Smart Growth

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The Growing Together Guide: A Companion Resource to the New England Environmental Finance Center/Melissa Paly Film

New England Environmental Finance Center

GROWING TOGETHER

Consensus Building, Smart Growth and Community Change

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<u>Growing Together: Consensus Building, Smart Growth and Community Change</u>.

S.O.S.!

What local leader or public official wants to be faced with an SOS—the "same old story" of public discord and confrontation over growth and development in one's community? That situation has become a problem for efforts to promote smart growth. Investments are needed in the walkable, compact, traditional-streetscape and mixed use neighborhoods and developments that are more sustainable and healthy than sprawl, for both people and the landscape. Yet attempts at such change all too often end up mired in costly public controversy and stalemate.

Predictably, you as a leader see your citizens, developers, and advocates with contending agendas all dig in to their positions for or against change. It happens from the start of your community's efforts to review the facts, apply local policies and regulations, and make the best decisions. Everyone stops listening to each other—or the facts. Tactics of delay stall resolution until projects become infeasible or investors simply agree to perpetuate the same old sprawling patterns of development to end legal challenges—another SOS—same old sprawl! Why is it so hard to move the community to desirable change? Is there another way?

Yes!

This guide is a companion to the documentary film <u>Growing Together: Consensus Building, Smart Growth and Community Change</u>, which tells stories of how communities have constructively addressed difficult questions of smart growth and community revitalization where the stakes are about what people value most in their living environment .

The Environmental Finance Center, Smart Growth & Consensus Building:

The New England Environmental Finance Center (EFC) produced <u>Growing Together</u> to illustrate the promise of alternative approaches to reaching agreement about how to create or redevelop the best aspects of livable communities and landscapes. These kinds of community-building and revitalization projects have in recent years been called "smart growth." Yet they are ideas that have been advocated in America since the 1920s as a better way to

The Region 1 Environmental Finance Center (EFC) is one of 10 EFCs serving different regions of the U.S. with support from the USEPA, and serves the 6 New England states.

grow. With today's growing demands to make more efficient use of energy and protect air quality, to promote healthier, less car-dependent neighborhoods, and to protect resource
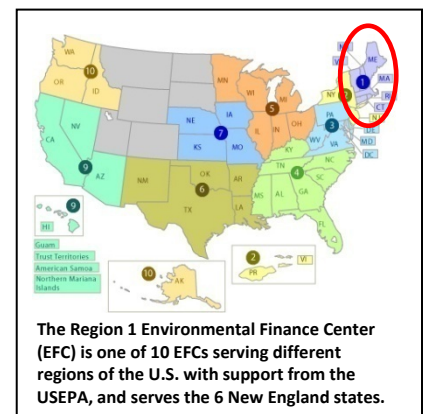
lands near our communities to support biodiversity, food security, water quality and flood reduction—these ideas have become more urgent than ever. Growing Together is meant to draw attention to smart growth as part of the EFC's mission in collaboration with the U.S. Environmental Protection Agency.

But the alternative, consensus-building approach also applies to many kinds of community, business and family issues, not just smart growth. It is based on now-well established principles and practices of direct discussion between contending parties in decisions—in business, families, civic matters—that come from the field of alternative dispute resolution (ADR).

Where to Start?

You should view this 52-minute documentary first, because local leaders, developers and citizens explain in their own words how they believe it is possible to reach agreement on change and renewal. That is the most convincing testimony we can offer---and why we engaged respected New England filmmaker Melissa Play to direct and create this film. Growing Together portrays examples of approaches to organizing, listening, and deciding when communities must confront diverse interests.

The film is a sequel in one respect to Paly's previous movie for public television, Livable Landscapes: By Chance or Choice? Livable Landscapes raised a pull-at-the-heartstrings clarion call to protect the valued qualities of New England's natural and built landscapes. Growing Together deals with how to do something about it. The story of Dunstan Crossing, at the time Maine's most innovative potential smart growth community development project, bridges across both films—the promise and the lessons learned.

The film's examples all draw on some common and powerful consensus-building and ADR principles. Those principles are always aimed at creating a process for discovering how to satisfy a community's most important interests through voluntary efforts to find agreement on action, rather than by vanquishing opponents. The process must, however, be thought-out and designed for each setting and set of problems, based on those principles. This is unlike the one-size-fits-all process of formal public hearings (which are uniform for constitutional reasons of guaranteeing equal protection and due process). It is meant to be a supplement to those minimum legal guarantees to hear voices with a stake in public decisions, not a substitute.

This Guide and the DVD:

Growing Together introduces a few of the principles of consensus-building that help make these efforts successful; the DVD includes a short liner note on using the film to open discussion in your community about trying on consensus-building for size. Public consensus-building pioneer and founder of the Harvard-MIT Public Disputes Program Dr. Lawrence Susskind join the EFC faculty to explain a few principles in the film, particularly conflict or stakeholder assessment.

Growing Together provides a brief mention of such principles. This written guide elaborates a little further on consensus-building principles and practices. It discusses how to pursue using consensus-building, finding professional assistance, and some of the best sources of further written information. It is not a handbook, but meant to point you towards more help in a well-informed way.

The Scarborough Story: Both the films Livable Landscapes and Growing Together tell the unfolding story of the Town of Scarborough, Maine. Scarborough's is a story of both seeking to change the development pattern towards smart growth through the Dunstan Crossing project, and exploring changes in public discussion of issues, as lessons were learned about the need for consensus-building. Scarborough's learning experience is further explored in this guide in several sidebars.

The EFC Smart Growth Leadership Case Study Library: Another tool of interest is the New England EFC's on-line library of written case studies about how communities have pursued change in their development patterns and retention of their valued built and natural environments. Available free at: http://efc.muskie.usm.maine.edu/pages/case_study_library.html. The EFC's Next Communities Initiative also offers a three-day workshop that covers smart growth concepts, community leadership in planning and development and basic consensus-building skills for community leaders.

Next Steps:

As a companion to Growing Together, this guide is meant to help you take next steps. The first step we suggest in the liner notes to Growing Together is that you consider convening a group of decision makers and stakeholders in your community to watch the DVD together and have a facilitated discussion about the questions it raises. Such as:

- o Do you face issues similar to those of the communities in the movie?
- o Are your current community processes for reaching decisions about such growth and revitalization issues serving you and your citizens the way you would like?
  - o Or are you facing stalemates and protracted conflicts that delay decisions about change and leave future working relationships in the community strained or impaired?
- o Would a better process for reaching consensus about complex issues involving many different interests help you as a community leader to be able to make better decisions?
- o Would it help bring about desirable change if everyone could just somehow move forward together?

This discussion can happen even when you do not have a pressing issue to decide. In fact it may be most valuable as a way to spur thinking about alternatives before the urgency of a major issue or decision deadline.

The Scarborough Story: Part I of V: Dunstan Crossing—Smart Growth Vision

In 2000, at start of the 21st Century, a precedent-setting smart growth development project—combining mixed housing types in more compact, dense traditional neighborhoods, with integrated commercial and office development and land conservation—was proposed in Scarborough, Maine. It was proposed by experienced builders John and Elliott Chamberlain, two brothers who had grown up in the Portland area. The Chamberlains had become interested in the idea of more compact, mixed use, transit-accessible neighborhoods for Maine's communities—like those that once existed in Portland and its oldest suburbs.

