Disputes Program Coordinator Andrew M. Sachs will serve as DSC's project manager for this effort. Although at this time Sachs has scheduling conflicts with certain milestone dates set forth in the Town's February 20, 2007 resolution establishing this process (March 15, April 14, May 17, June 16), Sachs will support the lead facilitators, Committee and Town as the needs of the process dictate and his schedule allows.

3.	The Town designates	as its project manager and
	DSC's the lead contact for this project.	

- 4. The Town will provide for all project logistics and materials, including adequate meeting facilities, flip chart paper, easel, masking tape, magic markers, name tags, photocopying, and notices to Committee members, forum invitees and attendees, and members of the public.
- 5. In consideration for DSC's services described herein, the Town will pay DSC as follows:
  - a. \$65.00 per hour for all time necessary to the project provided by the lead facilitator team (Dudenhausen and/or Langdon) whether one or both are present.
  - b. \$85.00 per hour for all time necessary to the project provided by Sachs.
  - c. \$25.00 per hour for all time necessary to the project provided by any small group facilitators provided by DSC, for example during the community forums.
- 6. In addition, The Town will reimburse DSC for all reasonable out of pocket expenses incurred by DSC as a necessity while carrying out its responsibilities under this contract, including automobile mileage at the IRS rate in effect at the time of travel, which is currently \$ 0.485/mile.
- 7. The Town will pay DSC's invoices within 10 days of receipt. Checks will be made payable to the order of the Dispute Settlement Center, and mailed or delivered to DSC, 302 Weaver Street, Carrboro, NC 27510. DSC federal tax identification number is F56-1216584
- 8. DSC and OPC agree that if disputes related to this contract emerge between them during or after the period of this agreement, each will first seek resolution by face-to-face problem-solving, facilitated by a mutually agreeable third party if necessary, before taking the grievance for resolution to any outside authority.
- 9. Any modification to this agreement must be written and signed by both parties.

Accepted by:	
	Date
Frances W. Henderson, Ex-	ecutive Director, Dispute Settlement Center
	Date
Signature of Person author	ized to commit the Town
Name/Title:	
Address:	•
Telephone:	
Email:	



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# The Zoning Dispute Whisperer

Adding mediation to the planner's toolkit.

By Joshua Abrams, AICP

Every day in meeting rooms across the country some variation of this scenario plays out: A property or business owner wants to make a change that requires a hearing. Neighbors are opposed. Both sides marshal their forces and appear before the zoning board. Each speaker engages in a few minutes of impassioned huffing and then the board must make a decision. It has limited freedom and limited time; the board members must work with the facts in front of them and make a decision within the context of the zoning rules.

No matter what the board decides, some people will leave disappointed. Often this process aggravates rather than heals relationships; it is rarely satisfying even for the winner. And it doesn't always end there. The party that did not get its way might appeal or file a lawsuit, both of which take up valuable staff time and city money. This, more or less, has been the standard zoning process since the 1920s.

But now some cities are getting good results with a much different approach: mediation.

Recently, a church located in a residential neighborhood came before the Zoning Adjustments Board in Berkeley, California, seeking a permit to add a small second building to its lot for its day care center. (Some details have been changed for confidentiality.) After hearing the case, the zoning board realized that the parties already had a strained relationship that could make the hearing process ugly. The board suggested that they try mediation and both sides agreed. (Usually, cases are referred to mediation by city staff before an initial hearing is held.)

During the mediations — there were several, each lasting two to three hours — it became clear that the real issues went back many years and were as varied as a loud, slamming gate and children picking flowers from someone's yard. During one interesting exchange, a neighbor said, "Members of the church don't even say hello to us as they walk by. I feel like a 'townie' being ignored by people who go to the university."

A member of the church responded, "Really? You want everyone to say hello? I was trying to respect your privacy. But I am happy to say hello."

In the end, the church agreed to make a number of changes in both its permit proposal and its dayto-day practices. Some were as simple as giving the neighbors advance notice of planned events, something that would never have been discussed at the zoning board hearing.

When the church reappeared before the zoning board it presented a revised request — and no one from the neighborhood was opposed to it. The board granted the permit. The mediation process reduced the staff's workload and eliminated the danger of the decision being appealed to the city council as court.



#### Mediation in practice

Planners are familiar with a range of public engagement methods, such as community meetings and design charrettes. Mediation can complement these processes. By involving an impartial person, often called a neutral, it helps disputants reach a solution that everyone can live with.

It is a structured, facilitated process usually conducted by a trained volunteer or professional with a special set of skills. Mediators have to know how to manage emotions, make sure people feel heard,

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American Institute of Certified Planners unearth the parties' true interests (rather than their stated positions), and help the parties generate solutions. By being creative and problem solving together, new ideas that benefit both parties can often be brought to the table.

Mediation begins with everyone agreeing to a clear set of ground rules and the mediator guiding the conversation. The parties (generally not their lawyers or hired experts) present their views, and when appropriate, the mediator encourages the participants to try to find ways of meeting everyone's needs.

Simple mediations usually last two to four hours, while more complicated issues can require multiple sessions. The tool is most appropriate when maintaining ongoing relationships is important; emotions are running high; issues are complex, interrelated, and often not stated explicitly; and novel solutions (as permitted by zoning law) are useful.

In a planning context, mediation is a way of generating improved, less contentious proposals for planning or zoning boards to consider. Applications are subject to the same standards and procedures as other proposals. It is a pre-step, usually optional, before projects have their hearings.

Incorporating mediation into planning activities offers a number of benefits, including saving time and money. Between 50 and 80 percent of land-use cases brought to mediation reach a formal agreement, according to 2007 report published by the University of Montana that studied 27 programs across the country. Because participants are more likely to have a resolution that they are satisfied with, the number of appeals and lawsuits is minimized. At the very least, mediation reduces the contentiousness of the dialogue, even if no agreement is reached.

"In my opinion, decisions made by appointed or elected officials are almost invariably less optimal than those that could be agreed to by those directly involved," says Daniel Sider, AICP, assistant to the zoning administrator in San Francisco. The city partners with a local nonprofit dispute resolution center called Community Boards.

#### Where it's worker

Program

Since the inception of the Berkeley mediation program in 1988, SEEDS Community Resolution Center, a local nonprofit group, has mediated hundreds of disputes referred by the city, with a success rate of about 50 percent. In the Berkeley program, there is no formal written agreement or report; success is clear by the lack of opposition at zoning board meetings and the improvement in communication.

Nathan Dahl, who has worked in Berkeley's planning and code enforcement divisions for six years, is a vocal proponent of the city's mediation program. "Mediation frees up staff time. It allows us to give more thorough evaluation to the projects themselves," he says. "It's better for the parties as well. They have a forum to describe their objectives or express their concerns. Otherwise, it's a lot of back and forth through letters or e-mails. Without that personal engagement, things can be misinterpreted."

