PLAN NH
Visioning *for* Sustainable Communities

Plan NH Listening Session

November 7, 2009

Town of East Kingston, NH
Incorporated 1738

PLAN NH
Visioning *for* Sustainable Communities

Plan NH Visits East Kingston

Executive Summary

Who are we?

Plan New Hampshire, The Foundation for Shaping the Built Environment (PLAN NH), is a non-profit organization formed in 1989. Our continuing mission is to contribute to the quality of life in New Hampshire by *promoting excellence in sustainable planning, design and development of the built environment.*

We believe that the economic vitality of a community is directly related to the vitality of the community itself, and are champions of Smart Growth, by which towns, communities, and/or neighborhoods

- Reflect the earliest years of a town's existence with dense, compact design, while preserving the unique historic architectural character, natural resources, and the surrounding rural landscape
- Are mixed use (living units, office/commercial, locally-based retail, municipal) and multi-generational
- Include living spaces for professionals, service workers and others who work in town or nearby
- Can be lived in/worked in/visited with a minimum of use of fossil-fueled vehicles (ie are pleasant and easy for walking, biking, wheelchairs, etc.)
- Offer a variety of spaces for social and civic gatherings (parks, playgrounds, benches on the sidewalks, cafes, a public library, post office, school …)
- Use a minimum of synthetic materials and encourage waste as a resource as well as other eco-industrial development
- Minimize or eliminate irreversible encroachment upon nature (i.e. land, water, wildlife, forests, soil, ecosystems)
- Maximize rich natural resources through community gardens, nature paths for walking or biking, conserving and protecting open land from development …

Members from across the state and beyond include architects, engineers, planners, contractors, real estate, law and other professionals. The common thread linking these people is their concern with the quality of the built environment and its impact on communities, including their economic and social identities. The diversity of our members brings a variety of views and perspectives for discussions of issues that address the built environment in New Hampshire.

PLAN NH
Visioning *for* Sustainable Communities

What is a design "charrette"?

A design charrette is simply a period of intensive work involving both professionals and local citizens as they explore potential solutions to a design issue. It has been referred to as the graphic equivalent of a brainstorming session. Lots of ideas are brought forth, explored by the group, and a consensus is built as to how best to move forward.

Why does PLAN NH do this?

PLAN NH believes that the quality of our built environment and the social capital people are willing to invest in helping to design that built environment contribute in a significant way to the quality of life in New Hampshire. Our goal is to assist communities with worthy projects that would not get started if there were significant expenses associated with deciding what to do, as well as to assist communities that have funding but require a clear and effective plan to begin the process. An important beginning point is to tap into a community's resources – people willing to become involved in helping to decide how to proceed with improving their community.

East Kingston's Proposal

The project is important to the community in that it may be an avenue that will broaden the tax base, thus lowering or stabilizing the growth in property taxes to farms and residential housing.

In March of 2007, the town adopted a Town Center Ordinance which includes a commercial overlay zone. The town does not control the land within the newly created overlay zone. The town would like to create a cooperative environment to encourage land owners and other stakeholders to work together in the development of this zone.

The citizens of East Kingston want the town to remain a small farming, scenic community. However there is concern about the escalating property taxes negatively impacting the quality of life and the ability for citizens to remain in their homes/farms.

The hope is to minimize the property tax burden by coming up with ideas for community growth such as creating opportunities for small cottage businesses in the home.

PLAN NH
Visioning *for* Sustainable Communities

Morning Brain Storming Discussion

Managing Growth Opportunities to Broaden Tax Base and Increase Social Capital

Michael & Ina Castagna from Plan NH gathered on November 7, 2009 with town citizens to discuss the land use options in the town. Specifically discussed were the town center and the possible expansion of the Commercial District.

Michael opened discussion, explaining how all Boards have to engage to make changes that are needed and consider Consensus Building involving the Community and all Stake Holders.

- What do you think of when you think of NYC? Traffic, noise, pollution, tall buildings, theatre, home for those who came from NY, good food
- What do you think of when you thing of East Kingston? Rural, peace and quiet, beauty, farms, clean air, residential, high taxes ($18.16 per thousand at 95% valuation)

Discussion took place in regard to the 2007 Visioning Session meeting to create a town center. An overlay map was created which showed a town center area and a commercial area at Rt. 108 and 107 to Rt. 107 A. There is residential in the town center areas as well. It was decided not to expand the proposed town center. It was desired to expand the commercial area.

Goals of the town: preserve rural residential character of the town, more utilization of the farms, conserve the open space, manage growth, preserve wetlands, expand community recreation area of Pow Wow River, encourage commercial and light industrial growth for tax base. Still keep what the town has, but interject cohesive commercial/Industrial tax base growth, work at promoting more agriculture functions to produce their own rather than have to import fruits and vegetables. The town needs to find a way to create programs to encourage more agriculture production and create good areas for commercial zones and what type of business the town would like to attract and what kinds of limitations the town could impose on commercial/industrial zones.

Public opinion was against strip center type commercial development. Would love to have a "Tuttles" type retail store that promotes locally grown produce. Michael explained that they need to examine existing infrastructure and keep that kind of retail near highway for trucking ease because a store like Tuttles, has to also bring in outside products to be successful. Consider a food co-op as well. Food co-ops become a promoter of social capital while containing a Café as a good additional attraction. Keep in mind that your Post Office is where most things come together, along with Town Hall and Library. Public opinion was to consider town owned conservation land for co-op use. The old town center/Post Office was originally located on the other side of the tracks. It is desired to create more localized business area opportunities for local business owners to use.

