

Commentary

Responding to Streams of Land Use Disputes: A Systems Approach

Matthew McKinney, Patrick Field, and Sarah Bates

Disputes over land use are inevitable. Two recent studies demonstrate that negotiation and mediation can effectively resolve such disputes on an ad hoc, case-by-case basis.¹ Given this evidence, and the reality that disputes over land use in many communities are increasingly chronic and ongoing, it is time to move beyond the ad hoc use of negotiation and mediation and incorporate collaborative methods throughout the land use decision-making process.

Over the past five years, we conducted research and convened a national policy dialogue to test this proposition. This commentary summarizes our findings, which suggest that collaborative methods are being integrated into the standard operating procedures of land use planning and decision making at both local and state levels. After describing a prescriptive framework for designing dispute resolution systems, we present a set of best practices to guide the design and management of such programs.

DISPUTE SYSTEMS DESIGN: A PRESCRIPTIVE FRAMEWORK

In recent years, the theory (if not the practice) of public dispute resolution has moved beyond the application of collaborative methods in isolated, ad hoc cases. The intent of “dispute systems design” is to create systems for dealing not with just a single dispute, but the

stream of disputes that often arise in nearly all relationships, communities, and institutions—so-called “chronic” disputes.

There are three basic ways to resolve disputes: (1) reconcile the disputants’ underlying interests; (2) determine who is right; and (3) determine who is more powerful.² The “best” approach can be determined by considering the following criteria, which are interconnected.

- How satisfied are the stakeholders likely to be with the outcomes of a particular process?
- What is the chance that the issue will be resolved—and not recur—through one process or another? That is, how sustainable is the outcome likely to be?
- What are the likely costs—time, money, and emotional energy—of relying on one process rather than another?
- How will the use of one process over another impact the relationships among stakeholders?

Dissatisfaction with outcomes may lead to the recurrence of disputes, which strains relationships and increases transaction costs. Based on these criteria, integrating interests through various collaborative methods, as appropriate, is less costly than determining who is right, which in turn is less costly than determining who is more powerful.

In light of this prescriptive framework, six principles of dispute systems design have been identified.³

- Put the focus on interests.
- Build in “loop-back” procedures that encourage disputants to return to negotiation.
- Provide low-cost rights and power back-up procedures.
- Build in consultation before and feedback after.
- Arrange procedures in a low-to-high cost sequence.
- Provide the motivation, skills, and resources necessary to make the procedures work.

This prescriptive framework suggests that by combining opportunities for public deliberation, collaborative problem solving and multiparty dispute resolution into the land use decision-making process, planners, decision makers, and others can create a more responsive system of governance, which in turn will likely improve land use decisions.

Figures 1 and 2 offer two illustrations of what this ideal system might look like and suggest several observations that are important in designing and managing land use dispute resolution systems. Figure 1 suggests that collaborative methods can be integrated into any and all steps of the land

Matthew McKinney is director of the Public Policy Research Institute at the University of Montana. Patrick Field is managing director of the Consensus Building Institute, associate director of the MIT-Harvard Public Disputes Program, and senior fellow at the Public Policy Research Institute. Sarah Bates is deputy director of Policy and Outreach at Western Progress and senior fellow at the Public Policy Research Institute. This commentary is based on *Responding to Streams of Land Use Disputes: A Systems Approach (Policy Report #5, Public Policy Research Institute, The University of Montana)*. A complete copy of the policy report is available at www.umtprl.org.

1. SUSSKIND, LAWRENCE ET AL., USING ASSISTED NEGOTIATION TO SETTLE LAND USE DISPUTES: A GUIDEBOOK FOR PUBLIC OFFICIALS (Lincoln Institute of Land Policy, 1999); SUSSKIND, LAWRENCE ET AL., MEDIATING LAND USE DISPUTES IN THE UNITED STATES: PROS AND CONS (Lincoln Institute of Land Policy, 2000).

2. URY, WILLIAM R., JEANNE M. BRETT, AND STEPHEN B. GOLDBERG, GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT THE COSTS OF CONFLICT (Jossey Bass, 1988).

3. *Id.*

Downstream, as the process moves forward, collaborative methods may be used prior to appeal or litigation.

