THE POTENTIAL OF ENVIRONMENTAL MEDIATION FOR PLANNING IN SOUTH AFRICA

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"The Social world of the future will require the intelligent guidance
of turbulence, rapid change and complexity if it is to avoid opression
and want . . . [it] will require . . . institutions . . . designed around
collaboration and reason rather than coercion and fear."
Bolan (1974: 30)

Planning theory and practice like other disciplines, have passed through several paradigmatic shifts this century; on account of its close sociopolitical and cultural ties, changes in planning have been associated in the USA with social turbulence. Recent experiences there with the problems associated with planning in a pluralistic, divided public decision making arena hold potential lessons for South African planning as it moves into a similarly turbulent period.

This article evaluates and explores the contribution which the styles of mediation developed in environmental problem resolution in the USA, can make under these circumstances. After reviewing the need in the Republic for a new approach which recognises value biases and conflicts of interest, to replace the outmoded approach currently in use, a model mediatory approach is defined and described before being tested against eight case studies including regional planning, public utilities, negotiated investment strategies, and urban planning examples.

Fundamental criteria on which the model is based are then related to the case studies showing a strong correlation in most regards. General conclusions are drawn together with a favourable appraisal of the applicability of this form of mediation as a planning approach in South Africa.

Beplanningsteorie en -praktyk, soos ander dissiplines, het gedurende die loop van dié eeu 'n aantal veranderings ondergaan: weens die sterk sosio-politiese en kulturele bande is verandering in die VSA aan sosiale onrustigheid gekoppel. Onlangse ondervindinge in die VSA met betrekking tot probleme aangaande beplanning in 'n pluralistiese en verdeelde openbare besluitnemingsarena hou lesse in vir beplanning in Suid-Afrika waar ons in 'n soortgelyke onstuimige periode inbeweeg.

In hierdie artikel word daar gekyk na die verskillende bemiddelingstyle wat in die VSA toegepas word om omgewingsprobleme op te los en die bydrae wat hulle kan maak onder omstandighede waar verskillende waardes en konflikte van belange heers. Hierna word 'n nuwe benadering wat belangekonflikte erken en wat op 'n modelbemiddelingstyl geskoei is, voorgestel. Hierdie model is gedefineer en beskryf en teen agt gevalle studies op verskillende terreine o.a. stads- en streekbeplanningsvoorbeelde getoets.

Onderliggende kriteria wat 'n sterk korrelasie in meeste gevalle aandui, is getoets. Oor die algemeen blyk dit dat hierdie vorm van bemiddeling wel in Suid-Afrika van toepassing is.

1. INTRODUCTION

In a recent article De Oliviera (1986:219) forcefully argued that South African planning has remained oblivious to changes in both procedural planning theory, and to "changing social conditions" . . . [it] "has been very much a legislative activity related to the physical control of land use development and [is] devoid of the reformist and social concerns" which characterised the formative period of the history of the profession. He proceeded to evaluate several models of mediatory planning

in proposing an alternative style of planning based on Roweis's concept of "Mediation".

The aim of this paper is not to criticise De Oliviera's proposal, since this has already been undertaken (Boden, 1986), but rather to examine more fully than he chose to, the potential of one of the other mediatory styles which he rejected (De Oliviera, op. cit:220-227). This style is what De Oliviera calls environmental mediation, as do Susskind and Ozawa (1984).

The argument proceeds from a short review of the influence values and context exert over the collapse of old paradigms and the emergence of new planning concepts, to discuss the importance of finding a more effective, yet feasible modus operandi. After discussing the differences between mediation and negotiation, the characteristics of the mediatory model utilized in environmental conflicts in the USA are identified, and the theoretical strengths and weaknesses are summarized, fol-

lowed by a series of case studies deliberately selected to cover a wide range of problems.

In conclusion the generic advantages and disadvantages of the approach preceed the evaluation of its potential for application in the Republic.

2. THE DRIVE TOWARDS NEW PARADIGMS IN PLANNING

Essentially there are several reasons for re-examining the philosophy, procedures and techniques on which planners depend in approaching the performance of their professional duties. As Kuhn (1970) has shown in the case of Science, and Smith (1974) has shown in relation to the Fine Arts and our perception of cities, disciplinary paradigms are seldom static: the examplar or the "classical" ideal towards which we strive is either being reinforced as it gains widespread acceptance, or being undermined by iconoclasts. Yet Kuhn is emphatic that paradigms rule until they are replaced by equally comprehensive alternatives − models which include ideas, techniques and model solutions that work better than their predecessors.

Since the 1950s the USA has become the dominant source of planning theory: during this period, repeated attempts have been made to dethrone the comprehensive, rational planning paradigm, either so as to replace it with other more fragmented procedures − incrementalist, transactive, advocacy, or mixed scanning in nature − or because it is ideologically unpalatable. Thus Fainstein and Fainstein (1971) criticize the artificiality of the "scientific" detachment and the concept of a single public interest associated with the comprehensive, rational model, in arguing for in effect a partisan and partial approach favouring the disadvantaged. However, as De Neufville (1983: 1) has argued, contenders to dethrone the comprehensive style of planning have attracted insufficient support to supplant it.

In general the critics of both reigning champion and challengers have focussed on three issues:- firstly, unreal expectations or focus, which leads to impotent proposals, secondly, the deliberate masking of value biases on the part of planners (and decision makers),

particularly where planning has become "the handmaiden of conservative politics" (Friedman, 1982), and thirdly an inability to accommodate the conflicting values of a pluralistic society:

"for example, while proposing planners act as group advocates, the advocacy model provides no criteria for determining which groups are to be served or which . . . conflicting interests of groups members are to be promoted." (Klosterman, 1983:217)

2.1 Emphasis on values and context

In demanding that the values from which planning objectives are derived should be made explicit, planning theorists proceeded through a series of increasingly explicit value-based formats, from advocacy planning, where the planner represents the (disadvantaged) clients in a plural combative political arena, to participatory and transactive planning, where the public are actively involved in determining value-related inputs such as objectives and priorities, to structural modifications primarily intended to serve the interests of the poor.

