Land Use Issues & Mediation

Finding Collaborative Solutions
Neighbors & Zoning Issues

- It was an old service station, later becoming a place to fix junked cars. Finally someone bought the corner lot and decided they would pursue their hobby.
- The zoning was grandfathered in and just what they needed for a small garage, parking space for cars in various states of repair and an office.
- However, the neighborhood saw this an opportunity to rid themselves of an eyesore that had been there for several generations. Wouldn't now be a good time to limit the uses.
- The battle lines were drawn, fortunately someone thought of mediation.
- The hobbyist preserved his right to fix his treasured cars. The neighborhood got a much improved corner look, with an attractive fence, landscaping and they figured out how to live together without ongoing wars.
Ridgegate has plans for the south end of the valley. This is a long-term commitment to the area and it’s responsible development.

They are focused on providing retail and looking for a quality project.

Of course no one wants a ‘big box’, but what if it is responsibly developed and sensitive to the communities needs and concerns.

Over a period of several months CMC meets with the five affected neighborhood associations, the developer and Target. We reach agreement on many features that will make Target acceptable to the neighbors.

What was mediated includes design issues, landscaping, parking, size limits, screening, signage, deliveries, color, height, and mechanicals.

We got it done!
The last remaining piece of property that straddles Cherry Creek in downtown Denver. How can we come to an agreement on its development?

There are issues of historic districts, impact upon existing view planes, the footprint, parking & traffic, access to the creek, precedence, height, mechanicals, pedestrian issues, landmark preservation.

We had a commitment from the many neighborhood associations, the business improvement district, the architect and most importantly the developer to talk our an acceptable resolution.

With a solid commitment, a lot of hard work and creativity we came to an agreement on a process, a new district, pedestrian access to the creek, park space and a signature building for the City of Denver.

Wait until it comes out of the ground.
“It is just a daycare!”

- It used to be a church, had been as long as anyone could remember. It was purchased and plans were made to convert the building into a daycare. After all, there never is enough daycare.
- Opposition came from the neighborhood, a few of them just didn’t like the sound (noise) of the children.
- We met several times, discussed and agreed upon specific steps to take to reduce any unnecessary or annoying screaming and came to an agreement of sorts.
- Because the daycare took the time, effort and energy to meet and respond to the neighbor's concerns, City Council had a strong foundation upon which to approve the PUD.
- CMC provided an equitable process, along with objective summaries and documentation.
A Subdivision or a Farm?

- For decades it was a farm and now there is talk of it becoming a subdivision.
- How will we ever find agree on density, height, trails, building concentration and so much more?
- Neighbors are concerned about property values being affected. There is always the question in their mind, “Can we cost the developer enough money to stop the project?”
- There are questions in the developer’s mind, “How much do I really need to listen to the neighbors. I’m building a quality and sensitive project.”
- Getting the affected parties and the municipality together around the table provides everyone with the opportunity to express their concerns and interests and find a way to resolve the issues.
An Historical Home

- When does my property become your landmark designation?
- Someone famous lived here, they contributed to the history or the design of the city.
- A landmark designation process can tie up a piece of property for a year while the details are worked out.
- So . . . DeBoer lived here. It is your property, but I want to preserve it.
- Is it historic?
- Is the land really yours, mine or shared?
- Everyone agreed to mediation and then pulled out. It was one of the few referrals CMC has received that didn’t come to a successful resolution.
- In the end maybe most of us would agree it didn’t work out that well for anyone.
NO WAL-MART AT THE OLD ELITCH SITE

The site plan and description of the Highlands Gardens Village was published in the newspaper by Jonathan Smith in 2004. Although 40 acres of this site are still owned by the city, the development plans have been revised and are in the process of being finalized. The project is expected to start in early 2020.

The Neighborhood Market, as it would be called, would include a pharmacy and other retail stores. The site plan was approved by the city in late 2019, and construction is expected to begin shortly. The project is expected to create 250 jobs and generate $10 million in new sales tax revenue annually.

By Elise Cohen

WAL-MART STORES, INC.
7024 E. 21st Ave., Denver, CO 80210
Phone (303) 936-9300

Design Review committee to be open to press and observers

The cross hatched areas indicate where the buildings must be built on the Highlands Gardens Village site. One challenge for Wal-Mart will be to address the height requirements on both W 32nd and 33rd Street.

Analysing Wal-Mart design

By Helen Hau

Note: Due to the Tribune’s Tuesday deadline, the outcome of the design review meeting held on Tuesday, May 11 will be reported on May 28.

For many years, developers have been looking for Wal-Mart’s plans for the area, but the supermarket giant has not yet released any plans for the site. Wal-Mart has not yet commented on the current status of the development.

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How Mediation Works?
### What typically happens

- There is minimal or no communication on the part of either party as land use issues begin to simmer.
- Assumptions about the intent and plans of both sides.
- Positioning begins and I hear a lot of “I’m right, you’re wrong” talk.
- Emotions are high.
- Irrational demands or claims.
- The municipality or city is pulled into the fight.
- Delay, increased cost & contention are often the result of a failure to communicate.
- Allowed to continue, there is no winner, the owner/developer suffers, the neighborhood suffers and good development does not take place.