PLAN NH
Visioning *for* Sustainable Communities

Michael said that the town needs to understand that they are in a good position to create their own spot zoning that is needed…..Form Base Zoning is what can be considered and is often done in Districts.

All Boards, including the Fire, Police, Recreation Dept., Historical Society, Library Director, Highway Dept., as well as State Highway Dept need to be part of a Consensus Building effort. Everyone needs to find common ground and be on the same page to properly grow your town and broaden your tax base. Michael explained how the Town of Durham handled the redesign of the Durham Mill Plaza planning. Remember to talk to NH DRED to help create and attract the right kind of Commercial/Industrial users that may have an interest in the area. Also, East Kingston Boards have to have dialog to discuss town incentives and stream line approval process to attract good business of the town's liking that would blend into the rural nature, as well as broaden tax base, which is needed. Down the Road, consider hiring a good Economic Development Director or outsource to the Regional Economic Develop Commission, to work with the State of NH, while managing the process of bringing into town, what you need for good business growth. Your town will need someone to help manage the creation of a TIF District, job creation through big picture proper planning.

East Kingston has many transplant citizens from other areas due to what the town has to offer, as well as being close to commuting roads to Massachusetts. East Kingston offers a great rural life, and SAU #16 offers a great school system. Create a Town of East Kingston Committee that can begin to work on easy things to do and promote social capital through town events and festivals on a frequent basis…..show outsiders how great the community is to move to and raise children. Keep news of ongoing efforts in the local news. Where can you have an Art Gallery or a place in the summer for Art festivals and shows and expand your Farmer's Market? Encourage local farmers to use their property to have an event that promotes the sale of their produce…..maybe a corn maze and pie sale, along with produce for sale. Something different at each farm to re-introduce the public to all the farm owners in East Kingston……have something to offer at each farm, all on the same day. You have your 275th year Celebration coming…..so plan so that all farmers can be involved in some way, as well as any stores or businesses that you do have in town.

The public said that they would like to achieve 85% of taxes be from residential and 15% come from Commercial/Industrial users. Remember to think about attracting a person who might like to start a kayak and canoe business near a recreation space of the River, and maybe a café and bike rental business near biking paths, coming from the town center, if possible. Remember doing a Community Garden…another great effort for family use, as well as creating produce to sell. Always think about Social Capital. A Bandstand for entertainment near town center is great. Discuss with neighboring towns, any opportunity for Regional Services to help tax base. Send out a town questionnaire with no more than 5 questions to obtain citizen opinions ……good job for the committee that gets formed. Remember to review your town's website and re-write it if necessary…..always good to have a section on website for public to write into and offer their suggestions and ask questions.

PLAN NH
Visioning *for* Sustainable Communities

Eight Advantages to Form-Based Codes

1. Because they are prescriptive (they state what you want), rather than proscriptive (what you don't want), form-based codes (FBCs) can achieve a more predictable physical result. The elements controlled by FBCs are those that are most important to the shaping of a high quality built environment.

2. FBCs encourage public participation because they allow citizens to see what will happen where- leading to a higher comfort level about greater density, for instance.

3. Because they can regulate development at the scale of an individual building or lot, FBCs encourage independent development by multiple property owners. This obviates the need for large land assemblies and the megaprojects that are frequently proposed for such parcels.

4. The built results of FBCs often reflect a diversity of architecture, materials, uses, and ownership that can only come from the actions of many independent players operating within a communally agreed-upon vision and legal framework.

5. FBCs work well in established communities because they effectively define and codify a neighborhood's existing "DNA." Vernacular building types can be easily replicated; promoting infill that is compatible with surrounding structures.

6. Non-professionals find FBCs easier to use than conventional zoning documents because they are much shorter, more concise, and organized for visual access and readability. This feature makes it easier for non-planners to determine whether compliance has been achieved.

7. FBCs obviate the need for design guidelines, which are difficult to apply consistently, offer too much room for subjective interpretation, and can be difficult to enforce. They also require less oversight by discretionary review bodies, fostering a less politicized planning process that could deliver huge savings in time and money and reduce the risk of takings challenges.

8. FBCs may prove to be more enforceable than design guidelines. The stated purpose of FBCs is the shaping of a high quality public realm, a presumed public good that promotes healthy civic interaction. For that reason compliance with the codes can be enforced, not on the basis of aesthetics but because a failure to comply would diminish the good that is sought. While enforceability of development regulations has not been a problem in new growth areas controlled by private covenants, such matters can be problematic in already-urbanized areas due to legal conflicts with first amendment rights.

PLAN NH
Visioning *for* Sustainable Communities

Definition of a Form-Based Code

A method of regulating development to achieve a specific urban form. Form-Based Codes create a predictable public realm primarily by controlling physical form, with a lesser focus on land use, through city or county regulations.
Form-Based Codes address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks. The regulations and standards in Form-Based Codes, presented in both diagrams and words, are keyed to a regulating plan that designates the appropriate form and scale (and therefore, character) of development rather than only distinctions in land-use types. This is in contrast to conventional zoning's focus on the micromanagement and segregation of land uses, and the control of development intensity through abstract and uncoordinated parameters (e.g., FAR, dwellings per acre, setbacks, parking ratios, traffic LOS) to the neglect of an integrated built form. Not to be confused with design guidelines or general statements of policy, Form-Based Codes are regulatory, not advisory.
Form-Based Codes are drafted to achieve a community vision based on time-tested forms of urbanism. Ultimately, a Form-Based Code is a tool; the quality of development outcomes is dependent on the quality and objectives of the community plan that a code implements.