Much of the criticism reflected the negative consequences of urban renewal, the urban and suburban consequences of the capitalist social ethic, and the critical American climate of the late 60s regarding involvement in Vietnam, Black frustration over life and prospects in the metropolitan "ghettoes", and the emergence of the environmentalist "movement". The mirage of a single public interest on which to base public planning and action evaporated in this increasingly divided, heterogenous society.

The emergence, flowering and decline of this activism (1965-1977) was matched to a sequence of strategic styles. Open confrontation, characterised by marches, sit-ins and even riots, was succeeded by a more conciliatory approach, reflecting diminished Federal support for activism and environmentalism in particular and shifting public concerns as energy, inflation and unemployment competed for the limelight (Susskind & Weinstein, 1980; Rivkin, 1977:3).

Having lost some political clout through this fragmentation of interest, opponents of change, of specific development proposals, and of new technology separately or in combination

had to settle for what could be achieved through bargaining (Popper, 1985:28). Planned Unit Development, Barnett's style of Urban Design, and the Model Cities programmes provided examples of the utility of this approach in other areas of planning.

As the 1970s ended, the idea of negotiating with the assistance of mediator was introduced, or reintroduced, and developed, primarily for environmental disputes. More recently it has spread to the broader urban planning field reflecting the social climate (Popper, 1985; Fulton, 1985; Fleissig, 1983; Cormick & Patton, 1977 and Susskind and Ozawa, 1983).

2.2 New planning values

Over the last five years, Forester (1980 and 1983), De Neufville (1983) and others have initiated the emergence of new planning approaches, which are characterized by an acceptance of conflicting values, uncertainty, and limited power to intervene, reflecting historic changes in the American and international urban social context.

Forester's 'rebounded rationality' argument is a central element in this search, and provides a framework for adjusting the planning approach to suit variations in the number of actors, the "muddiness of the decision-making waters", reliability of information, and anticipated co-operation between public and other interested agencies (Forester, 1983:9-10).

One of the purposes of this paper is to relate these concepts to the use of mediation given the apparent compatability between its flexibility as a process, and Forester's strategies for pluralist or structurally distorted planning contexts.

2.3 Relevance of the paradigm shift for South Africa.

Where planning is regarded as a generic activity, independent of place, occasion and substantive content, local applicability becomes irrelevant. However, this perspective has, as shown above, been criticised with increasing severity, and planning journals have published a growing number of articles dealing with planning in different cultural contexts: eg. Masser, Faludi et al., (1984), Dyckman et al., (1984).

Some qualities of the local situation

suggest the need to move from traditional notions of "rational" planning concerned primarily with efficiency and profit, towards a more open, mediatory stance.

Bolan's (1964) classification of the cultural dimensions relevant to planning will be used to support the conviction that our approach to planning should change to close the gap between static models of planning and our turbulent social context. In his paper Bolan identifies four factors, namely process rôles, decision field characteristics, planning and action strategies and issue attributes, as the significant dimensions.

2.3.1 Planning *process rôles* have been static for many years: given that the legislative framework for planning in the Transvaal, Free State and Natal has not changed significantly since the original planning ordinances were introduced; and guide plans and structure plans have produced even greater rigidity in what was already an inflexible, zoning-oriented system, the planning cast has comprised Township Board officials, public planners (provincial and local government) and private consultants, playing before critics (lawyers) and an audience ranging from apathetic non-attendees to aggressive lobbyists and mobs. It has been an all-White performance, and the motivation has for the most part been self interest — whether profits, fees, publicity, or keeping out of "trouble".

Where decision-making has been left to an elite, whether the enfranchised Whites here, or the planning commissioners and politicians dependent on big business in the USA, the results have been similar — to protect the interests of the powerful and wealthy, and to ignore those of the poor and powerless. As Boyer (1983:18) describes: the agents of change "sought not to help those condemned to seething tenement cores but to protect the rest of society from the disorder that threatened to escape from within the city perimeter". The only difference of note in the Republic was the relocation of the poor on the urban periphery not in central ghettoes.

2.3.2 The *decision field* was consequently fragmented, partial (in both senses), non-accountable to the disenfranchised majority and only indirectly responsible to the voter and the neighbourhood/community group. The

governing party's hold over White politics was so powerful that only Afrikaans voting opinion was of any account.

2.3.3 *Planning and action strategies* had a Victorian, paternalistic determinism: politicians in the governing body determined the focus of action, alone or jointly with provincial planners. Local autonomy at city or neighbourhood level has consistently been eroded, while resources are expended in the pursuit of first world norms in preference to third world necessities.

The significant clients have been developers, the institutions corporate, and the consumers White.

2.3.4 The *dominant issues* have assumed a capitalistic ideology, with often uncharted benefits for a few, and uncompensated losses, for neighbours, neighbourhoods, and civic amenities and perceptions. Actions have focussed on enabling private landowners to profit from intensified land use: public actions have been geared toward the reduction of entrepreneurial risk, on occasion in the past by direct transfer onto the shoulder of the ultimate purchasers or occupants. For example developers were until fairly recently allowed to develop land in floodplains or other suspect locations.

In essence efficiency has always been promoted, frequently at the expense of equality of opportunity and just treatment. Intangibles have succumbed to monetary concerns, because these priorities were accepted by that sector of the White electorate which participated in the process.

2.3.5 *Implications of the new turbulent political environment:* however well the customary planning paradigms may have functioned in the past, significant changes within this cultural ambience would invalidate these procedures and techniques. If it can be shown that there is a strong likelihood that the context is changing, and will continue to do so at an increasing tempo, then the need for a new paradigm would appear obvious.

The participants in the traditional context (governmental, developmental and local) represented three partially contradictory, but nevertheless overlapping value systems; this can hardly be claimed for the emerging situation: the collapse of Afrikaner unity and hegemony, the slow emergence of a political

dispensation incorporating all four races, and at least three income classifications for each, further divided into conservative, moderate and radical elements, suggests as many as 36 potential viewpoints. South Africa is moving from a consensus-seeking towards a pluralistic, conflictual, decision-making environment. In the process the poor and powerless are already acquiring a powerful, combative voice.

