

# PUBLIC PROCESS COUNSELING

by Bowen H. "Buzz" McCoy, CRE

An earthquake rumbled across Los Angeles early in the morning hours of January 1994, bringing extensive damage to the entire city, including the 70 year old art deco city hall. After the dust had settled, files, furnishings and employees were relocated and seismic damage teams called in to determine what was needed to return the building to its function. Under closer scrutiny, it was discovered that the damage was more structurally pervasive than first thought and, to complicate matters, continuing aftershocks made additional tiles topple from 27 stories above. Estimated repair costs mounted, and a panoply of options was advanced. Pending resolution, a shroud of black plastic was wrapped around the top of the flaking tower.

Twenty-four months and \$26 million in consultant fees later, the process is stymied. The project budget has grown to about \$240 million for this 750,000 square foot structure, and there are indications that it could increase to as much as \$300 million. The mayor becomes alarmed as project costs soar to more than double the original budget, and he names a pro-bono citizens' panel to undertake a fresh look at the project and seek more cost effective solutions. Your name is on the list, and if you agree to serve, you will find yourself in the midst of a public process counseling assignment. So hold on to your hat; it is going to be a wild ride. This is a highly appropriate assignment for a CRE (Counselor of Real Estate), because it calls for one of the highest forms of ethical decision-making: the preservation of the public trust.

My experience in serving on six such counseling assignments in the past few years does not render me the ultimate authority on this subject, but each assignment has given me new insight into the process. I write this article to propose a possible framework for approaching public process counseling and to stimulate discussion, within our professional area, on a process which could profoundly impact public/private land use in this nation. I write so that we might be the beneficiaries of such increased discussion and thereby better serve our clients.

## **Public Process Counseling Indicators**

Public process counseling is most generally indicated when a public entity experiences a breakdown of its legitimate process for decision making. Most often, the focus of the political process has become diffused and uncoordinated, weighted

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down with all the normal political baggage: diverse constituencies, multiple objectives and overlapping jurisdictions, divided councils, weak mayoral positions and budget constraints. Proposed legislation can become so packed with a grab bag of issues from everyone's social agenda that the legitimate process is rendered unworkable. Sometimes wise leadership has no other choice but to seek the counsel of qualified outsiders.

#### *Sewer Permit Allocation Ordinance—Los Angeles*

In 1988, Mayor Bradley convened a Citizens Review Committee to comment on a proposed sewer permit allocation ordinance. This less than romantic task would effect the pace and location of development in the city of Los Angeles over the next several years. It was, in fact, a prism through which we could justifiably look at transportation issues, neighborhood issues, urban sprawl, edge cities and each of the inputs in the urban development process.

The political process had loaded every wish list imaginable on the sewer ordinance, including the ratio of commercial development in the city to housing and the implementation of water saving devices in commercial buildings. A draft proposal of the ordinance stated that permits would be allowed on a priority basis for the following: homeless shelters, affordable housing, projects that achieved a 35 percent net reduction in waste water, economic enterprise zones, approved redevelopment areas, projects within one-half mile of the nearest mass transit, commercial projects providing child care for 30 or more children and home owner remodeling of less than 1,500 square feet. The focus of the proposed ordinance had been lost. Instead of sorting out the issues and setting priorities, an arbitrary laundry list of social justice issues, without debate or prioritization, had brought the allocation process to a dead halt.

Often, by the time the focus is lost, the news of the dilemma has also become public. The public entity can be under siege from constituents and the press. (Counselors' opinions, conclusions and mistaken judgments may end up in the local paper or in *The Wall Street Journal*!) Those involved individuals, elected and salaried, are probably experiencing personal distress. Things have become desperate, and there are no face-saving means for closure.

Our minority report stated that the proposed ordinance was unfair, inconsistent with the city's general plan and far too stringent. We estimated it would take a developer two years just to clear the sewer permit process hurdle. We further recommended a sunset clause for the ordinance.

#### *Convention Center Site—Denver*

Ten years ago, the City of Denver and the State of Colorado were locked in a vice grip when they asked the Urban Land Institute (ULI) to provide a

panel to choose the location of a proposed convention center. This project—along with the then proposed new airport—had been bogged down for years in bitter disputes between city and state (each which felt it had jurisdiction) and among the more powerful members of the Denver real estate community. A new convention center was sorely needed to bolster the declining tourism business, yet the city fathers and developers could not unite around this worthy objective. Feelings ran so high our panel of ten was sequestered the entire week of deliberation.

Sequestration is not uncommon in such endeavors. It serves as a tangible reminder that a public process counselor is subject to a high standard of behavior. In performing most of my assignments, without sequestration, I find myself oppor-tuned fairly often to attend functions or to meet with influential and popularly attractive individuals as guests of parties with interest in the assignment. Like it or not, a public process counselor must sustain, throughout the assignment, the detachment and independence of a true senior counselor.

