Planning In the Face of Conflict:

Negotiation and Mediation Strategies in Local Land Use Regulation

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This article shows how planners can simultaneously play negotiation and mediation roles in local land use conflicts. Extensive interview data suggest how planners perceive those roles and the associated problems and opportunities. Six mediated-negotiation strategies presented indicate the discretion that planning staff often have. The strategies require that planners have not only substantive but emotional and communicative skills. Administratively, the strategies may be systematically adopted without changes in local regulations. Politically, mediated-negotiation strategies need not simply perpetuate power imbalances.

In the face of local land use conflicts, how can planners mediate between conflicting parties and at the same time negotiate as interested parties themselves? To address that question, this article explores planners' strategies to deal with conflicts that arise in local processes of zoning appeals, subdivision approvals, special permit applications, and design reviews.

Local planners often have complex and contradictory duties. They may seek to serve political officials, legal mandates, professional visions, and the specific requests of citizens' groups, all at the same time. They typically work in situations of uncertainty; great imbalances of power; and multiple, ambiguous, and conflicting political goals. Many local planners, therefore, may seek ways both to negotiate effectively, as they try to satisfy particular interests, and to mediate practically, as they try to resolve conflicts through a semblance of a participatory planning process.

But these tasks—negotiating and mediating—appear to conflict in two fundamental ways. First, the negotiator's interest in the subject threatens the independence and the presumed neutrality of a mediating role. Second, although a negotiating role may allow planners to protect less powerful interests, a mediating role threatens to undercut this possibility and thus to leave existing inequalities of power intact.[1] How can local planners deal with these problems? I discuss their strategies in detail below.

This article first presents local planners' own accounts of the challenges they face as simultaneous negotiators and mediators in local land-use permitting processes. Planning directors and staff in New England cities and towns, urban and suburban, shared their viewpoints with me during extensive open-ended interviews. The evidence reported here, therefore, is qualitative, and the argument that follows seeks not generalizability but strong plausibility across a range of planning settings.

The article next explores a repertoire of mediated-negotiation strategies that planners use as they deal with local land-use permitting conflicts. It assesses the emotional complexity of mediating roles and asks: What skills are called for? Why do planners often seem reticent to adopt face-to-face mediating roles?

Finally, the article turns to the implications of these discussions. How might local planning organizations encourage both effective negotiation and equitable, efficient mediation? How might mediated-negotiation strategies empower the relatively powerless instead of simply perpetuating existing inequalities of power?

Elements of local land use conflicts

Consider first the settings in which planners face local permitting conflicts. Private developers typically propose projects. Formal municipal boards—typically planning boards and boards of zoning appeals—have decision-making authority to grant variances, special permits, or design approvals. Affected residents often have a say—but sometimes little influence—in formal

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public hearings before these boards. Planning staff report to these boards with analyses of specific proposals. When the reports are positive, they often recommend conditions to attach to a permit or suggest design changes to improve the final project. When the reports are negative, there are arguments to be made, reasons to be given.

Some municipalities have elected permit granting boards; some have appointed boards. Some municipal ordinances mandate design review; others do not. Some local by-laws call for more than one planning board hearing on "substantial" projects, but others do not. Nevertheless, for several reasons, planners' roles in these different settings may be more similar than dissimilar.

Common planning responsibilities. First, planners must help both developers and neighborhood residents to navigate a potentially complex review process; clarity and predictability are valued goods. Second, the planners need to be concerned with timing. *When* a developer or neighborhood resident is told about an issue may be even more important than the issue itself. Third, planners typically need to deal with conflicts between project developers and affected neighborhood residents that usually concern several issues at once: scale, the income of tenants, new traffic, existing congestion, the character of a street, and so on. Such conflicts simultaneously involve questions of design, social policy, safety, transportation, and neighborhood character as well. Fourth, how much planners can do in the face of such conflicts depends not only upon their formal responsibilities, but also upon their informal initiatives. A zoning by-law, for example, can specify a time by which a planning board is to hold a public hearing, but it usually will not tell a planner how much information to give a developer or a neighbor, when to hold informal meetings with either or both, how to do it, just whom to invite, or how to negotiate with either party. So within the formal guidelines of zoning appeals, special permit applications, site plan and design reviews, planning staff can exercise substantial discretion and exert important influence as a result.

Planners' influence. The complexity of permitting processes is a source of influence for planning staff. Complexity creates uncertainties for everyone involved. Some planners eagerly use the resulting leverage, as an associate planning director explains, beginning with a truism but then elaborating:

Time is money for developers. Once the money is in, the clock is ticking. Here we have some influence. We may not be able to stop a project that we have problems with, but we can look at things in more or less detail, and slow them down. Getting back to [the developers] can take two days or two months, but we try to make it clear, "We're people you can get along with." So many developers will say, "Let's get along with these people and listen to their concerns. . . ."

He continues,

But we have influence in other ways too. There are various ways to interpret the ordinance, for example. Or I can influence the building commissioner. He used to work in this office and we have a good relationship . . . his staff may call us about a project they're looking over and ask, "Hey, do you want this project or not?"

Planners think strategically about timing not only to discourage certain projects but to encourage or capture others. The associate director explains,

On another project, we waited before pushing for changes. We wanted to let the developer get fully committed to it; then we'd push. If we'd pushed earlier, he might have walked away. . . .

A director in another municipality echoes the point:

Take an initial meeting with the developer, the mayor, and me. Depending on the benefits involved—fiscal or physical—the mayor might kick me under the table; "Not now," he's telling me. He doesn't want to discourage the project . . . and so I'll be able to work on the problems later. . . .