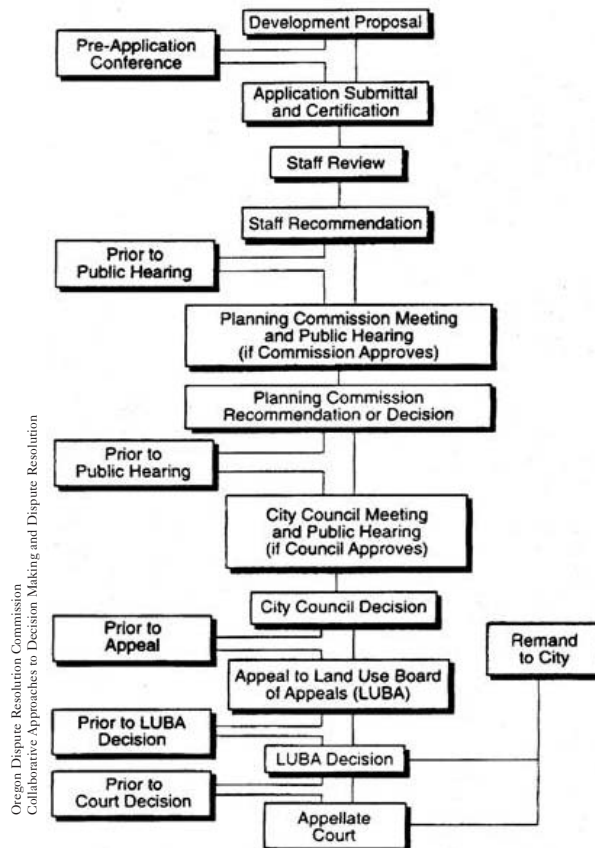
use planning and decision-making process. Upstream, at the start of the process, different collaborative methods can be used during preapplication conferences and prior to or simultaneously with formal public hearings with the planning board and decision-making body. Project proponents can potentially reduce the costs associated with detailed design, site planning, and legal work (including appeals) by informing, educating, and seeking the input and advice of neighbors and other stakeholders prior to submitting a formal application. This step allows the proponent not only to share his or her vision and plan, but also to modify that vision and plan based on the needs and interests of various stakeholders.

Downstream, as the process moves forward, collaborative methods may be used prior to appeal or litigation. When project proposals don't see the "light of day" until the formal application process is under way, it is not uncommon for neighbors and stakeholders to actively oppose proposed developments. If opposition threatens final approval of a project, the interests of all parties—including the decision-making body, project proponent, and other stakeholders—are perhaps best served by creating an opportunity to share interests, explore options, and seek agreement.

As illustrated by the vertical lines in Figure 2, land use disputes may arise in one or more of five different stages: (1) community planning; (2) preapplication; (3) postsubmission; (4) postdecision; and (5) court annexed. The incentive to participate in some form of collaboration typically changes over time. The incentives to negotiate tend to be low at the start of a planning or decision-making process and steadily increase as the issue or dispute moves through the land use decision-making process. By contrast, the likelihood of reaching an agreement is high at the beginning of the decision-making process, and then tends to decrease over time.

The incentive to negotiate is not necessarily well aligned with the likelihood of reaching agreement until just prior to a formal decision, suggesting that, while it may be valuable to build in opportunities for collaboration and problem solving

FIGURE 1. OPPORTUNITIES TO INTEGRATE COLLABORATIVE METHODS INTO THE LAND USE DECISION-MAKING PROCESS



throughout the land use decision-making process, it may be most compelling to provide such opportunities at or near the final decision step.

Figure 2 also suggests that the role of a process manager—which may be an impartial party such as a facilitator, mediator, professional planner, planning board member, or other official or non-governmental person with the necessary credibility, legitimacy, and capacity to play this role—is less formal and intense early on in the process and more formal and more intense as the parties become more polarized and the dispute becomes more intractable.

Not all land use disputes can or should be resolved by reconciling interests. The rights- and power-based procedures often become the forums of first resort and are frequently used whether or not they are necessary or preferred. The goal in designing a more effective dispute resolution system is to prevent