Not only are conventional processes and rôles threatened, but where there was previously division in the decision field, this will be greatly multiplied in the near future; even the bastion of stability provided until recently by the *volkspolitiek* among Afrikaners, has been eroded — note the crystallization of three parties from the old nationalist party. New strategies are therefore required to painstakingly build new coalitions and to achieve consensus through some or other compromises.

The government appears to be edging towards a system of integrated but non-accountable decision-making at regional level, and accountable, although spatially (racially) segregated, local authorities. Whether or not this succeeds, or evolves into more responsible forms of government is somewhat immaterial at this point. What counts is the inexorable drift towards a pluralistic, multicultural decision-making environment, which must drastically alter the foci, strategies, reallocation of resources, client relationships and deciding institutions.

Ideological differences, such as recently occurred between the three legislative Houses in Cape Town, may become more wide-spread, and will have to be negotiated, since repression is, hopefully, not considered as an option. As people obtain greater freedom to decide for themselves, these ideological stresses must filter down to all decision making levels.

This brief assessment has attempted to articulate not only the need for change, but stirrings in the political context which upon maturation will inevitably demand consequential, parallel modifications in the planning approach. That American planning experienced such a period of rapid change, and the development of new procedural styles in the 1960s was in no way coincidental; it simply reflected the social and institutional turbulence of the time.

3. THE PROPOSED MEDIATION MODEL

Even conservative bodies like the ATKV* now concede the changes anticipated above are likely to occur; consequently negotiation and mediation represent virtually mandatory techniques in the long haul as concensus is painfully crafted. In support of this contention, their nature as techniques, and experiences in their application will now be assessed.

3.1 Mediation and negotiation

Negotiation is defined as a process of conferring, discussing or bargaining to reach agreement (Webster's Dictionary). By contrast, mediation as an activity involves being in the position of an intermediary, seeking reconciliation through friendly or diplomatic intervention, by consent or invitation, so as to settle differences between persons, institutions, groups or even nations.

Negotiation involves only the principal actors, (Susskind & Weinstein, 1980: 314) in head-on bargaining, as in labour disputes, where both parties recognize a common interest, despite their attempts to maximise their own benefits at the expense of their opponents through the bargaining process.

Mediation, through the involvement of an apparently neutral third party, seeks a consensus agreement through a form of bargaining which frequently involves actors indirectly with one another.

Thus negotiation, itself, has a tendency towards achieving sub-optimal results, whereas mediation is intended to optimize the net benefit enjoyed by all participating actors and agencies. In the confrontational environment within which planners can expect to operate in the near future, mediation would therefore appear to offer better prospects for resolving conflicts over the apportionment of resources associated with planning.

3.2 Criteria for an ideal model

Susskind & Weinstein (1980:346) require that an ideal model for mediation should possess the ability to rapidly discern

(i) which factors are crucial to the dispute

(ii) which techniques work best in a given case

(iii) and when a consensual approach is inappropriate.

*Afrikaanse Taal en Kultuur Vereniging Conference, August, 1986, as reported by the SABC.

However, they admit these conditions have not been, and may never be, fully satisfied in the field of environmental disputes. Although the ideal may be unobtainable, it is however accepted that Susskind & Ozawa's (1984:10-13) analysis of international, labour, community dispute and environmental forms of mediation correctly identifies the latter as the most convincing model from which to derive a planning mediation process, on account of the appropriateness of its qualities:

"Environmental disputes are characterized by substantial complexity, often heavy reliance on technical data and analysis, diffuse and unrepresentable interests (such as the interests of future generations), and substantial 'externalities'. *Power relationships among interested parties tend to vary considerably*, especially in terms of access to information, ability to manipulate the media and public opinion, and availability of resources to garner public support. The outcome of environmental disputes can also have substantial implications for parties not represented in the negotiations, especially since such disputes involve what are, for all practical purposes, "irreversible" effects. The implementation of agreements often presents formidable obstacles when the cooperation of elected or appointed officials not involved in the negotiations is necessary. Finally, for the most part, environmental mediation is ad hoc, unlinked to formal processes of decision making. Thus, mediated settlements require the stamp of approval of formal decision makers."

"The planner's role in developing alternatives, identifying the implications of particular actions, and building an informed consensus appears closest to the role of the mediator in community and environmental disputes. Community and environmental mediation stress the quality of the negotiated agreements and their implementability. Because of the relative unfamiliarity of the parties with the negotiation process and, especially in environmental disputes, when technical analyses are essential, mediators in community and environmental disputes often serve as important sources of information.

The role of the mediator in these arenas thus more nearly parallels the role of the planner.

"Moreover, just as the mediator must remain available to help untangle problems that arise during implementation, so too, the planner ought to remain involved."

3.3 The concept

Operationally, Cormick and Patton (1977) have defined mediation as "a voluntary process in which those involved in a dispute jointly explore and reconcile their differences; the mediator has no authority to impose a settlement. His or her strength lies in an ability to assist the parties in resolving their own differences. The mediated dispute is settled when the parties themselves reach what they consider to be a workable solution."

Fundamental details of this definition comprise

− voluntary involvement of all parties;
− joint exploration of the issues, although there may be supplementary caucusses to resolve issues not relevant to other actors;
− the mediator's circumscribed role;
− the solution is developed by/with all parties in a form acceptable to all;
− the mediator shares the responsibility of ensuring that the agreement represents a workable solution − politically, physically and financially: this responsibility increases in inverse proportion to the skills of weaker parties to the dispute. (Cormick and Patton, 1977:14).

3.4 Preconditions

Several writers suggest at least eight preconditions for mediation − of these Cormick and Patton (1977) identify four: firstly, issues must have been defined; secondly, parties must be visible and highly involved, with a sense of urgency, or as Susskind (1980) describes it "they must really want a solution". As long as any one party sees an advantage in delay there is little chance of real mediation. Thirdly, there must be a balance of power between parties. Fourthly, mediation will only succeed where there is a reasonable assurance that the participants will execute any agreement − Susskind and Weinstein (1980:323-335) prefer to see this spelled out in written form.

Susskind and Weinstein add fifthly that

a neutral, but concerned mediator, expert in dispute resolution is also essential, whilst Rivkin (1977) argues that mediation is a delicate process demanding credibility and trust between participants: this depend on sensitivity to others' points of view, acceptance that all interests are legitimate interests and on civility and toughness.

