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RESIDENTIAL INTENSIFICATION CASE STUDIES

Municipal Initiatives

PLANNING MEDIATION PROGRAM Calgary, Alberta

SUMMARY

This program aids City staff and Councillors in managing land use and development related conflicts by allowing the use of trained third party contract mediators and facilitators in resolving disputes.

Date Implemented: 1998

Key Outcomes: Several (including larger and smaller) intensification projects have gone ahead after successful mediations.

BACKGROUND

Calgary is one of the fastest growing cities in Canada and the planning application load is considerable. The City's planning approval system uses a development control model that allows substantial discretion to planners in granting approvals. While this system provides flexibility, it can result in conflicts over what rules to apply in dealing with development applications.

Thus, planning staff and Council were open to experimenting with ways to reduce the extent and intensity of planning-related conflicts. A senior planner with the department had a personal interest in mediation as a form of conflict resolution and was aware of a program using this technique to handle certain types of development approvals in Kamloops, BC¹. In 1994, he proposed that Calgary pilot a more ambitious and inclusive program, for which he won Council approval in 1997.

¹ The ACT program, funded by CMHC, provided a grant to the City of Kamloops to help them develop a mediation program. A case study of this project is available on the ACT web site www.actprogram.com.



DESCRIPTION AND GOALS

The Planning Mediation Program is designed to aid City staff in managing land use and development-related conflicts by allowing the use of trained third party contract mediators and facilitators.

The program is founded on the concept of "interest-based mediation". This type of mediation is quite different from the processes that are usually employed to handle planning-related conflicts. Traditionally, planning decisions are made following a bureaucratic procedure that relies heavily on one-way communication (e.g., written briefs) and attention to previous decisions in the matter. If procedures are properly followed, each step in the process follows from previous decisions and the final outcome is the "right" answer. The party favoured by the decision is the winner and other party is usually the loser.

With interest-based mediation, there is no right or wrong answer: the key question is not "who is right and who is wrong", but "what outcome is everyone willing to live with?" This approach minimizes the importance of formal communication mechanisms in favour of structured face-to-face negotiations. Previous decisions in the matter are swept aside and parties are asked to look forward to potential solutions.

The Calgary program, introduced in 1998, uses trained mediators hired on a per-case basis to bring the parties to a conflict together, set the rules, get them negotiating and help them identify workable solutions. The program is managed by a senior planner with a small budget (for mediators and other experts) and handles conflicts referred to it by City Councillors and staff.



Only conflicts that are proving difficult to handle through the normal planning procedures are addressed by the program. Thus, each case begins with a dispute that has escalated to the point where City staff or a City Councillor decide that the normal planning process has proven unsuccessful. The dispute is referred to the program coordinator who decides whether the conflict is likely to benefit from mediation.

Once a decision has been made that mediation may be helpful, the parties are asked if they wish to participate. Generally the party which feels in the weakest position will be more positive towards the use of mediation, while the other(s) may need stronger persuasion. That may involve having a planner or Councillor explain the possible outcomes to all the parties, e.g., what could be lost by a negative decision.

Once agreement is reached to undertake a mediation, a professional mediator is retained. He or she contacts the parties, gives a detailed outline of how the mediation process will work and sets up the time and location for the first meeting among the parties and, if necessary, a staff planner (who provides technical input). If necessary, subsequent meetings are held until the parties agree to a solution or choose to discontinue the process. A Mediator's Report is prepared and submitted to the planning approval authority for final ratification. Although there is always the risk that the authority will not ratify the decision, the approval bodies have thus far supported mediated settlements.

At the outset, the program was limited to handling planning application matters but has gradually expanded to address all types of issues related to land use and development (see below).

COMPLEMENTARY POLICIES AND PROGRAMS

Negotiation skills can be applied in any planning approval dispute, regardless of whether it is the subject of a formal mediation. If more planners were to become more experienced with effective negotiation strategies, the number of planning appeals and the demands for formal mediation might decline.

Towards this end, all City of Calgary planning staff were offered in-house training in mediation and conflict resolution approaches, most of whom have availed themselves of the offer. The training was comprised of a three-day course in interest-based negotiation, along with a two-day follow-up. For those staff

members who are interested in pursuing this instruction further, the City provides support for outside courses in mediation.

The Planning Mediation Program does not handle neighbour-to-neighbour disputes unless there is clear City involvement in the matter at hand. Neighbour disputes are often referred by the planning department to Community Mediation Calgary, a non-profit society (partially funded by the City) that provides volunteer mediators.

Calgary operates an extensive Planning Education Program, which offers workshops, publications, and videos to train developers and the public in the approval and strategic planning process. This program supports the use of mediation and facilitation where appropriate.

The Alberta Government's Municipal Affairs Department has also initiated a mediation program, the inter-Municipal Dispute Resolution initiative. The initiative was developed to encourage municipalities to work together to resolve disputes between them in a manner that meets the interests of all involved. Alberta Municipal Affairs encourages mediation, provides municipalities with financial support to cover mediator costs, and maintains a roster of experienced mediators.

STAKEHOLDER RESPONSE

The program was set up by a senior planner who gradually built support for it among elected officials, senior managers and middle managers. Middle managers required the most convincing as some were concerned the proposed program would disrupt existing decision-making processes. Their support was eventually gained once they realized that the program would only be used in the small minority of cases that were consuming most of their attention and time. The program, it was argued, would reduce their work load and the frequency of angry confrontations. Once the program had been approved by Council, the CEO of the City circulated a letter asking staff to use the program.

The program initiator also contacted outside agencies (e.g., the Calgary Urban Development Institute, the Federation of Calgary Communities) and obtained their support for the initiative. He consulted the Alberta Arbitration and Mediation Society in order to gather information on the hiring of mediators, contract conditions, remediation, and so on.