"The zoning board loves us," adds Victor Herbert, the volunteer who designed the program and continues to run it. "We save hours of their time and they can go home early."

Albuquerque's Planning Department also has a well-developed alternative dispute resolution (ADR) program that handles about 100 land-use cases a year, focusing on infill development, business permits (liquor licenses, stores requiring a hearing), and infrastructure changes. The department uses independent, paid consultants, and over 60 percent of the Issues raised are resolved prior to the application being heard by the Hearing Board, according to Shannon Beaucaire, the ADR coordinator for the city. The typical cost is between \$170 and \$400, paid for by a \$10 to \$50 surcharge on development applications.

Unlike Berkeley's program, in Albuquerque the meetings between the applicant and the affected parties are public, and afterwards the consultant produces a formal report detailing areas of agreement and disagreement. Beaucaire cites several advantages: "It saves a lot of time. Planning board meetings used to last until two or three in the morning. Now, comments are more focused because there are fewer misunderstandings. Also, if the applicant and the people most affected reach an agreement on a point, as long as it is not contrary to policy, the planning board can incorporate appropriate language into its findings."

Programs can be run on the state level as well. The Massachusetts Office of Dispute Resolution (MODR, now called the Office of Public Collaboration) ran a program for the Department of Environmental Protection (MassDEP) to reduce lawsuits involving developments that impacted wetlands (the program was moved in-house by MassDEP in 2003). In Massachusetts, local conservation commissions conduct wetland reviews as part of the development process, but appeals go through a special state administrative hearing process. While cases were waiting to be heard by the judge, staff members from MODR offered disputants a chance to mediate.

Harry Manasewich, former program manager and now senior mediator at Human Factor Dispute Resolutions, an Arlington, Massachusetts-based consulting firm, notes that the system was quite successful in resolving lawsuits. "We were often able to come to an agreement, because frequently the dispute was less about the stated, appealable issues, and more about other issues. Because it was mediation, they were able to discuss everything."

#### Using mediation

Planners are using mediation in a number of ways.

Zoning/conditional use disputes. Mediation offers a complement to the traditional zoning process. When done right, the zoning or planning board maintains full control the process, but receives fewer contentious proposals. It works well in cases involving nonconforming additions, small infill development, new business applications that require a conditional use permit, and businesses seeking liquor licenses. It's less appropriate for cases where the zoning or planning board has little discretion or where the opposition is rooted more in ideology or politics and less based on direct impacts. Because of this, NIMBY cases can be some of the best to mediate.

Ideally, projects will get referred to mediation before they go to the zoning or planning board, although some programs prefer to concentrate on projects that are being appealed. While zoning boards are fairly limited in the formal scope of their review, mediation, because it is informal and not legally binding, provides more freedom. In mediation, participants can brainstorm unconventional solutions and engage in more in-depth discussion.

If a builder proposes something, neighbors can discuss how they think it will affect them. If neighbors suggest ideas, the builder can consider the feasibility. Ideally the participants will reach an agreement, and a modified proposal will move forward without opposition. If not, in a successful mediation, the subsequent hearings at least will be more civil.

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While this is going on, the clock on the permit process usually continues to click, which is important to the applicant. In the end, the planning or zoning board maintains full decision-making authority and votes on the proposal based on its merits and the rules set forth in the zoning code.

Code enforcement. With good reason, cities focus on major problems that threaten health and safety. Code enforcement seldom has the resources to address other minor issues that affect residents' quality of life — like a theater that occasionally operates outside its normal hours or a restaurant that gets deliveries earlier in the morning than allowed.

While these infractions are rarely acted upon, neighbors aren't likely to forget them and they may come out in force the next time one of these operations needs a new permit.

These kinds of cases are ripe for mediation. Often the disputants are not flagrant rule breakers and therefore a gentle nudge encourages them to become compliant with the zoning rules. Dispute resolution nonprofits handle these situations all the time with great success, and residents are generally open to mediation in these cases — if they know it's available.

Day-to-day interactions with an angry public. City planners manage urban conflict. They are constantly interacting with an angry public. The problem often starts at the zoning and planning counter when someone arrives expecting to be able to do something and is told he or she cannot. Emotions also run high at public meetings. And with good reason: People's livelihoods, homes, and dreams are being threatened — or at least are perceived as threatened.

The challenge is that most planners receive little or no training in conflict resolution. The rational model for city planning looks straightforward on a flowchart. You begin, collect data, define the problem, formulate goals, and so on — and that is what city planners are trained to do. There is nothing in this model about how to calm an infuriated, beet-faced member of the public.

Dispute resolution training can teach planners how to help someone calm down, show someone he's been heard and understood, and channel the conversation in a more useful direction. Some planning schools offer mediation training, and their students are often very positive about the experience.

James Kostaras, AICP, senior research associate at the Institute for International Urban Development, taught such a class at Harvard. "To this day, I have students who took the class 10 or 12 years ago tell me they use the skills they learned every day," he says.

Sider, the San Francisco planner, agrees: "The mediation-dispute resolution class was incredibly useful and was certainly one of the most important I took during graduate school."

Consensus-based policy making. Conflict resolution skills can be used to deal with bigger disputes as well. This typically involves a process called Consensus-Based Policy Making. This approach, worked out over the last 20 years, helps bring people from various stakeholder groups together to engage in creative problem solving. The objective is to pool what everyone knows, and with the help of a mediator, to try to formulate policy proposals that satisfy all the interests involved.

The Consensus Building Institute, based in Cambridge, Massachusetts, has done considerable work on using consensus-based policy making for land-use changes and other planning topics. "One of the great advantages of consensus building is that it actually provides a forum, without in any way taking away decision-making authority from those boards or elected officials, to bring in new parties and new voices," says CBI's managing director, Patrick Field. "And through innovative, dynamic, vibrant processes, a whole bunch of energy and new ideas can be brought to the table."

#### Moving forward

For cities interested in incorporating mediation and dispute resolution there are several next steps.

Staff training. Most dispute resolution centers offer training. Some cities, like Berkeley, ask trainers to tailor programs for their staff. Somerville, Massachusetts, hired professional dispute resolution experts to observe public meetings and then work with staff on ways to handle the types of conflict that they saw. An ideal training program will use role-play simulations tailored to situations that planners face.

Starting a program. Because it does not change the legal process for permits, a mediation step can be added informally if cities want to test out the process.

It is easier to create an ad hoc procedure to refer cases to mediation if there is a local or regional mediation organization that wants to help. The nonprofit group will already have a knowledgeable volunteer base or staff professionals, but it is important to make sure that the group understands the priorities and concerns of the planning department.

If a city wants to more actively embrace mediation and make it an integral part of the system, it should seek the support of elected and appointed officials and figure out how the process would work best locally. Important structural questions include: Is there a potential nonprofit partner? What will be the costs and who will pay them? Are mediations covered by open meeting laws? What are the staff or volunteer training needs? Important strategic planning questions include: Will the program use volunteers, paid consultants, or a mix? Which development proposals have the highest priority? How can the process be publicized? How will success be measured?