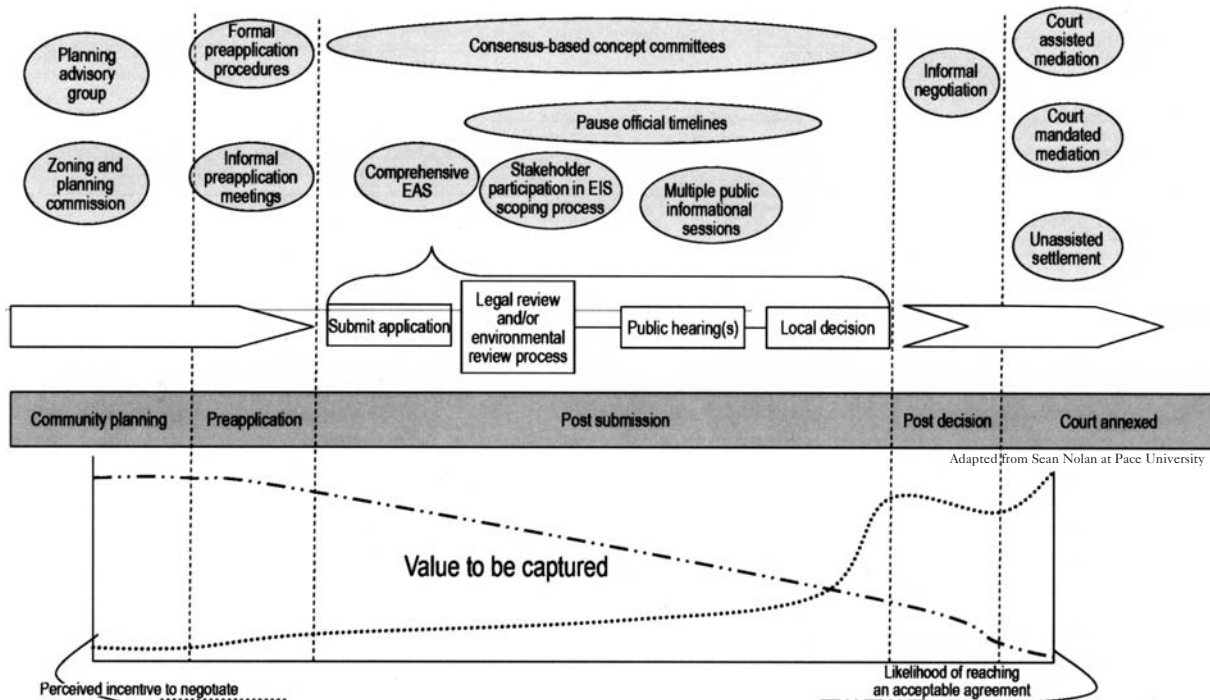
and resolve most disputes by integrating interests, some by determining who is right, and the fewest by determining who is more powerful. This approach to designing more effective systems to prevent and resolve land use disputes is experimental. We believe there is a tremendous need for more discussion and thought, as well as experimentation.

FROM THEORY TO PRACTICE: A SNAPSHOT OF LAND USE DISPUTE RESOLUTION PROGRAMS

Research conducted between 2003 and 2006 identified 27 land use dispute resolution programs—intentional efforts to move beyond the use of collaborative methods on an ad hoc, case-by-case approach and to integrate such methods into the standard operating procedures of land use decision making. Of these programs, 20 are state-level programs often authorized by state statute and seven are local or community-based programs.

The goal in designing a more effective dispute resolution system is to prevent and resolve most disputes by integrating interests, some by determining who is right, and the fewest by determining who is more powerful.

FIGURE 2. INTEGRATING COLLABORATION INTO THE LAND USE DECISION-MAKING PROCESS



Adapted from Scan Nolan at Pace University

Who Participates?

Land use disputes potentially involve a wide range of participants, including citizens, property owners, developers, environmental advocates, regulatory agency staff, and elected officials. Of the 27 programs included in this study, five limit participation to government officials dealing with interagency or intergovernmental disputes.⁴ Twenty-two allow property owners, citizens, and regulatory bodies to participate.⁵ Court-annexed programs clearly define and restrict participation to parties directly involved (including determinations of standing, when necessary). Local programs aimed at resolving disputes early in the land use planning or decision-making process tend to be more inclusive. The question of who should be allowed or encouraged to participate in a land use dispute resolution program de-

pends, of course, on what issues or disputes are being addressed.

What Types of Issues Are Addressed?

The issues addressed by the programs cluster into four categories:

- **Site-specific disputes:** Disputes that emerge over site-specific issues, such as revising a neighborhood plan, increasing density on a parcel of land, or requesting a change in land use. This category includes both private development and development initiated by a public body.
- **Comprehensive planning and growth management:** Disputes that occur during the process of comprehensive planning and growth management. For example, landowners disagree with regulatory procedures and special conditions on permits; open space advocates dispute zoning pro-

posals; and neighbors and developers object to redevelopment initiatives.

- **Interagency and intergovernmental plans:** Disputes resulting from conflicts between agencies or among levels of government. For instance, a local infrastructure plan may be inconsistent with an adjacent jurisdiction's priorities or in conflict with a state growth management policy. Alternatively, a local planning ordinance or part of a proposed municipal land use plan may be at odds with a state agency plan or policy.
- **Natural resources and conservation:** Disputes that focus on conservation issues. Often, local property owners or leaseholders that use public land will raise concerns about land set aside for open space, wetlands, or conservation areas. In some regions energy development raises

4. Colorado, Delaware, Georgia (2), Minnesota

5. Albuquerque, N.M., Austin, Tex., Baltimore, Md., Bozeman, Mont., California, Connecticut, Denver/Colorado Springs, Florida (2), Hawaii, Idaho, Maine, Massachusetts (2), New York (2), North Carolina, Oregon, South Carolina, Utah, Vermont, and Washington

Regardless of when collaborative methods are employed in the decision-making process, a number of elements appear with some regularity among the various programs.