Form-Based Codes commonly include the following elements:

- Regulating Plan. A plan or map of the regulated area designating the locations where different building form standards apply, based on clear community intentions regarding the physical character of the area being code.

- Public Space Standards. Specifications for the elements within the public realm (e.g., sidewalks, travel lanes, on-street parking, street trees, street furniture, etc.).

- Building Form Standards. Regulations controlling the configuration, features, and functions of buildings that define and shape the public realm.

- Administration. A clearly defined application and project review process.

- Definitions. A glossary to ensure the precise use of technical terms.

PLAN NH
Visioning *for* Sustainable Communities

Form-Based Codes also sometimes include:

- Architectural Standards. Regulations controlling external architectural materials and quality.
- Landscaping Standards. Regulations controlling landscape design and plant materials on private property as they impact public spaces (e.g. regulations about parking lot screening and shading, maintaining sight lines, insuring unobstructed pedestrian movements, etc.).
- Signage Standards. Regulations controlling allowable signage sizes, materials, illumination, and placement.
- Environmental Resource Standards. Regulations controlling issues such as storm water drainage and infiltration, development on slopes, tree protection, solar access, etc.
- Annotation. Text and illustrations explaining the intentions of specific code provisions.

PLAN NH
Visioning *for* Sustainable Communities

Foundations and private funding sources:

Wal-Mart Good Works – www.walmartfoundation.org

The Home Depot – Community Impact Grants, http:corporate.homedepot.com/wps/portal/!ut/p/.cmdcs/.ce/7_0_A/.s/7_0_121/_s.7_0_A/7_0_121

The Timberland Company – Community Involvement Program, http://www.timberland.com/corp/index.jsp?page=communityInvolvement

The Ford Foundation, http://www.fordfound.org/

PSNH – Community giving program, http://www.psnh.com/Community/Support/corp_giving.asp

The Allstate Foundation - http://www.allstate.com/Community/PageRender.asp?Page=foundation.html

The Verizon Foundation - http://foundation.verizon.com/

Merck Family Fund http://www.merckff.org/index.html

The Madeline G. von Weber Trust - Funds projects in community development, neighborhood development, human services and the performing arts. Contact: Madeline G. von Weber Trust, c/o James d. Dow, 95 Market St., Manchester, NH 03101.

New England Grassroots Environment Fund - http://www.grassrootsfund.org/

Transportation Enhancement Act Program - Project categories include: facilities for bicyclists and pedestrians; safety and educational activities for bicyclists and pedestrians; acquisition of scenic easements and scenic or historic sites; scenic or historic highway programs; landscaping and other scenic beautification; historic preservation; rehabilitation and operation of historic transportation buildings, structures or facilities; preservation of abandoned railway corridors; control and removal of outdoor advertising; archaeological planning and research; environmental mitigation to address water pollution due to highways or vehicles; and establishing transportation museums. - http://www.nh.gov/dot/municipalhighways/tecmaq/index.htm

Waste Management Charitable Giving Program - Support for Environment, Education, and Community Impact Programs - http://www.wm.com/WM/community/Giving.asp

Enterprise Community Partners - http://www.enterprisecommunity.org/
BUZGate™ is a public/private collaborative project between America's public entrepreneurial assistance network and the Knowledge Institute. As a free public service, the Knowledge Institute works with thousands of public technical assistance agencies across the country to aggregate and further promote access to federal, state, regional and local economic development programs that specifically serve individuals seeking to start, grow and succeed in entrepreneurial ventures. www.buzgate.org

ORTON FAMILY FOUNDATION, www.orton.org

Heart & Soul Community Planning
Submission Deadline: March
Open to: Communities in select New England and Rocky Mountain states. Partnership opportunity for four communities to receive funding and technical assistance on major community visioning and planning projects.

"Growth is inevitable and desirable, but destruction of community character is not. The question is not whether your part of the world is going to change. The question is how." --

Edward T. McMahon, The Conservation Fund

Building Consensus:

Dealing with Controversial Land Use Issues & Disputes

by Lawrence Susskind and Patrick Field with assistance from Alexis Gensberg

Introduction

Locating a large superstore, siting a new landfill, reviewing a major new development, reconstructing an abandoned railroad line for a bike path – all of these can create conflict. In most communities, the usual process is for the planning commission or zoning board to hold public hearings, review the evidence presented, and render a decision. When a project is highly controversial, odds are good that this decision will be appealed, ultimately ending up in court. But court proceedings can be costly and time consuming. Moreover, the final outcome will likely be unsatisfactory to at least one of the parties.

Over the last twenty-five years, a growing body of evidence suggests that mediation and facilitation – what we term "consensus building" in this article – can be effective in helping align divergent interests, develop creative solutions, and resolve heated disputes. Consensus building can lead to outcomes which *all* parties to a dispute find acceptable.