Zoning and other planning disputes have been resolved through an adversarial process for so long that it is hard for many city planners to imagine another way. But Berkeley, Albuquerque, and many other cities have turned to mediation, and it has helped to resolve disputes, limit lawsuits, reduce staff time spent handling such situations, and save money. It can mesh nicely with existing planning processes and in many cases there is nothing to lose by trying it. As it turns out, sometimes with the proper process, we all really can get along.

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#### Resource

**Images:** The former Walter Baker chocolate factory on the Lower Nesponset in Massachusetts. Photo Massachusetts Division of Ecological Restoration.

**Organization:** The National Association for Community Mediation lists 400 local dispute resolution centers across the country: **www.nafcm.org**.

**Training:** The Consensus Building Institute has training and other material about consensus-based policy making: http://cbuilding.org.

**Reading:** "Responding to Streams of Land Use Disputes: A Systems Approach," produced in 2007 by the Public Policy Research Institute of the University of Montana in partnership with CBI, summarizes successful programs, best practices, and relevant state laws.



### DISPUTE RESOLUTION SECTION

January 2011

"Disputes arise across a broad spectrum of relationships and substantive areas of the law. Alternatives to litigation may best serve client needs for resolving many of these disputes. The NYSBA Dispute Resolution Section has prepared a series of White Papers to set forth some of the special advantages of mediation and arbitration in the various contexts in which disputes commonly arise."

Edna Sussman, Chair, NYSBA Dispute Resolution Section David Singer, Chair, White Paper Subcommittee

# THE BENEFITS OF ALTERNATVE DISPUTE RESOLUTION FOR RESOLVING MUNICIPAL DISPUTES

By Pamela Esterman, Michael Kenneally, Jr. and Howard Protter\*

"Traditional litigation is a mistake that must be corrected... For some disputes trials will be the only means, but for many claims trial by adversarial contest must in time go the way of the ancient trial by battle... Our system is too costly, too painful, too destructive, too inefficient for really civilized people." Chief Justice Warren E. Burger of the U.S. Supreme Court

Any litigator will attest that litigation has become a lengthy and expensive proposition. It is a stressful process that destroys relationships. As some disputes will inevitably arise, lawyers seeking to best serve their clients must consider forms of alternative dispute resolution ("ADR" or "dispute resolution") which can avoid much of the delay, expense and disruption of traditional litigation. Mediation and arbitration, both of which are responsive to party needs in a way that is not possible in a court proceeding, are two of the most frequently utilized forms of dispute resolution.

When a dispute involves a municipality, the costs of resolving it will typically be borne by the taxpayers either directly through taxation, or indirectly through increased insurance premiums. No matter who ultimately prevails in the action, it is the taxpayer who pays. Arbitration and mediation can be used as an expeditious, more cost-effective means to remedy these disputes. For public officials, these dispute resolution

mechanisms have the added benefit of promoting effective communication with the public and making government more responsive to community concerns.

Mediation and arbitration are no longer *alternate* dispute resolution mechanisms but have become common in the resolution of commercial and non-commercial disputes between and among business entities and/or individuals. Mediation and arbitration are routinely incorporated into contracts as the method of choice for resolving disputes that may arise in the future. They are also routinely used after problems arise and the parties are seeking an appropriate means to resolve their disputes.

Nevertheless, in the context of non-employment related municipal disputes, there remains significant potential to expand these forms of ADR. This white paper reviews the benefits of mediation and arbitration generally and then provides several examples of the types of non-employment municipal disputes that can be resolved using these methods of dispute resolution.

## I. Mediation

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, and expenses, and waste of time." Abraham Lincoln

Mediation is the process in which parties engage a neutral third person to work with them to facilitate the resolution of a dispute. The growth of mediation over the past fifteen years has been exponential, a tribute to the success of the process. User satisfaction is high as parties retain control and tailor their own solution in a less confrontational setting that preserves relationships and results in a win/win instead of a win/lose. While not every case can be settled, an effort to mediate is appropriate in virtually any subject matter and any area of the law. The advantages of mediation include the following:

- 1. **Mediation Works.** Statistics have shown that mediation is a highly effective mechanism for resolving disputes. The rate of success through mediation is very high. For example, the mediation office of the U.S. District Court for the Southern District of New York reports that over 90 percent of its cases settle in mediation. Most cases in mediation settle long before the traditional "courthouse steps" at a significant saving of cost and time for the parties.
- 2. Control by the Parties. Each dispute is unique, and the parties have the opportunity to design their own unique approach and structure for each mediation. They can select a mediator of their choice who has the experience and knowledge they require, and, with the help of the experienced mediator, plan how the mediation should proceed and decide what approaches make sense during the mediation itself.

- 3. The Mediator plays a crucial role. The mediator's goal is to help the parties settle their differences in a manner that meets their needs, and is preferable to the litigation alternative. An experienced mediator can serve as a sounding board, help identify and frame the relevant interests and issues of the parties, help the parties test their case and quantify the risk/reward of pursuing the matter, if asked provide a helpful and objective analysis of the merits to each of the parties, foster and even suggest creative solutions, and identify and assist in solving impediments to settlement. This is often accomplished by meeting with parties separately, as well as in a group, so that participants can speak with total candor during the mediation process. The mediator can also provide the persistence that is often necessary to help parties reach a resolution.
- 4. Opportunity to Listen and be Heard. Parties to a mediation have the opportunity to air their views and positions directly, in the presence of their adversaries. The process can thus provide a catharsis for the parties that can engender a willingness to resolve differences between them. Moreover, since they are heard in the presence of a neutral authority figure, the parties often feel that they have had "their day in court."
- 5. **Mediation Helps In Complicated Cases**. When the facts and/or legal issues are particularly complicated, it can be difficult to sort them out through direct negotiations, or during trial. In mediation, in contrast, there is an opportunity to break down the facts and issues into smaller components, enabling the parties to separate the matters that they agree upon and those that they do not yet agree upon. The mediator can be indispensable to this process by separating, organizing, simplifying and addressing relevant issues.
- 6. **Mediation Can Save An Existing Relationship.** The litigation process can be very stressful, time consuming, costly and often personally painful. At the end of litigation, the parties are often unable to continue or restart any relationship. In contrast, in mediation disputes -- such as those between an employer and employee or partners in a business -- can be resolved in manner that saves a business or personal relationship that, ultimately, the parties would prefer to save.
- 7. **Expeditious Resolution.** The mediation can take place at any time. Since mediation can be conducted at the earliest stages of a dispute, the parties avoid the potentially enormous distraction from and disruption of one's business and the upset in one's personal life that commonly results from protracted litigation.
- 8. **Reduced Cost.** By resolving disputes earlier rather than later the parties can save tremendous sums in attorney's fees, court costs and related expenses.
- 9. Lessens the Emotional Burden. Since mediation can be conducted sooner, more quickly, less expensively and in a less adversarial manner, there typically is much less of an emotional burden on the individuals involved than proceeding in a burdensome and stressful trial. Furthermore, proceeding through trial may involve

publicly reliving a particularly unpleasant experience or exposing an unfavorable business action which gave rise to the dispute. This is avoided in mediation.