The smart growth idea had been extensively discussed in Maine for the past few years by then-state planning director Evan Richert and by the voluntary, ad hoc statewide discussion group ECO-ECO Forum, which was sponsored by Ted Koffman of Maine's College of the Atlantic to bring together private, public and nonprofit interests to explore Maine's future development qualities. These statewide discussions brought together developers, planners, designers and environmental quality advocates in a manner not seen before. It inspired the idea of giving up the land-hungry, large-lot pattern of auto-dependent, isolated residential development projects for something new that could recreate what Maine people historically experienced as the best qualities of neighborhoods and villages closely accessible to the natural landscape.

The Chamberlains found what they believed to be an ideal location in a large, undeveloped set of unsewered parcels totaling 150 acres on the south side of Scarborough—Maine's fastest growing municipality at the time and itself strategically located on the southern border of Maine's largest city, Portland. Moreover, the parcels had access to State Route 1—Scarborough's main arterial—at a location known as Dunstan Corner, historically a small-village-like cluster of commercial activity and homes. The new higher-density, mixed use "traditional neighborhood development" was to be called Dunstan Crossing. It would come to be looked at expectantly as the first success at recreating the "Great American Neighborhood" in Maine through new investment. It would garner support from interests as different as the Conservation Law Foundation and the Maine Real Estate and Development Association. But it would also experience opposition that would significantly alter the project.

Dunstan Crossing conceptual site plan. This illustration and other thumbnails are courtesy of Sebago Technics, Inc., the planning and engineering consultants for the project.

Why A Need for Alternatives? Some Background:

These are the kinds of questions people have come to ask about conflict in both private and public decisions in American life. Outright fights—in courts or regulatory processes—don't always lead to results that serve anyone's interests. Think of child custody conflicts in divorce court. Parents on both sides want what is best for their children. But the nature of such divisive proceedings, which requires that each parent vanquish the credibility and worth of the other—all too often has resulted in damage to everyone involved—especially the children.

Such dilemmas have lead to the development of alternative dispute resolution (ADR) principles and procedures. The interest in finding new ways to deal with formal legal conflicts in families, business matters and eventually public policy and regulatory arenas was made more urgent by court systems clogged with litigation over every issue, but denying timely justice to all.

Based on a record of experience with mediated negotiation in labor-management relations and emerging thinking from legal, business, and diplomatic practice, the interest in finding new ways to deal with difficult issues gave rise to ADR as a wider technique by the late 1970s. Courts began to allow for voluntary negotiation between litigants in certain kinds of cases—to see if those parties could find their own acceptable settlements, short of the court doing it for them.

As the era of complex environmental issues unfolded, innovators with experience in

ADR began to offer help to contending interests stalemated over regulatory decisions. The formal institutional processes forced the players to focus all their attention on assuming <u>positions</u> for looming court battles, but not new ways to solve the challenging and often uncertain conservation and development puzzles everyone faced together.

Linda Singer on Settling

Attorney and pioneer mediator **Linda R. Singer** is credited with helping to especially introduce ADR processes into family law among other areas. Her 1990 award-winning book <u>Settling Disputes</u> is one of the best overviews of how and why the dispute resolution movement has emerged in American life. In it she observes:

"When Americans must use the (legal) system—for example to handle corporate conflicts … or personal problems such as accidents, discrimination or divorce—court or administrative action displaces our power over our own disputes. The legal process distorts reality; not only speed and economy but the real issues …. Against this backdrop, new methods of settling disputes are emerging both in and out of courts, in businesses, and in communities. Diverse though they are, the innovations have a number of characteristics in common:

- o They all exist between the polar alternatives of doing nothing or escalating conflict;
- o They are less formal and generally more private than ritualized court battles;
- o They permit people with disputes to have more active participation and more control over the processes for solving their own problems…;
- o Almost all of the new methods have been developed in the private sector, although courts and administrative agencies have begun to borrow and adapt … successful techniques.

The movement by now has earned its own awkward acronym: 'ADR…'"

FROM: L.R. Singer. 1990. <u>Settling Disputes: Conflict Resolution in Business, Families and the Legal System</u>. Boulder, CO: Westview Press, pp. 2-5.

But the courts were not eager to be forced to make decisions about the substance of such environment and development issues as it was outside their purview—they are not the scientists, resource managers, elected legislators, or affected citizens. Likewise, public officials at every level of government responsible for carrying out environment and development policies through regulations increasingly found that the decision processes they struggled to carry out effectively were too often just a prelude to subsequent lengthy, costly legal battles after they made their decisions. And such battles too often left the important issues unresolved.

How Does It Help? These processes of direct problem-solving between adversaries do not substitute for legal and regulatory procedures of courts and government agencies. Those institutions still must carry out laws and responsibilities for public health, safety and welfare and to guarantee constitutional rights of due process and equal protection. The alternatives have become a supplement to those regulatory and legal procedures. The aim of these supplementary direct discussions between contending parties is to address the limitations of outright conflict as a means to acceptably and sustainably solve complex problems—whether in a family, a wilderness area, or a community's growing boundaries. (See sidebar: "Singer on Settling").

A quick example of what this means in practice is the use of mediation by judges in family court matters. Today in many courts, in that difficult child custody matter noted earlier, the judge may have been given the authority to ask the parents to sit down with a neutral mediator, and try to work out

Some Definitions of ADR-Related Processes:

Arbitration: Third-party decision-making long used in American private business affairs. The parties submit their arguments and preferences to a neutral arbitrator, who renders a decision. The arbitration may be binding (the parties must accept and implement it) or non-binding (the parties will take it into account as a guide to possible voluntary agreement). In voluntary arbitration, the parties may jointly choose the arbitrator. In arbitration required by contracts (like a new car purchase), labor laws or by a court, the arbitrator may be assigned to the parties.

Mediation: Mediation is best understood as voluntary negotiation between the parties with assistance of a neutral professional: the mediator. Mediators facilitate the communication between parties, (which obviously may be strained); they make sure that each side adequately hears the other and that all information and issues are "on the table," and to varying degrees, depending on the issues and situation, may help identify and structure possible agreements. But mediators do not decide (unlike arbitrators): it is up to the parties to find their own solutions if possible. Mediation should never be (but often is) confused with arbitration. Finally, mediators are often involved in the design of the negotiation or problem-solving process, starting before the parties actually meet and extending to helping devise a way of implementing and monitoring agreements. These design roles have become major ones in public-policy-related consensus-seeking processes.

Facilitation: Facilitators assist a group with their communication process around some defined topic, issue or task. Like mediators (and using the same skills) they work to insure that all voices are heard and that the group keeps track of all the information being voiced. Facilitators do not get involved in helping the participants devise agreements. They do help a group to plan and design a discussion with clarifying the topics or questions to be addressed before the process begins. Facilitated discussion is used widely in many situations where there is no specific conflict, such as in improving work teams and public participation events.

an acceptable plan for custody, visitation, financial support and other matters of vital importance to the two parties' shared interest—the child. The judge seeks the

The Scarborough Story: Part II of V---Smart Growth Vision SOS!

The Chamberlains knew that they would face opposition to the major change embodied in higher density, mixed land use development on a large scale. Even though broad 1994 Comprehensive Land Use Plan policies in Scarborough called for the smart growth concepts that would allow for Dunstan Crossing under planned development review, zoning regulation amendments were needed—a local legislative action. Reflecting on this to long-time Maine journalist Doug Rooks in a 2007 Mainebiz interview, Elliott Chamberlain said "A lot of people thought we were foolish to propose a high-density development … they told us 'Don't waste the effort.'" The prospect of opposition was, however, preventing Maine's communities from finding alternatives to the sprawl which in the Portland region was creating among the highest rates of wasteful large-lot residential land conversion in the nation, according to the 2000 Census.