For the astute, it seems, the complexity of the planning process creates more opportunities than headaches. For the novice, no doubt, the balance shifts the other way.

But isn't everything, in the last analysis, all written down in publicly available documents for everyone to see? Hardly. Could all the procedures ever be made entirely clear? Consider the experience of an architect–planner who grappled with these problems in several planning positions. The following conversation took place toward the end of my interview with this planner. The planner pulled a diagram from a folder and said, "Here's the new flow-chart I just drew up that shows how our design review process works. If you have any questions, let's talk. I think it's still pretty cryptic."

"If *you* think it's cryptic," interjected the zoning appeals planner, who was standing nearby and had overheard this, "just think what developers and neighborhood people will think!"

Both planners shook their heads and laughed, since the problem was all too plain: the arrows on the design review flow chart seemed to run everywhere. The chart was no doubt correct, but it did look complicated.

I recalled my first interview with the zoning appeals planner. Probing with a deliberately leading question, I had asked, "But what influence can you have in the process if everything's written down as public information, if it's all clear there on the page?"

The zoning appeals planner had grinned: "But that's just it! The process is not clear! And that's where I come in. . . ." The architect–planner developed the point further:

Where I worked before, the planning director wanted to adopt a new "policy and procedures" document that would have every last item defined. We were going to get it all clear. The whole staff spent a lot of time writing that, trying to get all the elements and subsections and so on clearly defined. . . . But it was chaos. Once we had the document, everyone fought about what each item meant. . . .

So clarity, apparently, has its limits!

Different actors, different strategies. Planning staff point almost poignantly to the different issues that arise as they work with developers and neighborhood residents. The candor of one planning director is worth quoting at length:

It's easy to sit down with developers or their lawyers. They're a known quantity. They want to meet. There's a common language—say, of zoning—and they know it, along with the technical issues. And they speak with one voice (although that's not to say that we don't play off the architect and the developer at times—we'll push the developer, for example, and the architect is happy because he agrees with us). . . .

But then there's the community. With the neighbors, there's no consistency. One week one group comes in, and the next week it's another. It's hard if there's no consistent view. One group's worried about traffic; the other group's not worried about traffic but about shadows. There isn't one point of view there. They also don't know the process (though there are cases where there are too many experts!).

So at the staff level (as opposed to planning board meetings) we usually don't deal with both developers and neighbors simultaneously.

Although these comments may distress advocates of neighborhood power, they say much about the practical situation in which the director finds himself.

All people may be created equal, but when they walk into the planning department, they are simply not all the same. This director suggests that getting all the involved parties together around the table in the planners' conference room is not an obviously good idea, for several reasons. (It is, however, an idea we shall consider more closely below.)

First, the director suggests, planners generally know what to expect from developers; the developers' interests are often clearer than the neighbors', and project proponents may actually want to meet with the staff. Neighborhood residents may be less likely to treat planners as potential allies; after all, the planners aren't the decision makers, and the decision makers can often easily ignore the planners' recommendations. Because developers may cultivate good relations with planning staff (this is in part their business, after all), while neighborhood groups do not, local planning staff may find meetings with developers relatively cordial and familiar, but meetings with neighborhood activists more guarded and uncertain.

Second, the planning director suggests that planners and developers often share a common professional language. They can pinpoint technical and regulatory issues and know that both sides understand what is being said. But on any given project, he implies, he may need to teach the special terms of the local zoning code to affected neighbors before they can really get to the issues at hand.[2]

The planning director makes a third point. Developers speak with one voice; neighbors do not. When planners listen to developers talk, they know whom they're listening to, and they know what they're likely to hear repeated, elaborated, defended, or qualified next week. When planners listen to neighborhood residents, though, this director suggests, they can't be so sure how strongly to trust what they hear. "Who really speaks for the neighborhood?" the director wonders.

Planners must make practical judgments about who represents affected residents and about how to interpret their concerns. This director implies, therefore, that until planners find a way to identify "the neighborhood's voice," the problems of conducting joint mediated negotiations between developers and neighbors are likely to seem insurmountable. We return to this issue of representation below.

Inequalities of information, expertise, and financing. What about imbalances of power? Developers, typically, initiate site developments. Planners respond. Neighbors, if they are involved at all, then try to respond to both. Developers have financing and capital to invest; neighbors have voluntary associations and not capital, but lungs. Developers hire expertise; neighborhood groups borrow it. Developers typically have economic resources; neighbors often have time, but not always the staying power to turn that time into real negotiating power.

Where power relations are unbalanced, must mediated negotiation simply lead to coopting the weaker party? No, because as we shall see below, mediated negotiation is not a gimmick or a recipe; it is a practical

and political strategy to be applied in ways that address the specific relations of power at hand.

When either developers or neighborhood groups are so strong that they need not negotiate, mediated negotiation is irrelevant, and other political strategies are more appropriate. But when both developers and neighbors want to negotiate, planners can act both as mediators, assisting the negotiations, and as interested negotiators themselves. But how is this possible? What strategies can planners use?

Planners' strategies: Six ways to mediate local land-use conflicts

Consider the following six mediated-negotiation strategies that planning staff can utilize in the face of local land-use conflicts. They are *mediated* strategies because planners employ them to assure that the interests of the major parties legitimately come into play. They are *negotiation* strategies because (except for the first) they focus attention on the informal negotiations that may produce viable agreements even before formal decision-making boards meet.