Perhaps the earliest consensus building effort in the environmental and land use context was initiated in 1973 and focused on a long-standing dispute over the location of a flood-control dam on the Snoqualmie River in Washington. In one year, with the help of a mediator, the parties agreed not only on a location for the dam, but also on the creation of a river basin planning council and the purchase of development rights to maintain the area's rural character. Since then, hundreds of land use and environmental conflicts have been resolved through the use of consensus building techniques.

Consensus building can be particularly helpful in: (1) resolving appeals of contentious local commission decisions; and (2) resolving "not in my backyard" (NIMBY) disputes.

Resolving Appeals of Local Commission Decisions

Despite a community's best efforts, a land use decision may find its way into court or be appealed to some other review body. Proponents of a project that has been turned down may feel they have no choice but to pursue litigation, especially if they see their case as strong and their sunk costs high. Similarly, opponents of a project that has been approved may feel they have no recourse but to go to court to block the project. While mediation is not always the answer, in many situations it can help the parties address the issues and reach settlement faster and at lower cost than litigation. *See also "Q & A #4: Does Land Use Mediation Work?" on page 18.*

Take the following example. After the recession of the early 1990s, a local bank in a community north of Boston found itself in repossession of 97 acres of developable land. The bank (through an investment corporation) proposed to build a 100 unit residential development, of which 25 units would be affordable housing. Local officials, however, were worried that the project would eliminate one of the last major parcels in town available for commercial development.

After a lengthy review, the town's zoning board rejected the application on the basis of wetlands and traffic concerns. The bank appealed the decision to the Massachusetts Housing Appeals Committee, relying on a state law that allows this state board (under certain circumstances) to override local zoning denials when affordable housing has been proposed.[1]

The Housing Appeals Committee, with a heavy backlog of cases, encouraged the parties to try to mediate the dispute. The parties agreed. For the bank, mediation held the promise of avoiding protracted and costly litigation. For the local officials, mediation offered the possibility of reaching an agreement which they could help shape, instead of one imposed by the state.

The Massachusetts Office of Dispute Resolution helped arrange for a mediator. Over a period of nine months, the mediator worked with the parties, keeping them focused, and reminding them of agreements already reached on key issues.

Glossary

Consensus Building: a set of techniques used to help diverse stakeholders reach agreement. Non-partisan professionals are usually needed to facilitate such a process.

Mediation: a way to resolve disputes that relies heavily on the assistance of a trained neutral acceptable to all the stakeholders. Unlike an arbitrator, a mediator has no power to decide anything. As a general rule, mediation subsumes the tasks of facilitation.

Facilitation: a general term for the management of problem-solving conversations. The role of the facilitator is to keep the parties on track during meetings.

Arbitration: a voluntary but highly structured adjudicatory process that produces binding decisions.

Stakeholder: a person or group likely to be affected by (or who thinks they will be affected by) a decision, whether it is their decision to make or not.

1 Since 1969 Massachusetts has had a unique state zoning law designed to encourage affordable housing. Chapter 40B, as it is known, allows developers who propose to build housing in which at least 25 percent of the units are affordable to apply to the local zoning board for a "comprehensive permit," which includes all the required local approvals needed for development. If the zoning board denies the application (or grants it with conditions which would make building uneconomic), the applicant may appeal the board's decision to the state Housing Appeals Committee.

Ultimately, the bank and town officials agreed to a mixed-use development of 40 single-family homes, with a 20-acre commercial/industrial park. Ten of the homes would be affordable; land would be set aside for open space; and the wetlands would be protected. The parties also agreed to jointly select an outside engineer to review plans and monitor construction.

Resolving Not In My Backyard Disputes

Siting landfills, homeless shelters, halfway houses, and countless other uses can provoke strong, and frequently bitter, reactions from nearby residents or businesses. Opponents will fight every inch of the way to prevent something they deem unsafe or destructive to the property values of their homes or businesses. On the other side, proponents will spare no cost in promoting the need for their project and generating support for it. Local officials often find themselves caught in the middle, between groups with firmly set opinions that seem miles apart. Consensus building can help the parties step back, consider possible options, and determine if there may be a way to satisfy the interests of all sides.

In West Chester, Pennsylvania, a proposed downtown homeless shelter divided the community. Local business owners organized in opposition, fearing the shelter would hurt nearby businesses and cause the downtown to further deteriorate. Others saw the shelter as essential to meeting an important community need. The County Commission wanted the dispute resolved, but also wanted to see if this could be done outside the context of a formal zoning permit hearing.

At the County Commissioners' urging, the parties agreed to try mediation. The County assisted by covering its costs. The mediators started by conducting a "conflict assessment," which included a series of confidential, one-on-one meetings with those involved in the dispute. The mediators then convened several meetings which all the stakeholders attended.

One major concern to the business owners was that the shelter would operate 24 hours a day, with the homeless not merely seeking a bed for the night, but other support services. Although shelter advocates argued strongly for day time job training and counselling services, the parties reached agreement that, at least initially, the shelter would operate only in the evenings. The shelter provider also offered a pledge to the community to be a good neighbor. The agreement ended with a motto coined by one of the original opponents: "Together we can do it." Four years later, after proving itself to be a good neighbor, the shelter was allowed to expand its operations to include daytime hours and additional services.

Elements of Consensus Building

The two examples described above provide just a flavor of how consensus building can make a difference. Given these examples, you might ask, "OK, this might make some sense, but how does it really work?"

