

Commentary

Some Thoughts On Planners and the New Dispute Resolution

David R. Godschalk

Dispute resolution techniques have come a long way from the old ad hoc approaches derived from academic psychology experiments. The new methods deserve an important place in the planner's tool kit. In fact, planners trained in the new techniques often are better equipped to resolve development disputes than lawyers or outside mediators.

I am aware of the sometimes exaggerated claims for negotiated settlement as the latest social panacea. Dispute resolution is no silver bullet. Many development disputes can not, and should not, be settled by negotiation. Some disputes should be decided in the courts; cases where the public interest is trampled do not deserve a win/win compromise. But the judicious use of dispute resolution could work out a large number of the development conflicts that planners face every day. The results would be more effective, efficient, and beneficial to all sides.

I believe that planners have an edge over lawyers and outside mediators due to our understanding of the substance of development disputes, as opposed simply to the process of dispute resolution. Our training as problem solvers equips us to master the process side, while our knowledge of urban systems equips us to generate creative alternative solutions. With some grounding in the theory and methods of dispute resolution, planners can learn to become very effective at seeking to further the public interest through use of these new techniques.

While there are a number of specialized methods available, the two main types of conflict settlement approaches are negotiation and mediation. Negotiation techniques are those that involve the opposing parties directly. An example would be negotiation between a city planning director and a developer over the amount of off-site facility improvements that a proposed project should pay for. Mediation techniques are those that introduce a neutral third party between the opposing sides. An example would be Virginia's Local Government Commission, which is an outside agency called in to facilitate and manage negotiation over annexation disputes.

Most local development disputes involve direct negotiation between the parties. These are the bread and butter zoning, subdivision review, and project design issues that planners face continuously. They mostly deal with smaller scale disagreements where a planner trained in dispute resolution can make a major difference in both the quality of the built environment and in the efficiency of the development management process.

Occasionally a development dispute gets out of hand. The issues or the personalities become too volatile for effective negotiation. At this stage, an outside mediator can step into the situation and provide the

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neutral conflict management necessary to keep the talks from breaking down. Knowing when this stage has been reached, and where to go for outside help, are very important. Most planners, unless they are exceptionally skilled and can easily step out of their own jurisdictions in order to help other governments, will not play mediator roles.

To make more effective use of planners' innate negotiating capacity, we need to invest in basic professional development. Within the planning schools, courses in dispute resolution can offer a grounding in the new methods and theory. My experience in teaching such a course to graduate students in planning, law, public administration, and business has convinced me of this need. Workshops and short courses can carry this grounding to practicing planners.

We also need more documentation of the successes and failures of development dispute resolution cases. Because the field is relatively new, case studies such as those in this issue are extremely valuable, though scarce. Planners should be encouraged to write about their experiences for others to use.

Finally, we need to expand the number of dispute resolution centers, where research and mediation services are combined. Universities are good locations for such centers, though not the only possibilities. Given the development pace and controversy in the South, it is surprising and disappointing that so few dispute resolution institutions are located here. A concerted effort is needed to fill this gap. □

A Review of Key Books on Negotiation

Dispute resolution has come out of the psychology lab. During recent years, the field has made major advances in theory, methods, and applications to real planning situations. Much of this progress has been pushed along by work at the Harvard Program on Negotiation.

Howard Raiffa has provided a theoretical concept for assessing the effectiveness of negotiation in his identification of the "efficient frontier." For any negotiating situation, this frontier describes the combinations of settlement options that exhaust all possible gains for the parties involved. It spurs negotiators to stay at the table until they can find no further joint gains. Raiffa's book, *The Art and Science of Negotiation* (Harvard University Press, 1982), includes several planning examples along with others from international diplomacy, government, and business.

Roger Fisher and William Ury have advanced the basic methods of negotiation. Their deceptively simple paperback text, *Getting to Yes* (Penguin Books, 1983), lays out solid principles for effective bargaining. One of their key tenets concerns identifying the power balance represented by the parties' alternatives to a negotiated agreement, which is the costs and benefits of withdrawing from the negotiation and seeking satisfaction from an alternative source, such as the courts. For weaker parties, developing an acceptable alternative improves your power at the negotiating table.

Planning applications of the new dispute resolution approaches so far are mostly centered on environmental management issues. Even Sullivan's *Resolving Development Dispute Through Negotiations* (Plenum, 1984), contains disappointingly few cases related to urban development management issues. But this is changing as the planners involved in the field, such as Larry Susskind and others, begin to publish accounts of the settlements they have worked on. Several of the articles in this issue demonstrate the rich range of potential development cases.