The Chamberlains, on advice from smart growth advocates, decided to create a direct process of engaging the affected area residents in the design of the project before it was ever formally submitted to the Town for review. This developer-led, outside-formal-regulation approach to public involvement has been used throughout the country in recent years. Alas, it is not without pitfalls when well-known consensus-building principles and cautions about coordination with formal public review are overlooked.

And that was the case with Dunstan Crossing. But the early days of this innovative attempt to gain consensus on better growth patterns was so ground-breaking in the region that filmmaker Melissa Paly included coverage of the process and project before its submission to the Town in her movie Livable Landscapes: By Chance or Choice. The promise of Dunstan Crossing in its early stages would not be fully realized, as it collided with controversy.

A project design supported by residents who had been involved in the developer-led public participation process was submitted to the Town for the beginning of formal review and necessary zoning amendments consistent with the Town Comprehensive Plan in 2001. As the contract zoning change and planned development regulatory review proceeded, further negotiated features became part of the project with the potential to become the most innovative new neighborhood development project in Maine in decades.

The Chamberlains agreed to purchase the development rights to open farmland and fields south of Dunstan Corner so that the denser development created by Dunstan Crossing would not simply be added to by low-density sprawl just down the road. The Maine State Department of Transportation agreed to make road design improvements to accommodate the increased traffic node, and plans were laid to bring bus transit into the mix. A diversity of housing types with affordable options would address the area's lack of close-in choice, in partnership with the Maine State Housing Authority. But at that point, opposition hardened.

best outcome for the child first and foremost—and will make a decision about custody and duties based on judgments about parents' commitment and capacities. But the judge knows that the child's welfare also often depends on the interdependent relationship of the parents—and the destruction of their ability to work together is often the casualty of purely adversarial court proceedings.

Mediated negotiation has increasingly been used to allow the parents a means to focus on communicating about the child's future support rather than the focus they are forced to adopt in court through their legal representatives—the vanquishing of the other parent's case. This mediated discussion occurs before the final rulings by the judge—but not instead. The role of the mediator is to act as a neutral helper to facilitate the difficult effort to hold a direct conversation between the parents.

Mediators and facilitators come from many fields and backgrounds; he or she might well be an attorney in the custody example here—but <u>not</u> one of the parents' attorneys. Instead, the mediator or facilitator is a neutral whose duty is to the process of helping both parties to communicate with each other <u>directly</u> (not through advocates). The aim is to explore and recognize opportunities to reach voluntary agreement on a best <u>possible</u> course of action. That is the basic idea behind reaching a <u>consensus</u> in a public or community affairs situation where there may be many parties about which there will be more discussion in this guide.

The need to have thoughtful discussions about difficult issues using all of the available information, rather than taking positions of simple yes-versus-no, and obscuring information for advantage, is nowhere more apparent than in the complex environmental and development decisions that most communities face. Likewise, communities need to preserve the ability of their members to work together in the future on new problems, not destroy those relationships.

The use of consensus-building approaches has helped address these needs. Public agencies and courts still exercise their legal duty to intervene and to enforce compliance where necessary. That is especially true where these institutions, especially the courts, protect basic rights. Such rights—to votes, equal-opportunity, and freedom from violence or exploitation—have at different times had to be won by struggle and outright conflict.

ADR-informed approaches have arisen precisely because not all issues, however urgent and important, are ones of rights, nor can they be resolved by outright conflict that claims "rights." Many issues are matters of finding the best, practical and legitimate path to satisfying different needs and interests. They are not matters of rights, which in fact <u>all the parties can claim</u>—the right to try to satisfy their own legitimate interests. Matters such as how big to allow a new neighborhood construction project to be, or what views to preserve in a road-widening—are distributional issues, not rights issues.

Consensus-Building for Public Issues Requires Assessment: Applying ADR principles and practices to public policy issues is much like other negotiation, but with added responsibilities to choose and design an appropriate process. That is

because the parties with legitimate interests in a public issue can range over many groups—from the citizens physically adjacent to a proposed land use change,

Others?

All Citizens?

Directly Affected Parties

Who To Involve In Consensus Building?
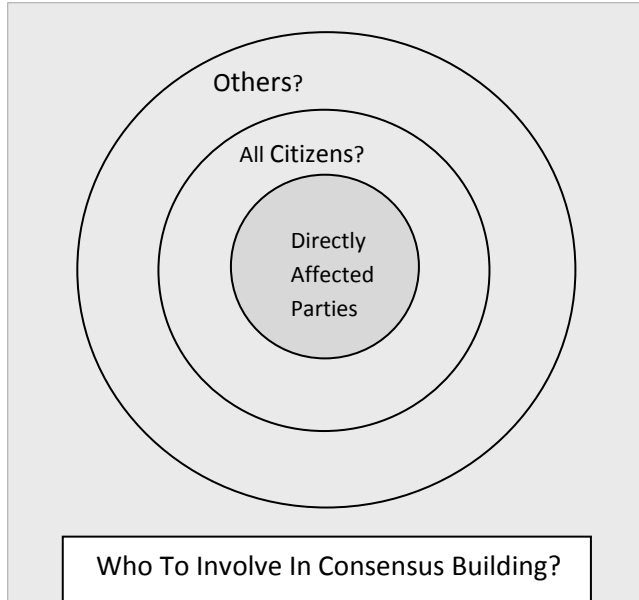
for example, to others in the community that have an interest in overall development patterns, and even to future generations that will inherit today's decisions. Others outside the community representing interests such as business, conservation, economic justice, environmental quality or aesthetics may claim a legitimate interest in a decision seen to be significant in the environment, and demand to influence it.

Who should be involved in a voluntary, direct problem-solving process? It is not necessarily obvious as it is in the case of two parents in a custody battle, or business partners seeking to resolve an issue. Public issues dispute resolution requires an assessment of who the legitimate stakeholders are and what the practical options are for devising a process to involve them. This is as true for a single, site-specific conflict or decision issue as it is for

consensus-building processes about community policies or ongoing community-development initiatives, like the case of Lawrence, Massachusetts' successful community renewal process in Growing Together. Consensus-building advisors—competent facilitators or mediators—can assist in analyzing the situation and in devising a suitable process, whether for a short-term, single issue or a longer-term process. Usually this will begin with a conflict assessment (also called stakeholder or situation assessment) like that described

When To Try A New Approach?
PCI on Collaborative Governance

The Policy Consensus Initiative (PCI) is a respected nonprofit in Portland, OR created in part as a result of former Oregon Governor and healthcare expert John Kitzhaber's efforts to convene ADR-inspired collaborative problem-solving processes on difficult issues in his state. PCI's 2007 publication **A Practical Guide to Collaborative Governance**, written by veteran mediator Christine Carlson, is an excellent introduction to what a local or state leader should consider when deciding whether or not to try an alternative approach. We recommend it as a next step information resource. It covers the role of leaders and conveners, working with neutrals (see our FAQs here as well), and questions to be answered when designing a process. Eleven case studies—largely at the statewide level—illustrate lessons relevant to communities too. Guidelines on when collaborative processes work best point out that not every issue has the right elements for the approach. These include among others high priority for the issues, multiple interests with influence over a public decision about it, decision makers with authority, but needing some level of agreement among those interests to act effectively, and a willingness from those authorities to implement appropriate multi-interest solutions gained from a voluntary process. Copies of this Guide are available from: Policy Consensus Initiative, POB1762, Portland, OR 97207.

by Larry Susskind in Growing Together.

Consensus-building processes differ from traditional citizen participation processes, starting right with that assessment. That is because the assessment is called for by the principle that you need to identify and recruit those with stakes in community decisions—not wait to see who turns up at the public hearing or committee meeting.