LAND USE DISPUTE ENABLING STATUTES

California

California Land Use and Environmental Dispute Resolution Act
CAL. GOV. CODE, §§ 66030-66037

Colorado

Colorado Office of Smart Growth
COLO. REV. STAT. ANN. § 24-32-3209

Connecticut

Mediation of Appeals of Decisions of Planning and Zoning Commissions
CONN. GEN. STAT. ANN. §§ 8-8; 22A-43

Delaware

Delaware Planning Act
DEL. CODE ANN. 29 § 9102

Florida

Florida Land Use and Environmental Dispute Resolution Act
FLA. STAT. ANN. § 70.51

Georgia

Local Government Service Delivery Act
GA. CODE ANN. § 50-8-7.1(D)

Hawaii

Geothermal Resource Zone Management
HAW. REV. STAT. § 205-5.1

Idaho

Local Land Use Planning Act
ID. CODE § 67-6510

Maine

Land Use Mediation Program
ME. REV. STAT. ANN. 5 § 3331 AND 5 § 3341

Minnesota

Planning Dispute Resolution
MINN. STAT. ANN. CHAP. 572A

North Carolina

Prelitigation Farm Nuisance Mediation Program
N.C. GEN. STAT. § 7A-38.3

Oregon

ORE. REV. STAT. §§ 197.805-197.855

South Carolina

South Carolina Land Use Dispute Resolution Act
S.C. CODE ANN. §§ 1-23-630; AND 6-29-800, -820, -825, -830, -890, -915, -920, -930, -1150, -1155, 1310-80

Utah

Office of the Property Rights Ombudsman, Department of Natural Resources
UTAH CODE § 13-43-204

Vermont

Act 250 and Vermont Rules of Environmental Court Procedure, Mediation Screening Pilot Program

Washington

Growth Management Act
WASH. REV. C. § 36.70A

conflicts with conservation groups and local citizens.

Two important themes emerge when comparing who participates with what issues are addressed. First, programs that predominantly (or only) address interagency and intergovernmental disputes generally allow only government officials to participate in the process. Second, where programs address site-specific disputes, comprehensive planning and growth management, and natural resource and conservation issues, it is more likely that a wider range of stakeholders are allowed to participate. The nature and frequency of the land use issues to be addressed not only determines who should be involved, but when and how collaborative methods are used.

When are Collaborative Methods Used?

Different programs use collaborative methods at different times in the decision-making process. The most common application is during the appeals process. Many statewide statutes call for a “time out” for mediation on appeal; court-annexed programs deal with cases after filing, but prior to trial.

Nine of the state statutes identified in this research either encourage or require mediation only upon appeal of a government body’s land use decision. None of these statutes requires or encourages any

form of collaborative methods in the preapproval or entitlement stage of the land use decision-making process.

In the case of California, the land use dispute resolution statute does not offer anything that does not already exist as a matter of local court rules. As a matter of policy, almost every Superior Court requires mediation before the assignment of a trial date in any type of litigation. Given this requirement, most attempts to resolve land use disputes via mediation in California do not occur until after a lawsuit has been filed by an aggrieved party or stakeholder group.

Other programs, by contrast, allow and encourage the use of collaborative methods at any time during the land use decision-making process, for example by requiring developers to meet with neighbors before submitting their project applications.

Many states encourage low-cost procedures to resolve disputes before moving to litigation and other rights- and power-based procedures. In Minnesota, for example, the land use dispute resolution statute seems to contemplate that disputants will start by trying to resolve their differences through mediation. However, if the dispute is not resolved after 60 days, it goes to binding arbitration before a panel selected by the parties and (if necessary) the state Bureau of Mediation Services.

How are Collaborative Methods Employed?

Regardless of when collaborative methods are employed in the decision-making process, a number of elements appear with some regularity among the various programs.

- **Screen potential cases.** Some programs use a screening tool to select cases that appear to be most appropriate for facilitation or some other form of collaboration. In New Mexico, the staff examines pending cases before the Environmental Planning Commission and identifies those that may be contentious or result in appeals. The Utah ombudsman reports that two-thirds of the inquiries it receives require no mediation services, but are satisfied by access to information about the laws governing land use and local government authority.

- **Jointly select facilitators and mediators.** In several programs, the parties jointly select a facilitator or mediator. In some cases, a mediator or facilitator may be suggested by one of the parties or the agency. In other situations, the program provides staff mediators or contracts with professional mediators and facilitators to provide services. Sometimes the state or local agency maintains a list of qualified mediators and facilitators, and parties select someone from that list. One of the likely barriers to effective land use dis-

While admirable, it appears that many state statutes have resulted in few effective systems to prevent and resolve land use disputes.

pute resolution is easy access to affordable, qualified, readily available mediators and facilitators. The value of the Albuquerque, Denver, (see sidebar on page 7) and former Austin programs is that they provide disputants immediate access to such professionals, without requiring the parties to sift through a long roster or to hunt the market for help.

