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Who represents "citizens" or "the public" in complex policy negotiations? Mediation of a development dispute in Denver provides one answer.

The Role of Citizens Groups in Policy Conflicts

James E. Kunde, Jill E. Rudd

Perhaps no problem is more vexing and full of contradictions for policy mediators than how to represent "citizens" or "the public" in negotiations involving formal representatives of official governing bodies whose jurisdiction includes those citizens. Not only is there the uncomfortable question of how people not formally chosen by an official process can be equated to those who are, but also the question of *which* citizens or members of the public will receive recognition while others do not. Both of these questions were central in recent negotiations in the Southeast Corridor of Metropolitan Denver, where representatives of the Conflict Clinic attempted to facilitate joint problem solving among disputing cities, a county, developers, business leaders, and citizens over annexation and public infrastructure questions.

A series of disputes in the Southeast Corridor developed over the past decade as the Denver Tech Center, one of the nation's earliest research parks, located and expanded at the junction of I-25 South and the I-225 by-pass south of the city. A commercial real estate boom coupled with liberal state laws for the formation of special districts enabled the development of an extensive area of tax "plums," which attracted aggressive annexation interests in nearby cities. The problem was complicated by state laws in Colorado, which in essence provide contract zoning for land

brought into a municipality under annexation agreements. Initial contract zoning was established by the courts to supersede subsequent actions by local governing bodies or initiative petitions.

The contract zoning feature had encouraged developers to seek competitive annexation bids to guarantee inclusion of the most favorable zoning features. Other factors, such as low rates of taxation and commitment to provide more expensive infrastructure, had resulted in a complex game involving chiefly local public officials and legal representatives of developers' interests.

Left out of these intricate bidding wars were the increasing numbers of new homeowners in the area who sometimes found that a municipality had annexed the entire area surrounding them and left their subdivision without a commercial or industrial tax base to support the more expensive urban services that would surely come with increasing population density. A group of homeowners became increasingly angry at the result of the annexation battles and banded together to seek incorporation of a new city called Centennial, which covered much of the unincorporated area left in the corridor. The incorporation petition was resisted by competing municipalities and the county government but was most directly opposed by developers who would be included in the incorporation. The developers were concerned because incorporation would preclude their ability to bargain for favorable development conditions among competing governments. The developers were especially concerned because an incorporation would not provide the same ironclad zoning protection they had enjoyed under annexation contracts.

The developers' legal representatives were able to stop the incorporation in court on a correctable technicality. It was clear that a second effort by the homeowners might easily succeed, and the issue already had cost the developers more than \$200,000 in legal fees.

An Ad Hoc Group Organizes to Seek Help

Shortly after the incorporation court case was decided, an ad hoc group of homeowners, developers, and public officials began to consider the idea of mediation to help the parties come together and seek out less expensive ways to solve problems in the area. One of the members of the group had heard about the negotiated investment strategy (NIS) developed by the Kettering Foundation as an intergovernmental problem-solving tool. NIS is a process that uses the structure and techniques of formal mediation for exploring problem solving and joint action by governments even though a formal dispute might not exist (Moore and Carlson, 1984).

In 1986 the ad hoc group contacted James Kunde, who had supervised the development of the NIS process for the Kettering Foundation. Kunde assembled a team under a contract with the Conflict Clinic to explore how a mediated process similar to NIS could work given the problems of

the Southeast Corridor. The team included Kunde as project manager, Carl Moore from Kent State University as the principal facilitator, Roberta Miller from Watertown, Massachusetts, Blaine Liner from the Urban Institute, Anita Fonte from the Maverick Institute in Tucson, Arizona, Carol Farquhar from the Kettering Foundation, and Jill Rudd from Kent State University.

As interviews and discussions proceeded with the principals, a structure involving five negotiating teams emerged: the city of Aurora, the city of Greenwood Village, Arapahoe County, concerned developers, and homeowners. As discussions developed, a number of other entities such as Cherry Creek School District and Castlewood Fire District became observers. Under the ground rules agreed on, there would be only the five teams represented by up to four persons with authority to participate.

As the participants reached the stage of establishing a steering committee, negotiating teams, and ground rules, the most difficult issue became how to represent the homeowners in the discussions. Both the developers and homeowners teams differed from the teams representing formal governing bodies. While the discussions were established from the beginning as exploratory and nonbinding from a legal standpoint, it was clear that there would be public scrutiny of the process and that representation at the table would almost certainly be challenged.