The consensus building process typically includes five key steps: convening; clarifying responsibilities; deliberating; deciding; and implementing agreements.

1. Convening. A sponsoring or "convening" body (usually a government agency) typically initiates discussions about whether or not to have a consensus building dialogue. This is best done by commissioning a mediator or some other "professional neutral" to talk privately with the obvious stakeholders to see if they have sufficient reason to support such an effort. Such consultations usually lead to the preparation of a draft conflict assessment report, which maps the views and interests of all the stakeholders (without attributing any statements to specific individuals).

This assessment provides the means for both the mediator and the stakeholders to clarify whether it is worth trying to reach an agreement through open deliberations (see step 3 below). If there does appears to be sufficient interest in moving forward with the mediation, the conflict assessment report can then be used to generate a work plan, timetable, operating ground rules, budget, and an outline of the data or technical material that needs to be gathered.

One of the advantages of conducting a conflict assessment is to test the idea of consensus building with the participants before diving in. Assessments can also provide a "cooling off" period during which the parties can review their interests and more calmly weigh how to proceed. Assessments take no commitment from the parties beyond the willingness to be interviewed confidentially for an hour or so and to review the draft conflict assessment report.

2. Clarifying Responsibilities. Assusming the parties decide to proceed, they must agree on a mediator. This does not necessarily have to be the same person who conducted the conflict assessment. The mediator's responsibilities should be spelled out in a contract between the mediator and the parties. It is also necessary to agree on who will participate in the mediation sessions as representative for each of the parties.

Since the subsequent consensus building process usually takes place in a public forum, it is essential to agree on rules about the role of observers (i.e., individuals who are not stakeholder representatives) during the mediation process. Finally, the relationship between the consensus building process and any legally required decision making (e.g., a ruling of a zoning board or a court) must be clearly spelled out.

3. Deliberating. It is the mediator's job to ensure that each face-to-face session is professionally managed. This can be a daunting challenge especially when a group involves 15, 20, or more participants. An agenda (approved by all participants) must be prepared prior to each meeting. Often subcommittees of participants, assisted by outside experts agreed to by all involved, prepare reports on specific issues, laying out options or arguments for the full group to consider.

Deliberations are most effective when the parties take sufficient time to "invent" options for each issue, and explore various combinations of those options before final decisions are made. It is common for the mediator to meet privately with each of the parties to identify and test possible trades or "packages." Often, the mediator

continued on page 3

Q&A:

1. How much does mediation cost?

Like any consultant, a mediator generally operates on a fee-for-service basis. Depending on the region of the country, the level of expertise needed, the kind of organization (for-profit, non-profit, or state agency), costs can vary widely. Mediators may charge as little as $75 per hour to as much as $350 or $400 an hour. Conflict assessments, depending on their scope, can range in cost from under $10,000 to as much as $30,000. Mediation efforts, again depending on scale, length, and intensity, may cost as little as $20,000 or as much as $100,000 or more. At first blush, these numbers may scare away local officials with very limited budgets. However, one should consider the implications of *not* reaching consensus in terms of administrative, litigation, and other costs, plus the non-quantifiable costs of intensive and extended conflict.

Small towns can take advantage of several less expensive resources. Your town may have a community mediation center with volunteers trained in mediation and able to assist parties in smaller scale disputes. Many colleges and universities, especially those with planning and policy programs, have professors trained in land use issues and dispute resolution who may be able to help.

2. Who pays for the mediation?

There is no one answer. In some cases, it is the local government. In others, it is the developer or, perhaps, a state agency. Costs can also be shared. But bear in mind that who pays for the mediation is far less important than having a clear understanding that the mediator will serve *all* parties in a fair, non-partisan, and professional fashion.

3. How do you find a mediator?

A growing number of states have offices of dispute resolution that can provide lists or rosters of mediators. States with particularly active offices include California, Ohio, Montana, Minnesota, New Jersey, Florida, Massachusetts, and Oregon. There are also numerous firms around the country who specialize in this kind of work, and there are sole practitioners who can be located through bar associations or planning organizations.

In one innovative program in New York, the Pace University Land Use Law Center has established a network of local planners, officials, and consultants who are available at low or no cost to assist local officials in assessing whether their particular problem might be amenable to mediation <www.pace.edu/lawschool/landuse/mediation.html>.

A number of other universities also have active conflict resolution programs. Finally, the U.S. Institute for Environmental Conflict Resolution maintains a national roster of experienced mediators. <www.ecr.gov>

4. Does land use mediation work?

A nationwide study, conducted by the Consensus Building Institute in 1997-1998, identified over 100 local land use and environmental conflicts in which mediation had been utilized. Lawrence Susskind, Mieke van der Wansem, and Armand Ciccarelli, *Mediating Land Use Disputes: Pros and Cons* (Lincoln Institute for Land Policy, 2000).

The study included a survey of participant satisfaction with mediation. 86 percent of the more than 400 individuals who responded to the survey reported either favorable or very favorable views of the mediation process. Moreover, 81 percent believed the mediation resulted in less cost *and* less time than would otherwise have been needed.

Among those respondents who stated that some sort of settlement was reached in their case, most thought the agreement was well implemented (75 percent), was more stable than what could have been achieved without mediation (69 percent), and was creative in producing the best possible outcome for all parties (88 percent). Furthermore, 92 percent of respondents whose cases were settled thought that their own interests were well served. At least from the perspective of participants in consensus building, it can and does work much of the time.