- **Use facilitators and mediators with land use and other expertise.** In several states, such as Colorado, Idaho, and Vermont, the mediators must have expertise in land use planning, regulatory processes, and other qualifications to serve as a mediator or facilitator.

- **Share costs.** In some cases, the parties to the disputes share in the costs of mediation and dispute resolution. These may include costs for professional services as well as costs incurred to convene meetings or file regulatory decisions. In a few cases, the cost for facilitators or mediators has been paid for or subsidized by a government entity.

- **Delay the judicial proceeding.** In some states and localities, the “clock” (deadline for pursuing legal action) is put on hold while the mediation or dispute resolution process is taking place. A formal statutory “time out” is offered to ensure that deadlines do not constrain the use of dispute resolution; this is typically accompanied by time limits to prevent an open-ended delay. Most often, the statute or rules guiding the process provide a clear timeframe for the dispute resolution to take place.

- **Allow for public review.** Several programs require a public meeting to allow citizens and others a chance to review the outcome of the dispute resolution process.

What is the Role of Statutory Authorization? Participants in the national policy dialogue expressed significant interest in the value or role of statutory authorization. Several participants noted that statutory authorization helps build awareness, credibility, and legitimacy for using collaborative methods to prevent and resolve land use disputes. However, they concluded that without the necessary resources—typically staff and money, along with political and institu-

tional will—statutory authorizations often become symbolic gestures.

Several states have passed enabling language for dispute resolution in general land use planning statutes. On first blush, the Idaho statute seems to provide the most comprehensive land use dispute resolution system. Mediation is mandated if requested by any party, including the government, during or after the planning process. Connecticut also passed statutory language in 2001 to encourage mediation, primarily during the appeals process in court. The statute provides for “tolling” (temporary suspension) of legal deadlines while mediation is under way, while also constraining delay by not extending mediation beyond 180 days unless jointly agreed upon by all parties to the dispute. California passed similar language encouraging mediation during the appeals process, and went further, allowing the governor to establish a dispute resolution office to assist with conflicts among permitting authorities, state functional plans, state infrastructure projects, and local projects.

While admirable, it appears that many state statutes have resulted in few effective systems to prevent and resolve land use disputes. California’s mediation law was not renewed, and we were not able to identify any particular cases that arose from this law. The Connecticut statute has resulted in some mediated cases (which could have occurred anyway, so the cause and effect of the statute is hard to determine), but these represented fewer than 10 percent of the judicial cases concerning land use issues. In all of these cases, the general language of the statute, the lack of funding to support the use of collaborative methods, and the lack of a program or office for implementation contribute to a very limited impact on the ground.

Where statutes assign more responsibility to a state agency, court office, program, or other entity, they seem to have a somewhat greater impact. Colorado’s statute requires collaboration prior to litigating certain planning disputes, but it applies only to government entities and does not compel private parties to engage in the process. While the scope of this statute is limited, it provides a model to address disputes that cut across jurisdictional boundaries, such as city and

EXAMPLES OF LAND USE FACILITATORS AND MEDIATION PROGRAMS

- In *Albuquerque, New Mexico*, the city established its Land Use Facilitation Program in 1994 to provide land use applicants and affected residents the opportunity to identify, discuss, and resolve issues prior to the acceptance and implementation of land use decisions. From 1994 to 2006, approximately 600 cases were referred to the program. The Land Use Facilitation Program is one of several ADR programs under the city’s Alternative Dispute Resolution Office. It receives funding annually from the city’s general fund to pay for facilitators and other costs. Currently it has a \$35,000 budget and offers free and voluntary services to city residents.

- In *Denver, Colorado*, the city initiated a partnership in 1998 with a nonprofit to facilitate some of its simpler land use issues. Initially the contracts called for mediation of land use variances and planned unit developments. More recently, the city has called upon the program to include more complex and contentious site-specific issues. On average, the program mediates or facilitates about 35 cases per year, with approximately 80 percent of those cases ending in signed agreements. Land use referrals come from city council members, the board of adjustments, the landmark commission, and planners, who call the program with requests to provide conflict resolution or mediation for specific land use issues.

Designing effective systems to prevent and resolve land use disputes is not an easy task.

county disputes over growth and annexation. Oregon and Massachusetts both created statewide dispute resolution offices that have since been relocated to the state university system. In Oregon, the office worked with the Land Use Board of Appeals to get cases into mediation, and in some cases, provided grants for funding the efforts. The office now works with the Department of Land Conservation and Development to assess and provide land use mediation services across the state. For its part, Massachusetts helped the Land Court establish a court-annexed screening and mediation program that is bid out by the court to program providers.