Strategy one: The facts! The rules! (The planner as regulator)

The first strategy is a traditional response, pristine in its simplicity, but obviously more complex in practice. A young planner who handles zoning appeals and design review says:

I see my role often as a fact finder so that the planning board can evaluate this project and form a recommendation; whether it's design review, special permits, or variances, you still need lots of facts. . . .

Here of course is the clearest echo of the planner as technician and bureaucrat; the planner processes information and someone else takes responsibility for making decisions. But the echo quickly fades. A moment later, this planner continues,

Our role is to listen to the neighbors, to be able to say to the board, "Okay, this project meets the technical requirements but there will be impacts. . . ." The relief will usually then be granted, but with conditions. . . . We'll ask for as much in the way of conditions as we think necessary for the legitimate protection of the neighborhood. The question is, is there a legitimate basis for complaint? And it's not just a matter of complaint, but of the merits.

This planner's role is much more complex than that of fact-finder; it is virtually judicial in character. He implies, essentially, "I'm not just a bureaucrat, I'm a professional. I need to think not only about the technical requirements, but about what's legitimate protection for the neighbors. Now I have to think about the merits!" Thinking about the merits, though, does not yet mean thinking about politics, the feelings of other agencies, the chaos at community meetings—it means making professional judgments and then recommending to the planning board the conditions that should be attached to the permits.

Consider now a slightly more complex strategy.

Strategy two: Premediate and negotiate—representing concerns

When developers meet with planners to discuss project proposals, neighborhood representatives rarely join them. Yet planners might nevertheless speak *for* neighborhood concerns as well as *about* them. A planning director in a municipality where neighborhood groups are well-organized, vocal, and influential notes,

We temper our recommendations to developers. While we might accept A, the neighbors want D, and so we'll tell the developers to think about something in the middle—if they can make it work.

Here, the planner anticipates the concerns of affected residents and changes the informal staff recommendation accordingly to search for an acceptable compromise with the developers. He explains,

What we do is premediate rather than mediate after the fact. We project people's concerns and then raise them; so we do more before [explicit conflict arises]. . . . The only other way we step in and mediate, later, is when we support changes to be made in a project, changes that consider the neighbors' views; but that's later, after the public hearing. . . .

Unlike the planner–regulator quoted above, this planning director relies on far more than his professional judgment when he meets with a developer. He will negotiate to reach project outcomes that satisfy local statutes, professional standards, and the interests of affected residents as well. His calculation is not only judicial, but explicitly political. He anticipates the concerns of interested community members. So he seeks to represent neighborhood interests—without neighborhood representatives.

Such premediation—articulating other's concerns well before they can erupt into overt conflict—involves a host of political, strategic, and ethical issues. What relationships does the planner have with neighborhood groups? In what senses can the planner "know what the community wants"? To which "key actors" might the planner "steer" the developer? How much information and how much advice should the planner give, or withhold?

Such questions arise whether or not project developers ever meet with neighbors. In many cases, where "neighborhoods" are sprawling residential areas, and where "the interests of the neighbors" seem most difficult to represent through actual neighborhood representatives, the planners' premediation may be the only mediation that takes place.

Strategy three: Let them meet—the planner as a resource

The planner's influence might be used in still other ways. The director continues:

Regardless of how our first meeting with a developer goes, we recommend to them that they meet with neighbors and the neighbors' representatives (on the permit granting board). We usually can give the developer a good inkling about what to expect both professionally and politically. The same elected representative might say that a project is "okay" professionally, but not "okay" for them in their elected capacity. We try to encourage back and forth meetings. . . .

The director, then, regularly takes the pulse of neighborhood groups and elected representatives. Working in city hall has its advantages: "We'll discuss a project with the representatives; we see them so much here, just in the halls, and they ask us to let them know what's happening in their parts of the city." So the director listens to the developers, listens to the neighbors, and "encourages back and forth meetings."

A planning director who seldom met jointly with neighbors and developers had an acute sense of other strategies he used:

We . . . urge the applicants, the developers, to deal directly with the neighborhood for several reasons: First, if the neighbors are confronted at a hearing with glossy plans, they'll think it's all a fait accompli; *so they'll just adopt the "guns blazing, full charge ahead" strategy, since they think it'll just be a "yea" or "nay" decision. Second, we tell them to talk to the neighbors since if they can come up with something that the neighbors will "okay," it'll be easier at the board of appeals. Third, we try to get them to meet one on one, or maybe as a group, but in as deinstitutionalized a way as possible, informally. We try to get the developers to sell their case that way; it'll get a much better hearing than at the big formal public hearings.*

But why should planners be reluctant to convene joint negotiating sessions between developers and neighbors, yet still be willing to encourage both parties to meet on their own? Why don't these planners embrace opportunities to mediate local land-use conflicts face to face? One planner could hardly imagine such a mediating role:

Work as a neutral between developers and neighbors? I don't know how I'd approach it. I'd just answer questions, suggest what could be done, and so on. That's what our role should be—although we should reach compromises between developers and neighbors. But we have to work within the rules—that's my reference point—to say what the rules of the game are; that's the job.

This planner's image of a "neutral" between disputing parties is less that of a mediator facilitating agreement than it is of a referee in a boxing match. The referee assures that the rules are followed, but the antagonists might still kill each other. No wonder planners might find this image of mediation unattractive!

A senior planner envisions further complications:

If I could be assured I could be wholly independent, then I could mediate—but I still have to pay my bills. . . . The planning department always has some vested interests, as much as we try to stay objective, independent . . . I work for a mayor, for the elected representatives, for 14 committees. . . . So there's always the question of compromise on my part: if the mayor says, "Tell me how to make this project work," for example. It took me a long time before I was able to say, "I'm going to have to say no." We have a very strong mayor. . . .