### Mediation Provides –

- Issues are clarified. We get to understand what is important to all the parties at the table.
- Flexibility & creativity are found. The first answer isn’t always the best answer. The owner/developer, the neighborhood and the city has the opportunity to creatively consider options they may never have thought of before.
- Responsibility. I get to take responsibility for my decisions, show responsibility as we craft solutions and behave in a responsible manner.
- Redefined expectations. We think we know what each other expects. Yet we are often guilty of costly assumptions. We’ll fix that.
- Collaboration & Cooperation in working toward a shared goal. It doesn’t get better.
Issues are Clarified

✓ Fillmore Plaza will be redeveloped. Neighbors, the City of Denver, Cherry Creek merchants, City Council; as you can imagine everyone has an opinion.

✓ Mediation provides the opportunity to hear and understand the concerns and issues each constituency brings.

✓ We heard:
  ✓ Connectivity, from the front door of Saks to the north side of Second Avenue.
  ✓ Pedestrian, encouraging safe and welcoming pedestrian movement.
  ✓ Flexibility, for configuration and allowing for a variety of uses.
  ✓ No regular vehicular traffic.
  ✓ Retail spill, encourage and accommodate “retail spill out” into the Plaza area.
  ✓ Water features.
  ✓ Complement existing design.
  ✓ Avoid a focused passage or pathway design.
  ✓ Provide for phased development.
“Not in my backyard!” Was the rallying call. “You’ve been here for 30 years, why don’t you move to someone else's neighborhood”. “You don’t know what it is like to have homeless people in your neighborhood each day.” “Hell no!”

Representatives of concerned parties began to talk in a “safe environment”. (Downtown partnership, city planning, parks & rec, police, neighborhoods, homeless providers, & Catholic Charities.)

When people are safe and feel heard, they can become creative and collaborative. They stayed engaged, even when we disagreed.

We worked one issue/concern at a time and found agreement –

- Hours of operation, police substation, window placement, dining room capacity, parking on street, screening wall, in/egress, height, dogs, trash, neighborhood & MHS cooperation.

The plan was then supported before council.
Density, density and density – these are the three issues that matter to the neighborhood.

Number of units, materials, design, lot layout, approval and the proforma – this is just a few of the things that matter to the developer/owner.

“No, no and no; from both the developer and the neighbors. But they did agreed to meet at the architects office with pens, bum wad, cutouts. In that creative setting we agreed –

- Face units on Bayaud
- Larger units on Garfield
- Parking
- Detached garages
- Personal space
- ½ space on top
- Materials & look
We won! (Personal Responsibility)

- “We won, we’ll win again!” “We are invincible!” “Why should we even sit down and talk?”

- For the first several months the City and CDOT just figured they were a bunch of whiny neighbors. They weren’t taken seriously until they presented before Council and won their case. The issue was then referred to CMC.

- The first time they actually sat down together and talked we discussed options, checked the reality of both positions, and learned a few things they didn’t know.

- We went home with work to do, and researched into quiet asphalt”, signalization, traffic flow to name a few.

- We came back, discussed, and “bartered” issues and outcomes; quickly realizing that if either side “won”, both sides would lose.

- Reality and responsibility are great realizations to come to.
Our Way or No Way - Expectations

- A developer bought 2/3 of a block with plans to redevelop into single-family lots – the same as the surrounding area.
- A Landmark Designation was adversely filed and development plans came to a halt.
- Expectations collided.
- Delay, anger, lobbying the councilperson, cost.
Redefined Expectations

- We created a safe place (confidentiality, honesty & respectful).
- Agreed upon need to talk & no unnecessary delays.
- Discussed some basic issues;
  - True historical value
  - Other important aspects to the neighbors and developer
  - Agreed upon process.
- Redefined expectations;
  - Historical value of 1928 part of the building
  - Agreed to withdraw landmark designation on ½
  - Single-family, lofts in 1928 and attached homes.
- Overwhelming success at council.
Why Mediation Works
Mediator Brings

- **Objective, third party:**
  - It is not my issue, my fight to win or lose
  - I’m not an advocate
  - No conflicting issues

- **Safe place:**
  - Establish trust & confidence
  - Legally confidential and not “discoverable”
  - Energy, hope & optimism ("There might be a chance!")
  - Process management & control

- **Skill set:**
  - To move conflicting parties from their positions to shared issues
  - Tools for generating options
  - Pushing for agreement
Process Management

• Meet with the parties separately;
  – Listen, help refine issues and concerns
  – Test reality
  – Ask questions to clarify range of options and ideas
  – Outline and frame the issues for everyone

• Bring the parties together;
  – Safe environment & disciplined process
  – Often the first time they have sat down, face-to-face and listened to each other’s perspective
  – Focus them on the issues, not the disagreement/person
  – Mediation skills

• Summary & agreement;
Mediation

- Provides a safe place for individuals actually involved in the conflict to sit down in creative and collaborative ways to resolve the situation.
- Often saves time and money.
- Creates innovative and lasting solutions, making the individual and their representatives successful.
- The parties feel successful.