Though not always the case, our research suggests that court-annexed and local programs of dispute resolution appear more robust and vigorous (though not always long-lived) than statewide efforts. Statewide efforts accompanied by assigning responsible agencies and programmatic dollars certainly also lead to more dispute prevention and resolution on the ground.

What Are the Outcomes of Current Programs?

Unfortunately, statistics on the performance of land use dispute resolution programs are scarce. Among the 27 land use dispute resolution programs identified in this research, only nine provided data on the number of disputes resolved through negotiation, mediation, or some other collaborative method.

The clearest conclusion from this limited information is that the majority of disputes were resolved when such methods were employed; programs reported success rates ranging from 60 to 80 percent. And, as participants in the national policy dialogue pointed out, parties often resolve their issues after mediation, even when the process itself

does not result in a formal settlement. In some cases, the screening process itself serves an important function in identifying parties' interests and concerns and facilitating productive conversations.

In addition, participants in the national policy dialogue identified a number of other valuable outcomes generated by land use dispute resolution programs. In some cases, these advantages are aspirational.

- Participants in a collaborative process typically emerge with a better understanding of their own and others' interests and concerns.
- Collaborative processes encourage tailored solutions for particular cases.
- Parties in a collaborative process are more likely to support and help implement a durable outcome.
- Systematic use of collaborative methods may reduce litigation and concurrent costs.
- This approach can improve governance and encourage a broader sense of community.

BEST PRACTICES FOR LAND USE DISPUTE RESOLUTION PROGRAMS

Designing effective systems to prevent and resolve land use disputes is not an easy task. Over two decades ago, Gail Bingham, a recognized expert on public dispute resolution, cautioned that "much remains to be learned about how to draft statutes that specify general procedures for negotiation, mediation, or arbitration of environmental disputes," noting the difficulty in specifying in advance which parties belong at a negotiation table and which ground rules will foster productive work among various combinations of parties. Moreover, she noted: "It is also not clear what effect establishing specific rules has on parties' incentives to negotiate in good faith or at all."⁶

Similarly, Jonathan Brock concluded that "the design complexity, political controversy, and intersection with existing regulatory and administrative practices makes institutionalizing alternative dispute resolution mechanisms more difficult than using alternative dispute resolution to resolve individual site-specific disputes."⁷

Based on the literature on dispute resolution systems design, an analysis of current practice, and input from participants at the national policy dialogue, we recommend the following best practices for designing and implementing land use dispute resolution programs.

1. Diagnose the existing system. The process of designing a land use dispute resolution system should begin by diagnosing the existing procedures for preventing and resolving such disputes. This diagnosis should seek to answer the following types of questions:

- What are the current and recent issues in dispute?
- Who are the parties?
- How many disputes are there?
- How are the disputes being handled?
- What type of dispute resolution procedures are being used and with what frequency?
- What are the overall costs and benefits of these procedures?
- Why are particular procedures being used and not others?
- What functions are served by the different procedures?
- What obstacles limit the use of more collaborative approaches?

The answers to these questions should illustrate the type and number of disputes that any new program will have to handle in the future, map the existing dispute resolution procedures and their

6. BINGHAM, GAIL, RESOLVING ENVIRONMENTAL DISPUTES: A DECADE OF EXPERIENCE 149-50 (1986).

7. Brock, Jonathan, "Mandated Mediation: A Contradiction in Terms, Lessons from Recent Attempts to Institutionalize Alternative Dispute Practices," VILLANOVA ENVIRONMENTAL LAW JOURNAL 2:57 (1991).

Ideally, a land use dispute resolution program should strive to address a range of issues during at least several stages in a permitting or planning process.

functions, and point out the obstacles to using more collaborative methods.

2. Engage affected parties in the design of the program. This step will help create a sense of legitimacy, credibility, and ownership. A dispute resolution system will only be effective if people buy into it.

3. Seek to create a comprehensive program. Ideally, a land use dispute resolution program should strive to address a range of issues during at least several stages in a permitting or planning process. This might include procedures to ensure early consultation between developers, staff, and abutters; facilitation assistance for public meetings or workshops; and mediation assistance should the case rise to more intense conflict closer to or during final decision making. Comprehensive systems should also employ a variety of collaborative methods, such as screening, informal negotiation, facilitation, mediation, and fact-finding. In short, comprehensive systems should offer multiple points of intervention and multiple collaborative methods.