The study also sought to determine in which situations land use mediation was most likely to work. It found that mediation was most helpful when one or more of the following factors was present:

- The dispute was local.
- Importance of the outcome to each participant was high.
- Issues were relatively clear.
- Relevant laws were flexible enough to permit a negotiated settlement.
- Actual decision makers were willing to participate or convene the mediation.
- There was no immediate danger to life/safety.

Mediation was found to be less useful when one or more of the following factors was reported:

- Precedent setting was important.
- Participants did not recognize the rights of others to pursue their interests.
- Fundamental rights were at stake that were not clearly delineated by law.
- A mediator acceptable to all key parties could not be found.
- No action on the issue was the best possible outcome for some parties.
- There were few issues to trade or package in an agreement.
- The process was used as a means to delay real action or create an illusion that something was being done.

5. How can I learn more about mediation?

We may be biased, but two good resources are *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement* (Sage Publications, 1999; 1176 pages, $145.95) and *Using Assisted Negotiation to Settle Land Use Disputes: A Guidebook for Public Officials* (Lincoln Institute, 1999; 26 pages, $12.00). Lawrence Susskind, one of the co-authors of this article, also co-authored both of these publications. Information on ordering the publications can be found respectively on the Sage Publications web site <www.sagepub.com> and the Lincoln Institute web site <www.lincolninst.edu>.

Another useful publication from the Lincoln Institute is *Resolving Land Use Conflicts through Mediation: Challenges and Opportunities,* by David Lampe and Marshall Kaplan (1999; 94 pages, $14.00). Finally, *Mediating Land Use Disputes: Pros and Cons* (cited in Question 4 above) can also be ordered from the Lincoln Institute (40 pages, $14.00).

Building Consensus...

continued from page 2

will develop a "single text draft agreement" synthesized from the views and ideas expressed during this phase of the deliberations.

The mediator may also help the participants articulate the proposed agreements to their respective constituencies, ensuring that all representatives have been in touch with the groups or individuals they are supposed to represent.

4. Deciding. It is at this point that the consensus building process differs most sharply from what most people are accustomed to in public decision making settings. The goal is not necessarily to arrive at a result which most closely meets the local ordinance's review criteria. Neither is it to find an agreement only barely acceptable to all (i.e., lowest common denominator). Instead, the goal is to reach an agreement which maximizes the *joint gains* of all participants.

Given the group problem-solving nature of the consensus building process, participants are responsible not only for presenting their own views, but for suggesting ways of meeting the interests of others. The mediator will typically help formulate a set of proposals, and will seek to have the participants clarify why they support or do not support a particular proposal. The new solutions developed in this way often satisfy more of the parties' interests than would have occurred without negotiation.

Reaching consensus does not mean that every participant has to be pleased with every aspect of a proposed agreement. But consensus does require concurrence by all participants – or at least an overwhelming number – with the overall agreement.

5. Implementing Agreements. Any agreement resulting from the consensus building process should include means to ensure it will be effectively implemented. This may be through provisions where third party experts are assigned the job of monitoring various aspects of an agreement's implementation, or through dispute resolution clauses which clarify how disputes over implementation will be resolved.

The product of a consensus building effort may be a plan that must still be formally adopted by a local board or commission, or a legal settlement that must be signed off by a judge. If consensus is reached (and assuming the mediator has kept the local board or the judge updated on the group's progress), boards or judges will likely be more than happy to finalize and formalize the agreement. Indeed, many mediations were convened in the first place by local officials, or were authorized by the court.◆

Lawrence Susskind is President of the Consensus Building Institute. He is also Director of the Public Disputes Program at Harvard Law School, and author of Breaking the Impasse, Environmental Diplomacy, *and co-author of* Dealing With An Angry Public.

Patrick Field is a Vice President of the Consensus Building Institute, and co-author of Dealing With An Angry Public.

Alexis Gensberg is a CBI associate and master student candidate in the MIT Department of Urban Studies.

On-Line Comments

"One of the challenges of land use mediation is meshing the mediation effort with the public process. A mediation must be designed to appropriately supplement the public ('rights based') process and not override it. Authority to mediate is sometimes a barrier for government. Planners can play an important role by including appropriate opportunities for mediation within their planning codes. … I would also note that in Oregon, the state provides grant funding and technical assistance to encourage mediation of land use appeals within the state planning framework. The state has created the Land Use Board of Appeals (LUBA) to hear land use cases at the state level. Parties involved in appeals to the board are advised that they may stay the appeal process to enter mediation and may obtain assistance from the state's public policy dispute resolution program. Grant funding is available to pay for a private sector mediator in qualified cases."