Strategy four: Perform shuttle diplomacy—probe and advise both sides

A planning director proposes another way to facilitate developer–neighbor negotiations:

I feel more comfortable in shuttle diplomacy, if you will; trying to get the neighbors' concerns on the table, to get the developers to deal with them. . . . I'd rather bounce ideas off each side individually than be caught in the middle if they're both there. If both sides are there, I'm less likely to give my own ideas than if I'm alone with each of them.

Shuttle diplomacy, this director suggests, allows planners to address the concerns of each party in a professionally effective way. He explains:

If I'm with the developer, I feel I can make a much more extreme proposal—"knock off three stories"—but I wouldn't dare say that if neighbors were there. The neighbors would be likely to pick up and run with it, and it could damage the negotiations rather than help them. . . . I'm willing to back off on an issue if the developer has a good argument, but the neighborhood might not, and then they might use my point as a club to hit the developer with: "Well, the planning director suggested that; it must be a good idea" . . . and then I can't unsay it. . . .

This planning director is as concerned about how his suggestions, proposals, queries, and arguments will be understood and used as he is about what ought to be altered in the project at hand. He recognizes clearly that when he talks he acts politically and inevitably fuels one argument or another. He not only conveys information in talking, but he acts practically, influentially. He focuses attention on specific problems, shapes future agendas, legitimates a point of view, and suggests lines of further argument (Forester 1982; Forester in press).

The director continued,

I might not want to concede to a developer that there won't be a traffic problem, because I want to push him to relieve a problem or a perceived problem . . . but I could say to the neighbors aside, "Look, this will be no big deal; it'll be five trips, not fifty." I can say that in a private meeting, but in a public meeting if I say it to a neighborhood representative I'm insulting him, even if the developer snickers silently. . . . So I lose my ability to be frank with both sides if we're all together. Not that this should be completely shuttle diplomacy, but it has its place.

These comments suggest that planning staff can certainly mediate conflicts in local permitting processes, if not in ways that mediators are thought typically to act. The planners may not be independent third parties who assist developers and neighbors in face-to-face meetings to reach development agreements—but they might still mediate such conflicts as "shuttle diplomats."[3]

Strategy five: Active and interested mediation—thriving as a nonneutral

We can consider a case that involves not a zoning appeal but a rezoning proposal. One planner, who had earlier worked as a community organizer, had convened a working group of five community representatives and five local business representatives to draft a rezoning proposal for a large stretch of the major arterial street in their municipality. She considers her work on that project a kind of mediation and reflects about how she as a planner acts as a mediator, dealing with substantive and affective issues alike:

Am I in a position of having to think about everyone's interest and yet being trusted by no one? Sure, all the time. But I've been in this job for seven years, and I have a reputation that's good, fortunately. . . . Trust is an issue of your integrity in the planning process. I talk to people a lot; communication is a big part of it. . . . My approach is to let people let off steam—let them say negative things about other people to me, and then in a different conversation at another time, I'll be sure to say something positive about that person—to try to let them feel that they can say whatever they want to me, and to try to confront them with the fact that the other person isn't just out to ruin the process. But I'd do that in another conversation; I let them let off steam if they're angry.

This planner is well aware that distrust on all sides is an abiding issue, so she tries to build trust as she works. She works to assure others that she will listen to them and more; that she will acknowledge and respect their thoughts and feelings, whatever they have to say. She pays attention first to the person, then to the words. Then, as she establishes trust with her committee members and with others, she can also make sure, carefully, that real evidence is not ignored.

She realizes that anger makes its own demands, so she responds with an interested patience. She seeks throughout to mediate the conflicting interests of the groups with whom she's working:

I also make a point to tell each side the other's concerns—categorically, not with names, but all the other sides' concerns. . . . Why's that important? I like to let people anticipate the arguments and prepare a defense, either to stand or fall on its own merits. For people to be surprised is unfortunate. It's better to let people know what's coming so they can build a case. They can hear an objection, if you can retain credibility, and absorb it; but in another setting they might not be able to hear it. . . . If they hear an objection first as a surprise, you're likely to get blamed for it. If concerns are raised in an emotional setting, people concentrate more on the emotion than on the substance. This is a concern of mine. In emotional settings, lots gets thrown out, and lots is peripheral, but possibly also central later. . . .

This planner is keenly aware that emotion and substance are interwoven, and that planners who focus only upon substance and try to ignore or wish away emotion do so at their own practical peril. Yet she is saying even more.

She knows that in some settings disputing groups can hear objections, understand the points at stake, and address them, while in other settings those points may be lost. She tries to present each side's concerns to the other so that they can be understood and addressed. Anticipating issues is central; learning of important objections late in the process will be costly emotionally and financially, and planning staff are likely to share the blame (Forester 1987). "Why didn't you tell us sooner . . . ?" the refrain is likely to sound.[4]

Consider next, then, this planner–mediator's thoughts about the sort of mediation role she is performing. She continues,

But what I do is different from the independent mediator model. In a job like mine, you have an on-going relation-

ship with parties in the city. You have more information than a mediator does about the history of various individuals, about participating organizations, about the political history of city agencies, and so on. You also have a vested interest in what happens. You want the process to be credible. You want the product to be successful; in my case I want the city council to adopt the committee's proposal. And you're invested . . . both professionally and emotionally. And then you have an opinion about particular proposals; you're a professional, you should have one, you should be able to look at a proposal and have an opinion.