The representation of developers was quickly resolved by two ad hoc meetings with a majority of the larger developers active in the area. Earlier, the active developers in the area had formed the Joint Southeast Public Improvement Association (JSPIA) to coordinate their work with the special districts created to build an initial infrastructure. While it was decided that JSPIA was not appropriate to represent the developers' interests at the table, the JSPIA network was useful in pulling together the ad hoc meetings. The meetings established a team that represented the major developers involved, and developed a communications process for the representatives at the table to keep in touch with other interested developers during the course of discussions.

The process for establishing a developers team raised some of the same representation questions involved in establishing a homeowners team, but the process was more straightforward. The number of potential parties was infinitely smaller. There were less than two dozen major developers active in the area. While the representation question later broadened to include consideration of businesses that were not developers, the group was still more manageable because of the existence of an active chamber of commerce and regular communication among most members of the business community. The same was not true of the homeowners, an unstructured group of individuals and family units related only by accidental affinity and common anxiety about the future of their neighborhoods.

How should homeowners and other groups composed of consumers, clients, and otherwise unrelated citizens be represented in policy processes affecting their interests? Should they have special representation beyond the elected officials in their county, city, ward, or precinct? Who should determine their stake? Before answering these questions in the Denver case, we turn to a review of theories of representation and an appraisal of why formal governmental processes do not always provide an adequate place at the table.

The Inadequacies of Formal Governmental Representation

There are two fundamental conditions that may create a demand by citizens for direct representation at a negotiating table when formal governmental representatives are also present. First, there are times when a governmental body acting on behalf of its interests finds itself at odds with the interests of a group of citizens. Neighborhood zoning issues or siting of a waste disposal plant are good examples. The citizen group at odds with the governing body is clearly defined by its specific interest, for example, the impact on its neighborhood. In this situation, the affected group may elect representatives or the issue may be so narrow that anyone concerned can be seated and participate.

The second condition is present when the limits of representative action are at issue. In this instance, the standard is public permission. Mathews (1984) suggests that the roots of the public permission idea in American political thought go back at least to the Greeks. The roots of the word *private* in ancient Greek suggest incompleteness. The Greek concept of private was highly personal, referring to those things that one kept behind the front door of the house. *Public*, on the other hand, had its roots in the word *pubes*, meaning maturity or fulfilling. Public life in this context meant the world outside the front door, which was a great deal more than government.

As the American democracy took shape in the latter eighteenth century, it did so in a place where people were convinced about the value of the individual and skeptical about government. They were also very skeptical about democracy. As a result they created a system that was filled with checks and balances, one which could not operate unless there was a consensus outside of government (at least among people who had the appropriate skills and education to participate). Perhaps the most astounding characteristic, according to Alexis DeTocqueville, was that when Americans had a problem, they went to see their neighbor. They did not go to the courthouse. Early New England employed the town meeting as a way of doing business. Local government began simply as a way for the neighbors to get together and get those things done that were too big or complex for a small group of neighbors to accomplish.

The good government movement began in the early twentieth century. In part, it was a response to a deteriorated public life caused by the complexity of an industrial society. Cities of the industrial age emerged as huge, complex melting pots. Good government began simply as advocacy for efficient systems to do what the public knew by consensus had to be done: police the streets, collect the garbage, school the young. Stanley (1984) suggests that in virtually all cases, government provided only part of the solution to the problem. Education was more than schooling, safety more than policing, and clean streets more than garbage pickup. In each case, there was a *public* response that was more than government.

As the twentieth century developed, the idea of professionalism grew along with a more complex society. As the questions got more complex, the answers seemed to require more professionalism. American education, city management, and justice all became increasingly professional, and services delivered by government became technically better. The forum for discussion of ideas outside of government had been the neighborhood. In the latter twentieth century, it tended to move to city hall and became part of the government. Mathews suggests that the idea of local professional service delivery worked well for Americans when the task was driven by public consensus. However, when decisions about what services to deliver moved inside government, "we the people" quickly became "they the government."

Paradoxically, throughout the period of growing professionalism, the nation continued a long-term trend toward greater democratization. Even while the public life declined in the neighborhoods, broader suffrage, civil rights, direct primaries, and popular referendums became part of government practice. It was probably inevitable that the two trends would clash. The confusion of the 1970s found governmental administrators torn between a demand for achievement and a demand from all sides to be heard. A nation whose government could put a man on the moon appeared unable to desegregate the schools or construct a suitable welfare program.