Because the program was designed to be triggered by City staff or Councillor (not be the general public), there was no announcement to the public about the program and there was no media attention given to the initiative at the time of its launch. Since then, there has been the expected media coverage of the higher-profile conflicts dealt with through the program, but little coverage of the program itself.

IMPACTS

The mediation program is suitable for only a small number of the most controversial and time-consuming applications. On average, the program handles about 10 applications per year, for a total of about 30 over its three-year lifetime. Not counted among these numbers are the informal mediations performed by program staff not involving an external mediator (many of which involve location decisions for affordable housing, group homes and homeless shelters). Also excluded are those disputes resolved by the parties themselves when they are told that their conflict would be subjected to formal mediation.

Of the 30 formal mediations conducted so far, many are not related to housing intensification: mediations have covered everything from neighbourhood objections to nuisances from adjacent industry, noise from bars and outdoor restaurants, and issues related to signage and lighting. However, several mediations have directly impacted on residential projects in the already urbanized area of the city.

Included among these was a four-block area in the Windsor Park neighbourhood. Although the built form of the area has been low density residential, it is zoned medium density. When landowners came forward with development proposals for multi-unit housing in the area, the community and neighbours lobbied to have the area down-zoned in order to prevent any density increase. A mediated agreement was reached that allowed development at densities up to 40 units per acre, i.e., close to what the developers had originally proposed. Some parcels have already been constructed and about 200 units will result once the agreement is fully implemented. The consensual agreement means that further appeals and objections are unlikely.

A second project in the Ogden area in east Calgary involved the redevelopment of a vacant shopping area in a mature suburban area of the city. The project included a substantial affordable housing component and was resisted by surrounding residents.



*Figure 1: Denser building forms permitted in Windsor Park as a result of a successful mediation.
Source: City of Calgary*

The mediation program provided facilitation and with support of the local politician and design modifications, the project was approved. About 100 units are planned for this site.

A number of mediations have helped resolve disputes related to the creation of new duplexes on infill lots in single-detached neighbourhoods. At least 10 units have gone ahead that might have otherwise had their approvals denied or approved with conditions less acceptable to the neighbours.

In most cases, mediations take place before the planning authority makes its decision in the matter. However, there are situations where the program has been used at the request of the local Councillor or planning authority to resolve issues arising out of an approval decision. In one case in the Beddington/Huntington area of North Calgary, a dispute between local residents and a developer arose over a 130-unit apartment building proposed for a mostly single-family area. The planning commission (which has the ultimate authority in these matters) made a decision that local residents feared would have worsened impacts on the community. The local Councillor called upon the mediation program to help resolve the matter. A modified version of the project was eventually approved.

FINANCIAL ISSUES

The major cost component of the program is the time of the coordinator. This person worked intermittently for two years setting up the program and now spends .25 FTE administering and conducting mediations, while an assistant spends .2 FTE.

In addition, it is often necessary to have a planning staff person in attendance at mediations for technical input. As the mediators gain experience in planning matters, they are becoming better able to handle matters without the assistance of planning staff, which is gradually reducing the cost of the program to the City.

A budget of \$20,000 is made available annually by the City to hire mediators and other experts that might be needed to assist with mediations (e.g., a sound engineer to assess noise impacts). Mediators typically charge about \$700-800 for a simple case but some more complicated cases have cost in the range of \$4-5,000.

The City does not recoup any of the cost of operating the mediation program through user fees charged to the parties involved. However, if mediation is reducing the drain on staff resources in the planning department, it is helping to reduce overall administrative costs. The City is also gaining tax revenues from projects that go ahead as a result of mediation that might have otherwise been cancelled or delayed due to conflicts. Mediation also reduces costs to developers (e.g., holding costs as an application winds its way through the approvals and appeals process) and to community volunteers.

EVALUATION

The record of successful mediations suggests that the program is an effective way of reaching planning decisions under certain conditions, despite the costs and time involved. The process works best in situations that are highly complicated from a planning process point of view, involve multiple stakeholders, lend themselves to very emotional debates, and in which the basic facts and applicable regulations may not be entirely clear.

One limitation is that the program is not designed to handle mediations where the City is a party to the dispute. For instance, the program is not used to mediate between the City and developers or between the City and residents who are opposing a City initiative (although sometimes exceptions are made to this rule).

Another limitation of the program is that although it allows a great flexibility in the range of matters that can be negotiated, some of these issues cannot be enforced precisely because they are not normally part of the approvals process. For instance, if neighbours

want a developer to plant trees on their lawns or fix any foundations damage caused by blasting as a condition for agreeing to let a development go ahead, the parties have to have side agreements outside the approvals process.

Finally, the program is not always effective: mediation has proved unsuccessful in about ten percent of cases handled. In other cases, mediated agreements have been violated by one of the parties, necessitating recourse to enforcement procedures. In still other cases, mediated settlements are eventually appealed by parties trying to improve their positions. In the vast majority of cases, however, mediation has been successful at arriving at a consensual agreement or at least improving communication among the parties such that the regular planning process is more likely to result in a decision that makes projects more acceptable.

The mediation approach is best suited for use in a planning approvals system that provides broad discretion to planners to negotiate outcomes with developers and other stakeholders. It can only be used where Council is strongly supportive of mediation as an alternative to the regular planning approvals process.

FOR MORE INFORMATION

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REPORTS:

City of Calgary (2001) Planning Mediation Program.
Program Review Update 1998-2001.

Phillip Dack (2001) Mediation for Land Use Decision-Making. Plan Canada. Volume 41 Number 1, pp. 10-12.

WEB SITES:

www.gov.calgary.ca
(City of Calgary)

OUR WEB SITE ADDRESS: www.cmhc.ca

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