A seventh requirement is that technical skills should be accessible, to permit rapid investigation of alternative options. Greenberg and Strauss (1977) suggest the use of computers for this purpose.

Eighth, Carpenter and Kennedy (1977) argue that conflicts often arise from lack of information, or misinformation, and propose deliberate data-sharing to reduce this problem. Greenberg and Strauss (1977) stress the importance of deciding which data is contentious and which is acceptable to all parties, prior to debate based on the data. For land use planning and environmental disputes they suggest a four stage process for developing an accepted data base:
(a) information packages on how to estimate impacts;
(b) provision of consolidated base-line data for all parties to use;
(c) programmed text with examples of the application of (a) to (b);
(d) a computer programme for rapid application of the process to different alternatives.

This process appears geared to what can be readily measured, quantified and manipulated, rather than to more contentious value biases. The greatest problems in relation to South African conditions could lie in achieving these preconditions.

3.5 The process
Susskind and Weinstein (1980) are the most thorough exponents of a process suited to planning applications. Lake (1977) provides several additional procedural requirements, arguing that irrespective of the type of mediation activity such as fact finding, dispute avoidance, conciliation or dispute resolution, the process has a consistent pattern – from the decision to mediate, to mediator selection, timing of intervention, selection of participants and technical experts, and implementation considerations.

Susskind and Weinstein formalise these activities in an eight step process geared to planning as follows:

Step One
Identify stakeholding parties to the dispute. Shift the focus from the number of parties involved to the categories of interests that want and ought to participate, "to have all interests represented, but by as few people as possible, to simplify negotiations" (Lake, 1977).

Ensure the groups or interests that have a stake in the outcome are suitably represented by asking whether "spokesmen" truly represent "their" constituency. Frequently the more powerful an interest, the harder it is to involve it.

Lake also stresses that experts or professional advisers be restricted to an advisory function, and do not serve as full participants.

Step Two
Narrow the agenda and confront fundamentally different values and assumptions: sharpen vague preferences into specifics, and establish the magnitude of disagreements. Selective perception of issues, based on emotional responses must be extended into a more holistic grasp. Frequently modifications of position occur as a result.

Step Three
Generate enough alternatives to cover all points of view: each perspective must find an alternative which it espouses even if it is the do-nothing version, before proceeding.

Step Four
Agree on boundaries and time horizons for the exercise. These choices can significantly impact the assessment of costs/benefits deriving from the issue under consideration.

Step Five
Weight, scale and amalgamate cost/benefit judgments. Here Susskind and Weinstein refer to the problems of data accuracy, and contentiousness (see 3.4. above). Philosophically, the problem of amalgamation deserves extremely thorough investigation. The literature on evaluation and environmental impact assessment is replete with discussion of the risks entailed: only use it if all parties participate in, and achieve agreement on, the weighting of elements.

Step Six
Determine fair compensatory or mitigatory measures. Often non-monetary solutions are more apposite for some of the participants – e.g. an exchange of sites.

In this respect the confidentiality of proceedings is vital (Lake, 1977:8), since "trial floats" often depend on the ability to gauge response before irrevocable commitment.

Step Seven
In implementing the agreement, "All parties should be made aware of the difficulties facing efforts to implement the solution(s) when they attempt to reach closure." Lake suggests the importance of having some political sanction to back the agreement, while Clarke (1977) argues the need for a temporary body or commission to ensure implementation according to the agreement. Unlike the composition of many permanent institutions *The Commission must consist of representatives of all major shareholding groups.*

Step Eight
Hold the parties to their commitments. Susskind and Weinstein supported in regard to contract zoning by Tremaine and Yates (1977) argue that a contract can serve this purpose. However, this requirement can introduce difficulties if not spelled out in initial discussions.

Non-institutional parties, e.g. pressure groups, may lack a permanent identity, or split over the agreement. Supposed unavailability of funds has also been used to justify non-compliance with original conditions, once developers have achieved their aims in the first phase of complex schemes (Fulton, 1985:9). This is more likely in the USA where litigation is more common, and accessible than, in the Republic.

3.6 The role and qualifications of the mediator
Susskind and Weinstein (1980:347) and Susskind and Ozawa (1983) summarise the mediator's roles: agenda clarification, scheduling of meetings, stating the ground rules clearly, moderating discussion, encouraging participants to "hang in" there till a solution is found, maintaining a sense of the mutual interest of all in finding a solution, assessing the motives of different parties (and controlling histrionics), extracting hid-

den agendas, and identifying issues, trading off potentials and information gaps. Qualifications for this role include impartiality, independence, a flexible mind, an ability to encourage openness, and humour. Adequate training in group dynamics, and knowledge of many of the issues would also be essential.

4. EVALUATION OF ENVIRONMENTAL MEDIATION

4.1. Published evaluations
The advantages and disadvantages of this approach have been described as follows in the literature.

4.1.1 Advantages
There are three primary advantages of mediation: benefits accruing through the participatory nature of mediation, benefits related to more efficient problem resolution, and benefits accruing to the overall "social climate". The arguments for user participation have been discussed at length elsewhere by Faludi (1973), Goodman (1972), and others; and Davidoff's notion of advocacy planning relied on the idea that all points of view should be represented, even if not by interested parties in person. More recently some radical planning theorists have changed their ground, arguing that by ensuring worker participation in "local government" the authorities will be coerced into a more active role in protecting neighbourhoods (Fainstein and Fainstein, 1982).

Efficiency is served better through mediation than litigation since delays and costs are reduced, and results improve (Susskind and Weinstein, 1980: 314). Delays diminished when issues could bypass the clogged American legal system, proportionally reducing costs. Better results are attributable to
(a) a broader involvement of interested parties. For example judges tend to focus issues narrowly to simplify the case, whereas most planning and environmental issues are inherently complex and polycentric (Susskind and Weinstein, 1980).
(b) the use of mediators who are familiar with the field and its issues, unlike judges, who are untrained in scientific or technical considerations relevant to many environmental and planning problems.