Consensus and Agreement to Act

In the face of these emerging conditions, new models of governance and the management of input have developed in American metropolitan areas. Such models include public-private partnerships, increasing reliance on task forces and broadly based citizens' groups, and attempts to apply collaborative and consensual problem-solving models to issues once thought soluble only through formal political action. The big city mayor or county executive who can amass sufficient political consent to act directly and forthrightly is rare. Federal cutbacks since 1980 have combined with increasing complexity of problems and the veto power

tactics learned by virtually every interest group in the 1960s to require more attention to negotiation and consensus building with and among constituencies.

In 1963 Williams and Adrian reported that those Michigan cities in their sample that worked best had home-based industries whose leaders recruited political leadership. The authors described cities where partnerships, collaboration, and consensus were possible—cities envied because they could get so much accomplished.

Since the late 1960s the nature of collaboration and consensus in urban governance has been changing. More frequently, progress has been the product of negotiation. The structures for action have been alliances—always temporary—that did not sacrifice the self-interest of the parties. The underpinning for negotiation of alliances was not consensus. Rather the basis for negotiation was a recognition by a critical mass of the public that a problem had to be solved and that action was necessary to solve it. The latter provided public permission for leaders to negotiate an agreement that would solve a specific problem. The solution would be unlikely to satisfy everyone but, to most of the public, it would provide a sense that sufficient action had been taken.

One advantage of bringing individuals together for direct representation in negotiations is that the process permits the individual participants to test and legitimize their conflicting values and attitudes. More important, the negotiation process provides the opportunity for creation of a shared belief or vision, which can only be created through group discussion. Bormann (1985) defines *vision* as a unified or shared belief that belongs to the group rather than any one individual. Creation of a shared vision as a result of the negotiation process is synergistic and provides the force for movement and change.

Homeowner Representation in the Arapahoe Case

In the Southeast Corridor dispute, virtually all of the homeowners involved were citizens of Arapahoe County—which had formal status at the table. Arapahoe County is governed by a three-person elected board of county commissioners, a set of separately elected officials such as sheriff and auditor, and numerous official public commissions including a planning commission that works with a staff hired by the county manager. Arapahoe County covers 820 square miles, has a population of 385,221, and is organized into 12 political subdivisions. Like many units of government that include both incorporated cities and unincorporated areas, some services are provided throughout the county, and others are provided only to unincorporated areas. Because of the size and the complexity of the county, it is difficult for citizens to feel as close to county officials as they might feel to officials of a smaller governmental unit. In

fact, lack of identity and lack of representation on major issues were the two biggest concerns named by homeowners in prenegotiation interviews and in problem statements at the table.

The homeowner representation issue in Arapahoe County had elements of both causes for representation demands. The homeowners were aggrieved parties to a specific action proposed (for example, annexations), and there also was a general concern that governance of the entire unincorporated area involved only "them"—the professional governmental officials of the various political subdivisions and special districts.

Seating homeowner representatives presented several options to the initial ad hoc steering committee, whose purpose was to consider how to structure further discussions in the Southeast Corridor. The options were to:

1. Precisely define the geographic boundaries of the affected area and call on recognized homeowner associations within that area to come together and select representatives for the process.
2. Ask the board of county commissioners to appoint a group of people to represent the homeowners.
3. Represent the homeowners' interest through the group that had banded together to attempt to incorporate the new city of Centennial.

A major high-profile selection process (the first option) was considered seriously, but it had two strong disadvantages. First, it would require an extensive and time-consuming effort to assemble a credible and high-profile process to select citizens. Another important issue for some was that it would have created a new entity that none of the other parties wanted.

Appointment by the county commission would have been regarded by many of the concerned homeowners as preemption of the most important issue—the right to express concerns contrary to the interests of the official governmental bodies.

The ad hoc steering committee concluded that the third option—using the citizen group that had started the incorporation effort—emerged as the only credible alternative. The citizens group had demonstrated that it had the power and the commitment necessary to do significant damage to the interests of the other parties. Another incorporation petition would be costly to fight. So, at least initially, the decision was made to let power decide representation.