- 10. Confidential Process and Result. Mediation is conducted in private -- only the mediator, the parties and their representatives participate. The mediator is generally bound not to divulge any information disclosed in the mediation. Confidentiality agreements are often entered into to reinforce the confidentiality of the mediation. Moreover, the parties may agree to keep their dispute and the nature of the settlement confidential when the matter is resolved.
- 11. Avoiding the Uncertainty of a Litigated Outcome. Resolution during mediation avoids the inherently uncertain outcome of litigation and enables the parties to control the outcome. Recent studies have confirmed the wisdom of mediated solutions as the predictive abilities of parties and their counsel are unclear at best. Attorney advocates may suffer from "advocacy bias" -- they come to believe in and overvalue the strength of their client's case.

In an analysis of 2,054 cases that went to trial from 2002 to 2005, plaintiffs realized smaller recoveries than the settlement offered in 61% of cases. While defendants made the wrong decision by proceeding to trial far less often -- in 24% of cases -- they suffered a greater cost -- an average of \$1.1 million -- when they did make the wrong decision.

A mediator without any stake in the outcome or advocacy bias can be an effective agent of reality in helping the parties be realistic as to their likely litigation or arbitration alternative."

- 12. **There are no "winners" or "losers."** In mediation, the mediator has no authority to make or impose any determination on the parties. Any resolution through mediation is solely voluntary and at the discretion of the parties.
- 13. **Parties Retain Their Options**. Since resolution during mediation is completely voluntary, the option to proceed thereafter to trial or arbitration is not lost in the event the mediation is not successful in resolving all matters.
- 14. **The pro se litigant.** Mediation can be very helpful when a party does not have an attorney and is therefore representing him/herself pro se. Court litigation can be very difficult for the pro se litigant who is unable to navigate the complexities of the court process and trial. With the downturn in the economy, studies showed that fewer parties are represented by counsel and that lack of representation negatively impacted the pro se litigant's case. Dealing with a pro se litigant in court can also create difficult challenges for the party that is represented by counsel. However, in mediation, the parties can more

<sup>&</sup>lt;sup>1</sup> Randall Kiser, Beyond Right and Wrong: The Power of Effective Decision Making for Attorneys and Clients, (Springer Science + Business Media LLC New York publ.) (2010)

<sup>&</sup>lt;sup>2</sup> Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts (Preliminary), ABA Coalition for Justice, July 12, 2010, available at http://new.abanet.org/JusticeCenter/PublicDocuments/CoalitionforJusticeSurveyReport.pdf

easily participate in the process and benefit from the involvement of an experienced mediator.

15. *More creative and long-lasting solutions*. Parties develop and create their own solutions to issues addressed in mediation and may enter into innovative, creative solutions tailored to their own particular interests rather than being limited by the remedies available in court or arbitration.<sup>3</sup> Because the parties are involved in crafting their own solutions, the solutions reached are more likely to be satisfying, long-lasting ones, adhered to by the parties.

# II. Arbitration

"Choice- the opportunity to tailor procedures to business goals and priorities- is the fundamental advantage of arbitration over litigation."

Arbitration is the process in which parties engage a neutral arbitrator or panel of three arbitrators to conduct an evidentiary hearing and render an award in connection with a dispute that has arisen between them. As arbitration is a matter of agreement between the parties, either pre-dispute in a contract as is generally the case, or post-dispute when a difference arises, the process can be tailored to meet the needs of the parties. With the ability to design the process and the best practices that have developed, arbitration offers many advantages including the following:

- 1. **Speed and Efficiency**. Arbitration can be a far more expedited process than court litigation. Arbitrations can be commenced and concluded within months, and often in less than a year. Leading dispute resolution providers report that the median time from the filing of the demand to the award was 8 months in domestic cases and 12 month in international cases compared to a median length for civil jury trials in the U.S. District Court for the Southern District of New York of 28.4 months and through appeals in the Second Circuit many months longer.<sup>5</sup>
- 2. Less Expensive. The arbitration process can result in substantial savings of attorney's fees, court costs and related expenses because the arbitration process generally does not include time consuming and expensive discovery that is common in courts in the United States (such as taking multiple depositions and very extensive ediscovery). Time consuming and expensive motion practice is also much less common.

<sup>&</sup>lt;sup>3</sup> Irene C. Warshauer, *Creative Mediated Solutions*, 2 New York Dispute Resolution Lawyer n.2, p. 59-60 (Fall 2009).

<sup>&</sup>lt;sup>4</sup> Thomas J. Stipanowich, *Arbitration and Choice: Taking Charge of the "New Litigation."* 7 De Paul Bus. & Comm. L.J. 3 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1372291

<sup>&</sup>lt;sup>5</sup> Judicial Business of the United States Courts 2009 Table C-5, available at http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2009/tables/C05Mar0 9.pdf

- 3. More Control and Flexibility. In cases where arbitration is required by contract, the parties can prescribe various preferences to suit their needs, such as the number of arbitrators hearing the case, the location of the arbitration and scope of discovery. Once the arbitration is commenced, a party seeking a more streamlined and less expensive process will be better able to achieve that goal than in court where the applicable procedural and evidentiary rules govern. The parties will also have input in scheduling the hearing at a time that is convenient.
- 4. **Qualified Neutral Decision Makers.** The parties can select arbitrators with expertise and experience in the relevant subject matter or that meet other criteria that they desire. Arbitration avoids a trial where the subject matter may not be within the knowledge or experience of the judge or jury.
- 5. Arbitration is a Private Process. Arbitrations are conducted in private. Only the arbitrators, the parties, counsel and witnesses attend the arbitration. Confidentiality of the arbitration proceedings, including sensitive testimony and documents, can be agreed to by the parties. In contrast, court proceedings are generally open to the public. In the generally less adversarial context of a private arbitration, ongoing relationships suffer less damage.
- 6. Arbitration provides Finality. In court proceedings, parties have the right to appeal the decision of a judge or the verdict of a jury. In contrast, the grounds for court review of an arbitration award are very limited. The award of an arbitrator is final and binding on the parties.
- 7. Special considerations for international arbitrations. Party selection of arbitrators ensures that a neutral decision maker rather than the home court of one party decides the case, and allows the parties to select an arbitrator with cross cultural expertise and understanding of the different relevant legal traditions. Of crucial importance also is the enforceability of arbitration awards under the New York Convention, in contrast to the much more difficult enforcement of court judgments across borders.

### III. Application of Mediation and Arbitration to Municipal Disputes

The number of contexts in which mediation and arbitration may be utilized by municipalities is limited only by the context of the disputes they may be a party to. Below are a just a few examples of how arbitration and mediation can be incorporated into common municipal disputes.

