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COLLABORATIVE DISPUTE RESOLUTION PROCESSES

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People are generally better persuaded by the reasons which they have themselves discovered than by those which have come into the minds of others.

—Blaine Pascal

Importance of Collaborative Dispute Resolution

Public Problems in a Democratic Society

In his remarks at the 1992 National Public Policy Education Conference, Michael Briand from the Kettering Foundation discussed public problems in a democratic society. He said there is no single standard, rather multiple perspectives on what is the “public interest.”

Shared Power Context. As described by John Bryson and Barbara Crosby, no one institution or organization is in a position to find and implement solutions to the problems that confront us as a society—in other words, no one is in charge! Their book, *Leadership for the Common Good: Tackling Public Problems in a Shared Power World*, sets forth how to think and act more effectively in a shared power context. Dimensions of a shared power context include:

- Increased complexity, uncertainty, turbulence and risk.
- Fragmentation, division and separation.
- Individual versus society—competition versus cooperation.
- Declining capacity to manage and to govern changing role of elected leaders.
- Solutions that can be implemented only when a critical consensus is created and sustained.

Public Decision-Making Trends. In their work on consensual approaches to resolving public disputes, Lawrence Susskind and Jeffrey Cruikshank suggest that this country’s public policy process is in the throes of decision-making paralysis when it comes to taking action on important and controversial public issues. Another decision-making trend is new mandates for public participation in 70s/80s (with tools for this evolving).

Emerging Collaborative Leadership Models. An effective public leader will realize that the solution does not lie outside the public but within it. What should be done becomes clear only as members of the community deliberate together. Effective public leaders do not assume the problem is already defined, but solicit a variety of perspectives and seek to integrate them into a new genuine community perspective on the problem. A community leader is one who helps the community find its voice and set its direction.

Goal of Public Policy Education

The goal of public policy education is to increase understanding of public issues and policy, as outlined by Barrows and Danielson.

Collaborative Dispute Resolution Efforts. Over the past decade, dispute resolution processes such as mediation, negotiated rule making and policy dialogues have become more common features upon the public policy landscape at every level of government. These processes, which are sometimes referred to by catch-all titles such as Alternative Dispute Resolution (ADR) or Collaborative Problem Solving (CPS), have been most commonly used on an *ad hoc* basis to resolve conflicts that arise during policymaking or policy implementation. These are structured public learning processes achieved through face-to-face engagement in defining problem(s); generating alternative ways to solve the problem(s); and selecting a solution that addresses the interests, needs and values of the different stakeholders.

Common Roles. Collaborative dispute resolution efforts and public policy education share a focus on the role of convener, promoter of a sound process and neutral process manager.

Collaborative Dispute Resolution Processes

Definition

The traditional use of litigation and administrative and electoral procedures for dispute resolution has not always produced fair and wise solutions. Litigation can be time consuming and expensive. Direct participation, for the most part, is discouraged and communications become distorted. Adversarial relationships make compliance and implementation problematic. Although a winner is declared and a decision is rendered, the dispute may not be resolved and the losing interests may redirect their efforts to block decisions.

Collaborative dispute resolution is a voluntary process that involves many interests in a facilitated—or mediated—face-to-face negotiation. The impartial facilitator, often selected by the participants, assists in defining issues, exploring the parties' mutual interests and those that divide them, generating and assessing options, and reach-

Figure 1. Stages of Consensus-Building Process.

GETTING STARTED	JOINT ANALYSIS	MAKING DECISIONS	DOING IT
See an issue	Mutual education	Create criteria	Present for ratification or adoption
Identify the parties	Create joint knowledge	Apply criteria	Prepare for renegotiation
Make initial contacts	Jointly define issues	Make preliminary choices	Monitor and evaluate
Think it through	Jointly define problems	Test	Celebrate!!
Develop a process	Generate visions and options	Package	
Ground rules		Develop implementation plan	
Logistics			
Timing			
PROCESS	THE PROBLEM	THE SOLUTION	PRODUCT



ing an acceptable solution. The agreements are reached by consensus, not by majority decision (Figure 1). These processes supplement conventional dispute resolution forums, and they are most often initiated when the normal decision-making process has proven ineffective. Building consensus through negotiation may be motivated by a desire to advance a shared vision through an exchange of information or by a need to resolve conflict to produce a joint agreement, or both.

State Dispute Resolution Programs

At least sixteen states have created, or are in the process of creating, statewide offices of dispute resolution or similar entities. The purpose of these offices is to provide and promote the use of new dispute resolution and collaborative decision-making techniques and to help states cooperatively manage, resolve and prevent conflicts that occur within government and between government and the public.

These state dispute resolution programs share a broad mission of bringing new tools and approaches for difficult public policy disputes. Florida is one example, with state centers focused on the public policy area and on the courts.

Florida's CRC

The Florida Growth Management Conflict Resolution Consortium (CRC) brings Floridians together to build collaborative solutions for

growth management problems through the use of mediation and other conflict resolution tools.

Based in Florida's state university system, the CRC serves as a publicly-funded, neutral resource for public and private participants in land use, environmental and growth-related conflicts. The CRC offers direct assistance and mediator referral in specific conflicts, help in designing new approaches to handle recurring growth management problems and facilitation of policy development. It provides training and public education on using collaborative approaches and it sponsors documentation and evaluation of these efforts.

Growth Management Context. Growth management in Florida is a legislatively-created system that regulates the amount, timing, location and character of development through comprehensive planning on the local, regional and state level. It is a decision-making process that seeks an acceptable equilibrium between development and environmental conservation; between the demands for public services generated by growth and by the supply of revenues to pay for those demands; and between progress and equity. Reaching and maintaining this equilibrium is an inherently conflictual activity that calls for new collaborative tools and approaches.