Thus, she suggests, mediation has its place in local land-use conflicts, but the "rules of the game" will not be those that labor mediators follow. Indeed, planners who now mediate local land-use conflicts are not waiting for someone else to write the rules of the game, they are writing them themselves.

Strategy six: Split the job—you mediate, I'll negotiate

Consider finally a planning strategy that promotes face-to-face mediation with planning staff at the table—but as negotiators or advisors, not as mediators. A planning director explains:

There's another way we deal with these conflicts; we might involve a local planning board member. For example, if there's a sophisticated neighborhood group that's well organized, we've brought in an architect from the board who's as good with words as he is with his pencil. . . . The chair of the board might ask the board member to be a liaison to the neighborhood, say, and sometimes he'll talk just to the neighbors, sometimes with both. . . .

Here the "process manager" comes from the planning board with highly developed "communications skills." How does the planner feel in these situations?

It's more comfortable from my point of view, and the citizens', to have a board member in the convening role. I'm still a hired hand. It seems more appropriate in a negotiating situation to have a citizen in that role and not an employee. . . . Since they've come from the neighborhoods, a board member is in a better position to bring neighbors and developers together—if they behave properly. Some board members are good communicators; some are more dynamic than others in pressing for specific solutions.

This planner identifies so strongly with the professional and political mandate of his position that he cannot imagine a role as neutral convenor or mediator of neighborhood–developer negotiations. But that does not prevent mediation; it means rather that the planner retains a substantively interested posture while another party, here a planning board member, convenes informal, but organized, project negotiations between developers and neighbors. This planner's example makes the point:

Table 1. A repertoire of mediated-negotiation strategies used by local land-use planners in permitting processes

1. The Facts! The Rules! (The Planner as Regulator)
2. Pre-Mediate and Negotiate: Representing Concerns
3. Let Them Meet: The Planner as a Resource . . .
4. Perform Shuttle Diplomacy: Probe and Advise Both Sides
5. Active And Interested Mediation—Thriving as a Non-Neutral
6. Split The Job: You Mediate, I'll Negotiate

Take the example of the Mayfair Hospital site. The hospital was going to close, and the neighbors and the planning board were concerned about what might happen with the site. So Jan from the planning board got involved with the hospital and the neighborhood to look at the possibilities. Both the neighbors and the hospital set up re-use committees, and Jan and I went to the meetings. There was widespread agreement that the best use of the site would be residential—the neighbors definitely preferred that to an institutional use—but then there was a lot of haggling over scale, density, and so on. Ultimately, a special zoning district was proposed that included the site; the neighbors supported it, and it went to [the elected representatives] where they voted to rezone the several acres involved. . . .

When local planners feel they cannot mediate disputes themselves, then one strategy may be to search for informal, most likely volunteer, mediators. These ad hoc mediators might be "borrowed" from respected local institutions, and their facilitation of meetings between disputing parties might allow planning staff to participate as professionally interested parties concerned with the site in question.[5]

Table 1 summarizes the six approaches presented. Together, these approaches form a repertoire of strategies that land-use planners can use to encourage mediated negotiations in the face of conflicts in local zoning, special permit, and design review processes. To refine these strategies, local planning staff can build upon several basic theories and techniques of conflict resolution (Fisher and Ury 1981; Raiffa 1982; Bacow and Wheeler 1984; Susskind and Cruickshank 1987; Sullivan 1984). Consider now the distinctive competences and sensitivities required by these strategies.

The emotional complexity of mediated-negotiation strategies

More than a lack of independence keeps planners from easily adopting roles as mediators. The emotional complexity of the mediating role makes quite different demands upon planners than those that they have

traditionally been prepared to meet. The community-organizer-turned-planner makes the point brilliantly:

In the middle, you get all the flak. You're the release valve. You're seen as having some power, and you do have some. . . . Look, if you have a financial interest in a project, or an emotional one, you want the person in the middle to care about your point of view, and if you don't think they do, you'll be angry!

[*"So when planners try to be professional by appearing detached, objective, does it get people angry at them?" I asked.*]

Sure!

This comment cuts to the heart of planners' professional identities. Must "professional," "objective," and "detached" be synonymous? If so, this planner suggests, then planners' own striving for an independent professionalism will fuel the anger, resentment, and suspicion of the same people those planners presume to serve!

Thus we can understand the caution with which a planner speaks of his way of handling emotional participants in public hearings:

How do I deal with people's anger? I try to keep cool, but occasionally I get irritated. But that's how we're expected to behave, to be rational. It's all right for citizens to be irrational, but not the staff!

How does one keep cool, be rational, and still respond to the claims of an emotional public at formal hearings? This planner elaborates:

It's one thing to begin the discussion of a project (to present our analysis) and anticipate problems. But it's another thing to rebut *a neighborhood resident in public in a gentle way. . . . Part of the problem is that if you antagonize people it'll haunt you in the future. . . . We're here for the long haul, and we have to try to maintain our credibility. . . .*

The planner's problem here is precisely *not* the facts of the case: the facts themselves may be clear enough. But how should the planner present the analysis that he feels must be made and how should he decide which arguments to make and which to hold back at a given time?

The biggest problem I have in the board meetings is when to respond and when to keep quiet. In a hearing, for example, I can't possibly respond to all the accusations and issues that come up. So I have to pick a direction, to deal with a generally felt concern. It's just not effective to enter into a debate on each point in turn; it's better to clarify things, to explain what's misunderstood. . . .

