

OPINION

Solving development conflicts

By Cary Lowe and
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San Diego County is awash in land use and development conflicts. On the bayfront alone, there are controversies over a new cruise ship terminal, the Navy Broadway commercial complex and the Convention Center expansion.

Up the coast, opposition is building to expanding the Del Mar Fairgrounds and racetrack. In North County, citizen groups are up in arms over the mere suggestion that part of the pristine Rancho Guejito may be developed. And downtown, battle lines are being drawn over proposals for a new Civic Center and a football stadium.

And these are just the high-profile issues. Other, less visible conflicts happen daily concerning siting of public facilities, small development projects or more intense uses of already developed sites.

For most of these projects, the future is sadly foreseeable. Environmental organizations, community groups and neighbors will make their opposition loudly known at public hearings. The developers or agencies will modify their plans in small ways to mollify the opposition, but to little avail. Within weeks of project approvals, lawsuits will be filed challenging the projects' environmental certifications. The complexity of the legal requirements governing those certifications makes them easy targets.

More often than not, after months or even years of litigation, the courts will agree that there are deficiencies in the environmental analyses and will invalidate the approvals. In a few cases, the costs of delay will pressure the proponents into abandoning their projects. More often, the project applicants will change their plans enough or revise the environmental reviews enough to survive further challenges, but without the opposition groups securing the changes they really sought. In a few other cases, the courts will side with

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the proponents, and the opposition will come up empty. In all cases, the process results in high costs, both personal and financial, to everyone involved, and rarely resolves the issues separating the parties.

Virtually everyone involved in these high-stakes land use conflicts wishes there were a better way, a process that is less costly and less legalistic, and which would incentivize cooperation rather than conflict.

There is an alternative. It is possible to apply to these large, complex land development conflicts a dispute resolution process used successfully for decades to resolve business, community, personal, labor-management and even international disputes – mediation.

In its traditional form, mediation is a confidential process in which disputing parties meet face-to-face and, with the aid of a neutral, knowledgeable mediator, work through the issues, identify their basic interests and craft a settlement satisfactory to all. In a mediation, the parties themselves, not the mediator, decide the result. That's a far cry from their arguing before a legislative or judicial body, and then having an outcome imposed on them.

Depending on the complexity of the issues, a mediated settlement can be reached in a few hours to a few weeks. The San Diego-based National Conflict Resolution Center finds that mediation results in settlements in nearly 80 percent of cases.

Traditional mediation has been used often to resolve neighborhood-level land use disputes.

When there are disputes over large

projects with public policy implications or with numerous parties, a modified approach can be applied that accommodates multiple stakeholders and plays out in a public process. The parties meet in a neutral setting, recognizing that, if they can work out their differences on their own, they won't need to fight in a public hearing or a courtroom.

The mediator, acting as a facilitator, puts together a plan to guide the discussion, including dealing with differing perspectives within each camp. The emphasis is on exchanging information and on bringing out the real interests underlying the dispute. Often, the parties find common ground or find ways to address others' interests without compromising their own. Finally, the mediator helps the parties write up an agreement.

Not every such negotiation is successful, of course. Some issues, such as the potential extinction of an endangered species, don't lend themselves to compromise. Also, some parties are unwilling to compromise regardless of the issues or stakes involved. Yet, in other parts of the country, particularly the Northeast where this approach has been in use for some time, the results have been impressive. Mediator-assisted negotiations have resolved disputes around issues as diverse as allocation of affordable housing among cities in Connecticut, a major highway interchange in Boston and a historic preservation program in Atlanta.

As if we didn't already have enough land use conflicts before us, their number and intensity will increase as the economy improves and development ramps up again. Before that happens, we need to reconsider. The way we currently resolve – or fail to resolve – these issues is unproductive and unsatisfying. There is a better way, and it is time to give it a chance.

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