4. Be selective and choose an appropriate scale. Successful programs need to be selective. Not all cases or parties are amenable to collaboration. For instance, mediation too early in a decision process—before issues and parties are clarified—would be of little use. A project that has generated absolute opposition by an entire, politically influential neighborhood is not likely to be helped through collaborative methods. Effective programs should include an active screening component. Sometimes the mere act of screening will help the parties to settle before mediation is initiated. Unless there are sufficient numbers of cases or applications that generate intense interest or conflict, there is not likely to be much need to integrate collaborative methods into the decision-making process. The most appropriate situations include:

- Courts with numerous backlogged cases clearly have an incentive to create programs or systems that reduce caseloads.
- Local boards and commissions with too many applications and too few resources (especially the time of many volunteer boards) may be seeking ways to

reduce contentious decisions and to at least improve applications that strive to incorporate abutter interests early and hone outstanding issues or disputes. However, for some small- to medium-sized municipalities formally designed systems may not be practical unless programs reach out across and seek to serve multiple municipalities.

5. Employ proven tools and techniques. A number of tools and techniques exist to improve the effectiveness of any land use dispute resolution program:

- screening potential cases
- jointly selecting facilitators and mediators
- using facilitators and mediators with land use and other experience
- sharing costs
- delaying judicial proceedings
- allowing for public review and comment

6. Link the program to the formal decision-making process. This prescription implies that the existing decision-making authorities are willing to experiment with new ways of preventing and resolving disputes, and to assure the parties involved that if they resolve their differences, the decision makers will do everything in their power to implement the negotiated outcome. As a matter of design, it is important to determine whether negotiated agreements are binding or non-binding on decision makers, and what happens if an agreement is not reached through this approach.

7. Provide the necessary motivation, skills, and resources. This practice focuses on the need to change the culture of decision making, and to make it easy to use collaborative methods as a regular part of land use planning and decision-making processes, including:

- enacting statutes to authorize and encourage the use of collaborative methods to prevent and resolve land use conflicts;
- clarifying the rules governing collaborative processes, including who participates; how decisions are made; issues of confidentiality; and the role of facilitators and mediators;
- maintaining rosters of qualified facilitators and mediators;

- providing training and education to raise awareness, understanding, and capacity among potential disputants as well as aspiring facilitators and mediators; and
- providing financial resources and technical staff support to inform and invigorate efforts to prevent and resolve land use disputes.

Most successful programs include an education component. This may be as limited as a flyer and notice about mediation as an alternative during the wait period for trial. Or the system may seek, over time, to incorporate collaborative values, principles, and tools into the thinking of those making decisions. Given that land use decision making is already complex and that many parties are accustomed to doing business “by the book,” a transition to collaborative methods will require ongoing education and persuasion, particularly in the early life of programs.

8. Conduct a series of pilot projects. Framing a new program as a “pilot project” can accomplish two important tasks. First, it allows participants to identify and eliminate obstacles in the system, minimize confusion and frustration, and build positive experience. Second, it provides an opportunity to build political support for the program, a key ingredient throughout the life of a land use dispute resolution program. In order to survive and thrive, a system must be politically sustainable. That is, it needs to develop and maintain political support for its continued operation among decision makers, planners, and stakeholders.

9. Make services affordable. Because land use decision making is already expensive for proponents (consultants to hire, applications to complete, legal representation to retain) and because many abutters often have few resources, collaborative methods must be affordable. In short, land use dispute resolution programs must pass some reasonable cost-benefit test which should include nonmonetary benefits, or “social capital” such as increased understanding and improved communication.

10. Evaluate, learn, and adapt. Land use dispute resolution programs that provide

Decision makers, planners, and other people interested in land use are slowly moving beyond the ad hoc, case-by-case use of collaborative methods to prevent and resolve land use conflicts.

