

Let's Not Plan by Siege


by Barbara A. Jarvis

We've all been there. The neighbors and the developers are before us, each vehemently asserting their positions, and we as planning commissioners are supposed to decide which side is right and what is best for the city. These decisions, of course, do not come at 7:00 p.m. when the meeting starts; no, they always come after hours of testimony, conflicting evidence, unnecessary acrimony and personal attacks, in the late hours of the evening. We're all tired after a day at work and now, after listening to angry citizens, we have to make a reasoned decision.

So, we make the ultimate decision. Is it a good one? Does it result in the best solution for the neighborhood, and the community? Possibly. Is there a better way of planning? Yes, but it takes time, re-education and a lot of commitment, not only on the part of the staff and the applicants, but also on the part of the commission and the community at large.

In Ashland, we have begun using new procedures to counter these confrontational hearings. There are two elements to this program; first, *early intervention mediation*, and second, *collaborative neighborhood planning*.

But before I discuss them, let me quickly describe Ashland. It's a small city, with a population of 17,000, located in southwestern Oregon, just across the border from California. The city limits are blocked on one side by the foothills of Mt. Ashland and on the other by Interstate 5.

Due to our appeal as a retirement location and our relatively low population, we have experienced significant development pressures. Under Oregon law, development is limited to within our "urban growth boundary" — any expansion of this boundary must be based on actual "need" and approved by the State.  *Urban Growth Boundary, p.19.* Ashland also has a

significant "no growth" group of activists. As a result, when there are applications for new subdivision development, or potential annexation, we have very lively hearings before the planning commission.

I. EARLY INTERVENTION MEDIATION

In some of Ashland's more combative planning applications, after the appeals process has been pursued — through the State Land Use Board of Appeals and/or the state courts — the planning action has

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been sent back to the commission for rehearing on issues requiring more evidence. Encouraged by the planning staff, and prior to the rehearing, the interested parties — neighbors, activists, and the applicant/developer — have agreed to mediation (the city has paid for the mediator in the first few actions).

The results, particularly in the eyes of the planning commission, have been excellent. The parties bring a mediated agreement to the commission for its stamp of approval. No more contentious hearings, no more anger directed at the commission because of our decision, and best of all, none of those street corner confrontations as you hurry to the grocery store, trying to remember what you were supposed to pick up on the way home.

Unfortunately, these mediated agreements have occurred late in the process. The parties have become polarized in their

positions, angry comments have been made in the heat of the moment, and positions have become entrenched. This makes mediation challenging and time consuming. The parties need to get past their anger and public positions so that they can actually "hear" the other side.

Mediation should be begun early in the process, not after the appeal process has run. If the parties can realize that each side has valid interests, then agreement can occur. The result may not be entirely "theirs" or "mine", but "ours" — and the community will be better served. Until we have a more cooperative procedure, we, as planning commissioners, will continue to "plan under siege" during the hearing process.

A new provision for mediation has been added to Oregon's land use statutes. Planning actions in Oregon must have a final planning decision within 120 days of an application being filed at the planning department. However, this time period can be put on hold if mediation is entered into by the parties. This has helped make mediation a viable option.

To further the mediation process, when large developments apply for approval — ones that we all know will be difficult — our planning staff will provide the developer with a list of mediators, discuss the process, and explain the significant advantages (both in the saving of time and money) of dealing with the neighbors early in the process rather than at the hearing before the commission. This is "early intervention mediation."

It is essential that the planning staff participate in the mediation process to ensure that what is developed is permitted under the relevant ordinances and would be acceptable to the commission. Planning commissioners, in order to preserve their objectivity, are not involved in the mediation process. The planning commission,

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however, retains the ability to change any portion of the agreement that is not acceptable (this has not occurred to date).

2. COLLABORATIVE NEIGHBORHOOD PLANNING

Another process in its infancy in Ashland is collaborative neighborhood planning. In collaborative planning all concerned parties are brought together by the planning staff in a neighborhood meeting. The participants are provided maps, both zoning and topographical, copies of relevant planning laws, and examples of possible alternative neighborhood plans. Everyone's ideas are considered and discussed. Using those ideas, a plan is developed. Planning staff provides assistance with zoning laws and development expertise. These plans are then presented to the community at large.

Ashland's first experience with this process had mixed results. There is a large, sparsely developed area on the outskirts of Ashland, zoned "rural residential" with a minimum lot size of one-half acre. Because of growth pressure, it became apparent that this area would be developing in the near future. Before facing a series of development proposals, the planning department invited area residents to plan the entire area. The process proceeded with the neighbors meeting for more than a year discussing their concerns and ideas for development. Staff assisted by providing meeting places, offering expertise, and constructing large maps for presentation. The process ended with an agreed upon plan.

This plan was then presented to the community at large during a study session of the planning commission. It became apparent that adjacent neighbors had not been involved in the planning sessions, as well as more distant residents who would be affected by the increased traffic generated by the development. Their objections halted the process (though efforts have been made since then to address their concerns).

A clear lesson from this is that all

stakeholders must be included very early in the process. Just giving parties notice that neighborhood planning meetings are occurring is not sufficient. All of the stakeholders need to be brought to the table, even if they have to be personally invited. It is much easier to have them at the table than at the podium before the commission later on.

Staff and commissioners also need to recognize that any new process is potentially threatening to the participants. Patience with neighbors, developers, activists, and advocates must be maintained. Developing a neighborhood plan through collaboration is not a quick and easy process. However, it is one that will result in a plan "by the community and for the community."

3. SOME CONCLUDING OBSERVATIONS

One difficulty with the use of mediation is simply that it is an unfamiliar process to most people. Developers — and neighbors — often rely on lawyers for assistance. As advocates for their clients, lawyers are hesitant to give up any position before they absolutely have to. However, lawyers know (or can be reminded) that the planning process is not without its dangers and pitfalls, and that a plan developed by defusing the neighbors' concerns prior to hearing is less likely to be appealed through the courts.

We each have a vision for our community. Although we may not always agree, we can learn to "hear" other visions. Once the rhetoric is reduced to more conciliatory terms, and we all are sitting at the table, agreement may come more easily than any of us would have thought imaginable. ♦

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Urban Growth Boundary:

Oregon's land use law requires cities and counties to jointly designate for each city an "urban growth boundary" (UGB) encompassing the land area that is expected to be needed for urban development during a 20 year period. The boundary separates urban land from rural land and establishes the perimeter within which urban facilities and services are to be contained. Data to support the boundary is required — including 20 year population and growth forecasts. Some of the criteria cities must meet when requesting a change to the UGB include a need to accommodate unpredicted population trends, to satisfy urban housing needs, or to ensure adequate employment opportunities.