

## Resolving Land Use Disputes

With more than 25,000 local governments in the United States involved in the review and approval of proposed changes in zoning, planning, and property development, the number of local land use decisions made annually likely runs into the millions. While the vast majority of such determinations proceed in a routine fashion, more complex and contentious changes in land use and zoning frequently involve lengthy and acrimonious conflicts.

Excess development entitlements in the Intermountain West (p. 4) exemplify such a challenging land use issue.

Land use and real estate development disputes are ranked among the most common types of civil disagreements in the United States, and they generally include multiple parties, properties, and interests. These contests produce costs for all parties directly involved as well as for the public more generally. Yet long experience with the resolution of land use disputes indicates that changes in the land use decision-making process can produce better outcomes at lower cost.

Local governments normally have a board charged with making decisions about changes in land use, and such boards employ a four-step process. First, the party seeking a change or permission to develop a property files an application with the board. Second, the board reviews the submission and may seek responses or modifications from the applicant. Third, there is an opportunity for public comment, which may lead to an additional dialog between the board and the applicant and further modifications in the application. Finally, the board renders a decision. This process works well for the majority of applications that are processed reasonably quickly. However, most of the board's time is spent on the minority of cases that involve many interests and numerous rights that can be overlapping, contradictory, or imprecise.

The typical four-step process focuses on adjudicating rights; when the issues are few and simple, and the rights are well defined for the properties in question, this method works well. For more complex cases, however, an expanded approach that focuses on mutual gains for all concerned parties is more promising. The mutual gains approach is



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most productive when: there are many interested stakeholders; the deciding board has some discretion in the particular decision; the impacts of the decision are long-term and far-reaching; and a non-collaborative outcome is likely to be challenged by one or more of the involved stakeholders. The mutual gains approach should not be viewed as an alternative to the usual four-step process but as an expansion of it—essentially through the

addition of extra steps or the expansion of existing steps in the standard procedure.

The key to successful use of the mutual gains approach is to discover stakeholders' underlying interests—behind their publicly announced positions—and then to develop new options or solutions that are responsive to those interests. It is ideal if this step occurs early in the process when positions are still flexible.

This process of investigation and discovery is an element of the first stage of the mutual gains approach, which involves identifying the stakeholders, listening carefully to their concerns, and building on their interests. In the usual four-step process, this would likely occur in a pre-application phase addressing development and design concepts before final proposals are formulated. The second stage of the mutual gains approach is to design a process for collaboration that involves all stakeholders and offers opportunities for them to share information and learn from each other. The third stage is to promote successful deliberation among the stakeholders—typically by using a good facilitator who can build relationships and trust among those involved. The final stage is to implement the agreements that have been forged, ensuring that the proposed solutions incorporate the accords reached by the participants while also meeting the requirements of the decision-making board.

A much more detailed description of the mutual gains approach, along with informative case studies, is available in the recent Lincoln Institute book, *Land in Conflict*, authored by Sean Nolon, Ona Ferguson, and Pat Field. This title is available in both print and ebook formats. [L](#)