A consensus has emerged within Florida's growth management community on the value and need for better approaches to resolving growth-related conflicts. Mediation and facilitation have a special role to play in the implementation of comprehensive plans, in inter-governmental coordination, and in resolving environmental and social problems brought on by rapid growth. In the past, the growth management system directed such conflict to adversarial last-resort forums such as administrative appeals, the courts or the legislature to declare winners and losers. In contrast, the CRC is dedicated to helping parties focus on reconciling their interests through joint problem solving negotiations, often assisted by a mediator or facilitator.

Program Orientation. The CRC serves as a catalyst for helping build a better system for meeting the growing demand for collaborative services with an adequate supply of highly qualified and competent mediators and facilitators. In light of lessons from other contexts, the CRC does not see the development of a public sector mediator corps as the long-term solution to handling increased use of collaborative approaches. However, in the future, many professionals within the public sector will be called upon to assist in designing and facilitating collaborative group processes. Both strengthening the market for mediator/facilitator services and developing greater internal collaborative skills and resources are critical to the ultimate success of this experiment. During the first five years, the CRC has focused on demonstrating collaborative dispute resolution approaches. This has led to greater use and institutionalization of

these processes. Over the next five years the CRC will focus on the supply side by improving the quality of mediation services, continuing to demonstrate consensus policy development and helping design appropriate systems for handling recurring disputes.

Casework. Through its involvement in growth management conflicts, the CRC seeks to demonstrate better ways for Floridians to build consensus on growth management issues, solve problems and resolve conflict. Its goals include: resolving or promoting the resolution of growth management disputes through collaborative dispute resolution methods; designing and promoting implementation of collaborative dispute resolution in recurring conflicts; and promoting consensus-based policy development, including legislation, agency rules and local planning and regulation. The CRC manages a referral listing of mediators and facilitators.

Education and Training. The CRC's education efforts seek to fundamentally change the perception of growth management as an inherently combative and adversarial process to one that seeks to solve problems and equitably balance compelling claims through collaborative dispute resolution processes. Its goals include: informing decision makers about the nature, value and appropriate use of collaborative dispute resolution; training professionals representing public and private interests in growth management conflicts in the skills necessary to effectively participate in collaborative dispute resolution; enhancing the practice standards of professional mediators, facilitators and agency staff serving as neutral intervenors through training.

Examples of Applications. Within Florida's growth management context, CRC has assisted in several ways. As an institutional broker, the CRC is a university-based service center promoting the use of collaborative approaches to solving problems. In its service, education and research/role, it is involved with research and curriculum efforts in urban planning, public administration, law and communications. CRC has facilitated: large group consensus building on policy (ELMS III); community problem-solving and collaborative planning, by convening a dialogue on balancing economic development with conservation (South Walton County); and mediation of planning and environmental disputes.

Collaborative Dispute Resolution Opportunities

Collaborative dispute resolution processes can be used in extension programs, or other direct service, to facilitate visioning processes for local communities or problem solving on policy problems. In the area of research, these processes can facilitate visioning processes for local communities or problem solving on policy problems. In the area of research, these processes can facilitate research evaluation and documentation, teaching and student involvement in ac-

tive learning. The President's Commission on Sustainable Development also presents new opportunities in helping build a sustainable development dialogue.

Collaborative Dispute Resolution Resources

National Institute for Dispute Resolution (NIDR), 1901 L Street, N.W., Washington, DC 20036 — (202)466-4764. Contact: Thomas Fee. This private, nonprofit institute is the only grantmaker in the United States devoted exclusively to conflict resolution. It offers grants, technical assistance and information in several program areas, including public policy, the courts, higher and professional education, community justice and innovation. NIDR's higher education program has produced a large inventory of teaching materials. Prepared for use in law schools and graduate schools of business, planning, public administration and public policy, some modules are generic and may be modified for use in other disciplines. NIDR also provides support for public policy dispute resolution, having helped create state dispute resolution programs in sixteen states.

National Council of State Dispute Resolution Offices. Created in June, 1992, at a NIDR-sponsored leadership summit in Columbus, Ohio, this council serves as a forum for information exchange and technical support among the staffs of state offices of dispute resolution that promote and provide dispute resolution services within state government. Although not all of the offices are located within state agencies, each has established a clear relationship with at least one branch of state government. The relationship between state governments and the offices distinguishes them from other private or nonprofit dispute resolution providers. The link between dispute resolution and public policy can be very beneficial. The offices are a proven, effective way of institutionalizing this link.

University Centers. Fourteen theory centers/consortiums, located at major public and private universities around the country, were initially supported by the Hewlett Foundation.

Program for Community Problem Solving, 1301 Pennsylvania Avenue, N.W., Suite 600, Washington, DC 20004 — (202) 626-3183. Contact: Bill Potapchuk. Housed at the National League of Cities, this program provides information and assistance for community collaborations.

National Civic League, 1445 Market Street, Suite 300, Denver, CO 80202- 1728 — 303-571-4343. This league also has been a leader in promoting collaborative efforts at the local level.

Conclusion

In conclusion, consensus-building approaches are not replacements for the traditional methods of resolving disputes. They are

creative supplements that engage the affected interests within a community in a legitimate public policy debate. These are not winner-take-all situations, but consensus-based negotiations in which the agreements must satisfy all participants' interests. These approaches have the potential for broadening the options available to those seeking an acceptable balance between conflicting goals.

When dispute resolution is appropriately used it can be a very effective tool for addressing tough problems and crafting policy. Although dispute resolution is by no means a panacea, these techniques can result in significant savings in time, expense and relationships. Even when dispute resolution is used and full agreement is not reached, the issues demanding resolution are usually more clearly understood and outlined and the relationship between the parties has usually improved, thus easing resolution through another, more traditional channel.

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