This planner does much more than simply recapitulate facts. He tries to avoid an adversarial posture, even when he feels the situation is quite conflictual. He listens as much to the individuals and their concerns as he does to each point. He knows that points and demands and positions may change as issues are clarified, but that if he cannot respond to people's concerns, he's in some trouble. Because he and his staff are there "for the long haul," he wants to be able to work with neighbors, community leaders, and elected representatives alike not just now but in the future as well. How he relates to the parties involved in local disputes, he suggests, is as important as what he has to say.

Another planner points to the skills involved:

Whom would I try to hire to deal with such conflicts? I'd look for someone who's a careful listener, someone who's good at explaining a position coherently, succinctly, quietly, in a calm tone . . . someone who could hear a point, understand it whether he or she agreed with it or not, and then verbalize a clear, concise response. Most people though—myself included—try to jump the gun and answer before it's appropriate. So I want someone who's able to stay cool and stay on the issues. . . .

A community development director first mentions "a good listener" and then elaborates:

[*To deal with these conflicting situations I'd want to hire staff*] *who won't say, "I know best," who won't get people's backs up just by their style. I'd want someone with some openness, with a sense of how things work, who won't accept everything, but who won't offend people. They have to have critical judgment—to leave doors open, to give people a sense of involvement and a sense of the feasible—*[*someone who*] *can't be convinced of something that's not likely to work, just for the sake of getting agreement. . . .*

This planning director also points to the balance necessary between what planners say and how they say it. The "how" counts; he doesn't want staff who will "get people's backs up," "offend people," and not communicate an openness to others' concerns. Nor does he want someone who'll sacrifice project viability for the temporary comfort of agreement. He asks for substantive judgment and the skills to manage a process.

Referring to the demands of working and negotiating with developers as they navigate the approval process, the director stresses the role of diplomacy:

We [planners] have access to information, to resources, to skills . . . so developers usually want to work with us. They have certain problems getting through the process . . . so we'll go to them and ask, "What do you want?" and we'll start a process of meetings. . . . It's diplomacy; that's the real work. You have to have the technical skill . . . but that's the first 25 percent. The next 75 percent is diplomacy, working through the process.

Percentages aside, the point remains. To the extent that planning practitioners and educators focus predominantly upon facts, rules, likely consequences, and mitigation measures, they may fail to attend to the pressing emotional and communicative dimensions of local land-use conflicts (Baum 1983). Because the planning profession has not traditionally embraced the diplomat's skills, it should surprise no one that practicing planners envision mediating roles with more reticence than relish.

In the next section, we turn to administrative and political questions. What, initially, can be done in planning organizations to improve planners' abilities to mediate local land-use negotiations successfully? What about imbalances of power?

Administrative implications for planning organizations

What does this analysis imply for policymakers and planners who wish to build options for mediation into local review processes? Mediation may offer several opportunities, under conditions of interdependent power: a shift from adversarial to collaborative problem-solving; voluntary development controls and agreements; improved city–developer–neighborhood relationships enabling early and effective reviews of future projects; more effective neighborhood voice; and joint gains ("both gain" outcomes) for the municipality, neighbors, and developers alike (Susskind and Cruickshank 1987; Huelsberg and Lincoln 1985). Such opportunities present themselves *only* when no single party is so dominant that it need not negotiate at all, that it is likely simply to get what it wants in any case (Fisher 1983; Hartman 1981).

Planners already use the strategies reviewed in diverse settings. Which strategy a planner uses, and at which times, depends largely on practical judgment: What skills does the planner have? How willing are developers or neighbors, or other agency staff, to meet jointly? Does enough time exist to allow early, joint meetings? Are the practical and political alternatives of any one party so attractive that they see no point in mediated negotiations?

No strategy is likely to be desirable in all circumstances, so no one approach will provide the model to formalize into new zoning or permitting procedures. But to say that we should not formalize these strategies does not mean that we cannot regularly use them. How, then, can planners apply the mediated-negotiation strategies in local zoning, permitting, and design review processes?

First, planning staff must distinguish clearly the two complementary but distinct mandates they typically must serve: to press professionally, and thus to negotiate, for particular substantive goals (design quality or affordable housing, for example), and to enable a participatory process that gives voice to affected parties, thus like mediators, to facilitate negotiations between disputants.

Second, planning staff need to adopt, administratively if not formally, a goal of supplementing (not substituting for) formal permitting processes with mediated negotiations: attempting to craft workable and voluntary tentative agreements before formal hearing dates.[6]

Third, planning staff should examine each of the strategies reviewed here. They need to determine how each could work, given the size of their agency, their zoning and related by-laws, the political and institutional history of elected officials, neighborhood groups, and other agencies. Planning staff must ask which skills and competencies they need to develop to employ each of these strategies appropriately.

Fourth, planning staff must be able to show others—developers, neighborhood groups, public works department staff, elected and appointed officials—how and when mediated negotiations can lead to "both gain" outcomes and so improve the local land-use planning and development process. Planners also have to be clear about what mediated negotiation will *not* do: it will not solve problems of radically unbalanced power, for example. It can, however, refine an adversarial process into a partially collaborative one. It will not solve problems of basic rights, but it can often expand the range of affected parties' interests that developers will take into account. Mediated negotiations will neither necessarily coopt project opponents (as skeptical neighborhood residents might suspect) nor stall proposals and projects (as skeptical developers and builders might suspect). Yet when each side can effectively threaten the other, when each side's interests depend upon the other's actions, then mediated negotiations may enable voluntary agreements, incorporate measures of control on both sides, allow "both gain" trades to be achieved, and do so more efficiently for all sides than pursuing alternative strategies (e.g., going to court or, sometimes, community organizing).