RESOURCES

- Camacho, Alejandro Esteban, *Mustering the Missing Voices: A Collaborative Model for Fostering Equality, Community Involvement and Adaptive Planning in Land Use Decisions*, STANFORD ENVIRONMENTAL LAW JOURNAL 24:3 (Jan. 2005) and 24:269 (June 2005).
- Davidson, Jonathan M. and Susan Trevarthen, *2002 Land Use ADR Report*, URBAN LAWYER 34:919 (Fall 2002).
- Davidson, Jonathan M. and Susan L. Trevarthen, *Land Use Mediation: Another Smart Growth Alternative*, URBAN LAWYER 33:705 (Summer 2001).
- Donahue, Elizabeth, *Environmental Land Use Disputes and ADR* (ABA Section of Dispute Resolution, 2000), available at www.abanet.org/dispute/env_land_use_disputes.html.
- Garza, Aric J., *Resolving Public Policy Disputes in Texas Without Litigation: The Case for Use of Alternative Dispute Resolution by Governmental Entities*, ST. MARY'S LAW JOURNAL 31:987 (2000).
- Henten, Doug et al., *Collaborative Governance: A Guide for Grantmakers* (The William and Flora Hewlett Foundation, undated report available at www.hewlett.org/Publications/collaborativegovernance.htm).
- Knaster, Alana, Gregory L. Ogden, and Peter Robinson, *Public Sector Dispute Resolution in Local Governments: Lessons from the SCAG Project*, PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL 1:177 (2001).
- MACNAUGHTON, ANN L. AND JAY G. MARTIN, ENVIRONMENTAL DISPUTE RESOLUTION: AN ANTHOLOGY OF PRACTICAL SOLUTIONS (American Bar Association, 2002).
- Mandelker, Daniel R., *Model Legislation for Land Use Decisions*, URBAN LAWYER 35:635 (Fall 2003).
- Matthew McKinney, *Designing a Dispute Resolution System for Water Policy and Management*, NEGOTIATION JOURNAL 153 (April 1992).
- MECK, STUART, ED., GROWING SMART LEGISLATIVE GUIDEBOOK (American Planning Association, 2002).
- Montana Consensus Council, RESPONDING TO GROWTH: BUILDING CONSENSUS ON LAND-USE ISSUES (Feb. 1999).
- The Municipal Dispute Resolution Initiative: Five Years of Resolving Disputes Together* (undated report of Alberta Municipal Affairs).
- Nolon, John R., *Mediation as a Tool in Local Environmental and Land Use Controversies*, NEW YORK LAW JOURNAL 222:5 (col. 2) (Aug. 18, 1999).
- Policy Consensus Initiative, Executive Orders: How Governors Can Promote Collaborative Processes and Dispute Resolution in States* (Sept. 2000) available at www.pci.org.
- Pou, Jr., Charles, *Legislating Flexibility, Dispute Resolution* (Summer 2001) available at www.pci.org.
- Ryan, Erin, *Zoning, Taking, and Dealing: The Problems and Promise of Bargaining in Land Use Planning Conflicts*, HARVARD NEGOTIATION LAW REVIEW 7:337 (Spring 2002).
- SUSSKIND, LAWRENCE ET AL., MEDIATING LAND USE DISPUTES IN THE UNITED STATES: PROS AND CONS (Lincoln Institute of Land Policy, 2000).
- URY, WILLIAM R., JEANNE M. BRETT, AND STEPHEN B. GOLDBERG, GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT THE COSTS OF CONFLICT (Jossey Bass, 1988).
- Van de Wetering, Sarah B. and Matthew McKinney, *The Role of Mandatory Dispute Resolution in Federal Environmental Law*, JOURNAL OF ENVIRONMENTAL LAW & LITIGATION 21:1 (2006).
- Walker-Coffey, P.B. "Lynne," *Environmental Disputes with Government Agencies: Singing in the Reign of ADR*, COLORADO LAWYER 33:103 (Dec. 2004).
- Wohl, Rachel A., *Beyond the Courthouse: State Courts Work to Create Civil Society*, DISPUTE RESOLUTION MAGAZINE 7(4):21 (Summer 2001).
- Wyche, Bradford W., *An Overview of Land Use Law in South Carolina*, SOUTHEASTERN ENVIRONMENTAL LAW 11:183 (Spring 2003).
- ZIEGLER, JR., EDWARD H., ARDEN H. RATHKOPF, AND DAREN A. RATHKOPF, THE LAW OF ZONING AND PLANNING (Clark Boardman Callaghan, 4th ed. 2007).

for ongoing evaluation, feedback, and adaptation are more likely to be sustainable in the long term. Evaluation can meet a variety of needs. First, evaluation of actions, cases, and outcomes can build ongoing appreciation for the success, value, and need for the program, especially when such programs are faced with budget or political threats. Second, evaluation can ensure and improve quality. The Albuquerque program provides evaluation of all facilitators so that the city can judge the provision of services by its roster of neutrals and adjust accordingly. Third, ongoing feedback allows the program or system to adjust and refine as practice and experience grows or as circumstances change.

CONCLUSION

Decision makers, planners, and other people interested in land use are slowly moving beyond the ad hoc, case-by-case use of collaborative methods to prevent and resolve land use conflicts. Across the country, there are a growing number of experiments to design ongoing systems to address the stream of land use disputes that characterize so many communities, regions, and states.

While the experiments to date are inconclusive, they nevertheless provide some insights on the best ways to design and manage a land use dispute resolution program. This empirical evidence also seems to validate the relevance of the prescriptive framework presented earlier.

In the future, we hope to gather additional information on the performance of land use dispute resolution systems or programs; examine the correlation between program function, structure, and performance; and identify future areas for research, education, and policy development.

We are also interested in helping to create a learning network of practitioners and scholars to improve the theory and practice of land use dispute resolution programs. The participants in the national policy dialogue represent the start of such a network. The Consensus Building Institute and the Lincoln Institute of Land Policy maintain a website on resolving land use disputes, and we hope to use this website as a platform to build and share knowledge.