#### 1. Inter-Governmental Disputes

Mediation can be particularly helpful in resolving disputes between two or more local governments. As noted above, one important advantage of mediation is to preserve

existing relationships. Due to their nature, local governments interact with one another on a continual basis. And despite recent efforts to reduce their number, chances are that these governments will continue to exist and work together in perpetuity.

Nevertheless, disputes between governmental entities occasionally arise. As individuals responsible for governance change frequently, clashes of personality, politics or otherwise may operate to deteriorate existing relationships. When such disputes arise, it is in the best interest of the public for local officials to resolve these disputes as amicably, cheaply and expeditiously as possible. Two common contexts where such disputes arise are inter-governmental planning and zoning and the consolidation / sharing of services.

### a. Inter-municipal Planning and Zoning disputes

One common context for these inter-municipal disputes is planning and zoning. When one government undertakes a project in another nearby community, or within a different level of government within its boundaries (i.e., a county undertaking a project in a town within its bounds), there are often questions about whether the host community's zoning and planning laws will apply to the project. To answer these questions, the host community must conduct a balancing test, taking into consideration a number of factors enumerated by the Court of Appeals in 1988 case Matter of County of Monroe v. City of Rochester. Pursuant to Monroe, the host community must weigh the following nine factors:

- 1. The nature and scope of the instrumentality seeking immunity;
  - 2. The encroaching government's legislative grant of authority;
  - 3. The kind of function or land use involved;
  - 4. The effect local land use regulation would have upon the enterprise concerned;
  - 5. Alternative locations for the facility in less restrictive zoning areas;
  - 6. The impact upon legitimate local interests;
  - 7. Alternative methods of providing the proposed improvement;
  - 8. The extent of the public interest to be served by the improvements; and
  - 9. Intergovernmental participation in the project development process and an opportunity to be heard.

A quick glance at these factors reveals that inter-municipal zoning disputes provide an excellent opportunity for resolution through mediation. Mediation can offer a forum for the evaluation of these factors in an expeditious and non-adversarial manner, and encourages the participation and cooperation of all parties involved. A cooperative approach to resolving these disputes is particularly important as it is likely that the municipal parties involved will have to work with one another not only on the subject project, but on other issues as well.

#### b. Inter-municipal Cooperation and Consolidation

One area where there is likely to be an increase in inter-municipal disputes is shared services / inter-municipal cooperation. Although the concept of sharing services

<sup>&</sup>lt;sup>6</sup> Matter of County of Monroe v. City of Rochester, 72 N.Y.2d 338 (1988)

among and between local governments is not a new concept in New York State, such initiatives have received much more attention recently. A State grant program for shared services has been included in the state's budget each of the past five years, and recent legislative enactments have attempted to make it easier to offer cooperative services and consolidate local governments.

There are a number of issues associated with cooperative services and government consolidation that can be very complex and very difficult to resolve. When entering into a cooperative agreement for a particular service, issues such as liability of employees and the allocation of costs can give rise to disputes between the parties. If the disputes that arise during the course of an agreement are resolved through litigation, the efficiencies and cost-savings associated with the agreement can easily be lost. No matter how well intentioned they may be, governmental parties to cooperative agreements are well served by anticipating such disputes and agreeing to a means to resolve them without resorting to litigation. When agreed to and incorporated into the inter-municipal agreements, a dispute resolution clause will provide certainty to the parties as to how to proceed, and encourage them to work cooperatively to resolve the dispute.

A recent addition to the General Municipal Law is designed to facilitate the consolidation and dissolution of certain types of local governments. The process can be initiated by either the governing bodies of the local governments involved, or by petition of the residents of such local governments. Either way, the consolidation or dissolution of local governments must be in accordance with a consolidation / dissolution plan. These plans, however, must be comprehensive and will often address issues that are controversial and require local officials to make decisions that may be politically unpopular. Mediating these issues in the course of developing a plan can save both time and money for the local government entities involved.

Regardless of the particular context, inter-municipal disputes often invoke strong emotional support or opposition from the local officials involved as well as the residents of the community. Resolving these disputes through mediation can provide an opportunity for all to be heard and ultimately lessen the emotional burden caused by the disputes.

#### 2. <u>Disputes Involving Public Officers</u>

One of the more difficult positions a municipal attorney may find his or herself in is resolving a dispute between two elected officials or bodies. A chief executive may challenge the authority of a local legislative body, a local clerk may refuse to perform a non-discretionary act, or a legislative body may be attempting to discipline another elected official. Just recently, the Mayor of New York City pursued an action against the City Council all the way to the NYS Court of Appeals over their respective powers.<sup>8</sup>

<sup>8</sup> Mayor of the City of New York v. Council of the City of New York, 9 N.Y.3d 23 (2007).

<sup>&</sup>lt;sup>7</sup> General Municipal Law Art. 17-a, New York Government Reorganization and Citizen Empowerment Act.

Although these disputes occur on a routine basis, they litigated only on occasion.

The lack of case law on many of these issues means that there is no clear precedent for many of these disputes, making resolution more difficult. What is more, these disputes often become political, leaving the parties involved, as well as the public, frustrated and cynical about government and public service. As these officials will likely have to continue working with one another, and with the public, for the duration of their terms of office, resolving these disputes through a non-adversarial mediation process will help preserve the working relationship needed between these officials.

Mediation has also proven to be a useful tool to resolve disputes between public officials and citizens within the community that may not otherwise be actionable in a court of law. For example, Civilian Police Review Boards (CPRBs) have been established in some communities to increase police accountability and improve the public's communication with the local police department. In some cases, rather than pursue a costly and time-consuming investigation of the citizen's complaint, the complainant and the police offer may agree to resolve the dispute through mediation. Resolving disputes of this nature through mediation not only provides an expeditious and cost efficient remedy, but helps maintain the public's confidence in its officials.

#### 3. Municipal Purchase and Public Works Contracts (Non-employment)

Municipalities enter into contracts as a routine part of their day to day operations, whether it be a purchase contract for a quantity of road salt or a public work contract for an expansion of the town hall. Such contracts serve an important function in government operations. Despite the best intentions of the parties, disputes will occasionally arise under these contracts.

Municipalities are authorized to enter into arbitration and mediation agreements to resolve the disputes arising under such contracts.<sup>9</sup> This authority is derived from the principle that the "authority to contract implies the authority to assent to the settlement of disputes by a means of arbitration." Although the authority to assent to arbitration may be implied from the authority to enter into contracts, the intent to arbitrate a dispute arising under a contract must be an "express, direct and unequivocal agreement in writing between the parties."11

A well written dispute resolution clause can be particularly beneficial for complex public works projects. For example, it can often be difficult for a public official to

<sup>&</sup>lt;sup>9</sup> Village of Brockport v. County of Monroe Pure Waters District, 75 A.D.2d 483 (1980).