Public issue consensus-building thus involves some work beyond what's involved in a private negotiation between two parties. But it is based on the same underlying principles—with the aim of getting to direct discussion by those with a stake in —and future influence over—decisions in your community.

Not every decision issue or project in your community will merit a special effort to create an alternative process to supplement customary procedures. (See sidebar, "PCI on Collaborative Governance"). But every successful instance of using better means of engagement will add to the social capital in your community—the ability of different interests to work together on the most important challenges you face together. The story of Scarborough in several sidebars here gives one example of this learning process.

What Does Consensus Mean Anyway?

ADR principles get applied to public issues to see whether voluntary solutions can be found among the contending interests—short of an authority like a court imposing one. A consensus is different from a majority vote, in which there is not voluntary agreement but only one choice prevailing over another. A strong consensus is considered to be when everyone involved agrees that a set of choices is the best that can be achieved to meet the most important interests involved. In practice, this is more challenging than a negotiation between two parties where there is either agreement or not. The point of consensus-seeking efforts is to engage all the interests involved in a good faith and committed effort to fully explore interests and possible choices to meet them. That is what often does not happen in adversarial approaches including up or down votes. At the very least, consensus-seeking can give decision making authorities ideas about more effective and durable options—because the contending interests have pursued their most creative and honest problem-solving efforts.

Following sections present brief overviews of some core principles of ADR-based approaches, and the steps of designing and conducting a consensus-building process (as mentioned in Growing Together). Leading sources for more detailed information are identified. There is a discussion of Frequently Asked Question about how to seek help from a neutral, what roles community officials can take, and costs of consensus building processes.

Basic Principles: *Getting to Yes* Still A Good Starting Point

Why does direct discussion about possible solutions to a problem often yield better results than outright adversarial battle—at least if the parties involved want to have a future working relationship? It is because of an approach called interest-based negotiation or problem-solving that follows some basic principles. Three decades ago Roger Fisher and William Ury took lessons being developed by the Harvard Program on Negotiation and the developing ADR community and distilled them into four ideas about what they termed "principled negotiation." Today these ideas underlie approaches called collaborative governance, mutual–gains or interest-based negotiation, and other labels—but the core principles are the same. Shown in the inset, these four principles, if followed, move a competitive or conflictual discussion from tactics aimed at defeating the other side to techniques aimed at satisfying each sides' most important interests.

The "Principled Negotiation" Principles in ADR

1. **Separate the People From the Problem**
2. **Focus on Interests, Not Positions**
3. **Invent Options for Mutual Gain**
4. **Insist on Using Objective Criteria**

FROM: R. Fisher and W. Ury. Getting to Yes (1st Ed.). New York: Penguin Books, 1981.

These ideas are so basic to consensus-building approaches today that they are not always reviewed. But Getting to Yes: Negotiating Agreement Without Giving In—the 1981 book that widely introduced these ideas to the world—is still an excellent starting point for insight. Public issues consensus-building or conflict resolution requires added considerations such as assessment

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Smart Growth Controversy Not a Small or Large Community Challenge Exclusively— Everyone Needs A Process of Listening

Our New England small towns often feel unique in trying to deal with the challenges of gaining consent for change in a highly participatory, and seemingly contentious, "home rule" municipal environment. But large and already urbanized communities face the same needs for a better process. Leah Kalinosky of the National Neighborhood Coalition, writing in the May 20, 2002 edition of the online newspaper Planetizen ©, reported on the citizen opposition to high-density smart growth land use proposed by the District of Columbia Council at the Takoma Park Metro station—one of the most ideal locations in America for transit-oriented development.

"At first glance," she writes, "developers and even some smart growth advocates may be tempted to yell 'nimbys!'" But she goes on, "When you listen to the concerns of the Takoma Park residents they don't sound so much opposed to development as **frustrated with not being listened to**." (emphasis added) Dismissing citizen protest over land use change "… ignores the complex range of issues behind 'resistance,' (and) "the acronym nimby … puts the burden on residents to 'accept' development rather than expecting that planners and developers effectively engage residents from the beginning …." writes Kalinosky.

Engaging and hearing all the nuances of issues— problems that can be acted on—begins with the same principles outlined in Getting to Yes. Listening is the first skill in consensus-building as it is in effective negotiation.

Planetizen story retrieved May 20, 2002 and again July 9, 2009 from http://planetizen.com/node/52

(mentioned earlier) which are discussed in the next section. The basic principles still apply to any form of engagement process concerning issues that need to be resolved among different interests.

The power of these principles is that they change the focus from defeating the others involved to finding out what the practical, substantive interests are that need to be satisfied—on each side. The use of hard positions—essentially "give me what I want or else"—is not well-suited to finding workable solutions to many issues. Who wants to agree with that kind of position? If you need agreement, you may never get there in this manner. The undermining of the other parties' legitimacy and credibility in "hard" bargaining and the use of information as a weapon—by hiding or distorting it—only undermines the legitimacy of one's own interests with those whose agreement you actually need. And it obscures information—the objective criteria—that could help find a practical solution.

Public officials and community members involved in growth management issues see this behavior all the time when opponents of a decision dig in their heels on hard positions, engage in battling experts and attacks on each other's proposed facts. But it is lazy to dismiss this simply as a "NIMBY" (not in my backyard) response by selfish citizens or special interests. Maybe the process being used does not allow those stakeholders any options for the pursuit of their legitimate interests except blunt and uncooperative opposition and distortion.

Public hearings, despite being the most basic guarantee of a voice in our system for policy-making and regulation, are the worst forum for sharing complete information and trying to explore it fully for new ideas about

From the NE EFC Smart Growth Leadership Case Library: Unlocking Opposition in the South Village Project

(Promotional Graphic for South Village)

When mediated negotiation is necessary to resolve specific issues that stalemate a major community project, sometimes discovering what the real issues are is the biggest step forward. The story of South Village, from the EFC Smart Growth Case Library, illustrates this. South Village is a smart-growth-concept new neighborhood being developed in South Burlington, VT (SBVT). Several years of extensive city review had resulted in project changes to satisfy concerns of both adjacent landowners and state agencies. But one landowner for whom changes had been made still persisted in opposing South Village through a pending appeal to the State Environmental Court under Vermont's Act 250 law. The E-Court has a program of asking disputants before it to first meet with a mediator's help to explore possible solutions. This process resulted in discovering that the landowner's real interest was in mitigating the impact of an existing public trail system near him that would be connected to South Village's new trail. In this case the City had provisions in place to alter the trail—which it agreed to—and the landowner withdrew his appeal allowing final approval of South Village. The "time-out" of direct mediated negotiation surfaced the real sticking point, allowing the issue to be freed from costly positional opposition. See the full case "South Burlington: New Urbanist South Village," at http:// efc.muskie.usm.maine.edu/ pages/case_study_library.html.

The Scarborough Story, Part III of V: Conflict and Consequences

By 2002, nearly two years after the pursuit of project approval had formally begun, the Dunstan Crossing vision had garnered sufficient support from the Planning Board and Town Council to start to move forward with the necessary negotiated contract rezoning (requiring Council legislative approval). But at that point, opposition developed among some members of the Dunstan Corner neighborhood. The Chamberlains had engaged nearby residents in an extensive pre-application participatory design process, facilitated by a real estate professional they engaged on their team. There had been enthusiastic support from the citizen participants who got involved. But some Dunstan Corner residents organized a petition referendum to over-turn the project through a citizen vote. Such direct-vote referenda on local and state policy decisions are readily accessible to Maine citizens.