Lake (1977:7) adds that this method is more accessible to those who cannot afford legal representation. Clarke (1977:11) believes that mediation can be used to reform and improve existing procedures. Cormick and Patton (1977) identify procedural flexibility as a major plus in terms of the number of actors, type of tradeoffs, treatment of issues – since the process can be tailored to suit circumstances.

Susskind and Weinstein (1980:353) add that public agencies benefit from quicker achievement of consensus and participation, improving the overall social climate within which they must operate, by avoiding the residue of bitterness and suspicion normally attendant on confrontation: note also in this regard Susskind and Ozawa (1983:5). In the local context where bitterness has become so deep rooted this is one way of overcoming it and avoiding further exacerbation of the problem.

4.1.2 Disadvantages
Disadvantages also revolve around three sets of issues: perils inherent in the approach, implementation difficulties, and characteristics associated with planning and environmental questions. Rivkin (1977) identified the "perils" as including the high cost of mediation, much of which has to be financed prior to the developments from which the funds would be expected to come, and the difficulty of finding a good mediator.

Susskind and Weinstein (1980:352-3) mention the unwillingness of large agencies to involve themselves in mediation as a problem, citing three causes: The agency may be accused of exceeding its powers, it may not wish to offend elected officials, or may resist its more limited role in a mediated process as one equal participant among many.

4.2 Case studies
Having reviewed mediation characteristics identified in the literature, the case studies provide an opportunity to assess the accuracy of the model, admittedly within the limits of secondary sources. A range of subject areas were selected to permit more thorough assessment: coverage includes large scale, regional studies through two levels of urban planning – local and metropolitan, to the question of public utility planning.
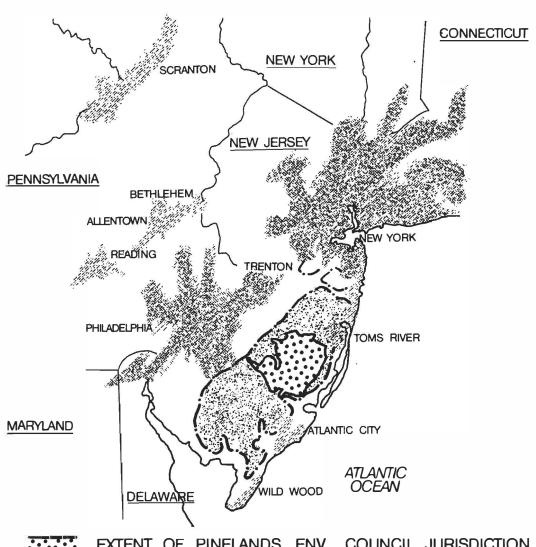
4.2.1 Regional development

4.2.1.1 Pine Barrens
Goldstein (1981) observed the different cycles of political activity between 1960 and 1980 in the eastern part of New Jersey known as the Pine Barrens (Fig. 1). Successively, this natural region was threatened by a proposed Port of New York Authority Jetport, then by incremental exurban residential complexes and new communities.

Consequently the process may be viewed over time as a sequential development of public resistance to development. The Jetport controversy prepared the ground for later intervention by fluid citizen groupings using varied tactics. The case cannot be termed a pure mediation exercise but is worth including for the insights it provides into public bargaining, in the absence of suitable institutional frameworks, spawning a set of political institutions for negotiating out such issues.

The original search for a new Airport site involved "casual arrogance" in the Port of New York Authority's approach, and strong opposition from the upper income suburbs, characterizing "two value systems on a collision course": ever expanding economic growth vs. new middle and upper income classes politically and financially capable of protecting their social environment" (Goldstein, 1981:66-81).

Over time the Jetport site issue was battled by a range of communities, as the authorities shifted their proposals in the face of vociferous opposition. Ultimately the site was transferred to the Pine Barrens area (Fig. 2) a fallback option to avoid this powerful political opposition. Whilst the major interests which could have been expected to support the proposal – the Airlines and the US Air Force – displayed little interest in this proposal, Goldstein (1981: 72-73), the opposition also coalesced slowly from "a loosely built association of lifelong conservationists" (p. 71), who almost inadvertently introduced the issue into the 1969 gubernatorial race (p. 77). As the threat was perceived and publicised, opposition grew from those who stood to lose most. Later these groups re-organized themselves to deal with conflicts between water development authorities and cranberry

EXTENT OF PINELANDS ENV. COUNCIL JURISDICTION

EXTENT OF PINELANDS

MAJOR CITIES

OTHER URBANIZED AREAS

Based on: Pinelands Environmental Council, Plan for the Pinelands (Philadelphia: Meridian Engineering, 1975).

FIGURE 1 THE PINE BARRENS AND THE NORTHEAST

growers, to decide control of large water resources and aquifers.

In the environmentally conscious climate of the 1970s new planning agencies emerged, forcing citizen groups to restructure their approach (Goldstein, 1981), since to resist a permanent threat required permanent organizations. These used the new governmental agencies to combat each other as follows:

- "Local control" and "free enterprise" believers used more vulnerable locally based planning agencies established with the State Government's aid,
- The environmentalists sought to involve the powerful state and Federal Agencies as "coplanners" of the region.

The rationality of these tactics is hard to explain, since the stated aims have little to do with rationality or overt concerns, Goldstein (1981:100). However, she noted that Canadians, unlike the New Jerseyans, following British legal tradition were unable to effectively voice their concerns, because they could not gain direct access to the bargaining within the decision making process.

4.2.1.2 The western resource lands
Quoting the cases of mining in Idaho, Utah and Wyoming, and the Washington/Oregon Forestry Industry cases, Kartez (1983) described certain unique features of land resource conflicts which separate them from other types of conflicts;

- the decision-making is decentralised;
- the local managers live in the communities which are affected by their decisions, establishing a mutual dependency, which influences the perceptions of both sides.

Consequently, he argues that where natural/mineral resources are concerned, the conventional perception of big business and the public interest as inevitably in opposition, does not hold.

Citing an agreement negotiated in Idaho (1982) to reinstate the Clean Air Act, and the experiences of the Washington Forestry Resources Association, Kartez (1983/4) found mediation was timely and provided continuous communication, ameliorating the obscurity of the public policy maze and the inflexibility of federal programme rigidities. Nevertheless, he expressed reservations

about the feasibility of using mediation for everyday environmental dispute resolution, citing a shortage of sufficiently trained mediators, and the high costs currently associated with this method.