Dormitory Authority of the State of New York v. Span Elec. Corp., 18 N.Y.2d 114 (1966), citing Campel v. City of New York, 244 N.Y. 317 (1927), "The expediency of such a settlement of differences is to be determined by the public officers to whom the regulation of the form of contracts is confided by the statute."

11 Village of Brockport, supra note 3, at 488.

determine whether a contractor has complied with the written specifications, or has otherwise satisfactorily performed their obligations under the contract. In such cases, independent engineering consultants may agree to be the arbiter of such factual issues arising under the contracts. Again, this will allow for a much more expeditious and cost effective manner of resolving complex factual issues than would otherwise be accomplish through litigation.

#### 4. Land Use

Dispute resolution may be used in connection with local land use review processes to enable parties representing diverse interests to negotiate a consensus on some or all of the controversial aspects of a proposed application prior to the decision of a town board, planning board, architectural review board or zoning board of appeals. It may also be used to prevent or settle a lawsuit after a board's decision, or in connection with town planning initiatives.

The traditional land use review process focuses to a large extent on the public hearing, at which speakers state whether they are for or against the proposed application. The process, and especially the public hearing, is often emotionally charged and adversarial. The format of the hearing, which is based on a courtroom model, affords no opportunity for meaningful dialogue among the interested parties and therefore does not lend itself to collaborative problem solving. Often, a board must sift through reams of written comments and testimony, which may contain conflicting scientific and technical data.

After the hearing, the board must then decide whether to grant, deny or conditionally grant the application before it. It often does not have the latitude to devise creative solutions beyond the scope of the specific application upon which it is deliberating in order to respond to certain legitimate concerns that may be raised by the public. Dissatisfaction with the outcome of the process often results in the filing of lawsuits challenging the decision of the board.

Unlike the traditional process in which there are typically winners and losers, ADR can often achieve a "win-win" resolution for all of the interested parties. In the context of land-use decision making, mediation is the most commonly used form of ADR, although other forms of ADR, such as collaborative decision-making or consensus building, may also be utilized. In this process, a neutral facilitator assists parties to develop a collaborative framework for reaching consensus on a particular path or strategy, such as in connection with the development of a comprehensive plan or proposed regulation.

Mediation provides an atmosphere in which representatives of all interested parties, experts and planners can communicate more effectively and collaborate on issues of concern. A mediated process encourages brainstorming and the creation of solutions

that can satisfy the interests of most, if not all, participants in the mediation. Because of the opportunity for improved communications, mediation often has the added benefit of streamlining the review process, especially where it its utilized at an early stage.

Most types of land use matters are appropriate for ADR. Examples include applications for site plan or subdivision approvals, special use/conditional permits, rezonings, subdivision plats, floating zones, and planned unit developments. It may also be used to facilitate the preparation or update of comprehensive plans or zoning ordinances. Some land use professionals have argued that ADR should not be used in connection with non-discretionary decisions, such as for use variances, which require application of specific legal criteria. It is uniformly agreed, however, that if a use variance is granted, ADR may be used to impose conditions on the variance, which are discretionary in nature.

The New York State Legislative Commission on Rural Resources previously published a model local law providing for the use of voluntary mediation in the prevention or resolution of municipal planning, zoning and land use disputes. The model contemplates the use of existing voluntary mediation programs, technical assistance and training as an optional means to enhance the quality of life for local citizens. It helps bring about cost-effective prevention or resolution of certain planning, zoning and land use disputes in the community.

The Rural Resources model provides that the commencement of any such mediation proceeding is at the discretion of the authorized municipal board or body having jurisdiction in the dispute or potential dispute, and that all costs associated with voluntary mediation should be allocated among the parties of interest as determined by mutual agreement of the parties. It further provides for a required notice to the parties in interest that: 1) the mediator has no duty to protect their interests, or provide them with information about their legal rights; 2) signing a mediated settlement agreement may adversely affect their legal rights; and 3) they should consult an attorney before signing a mediated settlement agreement, where they are uncertain of their rights.

The Rural Resources model also recognizes limitations upon government discretion, by providing that: 1) any mediation proceeding or outcome initiated shall complement, but not replace, otherwise applicable practices, procedures or enforcements, whether required by state law, local law, or ordinance; 2) the outcome of a mediation proceeding shall not be deemed to bind or otherwise limit the discretion of the authorized municipal board or body having jurisdiction in the matter being mediated; and 3) an agreement that requires additional action by the authorized municipal board or body shall not be deemed to be self-executing. If any such additional action by the authorized municipal board or body is required, the landowner or his or her agent shall be responsible for initiating a request for such action and supplying any information required by said municipal board or body to undertake the action. Further, provided that the action undertaken by such municipal board or body shall not be bound or limited by the mediation agreement.

#### 5. Local Code Enforcement

Mediation of any dispute requires consent to a process separate and apart from the judicial system. While use of mediation in the code enforcement context can be a useful additional tool, establishing a preventive system which can eliminate or reduce the need for judicial enforcement seems to be very effective. Many communities in the US and in Western Europe, have established voluntary systems for community mediation of property maintenance and nuisance disputes which, when unresolved, otherwise consume municipal code enforcement resources – typically code enforcement, police or animal control.

The New York State Unified Court System currently partners with local non-profit organizations, known as Community Dispute Resolution Centers (CDRCs), to provide mediation, arbitration and other dispute resolution options. The Court System also provides special mediation services to the agricultural community through the New York State Agricultural Mediation Program. According to the Unified Court System, in 75 percent of the cases that are mediated, parties reach a mutually acceptable agreement and a recent statewide survey indicated that 90 percent of people who mediated their case felt that mediation was a good way to address the dispute even when they did not reach agreement on all of the issues.

Typical issues resolved through a community mediation system include:

- Noise complaints
- Complaints about pets / barking dogs and leash violations
- Parking space problems
- Property maintenance/nuisance issues
- Safety and environmental concerns

While these issues often can be addressed by neighbors talking to each other, there are times when people simply can't work out their differences and they resort to the courts, or complain to the municipal code enforcement authorities for assistance. If there is an alternative system made available for dispute resolution which is low cost, fast, confidential, and, most importantly, effective, experience shows mediation can solve the dispute at less cost to all- including the local government.

When it comes to the enforcement of a municipality's local codes, the municipal interest is frequently served by obtaining compliance with the law- not in fines or penalties. In those circumstances, arriving at a compliance process and timetable through mediation can be a viable option. This "compliance first" policy can be served by incorporating a mediation process as an enforcement tool by local law.

There is no reason that the Rural Resources model law, discussed above, could not be applied in the context of the state's Property Maintenance Code (State Code). According to the code, violations of must be dealt with "in a manner appropriate to the applicable provisions of a city, town, village or county and shall be in accordance with the applicable provisions of local law."<sup>12</sup> Thus, the code anticipates enforcement mechanisms will be provided by local law.