– Dale Blanton, Dispute Resolution Coordinator, State of Oregon Public Policy Dispute Resolution Program

A Checklist to Determine if Consensus Building is Appropriate

Necessary Conditions for a Consensus Building Process	Assessment and Comments
Is there a Constituency for Change?	
Do people have a common concern over a reasonably well-defined issue?	❑ Yes ❑ No ❑ Maybe
Are people frustrated with the status quo? Do they truly want something to change?	❑ Yes ❑ No ❑ Maybe
Do people believe that the issue is timely and compelling?	❑ Yes ❑ No ❑ Maybe
Are people uncertain about their best alternative to a negotiated agreement?	❑ Yes ❑ No ❑ Maybe
Do people believe that the issues are negotiable? That is, there are no strongly felt issues involving a fundamental principle, right, value, or precedent.	❑ Yes ❑ No ❑ Maybe
Do people desire more control over the outcome?	❑ Yes ❑ No ❑ Maybe
Do people want to avoid an adversarial situation?	❑ Yes ❑ No ❑ Maybe
Are people concerned about the costs of a prolonged dispute?	❑ Yes ❑ No ❑ Maybe
Do people desire a sense of closure?	❑ Yes ❑ No ❑ Maybe

Is there Sufficient Stakeholder Capacity?	
Are stakeholder groups clearly organized – do they have clear lines of communication and decision making?	❑ Yes ❑ No ❑ Maybe
Can legitimate, credible representatives be identified, and are they willing to participate?	❑ Yes ❑ No ❑ Maybe
Are stakeholders willing to articulate their interests and seek solutions that accommodate the interests of other stakeholders?	❑ Yes ❑ No ❑ Maybe
Are public officials and decision makers committed to process?	❑ Yes ❑ No ❑ Maybe
Are there sufficient resources to support the process (time, money, information, etc.)?	❑ Yes ❑ No ❑ Maybe
Final Analysis	
Do people believe that they are likely to get more out of a consensus building process than they are likely to get out of their alternatives for addressing the issue(s)?	❑ Yes ❑ No ❑ Maybe

NEW HAMPSHIRE
CHARITABLE FOUNDATION

social capital

BETTER TOGETHER

what is social capital?

"Social capital" refers to the bonds that tie a community together—bonds that make communities safer, schools better and people healthier. When people are invested in their communities, they are more likely to vote, volunteer and care for one another.

Why Does it Matter?

In general, communities with higher social capital have higher educational achievement, better performing governments, faster economic growth, and less crime and violence. People living in these communities are happier, healthier, and have a longer life expectancy. In these communities, it is easier to mobilize people to tackle problems (ration water in a drought or organize against crime) and easier to undertake things that benefit everyone (start a child care cooperative or build a community park).

COVER Front porches and general stores foster social capital.
Photographer: Geoff Forester

SOCIAL CAPITAL AND PUBLIC POLICY

Sometimes the most effective ways to build social capital require changes in public policies.

1. **Smaller Schools.** The smaller the school, the greater the likelihood that all children will feel connected and that parents and the community can be engaged. A number of communities have created smaller, self-contained schools within existing buildings.

2. **Smart Growth.** Every 10 minutes spent commuting by car reduces by 10% a person's engagement in virtually every form of social capital—political, volunteering, religious, family time, being with friends. Reduce the sprawl that requires more time in our cars. Support Main Street Programs to strengthen commercial town centers. Advocate for concentrated development in existing communities to make livable, walkable towns. Focus the location and expansion of highways, sewers, water lines, public offices and facilities.

3. **Service Learning.** Children learn to volunteer. The best school-based service learning programs require all students to do some volunteer work as part of their school curriculum.

4. **Incentives.** Provide incentives to businesses for exemplary civic behavior through state and federal purchasing and contracting—just as we now provide public incentives for companies that operate in ways that respect the environment.

5. **Employment Policies.** A century ago, Americans steadily limited the conditions under which work could be required—they eliminated child labor, limited the number of hours of the work week, and provided for workmen's compensation and health benefits. The current balance needs to shift to protect family and personal time, and not treat the burden of caring for aging parents or children as purely private family obligations.

6. **Campaign Finance Reform.** Eliminate the power of money to dominate political campaigns.

7. **Social Capital Impact Statement.** Require public agencies to file statements that highlight the potential impact of any new program on the communities' stock of social capital. For example, when the US Postal Service proposes to close a small post office, and communities object that the post office plays a crucial role as a local meeting place. The same would be true when a school district proposes building a new school that is located miles from each of the potential feeder communities. A Social Capital Impact Statement would give weight to these concerns.

ABOVE "Bridging" social capital—Families learn about other cultures at a Latin American and Caribbean exhibit at the Currier Museum of Art in Manchester, NH. *Photograph courtesy of the Currier Museum of Art*

SOCIAL CAPITAL IN NEW HAMPSHIRE

A 2002 major national survey revealed that New Hampshire has among the highest social capital in the nation. The Granite State ranked highest among all communities surveyed in "civic equality"—where the opinion of the plow operator matters as much at Town Meeting as the opinion of the bank president—means that people here are more likely to be involved in community affairs. But, like everywhere else in the nation, New Hampshire has seen its levels of social capital decline. The New Hampshire Charitable Foundation aims to shore it up, encouraging civic engagement through leadership and funding projects that include social capital as a means or as an end-goal.

"We need to look at front porches as crime-fighting tools," Foundation President Lew Feldstein has said, "treat picnics as public health efforts and see choral groups as occasions of democracy."

"Bonding" social capital comes naturally between people with much in common; "bridging" differences is more difficult and, perhaps, more important to foster. There is no magic formula.