Fifth, planners need administratively to create an organized process to match incoming projects with one or more of the mediated-negotiation strategies and to review their progress as they go along.[7] With staff training in negotiation and mediation principles and techniques, planning departments would be better

able to carry out these strategies effectively once they have organized administratively to promote them.[8]

Dealing with power imbalances: Can the six strategies make a difference?

The six strategies we have considered are hardly "neutral." Planners who adopt them inevitably either perpetuate or challenge existing inequalities of information, expertise, political access, and opportunity. Consider each approach, briefly, in turn.

To provide only the facts, or information about procedures, to whomever asks for them seems to treat everyone equally. Yet where severe inequalities exist, to treat the strong and the weak alike only ensures that the strong remain strong, the weak remain weak. The planner who pretends to act as a neutral regulator may sound egalitarian but nevertheless act, ironically, to perpetuate and ignore existing inequalities.

The premediation strategy can involve substantial discretion on the part of the planning staff. If the staff fail to put the interests of weaker parties "on the negotiating table," then here, too, inequalities will be perpetuated, not mitigated. If the staff do defend neighborhood interests in the development negotiations, they may challenge existing inequalities. But which "neighborhood interests" should the planning staff identify? How should neighborhoods—especially weakly organized ones—be represented? These questions are both practical and theoretical and they have no purely technical, "recipe"-like answers.

At first glance, the strategy of letting developers and neighbors meet without an active staff presence seems only to reproduce the initial strengths of the parties. Yet depending on how the planning staff intervene, one party or another may be strengthened or weakened. At times planners have helped developers anticipate and ultimately evade the concerns of citizens who opposed projects (Hartman 1984). Yet planners may also provide expertise, access, information, and so on to strengthen weaker citizens' positions (Needleman and Needleman 1974; Forester 1982).

The same discretion exists for planning staff who act as shuttle diplomats. Here a planner may counsel weaker parties to help them both before and during actual negotiations by identifying concerns that might effectively be raised, experts or other influentials who might be called upon, prenegotiation strategies and tactics to be employed, and so on. The shuttle diplomat need not appear neutral to all parties but he or she does need to appear useful to, or needed by, those parties.

Planners who act as "interested mediators" face many of the same problems and opportunities that shuttle diplomats confront. In addition, though, the activist mediator may risk being perceived by planning board members, officials, or elected representatives as making deals that preempt their own formal authority. Thus the invisibility of the shuttle diplomat has its advantages; the planners can give counsel discretely, suggesting packages and "deals" but avoiding the glare—and the heat—of the limelight (Susskind and Ozawa 1983; 1984).

Finally, the strategy of separating mediation and negotiation functions also involves substantial staff discretion. Here, too, the ways that mediators and negotiators consider the interests and enable the voice of weaker parties will affect existing power imbalances.

Because negotiations always involve questions of relative power, they depend heavily upon the parties' *prenegotiation* work of marshalling resources, developing options, and organizing support (Fisher 1983). Thus politically astute planners need both organizing and mediated-negotiation skills if conflicts are to be addressed without pretending that structural power imbalances just do not exist.[9] Finally, note that a planner who explicitly calls everyone's attention to class-based power imbalances, for example, may not obviously do better in any practical sense of the word than an activist mediator who knows the same thing and acts on it in just the same ways without explicitly framing the planning negotiations in those terms.

Conclusion

The repertoire of mediated-negotiation strategies inevitably requires that planners exercise practical judgment, both politically and ethically. These judgments involve who is and who is not invited to meetings; where, when, and which meetings are held; what issues should and should not appear on agendas; whose concerns are and are not acknowledged; how interventionist the planner's role is; and so on.

In local planning processes, then, planners often have the administrative discretion not only to mediate among conflicting parties, but to negotiate as interested parties themselves. Planning staff can routinely engage in the complementary tasks of supporting organizing efforts, negotiating, and mediating. In these ways, local planners can use a range of mediated-negotiation strategies to address practically existing power imbalances of access, information, class, and expertise that perpetually threaten the quality of local planning outcomes.

Mediated negotiations in local permitting processes will, of course, not resolve the structural problems of our society. Yet when local conflicts involve multiple issues, when differences in interests can be exploited by trading to achieve joint gains (cf. Susskind and Cruickshank 1987), and when diverse interests rather than fundamental rights are at stake, mediated-negotiation strategies for planners make good sense, politically, ethically, and practically.

Author's note

Research for this article was conducted while I was visiting associate professor at the Massachusetts Institute of Technology and research fellow at the Lincoln Institute of Land Policy. I presented an earlier version of this essay at the Lincoln Institute's conference on negotiated development in June 1986. Critical comments came from Doug Amy, Deborah Kolb, David Godschalk, Linda Gondim, Chester Hartman, Harvey Jacobs, Esther Lacognata, Sandra Lambert, Michael Rosenberg, Lawrence Susskind, and Michael Wheeler.