In June, 2003 the Scarborough Council approved the contract rezone, paving the way for the further planned development review required. But sufficient voters had signed a petition circulated by unhappy Dunstan Corner residents and a special ballot measure the next month, July 2003, overturned the Council's rezoning decision. Among the main arguments used by the petition organizers is that Dunstan Crossing is too big and will change Scarborough's character, as well as the notion that the larger public had not been involved enough in decisions.

In August the Chamberlains filed suit in Maine Superior Court against the Town, claiming that Scarborough's zoning had failed to be consistent with the 1994 Comprehensive Plan, the official policy of the Town. In a preliminary ruling in October, 2003, the court supported this argument by the Chamberlains. Using Maine's provisions for discretionary use of voluntary mediation in civil court proceedings, the parties to the lawsuit were asked to undertake a mediated negotiation to settle the suit.

The negotiation resulted in an agreement between the Town and Chamberlains. A major change was that total housing units were capped at 288, compared to the original 441 units conceived of after the participatory design workshops and the original application to the Town. Decisions about commercial land use integral to the new village concept were deferred to the planned development process.

Yet another issue emerged when the Maine Department of Transportation (MDOT) objected to maintaining its commitment to provide multi-million dollar traffic improvements—because the scale and nature of the development was no longer innovative "smart growth." MDOT had not been a party to or had coordination with the mediation process, which was handled much like a private-party or family law case rather than a public policy and investment issue. Further negotiation and adjustment with that agency would be necessary to configure the final project. With a greatly slowed build out plan, deferring commercial development until the fourth phase, Phase 1 of Dunstan Crossing with 26 units began construction in 2007 and by mid-2009 was celebrating completion, with a July 18 public open house.

complex problems. People quite rationally must take final positions on the decision, and prepare for the subsequent appeal, lawsuit or referendum.

An interest-based approach starts with listening—the most basic skill and commitment for effective principled negotiation. But listening is too often the first thing abandoned in public issues when conflict escalates. Much of the work of facilitators and mediators involves simply helping the parties involved listen to each other.

Fisher and Ury and others from the Harvard Program on Negotiation famously sum this up with the advice on how to focus on interests instead of positions: "Ask them why." Finding out why someone has taken a position such as "not in my backyard" is the needed step to find problems that can be acted on—instead of positions that can only be rejected or submitted to.

Likewise, being hard on the problem by probing what people really want, but being easier on the people by respecting that each has some legitimate interests to voice, moves communication from attacking parties to attacking the issues to be resolved. Kick the issues around, not the people.

The process of exploration and option invention can then be pursued. The focus becomes getting to what people really want, and to what ideas there are for bringing that about if possible, in a single conversation that everyone hears. That process—originally called single-text negotiation by innovators in the ADR community—has been especially useful in data-heavy, complex and uncertain

environment and development issues, which can easily slip into less useful battles merely lobbing contending claims and protests back and forth but not increasing understanding of the real problems. Joint modeling builds one set of information about the issues and needs.

Finally, the idea of using objective criteria can be illustrated by the example of two people negotiating over the price of a used car. Imagine the two parties are arguing over whether the seller's claims of high quality and price are more legitimate than the buyer's proposed, much lower bids. What if this went on without resolution, with the argument the focus, and not getting to a settlement? What could they do?

One approach consistent with the idea of objective criteria would be to look at the Kelley Blue Book or other source of typical accepted price ranges for the vehicle in question. The parties still have to then explore where this vehicle falls in that range given age, features, and condition—but that's the route to possibly agreeing.

The used car example is not so different from the dilemmas we face in complex environment and development issues. The ADR community developed the idea of joint-fact-finding, particularly in environmental problems with technical complexity. Pooling information and testing its assumptions, instead of throwing contending facts at each other, becomes a way to get to that Blue Book anchor for exploration of complex issues.

Joint fact-finding is a good example of how the basic principles have been extended into techniques for dealing with more complex issues. How is that done in putting together a complete process for the often messy, multi-party nature of community development and conservation issues? As discussed by Professor Susskind in <u>Growing Together</u>, there is a good understanding today of the steps and phases of designing a consensus-seeking process and the roles leaders most appropriately play in convening and using the results of such efforts.

Consensus Building Stages: Basic Perspectives, Questions for Leaders & Further Information Sources

Today there is wide acceptance that we should think about consensus building efforts as having three general phases or stages, each with essential tasks and necessities. This is true for situations beyond a short-term negotiation about well-defined issues between two parties. It applies equally to a process with more parties and an uncertain set of issues when a major decision looms, such as a large development project proposal in a community or a new regulation (See The Scarborough Story sidebars). The need to consider each stage also applies to longer-term processes that may take place before urgency presses for a specific decision—for example in developing a new community plan. Although public participation is always a requirement of such longer term efforts, under most state laws and customary practice, much has been learned from the ADR/consensus-building experience about making such efforts much more effective.

In a negotiation the three stages are described as a pre-negotiation phase, the negotiation itself, and a post-negotiation stage.

Pre-Negotiation: Training of more effective interest-based negotiators emphasizes that the pre-negotiation stage is essential but often over-looked. It is the stage before sitting down with the other party in which effective negotiators analyze both their own interests (what do we really need?) and those of the other side (what do they really want that can be achieved while we also meet our most important interests?). It is also the point where protocols or ground rules for the actual negotiation discussions are worked out and agreed to—who is at the table, who is responsible for any costs, will there be a neutral helper?

Negotiation: The actual negotiation is where the focus is on the behaviors and tasks of putting interests on the table, instead of mutual assault, and exploring possible ways of meeting those interests. Much of a mediator's work is in helping design and then pursue a discussion between the parties that allows a safe space to explore possible agreements without feeling that final commitment must be made.

Post-Negotiation: When an agreement is found, if possible, the third phase becomes essential: Appropriate means must be devised to implement agreements—whether in contracts, statements of understanding, exchanges, or other means. It is wise to also devise means of monitoring agreed-on performance by all parties if

commitments must be carried out over time.

Voluntary agreement based on serving one's most important interests is the *sine qua non* of interest-based dispute resolution or consensus processes. The lesson is that reaching agreement is necessary to serve those interests, else why a conflict and the need to engage? One of the practical and powerful insights of ADR is that we need the cooperation of our adversaries in distributional issues (not matters of rights or safety) in order to meet our own interests. That means

understanding what the other party's legitimate interests might be—a practical truth.

Applying the Stages to Public Issues

The need to plan for how to engage people in a consensus-seeking process is as great or greater when the issues involve a potentially wide cast of people with different interests. In such situations the ground rules for decision are not simply reaching agreement between two parties, and so must be worked out before trying to commence a process. The ADR community has generalized the stages of any consensus-seeking process: Convening, Deliberating & Deciding, and Implementation. These are parallel to stages of negotiating but with added considerations and tasks for those who would sponsor and convene a public process and the neutrals who may assist.

Stages of Consensus-Building:

In A Negotiation	In Any Interest-Based Consensus Process
Pre-Negotiation	-- Convening
Negotiating	-- Deliberating/Deciding
Implementation	-- Implementation

The following is not meant to be a full discussion of that framework—for which authoritative information resources are available (see sidebar). The focus here is on points about the convening stage, as it is too often overlooked when consensus building principles are not taken into account. Yet all that comes after is affected by what is done at this stage.