The State Code provides in general, that property must be maintained "in a clean, safe, secure and sanitary condition ... so as not to cause a blighting problem or adversely affect the public health or safety." While local governments can't waive, modify or otherwise alter the State code, what constitutes a violation in any individual context can sometimes be the subject of discussion and hence mediation.<sup>13</sup>

Similarly, how a violation may be remedied is frequently capable of alternative solutions. The State Code explicitly recognizes this in §105.2 which provides for alternative materials and methods:

> The provisions of this code are not intended to prevent the installation of any design or material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the State Fire Prevention and Building Code Council finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

For example, the State Code provides that "drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public nuisance." How that is accomplished can be an appropriate mediation topic.

#### 6. Environmental Cases

Dispute resolution is especially useful when a municipality faces potential liability for soil or groundwater contamination under such statutes as the Comprehensive Environmental Response, Compensation and Liability Act. A municipality's liability may arise from its ownership or operation of a municipal solid waste landfill, from the generation and disposal of municipal waste, or from spills of petroleum or chemical contaminants. These types of environmental disputes may involve many potentially responsible parties. ADR can facilitate agreement among the disputing parties

<sup>&</sup>lt;sup>12</sup> (§PM106.1)

<sup>13 (§</sup>PM111.1) 14 (§PM507.1)

concerning their liability in a manner that is less expensive and time consuming than litigation.

Mediation can also be used to settle oil and petroleum spill cases in which a town may be either the discharge or the injured party. Oil and petroleum spills can damage lakes, beaches, fish, drinking water and other natural resources, and result in significant property damage and clean up costs. For example, when an underwater pipeline ruptured affecting a body of water between New York and New Jersey, mediation rather than litigation was used to craft a settlement which would not have been likely in a court ordered decree.

ADR may also be used to assist a municipality with problems stemming from industrial operations such as odors, air emissions or noise issues. It may also be used to address issues related to climate change. Frequently, a municipality may be faced with the competing needs of protecting the quality of life for its citizens and preserving its relationship with the industry which provides needed jobs and tax revenues in the community. Paper mills, quarries, power plants pharmaceutical companies, incinerators and sewage treatment plants are just a few of the industries which might present such conflict within a community. Mediation or other forms of ADR have been used in such cases to allow all parties to the dispute to participate in a process to identify the source of the odor, noise or emission, gather needed information on technical solutions, develop a plan for reduction or elimination of the offending matter, and establish a timetable for accomplishing such tasks.

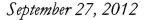
#### Conclusion

When it comes to disputes involving a municipality, there is often more at stake for municipal officials than dollars and cents. Establishing effective communication with the public, obtaining compliance with its local codes, maintaining the public's confidence in its public servants and working cooperatively at all levels in the best interest of the public are paramount considerations. The alternative dispute resolution measures discussed in this paper help local government officials maintain this perspective in the face of a dispute, and the effectiveness of these techniques will be limited only by the extent to which the municipality makes ADR processes available and accessible.

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## General Information about Using DSC's Public Disputes Program

We would ask parties interested in using our services to please consider the following:

1. It is necessary for DSC staff to conduct a situation assessment as a basis for developing a process design.

We strive for the deliberations and decision making that take place through our processes to be acceptable to all of the groups and individuals who will be participating in or affected by the process. Therefore, DSC's first step is to interview key informants in order to learn more about the situation. In general, a first set of interviewees is identified through consultations with the client, supplemented by additional key informants suggested during this first set of interviews. DSC will learn from these interviewees who the direct stakeholders and other interested parties are, what issues they would want to address through the process, what their interests and options are with respect to those issues, and what their needs are with respect to how the process is designed, conducted, and used.

2. If we determine from the situation assessment that we can add value through our services, then we'll then develop a process design describing how we think it can work.

There is a wide variety of purposes that an intervention by DSC can fulfill and a wide variety of forums and formats that may be used to advance a set of purposes. DSC will work collaboratively with the client and stakeholders to develop an effective, efficient, participatory, well-balanced, and responsive process. In many situations it is helpful during the process design phase for DSC to convene a working group with significant participation by a cross-section of stakeholders and other interested parties. The working group would receive DSC's situation assessment and provide an initial forum through which people with different perspectives on the issue can plan the intervention. The following are examples of the elements that DSC works with the process design phase:

- O The stage(s) in community decision making that the intervention will be informing. For example, is the goal to air perceptions, define a problem, identify options, develop solutions, implement agreements?
- O The nature of the final product: Will it be a recommendation to an elected board? To department staff? To an advisory board? Will it take the form of a strategy for moving forward on some shared set of goals? The physical design of a space or facility? Programming ideas? A vision statement? A set of options rank-ordered for addressing some need? A report of the conversation by an objective party that might advance community awareness and understanding of a situation? Improved working relationships?
- Who should participate in the deliberations and decision making within the process (categories of participants if not specific individuals). Is participation by invitation (and if so then by whom and how) or open to the public, or some hybrid approach?
- O How long the deliberations and decision making will take, along with realistic timelines, milestones, and deadlines. Will there be one forum or a series? What will be the sequence of events (e.g., meetings, research, documentation, publicity)?
- O What will the participants be asked to do before and during the forum(s)? What is the authority of the participants: the scope of their shared decision making? Will decisions, if any, be advisory (that is, recommendations to whom, and on what issues) or binding (on whom, and how would such authority be enforced)?
- O Logistics. How will any needs for staff time, small group facilitation, note taking, technical studies, scheduling, meeting facilities, advance and follow-up communications, publicity, registration, equipment and materials be arranged, managed and paid for? How will participants be contacted and encouraged to attend the forum(s)?
- O What are the ground rules? For example, will the news media be invited? If this is to be a decision process, then how will decisions be made? Which technical resource people will make formal presentations, if any, and what is

their role in dialogue/decision making after they present? What guidelines will contribute toward a civil yet robust discourse?

O How will credible information be presented; by whom? What will be the role of any local government staff? What background information is pertinent to the issue(s), on what is known and not known, and on the methods for generating answers to relevant questions?

# 3. We'll then facilitate implementation of the process in a manner that is flexibly consistent with the process design.

DSC will serve as lead facilitator for the forum(s) convened as part of the process. Whether it's a small group using mediation to resolve a specific dispute, or a larger community process, meetings facilitated by DSC are planned and conducted to achieve the following goals: (1) discussions focus on one subject at a time, (2) group members are supported with a clear and effective process relevant to the meeting's purposes, (3) the conversation is open to all those who have been identified in advance as being part of the deliberations, and balanced among them, (4) roles of all attendees — observers, resource persons, decision makers, discussion participants — are clearly defined and agreed upon, and (5) participants' feelings and ideas are taken into consideration.