4.2.2 Negotiated Investment Strategies (N.I.S.)
These have been applied under substantially different circumstances with varied aims.

4.2.2.1 The Columbus Negotiated Investment Strategy (N.I.S.)
This entailed protracted mediation ranging from site specific land use matters to metropolitan scale social policies.

Susskind was one of the two mediators, so the process followed the principles he enunciates. It began with decisions on ground rules, (membership, proceedings, records, media control and the relationship between the N.I.S. and other government action), and continued with written problem statements, and finally a series of structured discussions (between December 1979 and March 1980). Final reports from eight three party subcommittees had been debated, discussed and agreed on by the end of April, seven months after the process commenced.

By 1982, 60% of the agreement had been realised. This can be attributed to the careful crafting of the agreement and the thoroughness with which the implementation was spelled out:

- projects were priced and itemized;
- policy changes specified;
- procedures for implementation were stated, responsibilities assigned for monitoring items, and provision made for resolving conflicting agreements.

Overall this N.I.S. must be considered a success.

4.2.2.2 The Malden, Mass. (N.I.S.)
This decaying Boston suburb used N.I.S. (and Susskind) to persuade major stakeholders to participate in planning the city's future. Government, citizens and business teams met and negotiated a 148 recommendation agenda, explicating agreement on long-term goals. Using mediation to sharpen goals – "eliminates grandstanding and irrelevant detail" (Woodhams, 1985) – there is a greater commitment than usual to realizing the plan.

A demoralised community made going heavy, but eventually recommendations were developed in each of six areas:
- public education,
- economic development,
- city pride and beautification,
- public safety,
- human services and
- city finance.

Despite public scepticism the easiest proposal namely to beautify the town had already been completed by June, 1984.

Procedurally also, Susskind's criteria seemed to have been successful, despite a participating group of 47 viewpoints.

Reservations were expressed about implementation where decisions are agreed to by loosely established groups since, unlike corporations or public agencies, they are relatively impermanent.

The mayor understood this, but continuous public surveillance was essential to ensure the agreement was fulfilled. The city planner was convinced, however, that the experiment had succeeded (Woodhams, 1985:75).

4.2.3 Public utilities
Two examples will be discussed briefly, since the original source material in Susskind and Ozawa (1984) is limited. However, it nevertheless still indicates the feasibility of mediation in this context.

4.2.3.1 Brayton Point Coal Conversion
This was one of several New England power supply utilities which attracted controversy when conversion from oil to coal fired technology was mooted (1977). Several months of careful analysis preceded formal sessions, and after eleven months all was signed and sealed. Insofar as it was described, O'Connor's method was similar to Susskind's and insights gained during the process were used to develop "pivotal suggestions". Criticism focussed on the neglect of some public interests.

4.2.3.2 Foothills water treatment project
This was planned 25 miles S.W. of Denver (in 1977), and generated a stalemate between federal and local agencies, and environmental groups. Eventually, despite his stated support for one position and his power as a congressman to bring pressure to bear on various parties, Congressman Wirth was co-opted to mediate the discussions.

Wirth began by privately consulting senior officials in the principal agencies, the Army Corps of Engineers,

Environmental Protection Agency, and the Denver Water Board, following this with rounds of mediated negotiations, which hinged on a report by the Corps of Engineers on all major issues in the controversy. With only minor changes following its circulation, ths report became the basis of the agreement: it was seen as a mixed bag since all gained something, but conceded part of their agenda in exchange. Failure resulted, however, because not all of the stakeholders in the dispute were incorporated in the discussions, and one environmental faction turned to litigation. This may have reflected Wirth's own perceptions and biases in defining significant interests. The longterm prospects for water supply to the region were consequently compromised.

4.2.4 Public interest in an urban setting: Denver and Santa Monica

In both these cases, despite the different ideological persuasions of the participants, the issues revolve around inner city development and redevelopment.

4.2.4.1 Denver CBD

In the case of Denver the focus was on the development of a model of Urban Design (Appleyard, 1982:122), with an emphasis on growth and real estate concerns, whilst the Santa Monica experience entailed a "progressive" movement. These cases therefore represented opposite poles of the political spectrum.

Fleissig (1983a:12) supports the principle of public/private central city development partnerships, arguing a shift towards this form of government — investor-resident collaboration represents a three way set of influences:

- Political realities: The 80s reflect increased competition foɪ public money, since basic city services and human services, education, welfare and social security are likely to dominate the budgets;
- Economic reality: Costs and risks of financing real estate tend to favour larger developers and institutions rather than the small or medium scale.
- Design realities: Zoning, building and energy regulations constrain the project designs, combining with financial impositions to leave little design leeway. In this constricted environment Fleissig (1983a) argues

"no one actor in the development business can go it alone". He is implicitly asking for a negotiative stance from all three parties:

"In short, quality downtown development will succeed when citizen suggestions and concerns exert a driving force rather than remaining in a reactive position: when corporations feel a personal stake in improving their work environment, rather than hoping somebody else will take care of it, and when city governments act to protect their investments downtown so as not to lose business and residents to outlying areas." These actions can take place only if the actors work together in a truly collaborative process. This is what makes private/public partnerships different from past programmes. *Developers, city officials business leaders and neighbourhood leaders will be forced to work together* in order for any major project to be built.

In a subsequent article on Denver's thirteen block Mall, Fleissig (1983b) describes how the Denver partnership, a non-profit, private organization of business, civic, educational and community groups successfully intervened in developing new zoning controls for the Mall. Whilst not specifically identified as a negotiated solution, the existence of a range of actors who hammered out an agreement in a process which involved "all the participants from the beginning", closely approximates the mediation process. This occurred despite indifference and opposition from the Director of the City Planning Department.

Using consensus, as in mediation, the proposals were submitted to, and approved by the city council within six months of the commencement of the exercise.

The lessons learnt coincide with many characteristics of mediation, such as the importance of a clear, comprehensive agenda, and the value of having a range of alternatives available for discussion at all sessions.

4.2.4.2 Santa Monica

Here a populist group was elected in 1981 on a platform placing residents' needs ahead of business and real estate

interests (Shearer, 1982; Fulton, 1985).