The Scarborough Story: Part IV of V—Lessons Learned in Dunstan Crossing

Participants in the Dunstan Crossing story, including Elliott Chamberlain and Town Manager Ron Owens, reflect thoughtfully on some of the lessons learned from their perspective in <u>Growing Together</u>. One observation they make is that perhaps the Town itself should have been the convener of the initial participatory process. As you now know from reading this guide or from your own training, the Town can appropriately be the sponsor and convener of such a process given certain provisions. Among those is the need to make the relationship of the ad hoc, voluntary process to formal, legal procedures clear. Another is to insure that the process is appropriately conducted, for example by a neutral, so that it will be legitimate.

The effort by the Chamberlains and their advisors to conduct innovative engagement of the affected public and to seek a consensus design was nonetheless very commendable. On the plus side, that effort was early, involved direct conversations with stakeholders, and was actually quite accountable to those participants within the developer-led process. Unfortunately, however, using consensus processes for public policy and regulation issues requires applying lessons and knowledge about the requirements of that kind of setting. Because no situation assessment was done based on those principles, the question of how the initial process would connect with the larger public process was not accounted for in a total design.

Nor was the full scope of stakeholder interests—and potential influence over outcomes—accounted for, which is a basic task of conflict assessment. The opponents of the project were able to use these issues as leverage to conduct a recall referendum vote among the wider citizenry, overturning the Town's approval of the project. Part of convening is assessing who needs to be involved in the discussions. In a public issue, that can be a wider group than the traditional legal requirement in land use laws, for example, of publishing a public notice of formal hearings, and maybe direct notice to abutting landowners. Clearly in the Dunstan Crossing case in Scarborough, a wider involvement was needed, and convening in consensus-building often means not only identifying what interests need a voice, but also actively and directly recruiting appropriate, voluntary representation of each of those interests to the extent possible.

The developer-led process also used a non-neutral to facilitate the work between the project team and the members of the public. Whether or not this meant that the guidance of the conversations was biased toward a certain result—which can be hard to avoid and also violates the principles of facilitation—it undercuts unnecessarily, the credibility of the outcomes. This could have been easily addressed by designing a process with neutral help.

The mediated negotiation to reach settlement of the lawsuit between the Chamberlains and the Town also suggests another lesson about design—the need to coordinate with institutions and other actors who will be necessary to the implementation of a voluntary, consensual solution. A "red flag" procedure (as described later) has been used successfully in similar situations, and could have been set up with the Maine Department of Transportation.

These lessons from Dunstan Crossing all reflect the need to conduct an assessment, plan carefully for convening, and to address the overall design of a consensus-seeking effort as early as possible.

Why Pay Attention to Convening?: Unlike a public hearing or traditional public participation, creating a consensus-seeking process requires more than just opening the doors and seeing who shows up. Sitting down with a consensus-building neutral who is experienced with public processes can help organize a successful effort. The means to do that is through conflict assessment, as discussed by Larry Susskind in Growing Together. This is also called a situation or stakeholder assessment when it applies to issues that may not constitute a specific conflict among obvious parties.

Assessment (Design): Deciding who needs to be involved is one of the key tasks of convening and is addressed in an assessment. Other matters addressed in assessment that are important to convening include analyzing what the issues or questions are that need to be answered, and what interests are involved. That is necessary to determine who needs to be involved.

An assessment also begins to analyze what kind of process will best suit the needs of the situation. Doing assessment is the first step toward consciously designing the process, not leaving it to habitual practice or minimum legal requirements. The step of engaging an independent assessment is also a step towards committing to a fundamental aspect of ADR-based consensus-building—a neutral process.

As noted in Growing Together, the results of an assessment will include findings about what issues and interests are of concern among different parties. An agenda or statement of questions or issues to be addressed as a starting point for a process of engaging the parties will be offered. The interests that need to be represented will

be identified, with advice about how to recruit appropriate representation for each interest—based on finding a way to include parties that speak for an interest rather than apportioning votes.

Recommendations will be made for design of a process that fits the situation, appropriate timelines to reach closure, and the relationship to the role of formal public authorities (for example, will those decision makers wait for the outcome of the process and consider its results?). A neutral assessor will give an opinion about whether or not a process of some kind is likely to succeed given all those factors.

The assessment may have also revealed conditions that create an uneven playing field for the participants—such as differences in resources to acquire and understand technical information. Design can address this for example by providing resource experts to help, or even gaining agreement that a party with much technical information will share it (which has been agreed to in a number of mediated negotiations over environmental impacts from industry).

Assessments provide a basis for convening. Each will emphasize the different elements to varying degrees. Each will be unique to the situation, but draw on the basic ADR principles as a guide.

Once a decision is made by the convener to go ahead with the assessment's recommendations, there will still be design decisions to be made such as:

- Selecting neutral facilitators or mediators to manage the process;
- Ground rules for participants, including the roles of parties directly involved,

and the of resource experts or staff who may need to be called on for information,

- The arrangements with any formal authorities who will be asked to consider any consensus outcomes in their decisions.

Clarifying Roles: Convening also involves clarifying roles and responsibilities. The **mediator or facilitator** (depending on the type of process) will have the role of working out those understandings and guiding everyone toward honoring them. **Public officials** who want to see the contending interests in their constituencies find agreeable and beneficial directions they can jointly support have the often challenging need to step back from the process. A town can be the sponsor and convener of a process by undertaking an assessment and then inviting participants in.

Town officials should never, however, try to be the mediators or facilitators of a process. Even given skill with and understanding of that work, an official will be viewed as chairing a discussion in which everyone is trying to influence that individual's opinion and ultimate judgment. For the same reason, using public staff as neutrals can have limitations, although there are situations in which that may be appropriate.

The mandate or charge for the process needs to be clear—for example, a town may want to give the community an opportunity to air ideas and concerns about a major policy or regulation before officials begin the formal process of development and adoption. (**See The Scarborough Story Part V: Dogs on the Beach**). It is vital that officials carefully define their role—which legally cannot usually involve direct

participation. But it can involve listening to what the process reveals. And that is the appropriate and most important role in terms of consensus building principles.

More deliberate attention is also given to **participants'** roles. In conventional engagement of the public, little thought is given to this. Minimum standards of behavior are imposed in a public hearing, such as keeping speakers to equal but limited time to testify and not allowing abusive language. Even basic neutral facilitation of a public discussion—with ground rules about speaking constructively—doesn't encompass the roles that participants recruited to a consensus-seeking process can be asked to accept.

In addition to ground rules about constructive speaking, the role of participants should include a commitment to the idea of working as hard as possible to explore possible jointly acceptable outcomes. The challenge is that this is not a guarantee to achieve agreement, simply a commitment to work hard towards its possibility. That is vital to unlock participation from defending a position—which closes off exploration from the outset. Like any exploration, it has unknowns and may be difficult.

Accountability: At the same time, the conveners of a process need to make clear what the participants can expect in return for taking the risk of this work. What influence will the convened parties have on eventual decisions? Will decision makers take their conclusions into account? How will the participants find out the reasons why their recommendations were adopted, or why not? Participants need to know their

The Scarborough Story, Part V: Dogs on the Beach—Lessons Applied

Between the settlement of the Superior Court suit and the real beginning of housing construction at Dunstan Crossing, the Town of Scarborough began to act on its lessons learned about process and public consensus building. A good example is how the Town approached a looming issue of adjusting its regulation of "dogs on the beach" under pressure from state and federal authorities. This was and is an issue about which emotions run high—and in conflict. Scarborough's beaches remained the last of Southern Maine's sandy retreats where an urbanizing population can let their dogs run free off leashes. Some people fear these dogs on the loose, however, and incidents of friction with non-dog-owners had occurred on beaches in Scarborough. But the most influential factor driving adoption of dog leash laws over time on beaches in the towns of this area was the protection of the Piping Plover, an endangered beach-nesting bird under both Maine's laws and the federal Endangered Species Act.

