

WHAT'S NEGOTIABLE?

The Appropriate Use of Collaborative Processes

by Judy Corder, Corder/Thompson & Associates

The neighborhood association's proposal:

- *use a collaborative process to develop the park plan;*
- *select 8 to 12 representatives of groups (including the city) who have a stake in the park plan;*
- *use a neutral facilitator and try to reach consensus on an agreed-upon plan for the park.*
- *After the meeting, a Parks Department official advises the City Manager NOT to use a collaborative process for the following reasons:*
- *the stakeholders will just get into a fight;*
- *a couple of traditional public hearings will allow for plenty of input;*
- *the staff thinks there are just enough votes on the Council to pass the plan as it is.*

The first public hearing is scheduled in one month. The City Manager needs to make a decision immediately.

Increasingly local governments are using collaborative processes for community decision-making and for policy development because there are a number of important advantages to using these processes. These processes typically involve convening a group of stakeholder representatives who work together to find solutions or make decisions that will satisfy the needs or concerns of all the stakeholders. However, collaborative processes, like all approaches, have advantages and disadvantages, and are not always realistic or appropriate. One of the challenges for local governments is to decide what approach to decision making or policy development is the best one. There are a number of criteria, which can be used by local governments to help them assess whether collaborative processes are appropriate.

CRITERIA FOR ASSESSING THE APPROPRIATE USE OF COLLABORATIVE PROCESSES

Is there adequate time? Collaborative decision making takes more time than traditional local government decision making by an elected body. If the decision must be made rapidly, the more traditional approach may be the most appropriate approach. However, sometimes decisions made without public input and without collaboration with stakeholders may take less time in the short term, but more time in the long run, if the stakeholders who do not agree have the power to delay or stop the implementation of the decision.

Are the issues negotiable? Sometimes public policy decisions involve values or issues that are not negotiable, e.g., protecting the public's safety; protecting human rights; fulfilling an official mandate; being consistent with the law. In these instances, it

is important that the decision-making process leads to outcomes that support these values or assures appropriate protection or compliance with mandates or laws. In these instances, more traditional processes may be the most appropriate ones. In disputes that involve stakeholders who are arguing from very different value perspectives, collaborative processes have a lower probability for success because values are often not negotiable. Sometimes a policy decision can be made with a more traditional approach and the decisions about implementation of the policy can be made more collaboratively. Or, in some instances, even when there are value differences, there may be some aspects of the issue where stakeholders can agree and can work together to achieve common goals.

Are parties motivated to negotiate? In some instances, the stakeholders refuse to participate in a collaborative process, often because they believe it is not in their best interests to do so. When groups believe that they have a BATNA (Best Alternative to a Negotiated Agreement) that is better than any other outcome they could achieve by participating in a collaborative process, they often refuse to participate. This also can occur if one group has the power to make the decision unilaterally. In these instances, collaborative processes may not be successful. Often it is useful for a neutral third party to explore with the stakeholders what motivation they might have to participate in a collaborative process. Motivation to negotiate can come from

- the desire to avoid undesirable decisions or policies;
- uncertainty about the outcome if no collaborative decision can be made; or
- the desire to be able to implement quickly and with the lowest possible cost.

Are there adequate resources? Collaborative processes typically involve an investment of time, expertise, skills, money, and other resources such as data and technical assistance must be available. Some of these resources will come from local government, but a commitment of time and possibly other kinds of resources also will be required of stakeholder groups and representatives participating in the process. When resources for making policy decisions are scarce, the most important consideration may be a comparison of the resources required for collaborative processes with the long run cost of defending and implementing the decisions made by a more traditional process.

Is public support needed? When local government needs public approval or public support for policy decisions, collaborative processes are most likely to be chosen because they are most likely to yield satisfaction with and commitment to the outcomes. One of the challenges when there is a need for public support of decisions is to determine the most efficient and effective way to involve the public in the decision making in a way that will utilize their input and increase the probability of their support of outcomes reached collaboratively.

Are creative solutions needed? Because collaborative processes assure the open exchange of information and the consideration of the interests and input of a variety of stakeholders, these processes often yield creative solutions that are more substantively efficient and satisfactory than those that result from more traditional decision making.

Because consensus on a decision requires that a variety of interests be addressed, participants in collaborative processes are motivated to be creative about options.

Is there unclear authority? Increasingly collaborative decision-making approaches are being used because overlapping jurisdictions, contradictory mandates and limited resources mean that no one governmental entity has the authority to make the decision by itself or has the resources to implement the decision by itself.

Is there a desire to reduce divisiveness in the community? Traditional decision making where there are winners and losers tends to lead to polarization among different stakeholder groups in communities. Differences rather than common goals are emphasized. This reduces the probability that these groups will be able to work together for the common good of the community. Collaborative processes often lead to stakeholder groups understanding their common goals, as well as their differences in perspectives. These processes often can build trust among stakeholder groups with very different interests.

Is the timing right? It is important that there be adequate time for collaborative decision-making processes. Often it is also important that there be some kind of deadline by which the decision needs to be made. This could be a legislative, judicial, city ordinance, or city council-imposed deadline. Deadlines help the negotiators keep focused on moving the collaborative process toward closure.

Are there clear stakeholder groups? When using collaborative processes it is important to have stakeholders represented at the negotiating table. Stakeholders are those who have the authority to implement the decision, those who will be or potentially will be affected by the decision and those who have the power to interfere with the implementation of the decision. In some instances, everyone in the city may be a stakeholder. The collaborative decision-making group must be of a manageable size. Typically this is accomplished by asking stakeholder groups to select members to represent their interests at the negotiating table. If it is not possible to identify stakeholder groups, it will be very difficult to get appropriate representation of stakeholders for the negotiations.

WHEN COLLABORATION IS NOT APPROPRIATE

Increasingly there is pressure on local governments from the public and from special interest groups to allow them to have a role in making decisions. In instances where the City decides that collaboration is not appropriate, how this decision is communicated can have an important impact on the how this decision is received.

Provide a rationale. Providing a rationale for the decision not to use a collaborative process can help those requesting or expecting it to understand the decision. The checklist of criteria for using collaborative processes can assist with providing a rationale by indicating that specific objective criteria were used to make the decision. It

is useful to provide as much information as possible about factors that were considered and how they affected the decision.

Give options. When saying no to any request, it is helpful if it is possible to say what can be done instead. If there is anyway for people to have input into or influence on the decision, they are more likely to accept not being part of a decision-making group. If the decisions will not be made using collaborative processes, but it is possible for decisions about implementation to be made collaboratively, the message may be received more favorably.

Consensus building or collaborative processes can be powerful tools for making community decisions that build relationships, generate support for decisions, facilitate implementation, and lead to creative solutions. However, a collaborative approach to decision making is not always the most appropriate approach, even when there may be some public demand for the use of these processes. Using collaborative decision making processes when they are not appropriate can lead to distrust, frustration, and a reluctance to engage in similar processes in the future. Therefore, before convening a collaborative decision-making process, it is important to make a careful assessment of the factors listed above.

This article is part of a series on collaborative processes for municipal government. Judy Corder and Mary Thompson, Corder/Thompson & Associates, Austin, Texas, specialize in collaborative approaches to dispute resolution, planning and policy development. For more information or to suggest future topics, contact Mary Thompson at (512)458-4427 or e-mail emmond@aol.com.