Without extensive discussion the central issue was whether to prevent developers from exploiting Santa Monica's central position in Los Angeles, to the detriment of a large local rental community. The citizens elected a group whose policies included, inter alia:

(i) encouraging affordable housing by making it a non-negotiable demand facing all commercial developers;

(ii) controlling housing rentals and preventing further conversion of apartment blocks into condominiums;

(iii) empowering local neighbourhoods to substantially determine their own future, and

(iv) utility rate surveillance.

Whilst the populists operated as an elected council, the "city's wide-open political atmosphere" permitted them to test developer exactions, tenant ownership cooperatives and other innovations. Hence the significance for mediation/negotiation: "for 3½ years while they prepared new development guidelines the ruling group used *open-ended zoning negotiations* to extract promises from . . . developers . . . wresting low income housing, money for social services" and other concessions from them. A former planning commissioner, Frank Hotchkiss, stressed the centrality of political concerns in their conception of land use development, rather than mechanistic questions of economic efficiency (Fulton, 1985:5-6).

Certain features deserve comment:

(a) In the interim, while developing new land use controls, the negotiating process enabled the council to avoid delay in implementing its radical policy, and gain experience in its implementation.

(b) Case-by-case negotiation of rights was problematic, exhausting and expensive, persuading official negotiators it was only acceptable on an interim basis.

(c) The importance of establishing who could participate in negotiations was not initially appreciated, producing considerable confusion on occasion.

(d) Encouraging vociferous neighbourhood group participation was over-

ly successful, creating hyper aggres-
sive community groups who some-
times rounded on their Council
"mentors".

(e) Since the adoption of the revised
land use controls the development
agreement procedure has been re-
served for phased, or large, complex
projects.

5. CONCLUSIONS

5.1 The need to change
This paper has argued the need for
adaptations to the prevailing planning
paradigm which will render procedures
better able to cope with emerging politi-
cal and social demands in South Africa.
Primarily, the question of divided in-
terests and differential public values
demands a less technocratic and more
socially responsive and complex style of
planning. Forester (1983) summarises
this in his arguments for the planning
approach to recognise the implications
of working in a confused, obscure con-
text where rationality is limited or
bounded in its applicability.

It was further argued that in terms of
Bolan's cultural dimensions of plan-
ning, South African planning practice
was no longer appropriate in a context
of turbulent change – the process
roles, decision field elements, planning
and action strategies, and dominant is-
sues requiring to be re-assessed. Conse-
quently mediation, rather than negotia-
tion, might be of use in revised planning
environment.

5.2 Generic model evaluation
In order to analyse mediation's poten-
tial, a particular model was developed
and described procedurally and relative
to operational preconditions.

(i) This model has been tested against
a number of case studies, with the
following conclusions: The matrix
(Figure 2) shows that, in relating
the case studies to criteria based on
the mediation model discussed
above (see 3.1-3.4), only three
criteria did not apply in at least
62% of the case studies, and those
three were still present in 50% of
the cases. Half the criteria had a
75% rating or better. Since the
cases were selected to present a
range of situations in which con-

CRITERION \\ CASE STUDY	PINE BARRENS	WESTERN RESOURCE LANDS	COLUMBUS	MALDEN	BRAYTON POINT	FOOTHILLS WATER PROJECT	DENVER	SANTA MONICA	PERCENTAGE
SUCCESS OF MEDIATION	★	★	●	●	●	●	●	★	62,5
OFFICIAL MEDIATOR INVOLVED			●	●	●	●	▲	★	50
HIGHLY VISIBLE PARTIES	◐	●	●	●	●	◐	●	●	87,5
BOTH/ALL SIDES NEED A SOLUTION	●	●	●	●	●	●	●	◐¹	93,7
ALL SIDES EQUALLY BALANCED	□	□	●	●	●	●	▲	□	50
VOLUNTARY INVOLVEMENT	●	●	●	●	●	●	●	□	87,5
ALL PARTIES INTERESTED HAVE PARTICIPATED	●	▲	●	●	●	□	□	□	50
PROCESS FOLLOWED	▲	▲	●	●	●	●	◐	□	56,2
TECHNICAL SKILLS ACCESSIBLE	◐	●	●	●	●	●	●	●	93,7
"CONTRACT" TO IMPLEMENT AGREEMENT	●		●	◐	●	●	?	◐	62,5
ON BALANCE SUPPORTS CLAIMS FOR MEDIATION	?	?	●	●	●	●	●	●²	75

KEY

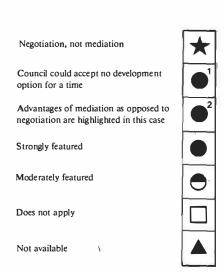|	
Negotiation, not mediation	★
Council could accept no development option for a time	●¹
Advantages of mediation as opposed to negotiation are highlighted in this case	●²
Strongly featured	●
Moderately featured	◐
Does not apply	□
Not available	▲

FIGURE 2 RELATIONSHIP BETWEEN CRITERIA AND CASE STUDIES

flicts over environmental quality and development had to be reconciled, rather than deliberately seeking examples of mediation, this suggests that the model has widespread applicability. Furthermore the matrix has not expressly explored the more detailed procedural aspects, since the information was not available; if it had been there might have been reduced agreement between the model and the cases.

(ii) In some of the case studies not all parties were included in initial debates. As with scoping in the administration of EIA's in the United States, the fundamental importance of reaching agreement on what to consider and how to treat it (Schneider and Tohm, 1985), was stressed by the failures associated with such incomplete participation.

(iii) the cases also underline the importance of ensuring that specific provisions for implementation are included as part of the deal. In the cases of Columbus, the Western resource lands, Malden and Brayton this was a major contributor to early and successful implementation. The Foothills exercise, and the efforts of the Santa Monica Progressivists to permit a proposed $150 million dollar hotel-office-retail complex only on condition social criteria were satisfied (Fulton, 1985:7), both foundered, because the execution of the agreement had not been adequately safeguarded.

(iv) Mediation does not depend on coercion; it is voluntary and depends on the commitment of the interested parties to succeed:

"Mediation is a voluntary process. The mediator has no authority to impose a settlement. The mediated dispute is settled when the parties themselves reach what they consider to be a workable solution" (Susskind and Weinstein, 1980:314).