Soon after a summer in which damage to Piping Plover nests continued to occur on Scarborough's beaches, the Maine Department of Inland Fisheries and Wildlife (MDIF&W) and the United States Fish and Wildlife Service Gulf of Maine Office communicated their concern to the Town under these laws and asked for Council consideration of adopting a stronger leash law or outright ban of dogs on the beach.

Facing the need to review and reach judgment about the current Town beach ordinance, some members of the Council, drawing on experience with the Dunstan Crossing issue, asked Town Manager Owens to bring in a neutral to discuss possible approaches to engaging the public on the issue early. A consensus building practitioner/educator was brought in through the auspices of the New England Environmental Finance Center. After discussions with the full Council and Town Manager, it was recommended that the Council Ordinance Committee—who would have to review current local regulation—sponsor and convene a one-time public forum on the looming issue.

The purpose would be to inform the public about the pressures to revisit the regulations, to hear views from different interests among the public, and to raise as many ideas as possible for how the Council Committee might approach revising the regulation. The forum was to be designed, managed and facilitated by a neutral experienced with public and local government issues. In making the abbreviated assessment and recommendations for the forum, the neutral proposed and gained Council agreement that they would attend the forum, welcoming the public as its conveners, but would only listen—not comment or voice any opinions, and definitely not sit in their customary raised dais at the front.

About 150 people attended the Dogs on the Beach Forum on a mid-winter night. The room was charged with tension. The forum had been designed with time at the beginning to hear from the regional staff member for the Maine wildlife agency, explaining the legal situation, the issues with endangered birds and the state and federal requests to the Town. This expert was also on tap to clarify questions during the evening. The ground rules and roles were explained to everyone, including the vital points that Council members and Town staff would listen only, and that the Council wished to hear both feelings and ideas about what the Town should do.

Perhaps the most striking aspect of the forum itself was the contrast between citizen stories of how taking their dogs to the beach was a vital part of the Maine way of life and tradition—even health and survival—and the stories of those afraid of dogs, fearful for their children's safety or their own. As these citizens listened to each other in the facilitated discussion, the initial incredulity that other people could think like that changed in some eyes to the dawning of broader understandings. People have different needs and experiences, and the Council would have to somehow take all of them into account.

The most consequential impact of the forum was that a new ballot referendum (which threatened to prohibit the Council from changing the local beach law) failed to ever succeed. It was not that the citizens of Scarborough weren't ready to use that blunt tool of democracy—they had just succeeded to a point with Dunstan Crossing. It was more the fact that the issues had been aired, the complexity of the problem understood by more citizens, and an opportunity had been created to see if the Council could make use of what it learned. The Council, using ideas developed in part from the forum's input, successfully revised the beach law before summer's start to impose new rules that limited unleashed dog access but maintained some opportunities for people and dogs to have access.

role in terms of accountability to as well as from them in a voluntary consensus process.

Deliberation & Deciding: The actual process of joint dialogue or deliberation is heavily influenced by whether or not assessment and design has first taken place as part of convening. It is not the purpose of this companion to Growing Together to elaborate on the skills and strategies involved in deliberation, for which there is a wealth of information resources (see inset). It is worth noting that a fundamental innovation that public officials can make that will support this stage is to provide for neutrals to support it. Their guidance also often has the benefit of building capacity and skills among the participants, which only strengthens a community's ability to address future challenges.

Implementation: Determining how to carry out the results of either negotiated agreements or consensus-seeking efforts is also a phase that is given much more consideration today based on lessons learned. One lesson is that attention needs to be given to implementation as early as possible in public issues consensus efforts.

This is especially true if a legally-empowered agency or decision making body must consider the results as a basis for exercise of their duty. If the recommended consensus actions conflict with an institution's legal requirements or fail to meet the institution's fundamental duty, it will be a non-starter. That will be regardless of consensus among stakeholders who had been at odds.

A good example of how this issue is proactively anticipated in the design and convening of a consensus process is the

"red flag" procedure innovated by pioneers of major mediated environmental agreements thirty years ago.[1]

A red flag process involves gaining agreement with the agency that emerging conclusions will be shared confidentially with the agency, by the neutral, early enough so that if conflicts exist with policies or regulation, the consensus-seeking group can rethink their direction. When this coordination with agencies is overlooked, the institutional cooperation needed to implement voluntary solutions may be lost. (This problem emerged in the case of Dunstan Crossing—see sidebars.)

This is but one example of aspects of implementation that need to be anticipated, with an approach designed to meet the situation. Experienced neutrals who assist with designing an entire process will have recommendations about how to address this stage proactively.

> The final section of this companion to Growing Together reviews some frequently asked questions about your role as a public official, where to look for neutral assistance and resources, and typical costs of consensus-building processes of different scopes. If you have watched the film and read this guide, you have taken the first steps toward making choices about how the most challenging decisions in your community might be more productively discussed.

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[1] Interviews with Orville Tice and Leah Patton of The Mediation Institute, Seattle, WA, conducted by Jack Kartez at Washington State University, 1982.

ADVICE ON SOME FREQUENTLY ASKED QUESTIONS[2]

Isn't this approach more for large or wealthy communities than small places like ours?

No. The consensus approach can be tailored to fit the resources and needs of smaller communities. Use of a facilitator or "neutral" is a key aspect of the approach, but there are options for containing the cost of the process as discussed in FAQs below. Communities can and should also be selective about when the consensus building approach is used – reserving it for periodic contentious or exceptionally complex issues rather than trying to incorporate it into routine decision making—which would not be appropriate. As the case study of Randolph, Vermont showed in <u>Growing Together</u>, consensus building approaches can work well in a more rural setting. Each area will have its own needs for the design of a process as discussed in previous sections.

Does consensus building take more time than a more "traditional" process?

That depends on whether one takes into account the total time an issue can command if the decisions resulting from the formal review process are then challenged through appeals, lawsuits or referenda like the Dunstan Crossing case. The true cost in the end of not using supplements to the formal process can be greater. Resolving difficult issues to reach a stable outcome with all involved often takes time. – regardless of the approach used. And even when sticking to the conventional process results in a quicker decision, this may be of limited value if it created "winners and losers. " That is not only because of added future political or legal challenges to the decision, but because future working relationships are damaged.

Officials and citizens in our community are likely to be skeptical that this approach will work in our town. How do we make the case that it is worth trying?

Perhaps your reaction to the film is this: I like the approach and it seems to have worked well for these communities, but OUR town or region is different. Maybe you have trouble visualizing how such a process could generate adequate interest in a small town typified by poor meeting turnout, general distrust among different groups or leadership wedded to the status quo. Or perhaps the process looks too cumbersome for making timely decisions. But the same has been true for the communities in the film and many others. First, remember that it is important to be selective about when a supplementary consensus-seeking process should be used, so that there is interest because different parties must find an acceptable outcome and because the issue and time are "ripe" for the effort. A neutral assessor can help you judge that. Second, the approach must be tailored to your situation and in some cases may be a quite modest step like the "Dogs on the Beach Forum" that Scarborough eventually tried. Third, trying these processes usually requires leadership and a champion who asks, "Don't we want a better outcome that everyone can live with instead of using up our energy on opposing each other?"

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[2] Based on an earlier version written by Will Johnston, NE EFC Water Program Manager, and posted on our website.

Who should be "in charge" of the process?