The Evolution of the Representation Issue at the Table. The process facilitated by the team from the Conflict Clinic involved four major steps. The first step was the formation of the official steering committee, which met and mapped out the ground rules. The steering committee was comprised of one member from each of the five teams: Arapahoe County, the city of Aurora, the city of Greenwood Village, citizens

(mainly from the group that had organized the effort to incorporate the proposed new city of Centennial), and business and commercial interests (chiefly those business and commercial interests involved in the organization of JSPIA and the combined special districts authority). The steering committee first met on July 29, 1987, and developed the official ground rules. All members agreed on the ground rules and agreed to go forward with the process.

Step 2 of the process was preparation for and participation in a session to jointly define the problems to be addressed. This step was completed on August 23, resulting in a statement distributed to all the parties for further study and review with constituents not at the table.

Step 3 of the process called for each team to develop a proposed solution to the problems and present it at a joint session. During the joint session on September 23, a single text process was used to combine the proposals, sort out agreements, and decide on further work.

The fourth and final step of the process was to convert the preliminary agreements into specific language and to agree on an ongoing system for working on unresolved issues.

Creation of the Interim Advisory Group. The teams developed goals, options, and outcomes in the hope that an agreement also could be reached on a structure for proceeding with implementation of the agreements. Analysis by the parties, led to the conclusion that the best outcomes were most likely to result from structural options that would be the most difficult to agree on and implement. This led the members of the drafting committee to suggest the creation of an interim advisory group, which could proceed with efforts to implement the current agreements, pursue further discussions to develop other agreements, and consider how the long-term governance structure questions might be handled. The discussions focused principally on how the wide variety of interests within the unincorporated area could be brought together for more effective and useful interaction with the special districts and municipalities with essential concerns in the area (for example, potential annexation interests, major traffic arteries, and the Centennial Airport).

The proposed text for agreements reached in principle at the joint session of September 23, 1987, was then reviewed at the third joint session on November 12, 1987. The text was prepared by the facilitators working with a drafting committee representative of each party. While the agreements were reached in principle by all five parties, attendance at the drafting committee meetings in October was difficult for some municipal officials due to election campaign commitments. As a result, facilitators and drafting committee members continuously checked specific language of drafts by telephone and mail. The text represented language that was reviewed and modified by everyone who sought input into the process.

At the fourth and final joint session, January 13, 1988, it became clear

to all of the parties that the heart of the agreement was the development of an interim advisory group and the potential of the group to advise the county commissioners on how to address the needs of the unincorporated area of Arapahoe County. The negotiating teams decided that the county, citizens, and business and commercial interests would be the signatories, to an agreement that outlined the goals and procedures of the interim advisory group. The two municipalities were not as likely to be affected directly by the work of the interim advisory group. Moreover, to make the agreement legally and politically acceptable to the municipalities, it would have been necessary to substantially modify ideas that were very important to the other three parties.

The parties discussed the need for an intergovernmental agreement between Arapahoe County, the city of Aurora, and Greenwood Village. The sections of the agreement articulating policies on annexation/incorporation, land use, and infrastructure provided an initial agenda for the deliberation between the county and the two municipalities. The county agreed to include the recommendations of the interim advisory group in intergovernmental discussions with the two municipalities.

Formation of the interim advisory group (IAG) represented a major change in the thinking of the county about the representation of citizens' interests in development decisions. Portions of the agreement creating the new mechanism are presented in Exhibit 1 as one model for dealing with the policy and governance issues facing developing areas.

From Power to Principle. During the course of the Southeast Corridor negotiations, representation evolved from a power-dictated model into a principled model based on recognition by all parties of the need for policy processes to be responsive to a wider range of citizens' interests. This recognition resulted in the interim advisory group, which is now called the Southeast Corridor Priority Board and is being fully implemented in Arapahoe County. The initial homeowner representation was extremely practical—it could be implemented immediately and could

Exhibit 1. Agreement to Form an Interim Advisory Group

The Arapahoe County Government will officially designate one or more advisory bodies to deal with governance issues in unincorporated areas—beginning with a group representing the area from Parker Road, south along the eastern boundary of Centennial Airport to the Arapahoe County line and west to the City of Littleton. The Interim Advisory Group will consist of a body of ten persons, including five business leaders representing business and commercial interests and businesses operating in the area and five residents representing homeowner organizations in the area. The residents shall be nominated at a session called by the County Planning Department, using processes providing adequate notice to all residents' associations, where each Homeowner Association is entitled to send one representative. Resident representatives are to be nominated by the representative homeowner associations. Business representatives are to be nominated by

Exhibit 1. *continued*

the following organizations: JSPIA—2; Centennial Chamber of Commerce—3. All nominations have a right of veto by the Board of County Commissioners.