(v) The primary function of mediation appears to lie in determining the scope of the policies or projects being negotiated – in converting broad goals, hidden agendas, and personal or group preferences into a set of objectives, constraints and criteria for accommodating them. However, the emphasis on implementation also requires that interested parties be satisfied with the package which emerges, and be prepared to see it through to completion.

5.3 Specific application in South Africa

In recognition of the unfamiliar sociopolitical conditions likely to be experienced in the near future, new planning approaches will be needed. The body of the preceding material has been provided to support the argument that mediation, based on the environmental mediation precedent and characteristics, has much to offer planning. Whether it can be applied in South Africa depends on the answers to three questions. Can the preconditions for its use be satisfied? Would it represent a better or more appropriate means of arriving at decisions? Is it culturally feasible – are there signs that mediation is compatible with existing decision making processes?

5.3.1 Preconditions

Here the three crucial issues would appear to be whether a climate of credibility and trust can be created in the deliberations, whether the imbalances of power are insurmountable, and whether neutral mediators can be found.

To create a climate of trust and a willingness to hear opposing viewpoints will be difficult. However, the Indaba between Kwazulu and Natal, and the Nkomati Accord suggest it is possible.

Forester (1983) argues that power is not evenly, but unequally distributed, and the planner should attempt to balance this by the aid he provides for the voices of the powerless and underprivileged to be heard. Simply to be present during deliberations may affect the results, but like a sop, it is not permanently satisfying. To participate fully, however, requires adequate resources, time off to attend, professional advisers and confidence that one's opinion will be respected. These requirements ought to be incorporated into the mediatory package, to balance the inequalities power creates.

Forester presses this point further (p. 14) by referring to the ubiquitous, unpredictable patterns assumed by conflict under such circumstances. Where such uncertainty reigns, standardised measures, whether for facility provision or design, become not only meaningless but also obstructions to workable solutions. Planning in the Republic has used standards as crutches, as substitutes for carefully considering genuine rather than abstract needs.

The neutral mediator is provided by training and experience. It would therefore be possible to have the first group specially trained – abroad if necessary – before employing them to disseminate their skills.

Defining the issues and identifying points of view seem less difficult to achieve, provided the importance of these activities is acknowledged. Executing the agreements could be accommodated by the use of contracts, while the availability of technical skills and data will depend on each case's merits. If the finances are provided these requirements can easily be met.

5.3.2 Better decisions

Benefits in participation and an improved social climate would probably exceed their equivalent in the USA, while efficiency would be measured in terms of the consequences of greater social stability rather than simple timesaving.

Of the problems listed, the most severe is likely to be intransigence on the part of larger agencies – governmental and corporate. Some confrontations may well have to occur before the value of cooperation is accepted. Conflict of interest is unavoidable in this pluralistic environment, and cannot be overcome by decree – unless one depends on naked force. Consequently planning in South Africa will inevitably cease to occur within a comprehensive national framework, and will instead become lodged in Forester's bounded planning environment. Instead of clearly defined, rationally treated problems, where information is unquestioned and time unlimited, planners will be faced with problems which are somewhat ambiguous in scope and evaluation, information is incomplete, and time is limited, or worse still, the problems are pluralistic, if not structurally distorted (Forester, 1983:8-16). Here the agents and actors are competitive, and unevenly equipped, located in different places

and power centres, the problems are multiple and defined through personal or ideological value bases, information is contested, withheld and manipulated more or less overtly, and time is a joker in the hands of the powerful. The result is (Forester, 1983:14): "in the face of pluralist competition and conflict, bargaining and adjustment are necessary . . ." "'mutual partisan adjustment' becomes a practical incremental strategy, (if not the only alternative to rank oppression)", and becomes all the more defensible if there are indeed 'watchdogs' for all affected interests.

A major objective of effective planning will have to become the construction of consensus. If conflict of interest becomes endemic, the only alternative to social disruption and civil strife will be the crafting of temporary coalitions, creating points of equilibrium for long enough to enact changes and lay the foundations of a new order, in which all citizens stand to lose something should it fail.

Furthermore, if the current distribution of resources is unfair, then steps to remedy this can begin with a system of negotiation in which all parties are represented, not just the most powerful − in other words the environmental style of mediation, not that of labour negotiation.

5.3.3 Cultural feasibility

Finally, there is the question of cultural continuity. Forester admits that the circumstances or context dictate what actions will appear sensible. As identified above (2.1) there is growing recognition that different cultures distribute power in peculiar ways, that checks and balances vary, as do perceptions of values such as honesty, freedom and justice.

South African governance is rooted in an amalgam of Dutch, French, tribal and British colonial, political and administrative structures. By and large, power and decision making is not as open in these as in the American ethos, and paternalism and autocratic/bureaucratic traits dominate.

However, the advantage of building from environmental mediation foundations lies in the local experience and institutions which have already emerged. For example, the Council for the Environment consists of representatives of Government and of many private associations and professional bodies; it has emerged through sustained pressure from professionals of the public for change; it began as an advisory body, and has acquired official status even to the point of recommending legal changes. The step from it to mediation is not that large.

Much of the argument for mediation, and to which it must provide solutions and compromises, derives from differences of value and interpretation. The comfortable world of the technician projecting demands, based on a set of standards chosen either from personal preference, arbitrary whim or traditional dogma, is an anachronism.

It is disappearing in the first world, and can no longer be justified here: we must replace numerical abstractions derived from nineteenth century British practice with a willingness to accept that most people *know*, or can be helped to *decide*, what they need and the order of priority of these needs.

Attempts to mislead or coerce the affected population inevitably produce resistance and strife. It is far easier, and less expensive in the long run, to discuss with people the issues of concern, and the gist of the more likely or preferred alternatives available to solve them, and then forge a concensus through debate, than it is to impose a solution on a recalcitrant, hostile community, united by their dislike for what is being foisted on them. If planners would put themselves in the place of the planned-upon, they would surely realise this. For planners to assume a mediatory rôle will also be more rewarding and satisfying, as well as more effective in building a better South Africa.

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