Notes

1. The possibility and desirability of mediator neutrality are controversial issues in the mediation community (Colosi 1983; Susskind and Ozawa 1983). Colosi argues the traditional position: mediators' effectiveness depends upon the perception of their neutrality. Susskind argues, to the contrary, for a more substantive conception of activist mediation: mediators of public disputes can and should bring representatives of affected but weakly organized parties to the negotiating table. (On the limits of the traditional conception see Amy 1983; Schoenbrud 1983.) For a review of recent work in environmental mediation, see Bingham (1986) and for analysis, see Bacow and Wheeler (1984). Fisher and Ury (1981) present a deceptively simple introduction to negotiation theory and technique; for extensive applications to planning issues, see Susskind and Ozawa (1983; 1984); Susskind and Cruickshank (1987). Two other recent studies of planning practice indicate the centrality of these issues for the profession: Knack (1986: 10) estimates that more than 40 percent of the American Planning Association membership concentrates upon zoning and subdivision issues; Dalton and Conover (1986: 4) suggest that planners in their statewide California sample "spend a majority of their time administering [permit processing] regulations."
2. Formal permitting decisions are often debated in the specialized language of zoning regulations, and speaking this language is often easier for developers than for ad hoc neighborhood groups. If neighbors then turn to planning staff for help, the planners may feel awkwardly cast in the ambiguous role of zoning lawyer for the neighborhood. If neighborhoods do not have planners who serve as their advocates, local planners are likely to find that the problem of a "common language" subtly aligns them with development interests.
3. Indeed, face-to-face mediation might be avoided by planners who expect shuttle diplomacy to protect their own influence or leverage. In one community, for example, a developer proposed a 150 unit apartment complex; neighbors, though concerned about scale, were generally supportive and the planning staff hoped to have a fraction of the units designated as "affordable." Several days before the decision-making board was to review the project, the planning staff and developer negotiated an agreement: 15 percent of the units would be offered at below-market rates; design alterations would be made; and planning staff would strongly recommend project approval without delay. One of the planners justified the exclusion of the neighborhood from the negotiations in this way:

   > What we got that we didn't think we'd get was the "15 percent affordable" agreement. But if we'd had the neighborhood involved in that meeting, we might not have been able to give so much on the height and bulk. . . . Each faction values these things differently; the neighbors, abuttors, weigh design and aesthetics much more, I'm guessing, than affordability, so [even though we're trying to make more housing available to people] we might not have gotten the 15 percent. . . .

   Should advocates of affordable housing have participated along with abutting neighbors concerned about scale? The negotiated outcome might have been better, but just days before the board meeting, the meeting might also have been unmanageable, disrupted by personality, or simply inconclusive. The risks—the apparent unpredictability of face to face mediation under severe time constraints, the threat of disruption, and potential failure to reach agreement—appear to make shuttle diplomacy (and other strategies discussed here) more attractive to planners than more traditional face-to-face mediation (cf. Susskind and Ozawa 1984).
4. The elemental promise of mediated negotiations is that if disputing parties value issues at hand differently—one cares more about design, the other cares more about use—the disputants may achieve not simply grudging compromises or ways of settling for less, but, rather, valuable trades, ways of giving on issues they do *not* feel strongly about to gain on issues that they *do* value greatly. Consider a rezoning proposal in which scale and design review authority are key issues. If local property owners value scale far more than design review threatens them, and if neighbors are much more concerned about design review than about scale itself, then an outcome far better than compromise may be possible: strong design review provisions for the neighborhood, and scale allowances for the owners. Both may gain, relative to likely compromises or imposed decisions reached without mediation.

   When local land-use disputes involve multiple issues, trades between the disputing parties can be possible because the disputants value different things differently. If planners can identify these differences, they might then enable trades across issues (design and scale, for example), and thus transform conflicts from what appear to be purely "win-lose" into "both-gain" situations, in which the parties may not simply compromise, but gain. By helping conflicting parties to "exploit their differences" (Susskind and Cruickshank 1987), the planner–mediator works to achieve "both-gain" outcomes, outcomes realizing "joint gains" (Raiffa 1982).
5. Similarly, Deborah Kolb notes that business managers may often call upon "free-floating mediators" in their organizations for help. In every organization, she suggests, such ad hoc mediators may be effective not because of their substantive knowledge, but rather because of their communication and conflict-management skills (personal communication, 19 March 1986).
6. Such agreements could then be reviewed and perhaps refined during and after the formal hearings. Howard Raiffa's suggestion of post-settlement settlements could then be explored: to paraphrase, "Ok, you've both agreed to this; now let's see if we can devise a package that's even better for each of you!" (Raiffa 1985).
7. This entire discussion assumes no statutory changes in local permitting regulations. In general, local planners have the discretion to adopt mediated-negotiation strategies without risk of violating existing zoning statutes and ordinances. Although a discussion of revised statutes that might encourage mediated negotiation is beyond the scope of this article, note, for example, that local ordinances might be modified: 1) to enable a specified authority (e.g., building commissioner or planning director) to determine on a case-by-case basis which projects should be considered candidates for mediated negotiations; 2) to require those projects to be reviewed in a multiparty forum, whose meeting dates would fall well before mandated board meetings; 3) to encourage, as a matter of public policy, that all participants in local land-use permitting processes seek mediated, collaborative agreements as a *supplement* to existing formal processes; and 4) to require local building departments to refer project proposals for review (see note 1) before allowing proponents to file for permits and "start the clock."

8. Lax and Sebenius (1986) provide an excellent summary of the analytic issues involved. See also Susskind and Cruickshank (1987).
9. Note that power structures involve collective relationships and require collective strategies (e.g., social movements) if they are to be challenged. The question to be asked here is not, "Can mediation strategies change power structures?" (they cannot), but rather, "Can mediation strategies support wider, collective efforts to change such structures?" (they might).

To focus on power structures and neglect planners' strategies will produce paralysis, not empowerment. Conversely, to focus upon strategies alone and neglect power relations will produce not efficacy, but naiveté. For planners seeking to defend and empower the relatively powerless, then, mediated negotiation strategies *complement* prenegotiation organizing strategies. Both organizing and mediated-negotiation strategies require that planners exercise political judgment and skill—to be able to listen sensitively and critically, to be able to speak cogently and persuasively, to be able to encourage and mobilize action (Bailey 1983; Forester in press).

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