The Interim Advisory Group will be provided a staff person from the Planning Department of Arapahoe County and subject to approval by the IAG. Other staff and clerical support are to be provided as needed. The IAG is expected to be in operation by March 1, 1988.

The initial term of appointment for members shall be two years. If no agreement is reached on a permanent ongoing governance structure for the area and if the IAG proves effective in solving problems, then it shall recommend an ongoing advisory body to replace it. The ongoing body should be in the same form, chiefly business and resident representatives, but should be set up with staggered terms of appointment to ensure continuity and a limitation on service to ensure access of new people with new ideas.

Wherever possible, the consensus model of decision making should be used. At least a two-thirds majority will be required for recommendations to be considered as official (that is, seven votes) if and when a vote is necessary. It is recommended that when the ten original appointments are made, that ten alternates (five residents and five business representatives) are chosen through the same process. The alternates would be asked to vote for specific official representatives when those official representatives are unable to be in attendance. On that basis, it is recommended that an official quorum be comprised of at least eight official representatives or their specific alternates.

The IAG will assume initiative to work on the following agenda and will make *primary recommendations* to the Board of County Commissioners on capital and operating budget decisions that significantly affect the area outlined. A *primary recommendation* is defined to mean that the Board of County Commissioners will treat that recommendation as at least equal to any operating department or statutorily designated county government official. In other words, unless overall governing responsibility prevents the acceptance of the recommendation, the County Commission will honor it.

A Proposed Agenda for the IAG **Working with Other Bodies as Appropriate**

1. Develop a model annexation/incorporation procedures guide that is practical and embodies the spirit of the agreements.
2. Develop a model annexation/incorporation impact statement that is practical and embodies the intent of the agreement.
3. Develop a set of criteria for a study of options to resolve the Cherry Creek Crossing issue, in general accord with DRCOG 2010 Traffic and Transportation Plan.
4. Plan revenue sharing agreements within the community of interest.
5. Develop a design for a County Development Authority or other vehicle to provide equity participation by governmental bodies and other development assistance tools for development deemed to be in the public interest and to provide for public/private cooperative actions to ensure high quality development in general accordance with the comprehensive plan.
6. Prepare an implementation plan for essential infrastructure needs, with proposed enabling legislation if required.

capture the willingness of the other parties to begin right now. However, it lacked vision and stability for the long term. As the discussions proceeded and representation clearly stood out as the issue, it was possible to develop a vision for the longer term, which quickly led to the formation of the IAG and its implementation as the Southeast Corridor Priority Board.

The parties decided to begin implementation of the interim advisory group concept before the final agreement was signed. A pilot interim advisory group was formed under the terms established by the agreement for the final IAG, except that the initial citizen representatives were appointed by the county commission based on recommendations from the citizen negotiating team. The pilot IAG was given a two-month life span and asked to make the following recommendations in two areas: (1) Should Arapahoe County begin development of a regional park system? (2) Should Arapahoe County initiate a public/private economic development corporation?

The pilot IAG has begun operating while the process called for in the agreement to name the official citizen representative gets under way. When the pilot IAG completes its assignment, the ongoing body will have been named, using the experience of the pilot to help set its ground rules.

Conclusion

The Southeast Corridor dispute typifies increasing numbers of policy and planning issues in metropolitan areas that involve specific citizen interests not adequately represented through formal elective politics. It also represents the increasingly frequent application of mediation or facilitated negotiation to such problems and the complexity of preparing for negotiations—that is, of getting to the table. Without solving the citizen representation problem, no sound and lasting outcomes can be expected, and policy making becomes gridlocked.

In recent interviews in the state of Washington, several parties involved in the resolution of the controversial and long-standing salmon fishery dispute enunciated a fundamental idea they had learned together in the process: “think big, act small.” In many ways, the Arapahoe County process reflects the same lesson. Representation was a big issue, and it required a big vision. But the vision was achieved—and the issue put on track toward resolution—only through a series of very small and practical steps at a representative table.

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