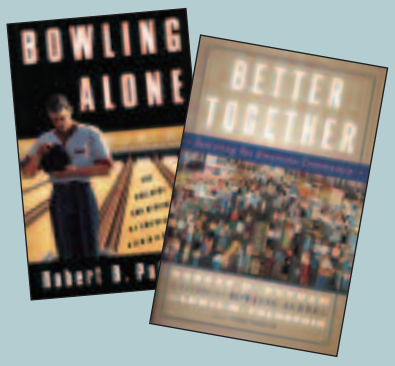
Success is hard to measure. But the state pioneers new ways to build social capital. New Hampshire is the first state in the nation to incorporate social capital testimony in the federal Environmental Impact Statement process, and to pilot ways to build social capital into the Master Planning of individual communities.

From the changes anticipated by the widening of Interstate-93 in the central corridor to the proposed federal prison in the North Country, the Foundation has championed social capital as a critical factor in the quality of life in our communities.

"If you don't go to somebody's funeral, they won't come to yours." - Yogi Berra

RESOURCES

Visit **www.ksg.harvard.edu/saguaro** for more information on *The Saguaro Seminar: Civic Engagement in America*, an initiative of Professor Robert D. Putnam at Harvard University's John F. Kennedy School of Government, and **www.bettertogether.org** to read "BetterTogether," the final report of the Seminar.



LEFT The genesis of the Charitable Foundation's social capital work was inspired by Robert D. Putnam, who authored *Bowling Alone* in 2000—the seminal work that focused world attention on social capital. Putnam and Foundation President Lew Feldstein co-authored *Better Together* in 2003.

The New Hampshire Charitable Foundation has been working to improve the quality of life in our communities since 1962. It manages a collection of funds that are created by individuals, families and corporations for charitable purposes. Each year, the Foundation awards millions of dollars in grants to nonprofits and scholarship funds to students. Based in Concord, the Foundation roots itself in communities across the state through its seven regions—Lakes, Manchester, Monadnock, Nashua, North Country, Piscataqua and Upper Valley.

Contact us at: 37 Pleasant Street, Concord, NH 03301
603-225-6641 fax 603-225-1700 info@nhcf.org www.nhcf.org

Confirmed in Compliance with National Standards for U.S. Community Foundations

Printed on recycled paper with soy-based inks

Ways to Build Social Capital

Social capital is built through hundreds of actions, large and small, that we do every day. We've filled in many items and left blanks for you to fill in on your own. Try some on your own or with your co-workers and neighbors. Build trust in your organization and neighborhood. Get involved.

20 THINGS YOUR ORGANIZATION CAN DO

1. Invite local government officials to a lunchtime discussion with your staff and volunteers.
2. Host a blood drive for employees, volunteers, and clients.
3. Provide release time to employees for volunteering.
4. Provide meeting space for local community organizations.
5. Form a fitness/health group with your co-workers.
6. Think about how to involve different types of volunteers. If you serve the elderly, how can you bring in children? If you serve children, how can the elderly help?
7. Join the United Way campaign.
8. Form social groups—softball teams, hiking clubs, bridge circles, theater clubs, etc.
9. Host a picnic for staff and nearby residents.
10. Schedule a half hour "get together" before staff meetings.
11. Participate in your local United Way Day of Caring.
12. Set up a voter registration table in your organization.
13. Log onto www.bettertogether.org and learn more about the growing national discussion around strengthening social capital.
14. Have a movie night at your organization—with popcorn during and discussion afterward.
15. Establish a matching grants program: match charitable contributions by your employees.
16. Invite school groups to have a field trip at your site.
17. If a plow clears the snow from your lot, offer to plow the lot of a local day care center.
18. Invite the kids from a community or school art program to paint a "community mural" on the side of your building.
19. Hold staff and/or volunteer discussions about social capital, and what you can do to help increase it.
20. _____

35 THINGS YOU CAN DO

1. Go for a walk, invite a neighbor.
2. Attend gallery openings.
3. Write personal notes when inspired to neighbors and friends.
4. Organize a town-wide yard sale.
5. Visit a local nursing home.
6. Start a children's story hour at your local library.
7. Read your local newspaper, faithfully.
8. Join a book club discussion.
9. _____
10. Sing in a choir.
11. Make a point to help those in need—open the door for someone who has his/her arms full.
12. Go to a contra dance.
13. Stand on the corner of Main Street holding a sign for the candidate of your choice.
14. Attend your town meeting.
15. Support your local merchants.
16. Volunteer your time anywhere.
17. Take dance lessons with your friends.
18. Be a mentor for someone from a different ethnic or religious group.
19. Join a gardening club.
20. Become a blood, organ, or bone marrow donor.
21. _____
22. Join a carpool.
23. Eat breakfast out on Saturday morning at a local gathering spot.
24. Turn off the TV and talk with your family.
25. Offer to rake a neighbor's yard or shovel their walk if he/she needs help.
26. Fight to keep essential local services in the downtown area—your post office, police station, school, etc.
27. Offer to serve on a town committee.
28. Go to church…or temple…or outside with your children. Talk about why it's important to be there.
29. Give to your local food bank.
30. _____
31. Attend Veteran's Day and Memorial Day parades and say 'thank you.'
32. Join a bowling team or form one.
33. Audition for community theatre or volunteer to usher.
34. Join a baby sitting cooperative.
35. Talk to your family and friends about social capital. Tell them why it matters.

Lists compiled by the New Hampshire Charitable Foundation
37 Pleasant Street, Concord, NH 03301 603-225-6641 fax 603-225-1700 info@nhcf.org www.nhcf.org

Special Thanks to Plan NH's Corporate Sponsors