DSC typically develops a plan prior to each session that it facilitates to ensure integrity across the following factors:

- o Anticipated number of meeting participants
- o Invitees' expectations
- o Invitees' resources (e.g., authority, information, skills, options)
- Purposes of the meeting
- o Topics to be discussed
- o Methods to be used
- Allocation of time
- Assignments of responsibilities
- o Facilities and equipment

Background information on the Public Disputes Program lead staff and past projects is attached. For more information, please contact Andy Sachs, Program Coordinator, <u>asachs@disputesettlement.org</u>, (919) 929-8800 ext. 23, 302 Weaver Street, Carrboro, NC 27510



## Andrew M. Sachs Professional Biography

Andy Sachs is the founding Coordinator of the Public Disputes Program at the Dispute Settlement Center (DSC), a not for profit organization based in Carrboro, North Carolina. Since 1987, the Public Disputes Program has been designing collaborative planning and decision making processes for state and local jurisdictions and non-governmental groups, facilitating large and small format meetings in support of state and local public engagement efforts, mediating conflict around local public sector issues, and training individuals from all sectors in such process, leadership, and communication skills.

Sachs was awarded a Masters in City Planning from M.I.T. (1986) and a B.A. in Environmental Studies from the State University of New York at Binghamton (1979).

He is a member of the National Association for Community Mediation (since 1994), the Association for Conflict Resolution (since 1993, including ACR's Environmental and Public Policy Section), and the National Roster of Environmental Dispute Resolution and Consensus Building Professionals (since 2000). He served on the Board of Directors of the North Carolina Mediation Network from 1990-2004. His publications include "Understanding Public Disputes Resolution in Community Mediation" (*Mediation Quarterly, v.17, no. 4, Summer 2000*), and contributions to two chapters in <u>Alternative Dispute Resolution in North Carolina: A New Civil Procedure</u> (Raleigh, NC: North Carolina Bar Foundation and the North Carolina Dispute Resolution Commission, 2003).

A list of projects representative of his experience follows:

1. Design and facilitation of a year long community consensus building process on the Town of Carrboro's Northern Transition Area Small Area Plan. In 2000, the "Facilitated Small Area Plan for Carrboro's Northern Study Area" was selected by the NC Chapter of the American Planning Association as the recipient of the Brian Benson Award for Small Community Comprehensive Planning.

- 2. Facilitation of a series of meetings convened by the Inter-Faith Council for Social Service (IFC) at the direction of the Chapel Hill Town Council through which IFC is seeking advice on the contents of a "Good Neighbor Plan" for addressing neighboring residents' concerns about a proposed transitional housing and emergency shelter on Martin Luther King, Jr. Boulevard and Homestead Road.
- 3. Facilitation of a series of work sessions through which residents living near the Orange County, NC Regional Landfill and representatives of local governments negotiated conditions by which the governments would acquire soil from adjoining tracts for use in landfill operations while minimizing adverse impacts on residents and the environment.
- 4. Facilitation of a series of meetings through which representatives of the University of North Carolina at Chapel Hill and neighborhoods surrounding the campus power plant reached understandings and agreements for minimizing the impacts of a proposed coal silo demolition/reconstruction project.
- 5. Design and facilitation of the Shaping Orange County's Future Task Force process: 27 residents of Chapel Hill, Carrboro, Hillsborough and the unincorporated areas of Orange County, NC appointed by their respective jurisdictions reached consensus after years of study and deliberation on a set of values and goals for guiding the community's future, and on a set of recommendations for achieving those ideals.
- 6. Facilitation of the stakeholder-led planning process and the resulting half-day "Forum on the Proposed Glen Lennox Neighborhood Conservation District" in February 2009 at which neighborhood residents, property owners, Chapel Hill Town officials, and interested members of the broader community shared information, opened new lines of communication, and identified shared values related to neighborhood protection and possible redevelopment of the Glen Lennox apartments.
- 7. Co-Mediator (with Dr. David Godschalk) for multiple parties (Neighborhood Coalition for Responsible Development in Raleigh, the Oberlin Village community, First Colony Property Company, City of Raleigh) in conflict over First Colony Properties' proposal to develop 15 acres as mixed-use infill at Wade Avenue and Oberlin Roads in Raleigh, NC.

- 8. Process-design consultation and meeting facilitation in support of the Orange County, NC Comprehensive Plan Update (2008), including facilitation of joint public sessions for multiple County advisory boards, a special Planning Board meeting, and public information forums.
- 9. Mediation for sponsors of a proposed group home for people living with AIDS and residents of four surrounding neighborhoods in opposition to the proposal in Carrboro, NC. Representatives from the two sides jointly organized a facilitated public forum at which the proposal and neighborhood concerns were discussed. Opposition to the group home dissipated after information was shared, relationships were established, and lines of communication opened across the two groups.
- 10.Design and facilitation of an innovative year-long community problem solving process sponsored by the Winston-Salem, NC/Forsyth County Coalition on Drug and Alcohol Problems through which over 60 organizations in the public, private and civic sectors reached consensus on improvements to local substance abuse treatment services.
- 11. Consultation to Dr. David Salvesen, Director, UNC-CH Program on Smart Growth and the New Economy, Center for Urban and Regional Studies, for projects in North Carolina and in the Atlanta metropolitan region relating to collaborative planning across school districts and county and municipal governments in public school siting processes, including design and facilitation of the May 2006 Summit on School Facility Siting convened by CURS for over 30 municipal, county, and schools officials from Cabarrus, Guilford, Johnston and Union counties.
- 12.Design and facilitation of a conference, "Leading with Civility: Navigating Complex Conversations with Passion and Courage" attended by over 100 civic leaders convened in Charlotte, North Carolina by the Wildacres Leadership Initiative, the Lee Institute/American Leadership Forum, Leadership Charlotte, Whitehead Associates/Center for Intentional Leadership, and the Community Building Initiative.
- 13.Organized and facilitated a series of meetings for an ad hoc Public Participation Planning Group under contract to the NC Low Level Radioactive Waste Management Authority. Environmentalists, electric utility representatives, consumer advocates, state and local government officials and others with interests in low-level radioactive waste met together to plan for public

participation in the state's waste management facilitating siting process.

- 14. Facilitation of focus group session in support of a project through which the Center for Urban and Regional Studies (CURS), University of North Carolina at Chapel Hill, assisted the North Carolina Division of Emergency Management to assess the technical assistance needs of local governments in developing hazard mitigation plans. Developed plan for conducting the focus group in collaboration with the client, including desired outcomes, discussion guidelines, questions and discussion topics, agenda/time flow, ways in which information generated by the focus group would be captured, and roles for all DSC and CURS personnel who were present during the focus group session.
- 15. Process consultation and meeting facilitation funded by the federal Centers for Disease Control and Prevention in support of state and local public health departments' efforts to engage stakeholders and the public at large in Ohio in the development of community-based approaches for managing pandemic influenza (H1N1).
- 16. Facilitation of the North Carolina's Scientific Advisory Board for Nutrient-Impaired Waters, charged by the NC General Assembly and appointed by the Secretary of the Department of Environment and Natural Resources, to identify and apply valid models for nutrient load reduction in the Jordan Lake watershed and identify management strategies that can be used by local governments to reduce nutrient loading from existing development.