Federal, state or local governments are often conveners today because public leaders caught in the middle of contending interests really would like to find a path that satisfies as much of everyone's interests as possible. At the community level, a local leader, non-profit organization or group comprised of different interests may also act as conveners. While it is not essential that conveners be viewed as completely unbiased toward a particular point of view, it is critical that the process they establish be perceived as fair, neutral and transparent. Use of a facilitator or mediator who is clearly working on behalf of the stakeholder group, not the convener, is a primary means to create an impartial process and to build trust in it. In some processes the convener retains a general oversight role in keeping things moving and dealing with logistical details. In other situations, the convener turns this role over to another entity or person, often to the stakeholder group itself, to a subcommittee of it or to a chairperson or staffer. The participants and the public at large need to know what this role is and its limits—it is not being "in charge" of the decisions of the consensus-seeking group. The essential requirement is that the convener not assume the role of managing the conversations, which is best left in the charge of a neutral, with the participants "in charge" of their results.

What options exist for using facilitators and mediators?

The field of facilitation and dispute resolution is a growing one, and practitioners exist in the private, public and non-profit sectors. It is likely that a number of qualified individuals, firms or organizations are available in your region to provide such services. The terms *facilitator, mediator and neutral* are often used interchangeable to describe individuals who serve as the impartial third party helper. But as the preceding guide points out, mediators play a much greater role in helping a group to devise agreements than is involved in facilitation of a meeting or ongoing process—but the distinction is not a sharp boundary. In the remaining FAQs, the term facilitator is used generically to describe practitioners who serve as neutrals. There are many excellent *private sector facilitators* whose hourly rates can range from fifty to hundreds of dollars, depending on their experience and expertise, the services they offer and statewide or national reputation. While fee considerations are likely to be an important factor as you weigh your options, you should also carefully evaluate track record and approach. In some cases, a highly trained and talented facilitator may help you achieve breakthroughs that save time and money, making the extra investment well worth it. A number of *public, non-profit or academic organizations* have facilitation or mediation services, or employ individuals willing to provide assistance, either on a reduced fee or pro-bono basis.

Some states have dispute resolution offices as well as universities that offer services and training – a few with funding to provide assistance at no charge for selected cases. A recent trend is the growth of non-profit organizations that provide training in *leadership skills*, of which consensus building process, dispute resolution and collaborative leadership often are a part. These organizations may have staff members who are available to assist you either in designing or conducting your process, or they may provide valuable training to small group moderators, other volunteers and participants themselves. Participants well versed in group and leadership skills will find it easier to work together on contentious issues. There may be cases in which less trained or experienced individuals are able to serve as a neutral as well – particularly if the role is limited to simply observing and recording the proceedings and enforcing ground rules in an impartial manner. The use of a group member as a facilitator in meetings, such as town committees and work groups or public forums without pressing conflicts or decisions, can be a good means to build leadership skills. But one cannot perform facilitation service without remaining neutral, which is a skill and which cannot be asked of someone of they have interests they need to

pursue in the process. Remember as well that facilitation involves concrete skills and ethical norms—not merely a pleasant or persuasive personality.

So can we tap a local person, perhaps one whom has some has had some facilitation training?

How about using a well respected person in your community – perhaps your perennial town meeting moderator– to facilitate or process? Or how about a citizen who has taken some course in facilitation and group processes? This approach presents several difficulties. The first has to do with being an effective neutral. It is extremely difficult for a person living in a community or region to remain completely impartial regarding issues or development that is confronting the area. Even when it is not on a conscious level, the tendency to take sides can be strong when family, friends and neighbors are part of the process. Secondly, the skills involved in chairing or moderating meetings are often not the same as those used in a consensus-building process. In fact, it is sometimes difficult for someone accustomed to running meetings using Roberts Rules and votes on motions to make the adjustment to these new techniques. Even when the local person has had some training in consensus building and alternative dispute resolution, it usually takes experience and time to hone skills and gain confidence with this approach. Finally, that respected individual who also has some grasp of the value of alternative approaches may be an ideal lead representative of a convening effort, where their insight, credibility and energy can help support a successful process. Citizens with leadership and group process skills can also be utilized as small group moderators or recorders, or serve other auxiliary roles, under the direction of a skilled neutral.

Should our neutral be experienced with land use and environmental issues?

This type of question is always under debate in the ADR community. One view is that a mediator or facilitator can support a process directed at any kind of issue. It is not the role of the neutral professional to render opinions about the substance of issues—for example, how to design a new neighborhood—and certainly not their role to provide the "answer." That is what all of the stakeholders are there to hammer out. At the same time, however, it can be very ineffective if the neutral is so unfamiliar with the terms and concepts involved in issues that he or she must stop and ask what they mean—or is unable to expediently record and summarize for the parties what the discussion is about. Because facilitators come from a wide variety of fields today, background understanding can vary widely. Some skilled facilitators are nonetheless completely in an alien environment when people are arguing about local zoning, economic development and landscape protection needs. Perhaps the best way to think about what is needed is that the neutral should be familiar with local government matters, including the formal processes, and the nature of public issues in a general way. They should be comfortable supporting the discussions in that arena. Perhaps an equally important question is whether or not the neutral also has experience with designing a process that can fit with the public decision making environment — for example, understanding how the work of a voluntary consensus discussion can then be connected to formal decisions.

What costs can we expect from a consensus building process?

The costs involved in a consensus building process are highly dependent on the type of process you intend to use and the time spent. A significant cost factor is the extent to which you use a facilitator and his or her hourly rate. If a facilitator with a rate of $200 an hour or more is used over an extended period, it is not difficult to accrue significant expenses. On the other hand, one can argue that you get

what you pay for, and that an experienced and skilled facilitator can help reduce the length of your process and foster a higher level of resolution on the issue in question.

The extent of other costs will be highly variable based on the approach used. If the approach will rely heavily on computer technologies such as visualization software, this may involve considerable expense, unless your town already has these resources. You should also take into account likely administrative costs involving printing and copying materials, use of community space and providing food and beverages. Many of these costs, however, can be reduced by soliciting donations and volunteers. Although it is not usually possible to accurately predict all expenses, it is useful to flesh out the expected budget, building in some conservatism to account for unforeseen circumstances. Ultimately, a proposed $12,000 process that ends up costing $10,000 will be viewed in a far more positive light than a proposed $8,000 process that ends up costing twice that amount.

The table below provides some extremely rough time/cost estimates based on three different consensus- building scenarios. Actual facilitation rates for some private practices can well exceed $200 an hour, and, on the other end of the spectrum, you may be able to secure at least some pro-bono facilitation help. The table also does not account for use of municipal staff time. Description of Process	Facilitator Time Involved	Expense assuming facilitator at $200/hour	Expense assuming less costly facilitator ($50 hour)	Other Possible Expenses
One-day Design Charette (assuming use of volunteer moderators for breakout groups).	8 hrs. – Preparation 8 hrs. – Meeting and travel 9 hrs. – Debriefing and reporting **25 hrs.** – Total	$5,000	$1,500	$300-$500
A 2-3 month process to address a development proposal (Assume 5 meetings)	20 hrs. – Process design and 20 hrs. – Meetings and travel 20 hrs. – Debriefing and reporting **60 hrs. – Total**	$12,000	$3,000	$1,000-$2,000
A one-year process to address an "intractable" community issue. (Assume conflict assessment and 12 meetings)	30 hrs.– Conflict Assessment 30 hrs. – Process Design and prep. 60 hrs. – Meetings and travel 30 hrs. – Debriefing and reporting **120 hrs. – Total**	$24,000	$6,000	$4,000-$8,000