#### *Los Angeles Finance Task Force*

In other, less emotionally charged instances, the counsel of outside advisors is sought as the basis for planning. I had the opportunity to serve on a public pro-bono Finance Task Force for Los Angeles Mayor Tom Bradley. Our task was to review the city's economic condition and financial structure, to identify operational and capital requirements to maintain appropriate levels of service and to examine conventional and alternative revenue sources to maximize capital formation and funding. The task force worked extremely well together. It was a stellar group, including future State Treasurer Kathleen Brown and future State Controller Kathleen Connell. In fact, in each of these assignments, I personally have found the quality and dedication of the private citizens involved one of the primary benefits of the experience.

### **The Charge Or Assignment**

Rarely is the charge of public policy counseling to arrive at a bottom line solution. (The Denver Convention Center Panel was unusual in this regard. The city and the state agreed to abide by the location decision of the ULI panel.) Herein lies the greatest contrast to private transaction counseling in a normal business environment. Indeed, there may not be a bottom line, hard-nosed solution to the dilemma. There is room for softer type decisions, as well as purely utilitarian decisions, and the impact can be just as forceful within the area of conflict:

- The focus might be on the process for decision making or administration, identifying and bringing in good practice from the outside and reinforcing good practice where it is found in the client organization.

- The focus might be to identify bad practice or condition, not by being overly critical but by pointing out why another administrative process might be more effective.

In Mayor Bradley's Finance Panel, previously discussed, we came face to face with the problem particular to Los Angeles and certain other locales: the multiplicity of jurisdictional authorities operating in the same area, including federal, state, county and city, together with a weak mayoral position, a strong but internally divided city council and the lack of any cohesive regional planning authority. In particular, this assignment demonstrated the severe price paid at all government levels for failure to have a longer term planning process and vision.

The essence of our findings was that the city utilized an extremely short time frame for planning purposes, engaged in an excessive amount of deferred maintenance (thus understating current budgetary requirements) and was lagging in its mandate to privatize operations. The lack of a planning cycle much longer than a year rendered the city ineffective in resolving key issues for Los Angeles, such as air quality, wastewater treatment, etc.

We concluded with a set of ten recommendations, including an increased local gasoline tax to fund deferred street maintenance. An increased gasoline tax appeared on the ballot and was defeated. Funding was provided for a portion of the deferred maintenance. An inter-departmental process was initiated to improve management of city facilities and, most important, the City Council committed to develop a strategic financial plan and engage in multi-year planning. (This well intentioned response did not materialize.)

#### *Leasing Of Office Space For State Agency*

A more recent assignment involved advising a state agency on purchasing or leasing significant office space in downtown Los Angeles, which currently has one of the highest vacancy rates in the country. An obvious private transactional decision would incorporate price weaknesses in untenanted modern structures. Yet the state was willing to take part of its space by rehabilitating outmoded buildings in less than desirable locations. Using state funds to rebuild the decaying urban core had considerable appeal to certain private businesses which were also trying to hang on in the older inner city. Thus, a public process counselor must be tolerant of ambiguity and open to a multitude of stakeholders.

#### **Suggested Process For Counseling Decisions**

Regardless of the nature of the charge, public process counselors must actively seek and process large amounts of pertinent and often conflicting information with great precision. Indeed, the underlying cause of political logjam is often a failure to seek and see, to hear and listen to all the critical

data. It is from this data that stakeholders can be identified and assigned relative value, that existing conflicts can be dissected and potential ones perceived. It is through this information that creative solutions are found which are cost effective and yet serve the people of the targeted area.

The gathering of this information can be a formidable task and may take some unconventional forms. One must move beyond the controlled presentations which are usually proffered to a truly investigative and pro-active role. This type of interviewing is obviously more painstaking and time consuming, but the payoff is there. The Denver experience is a good example.

#### *Denver Approach*

Our panel of ten spent a week there, sequestered the entire time, as varying city leaders were convinced one of the developers would attempt to buy us off. We conducted interviews with about 100 citizens, politicians and developers. The crux of our panel's decision making entailed my interview partner for the week, Nick Trkla (who passed away far too soon just this year), and me walking from the busiest intersection in downtown Denver to each of the proposed sites. We arrived at our recommended site in eight minutes. One of the other favored sites took us 43 minutes to reach. None of the others took less than 16 minutes. This was not a particularly sophisticated nor trying process. We recommended a site in the center of downtown Denver, with compactness to nearby hotels and an easy walking distance for conventioners during inclement weather. This rather simple-minded approach taken by Nick and me provided clarity and focus to the assignment and unpacked the decision of patronage, favoritism and ancillary issues which had rendered the decision-making process cumbersome and unmanageable.

#### *Pension Fund And The Interview Process*

A very recently completed paid assignment called for an expanded and much more rigorous form of the interview process. My charge on this assignment was to make recommendations to improve the investment process in real estate for our client, a large public pension fund with roughly \$5 billion in various real estate assets. I was fortunate to have an excellent partner on this assignment, and we performed our task over seven months.

We conducted approximately 100 interviews with trustees, staff, advisors, consultants and many disinterested pension funds and pension fund advisors throughout the real estate industry. It was our goal to identify bad practices within our client and the industry and hold them up for critical comment as well as to identify good business practices within our client and the real estate pension fund industry and hold those up to our client as a new model. We knew there would be little impact if

after all these interviews, we only came up with a long list of new practices for the trustees and senior staff. From the beginning we needed to have impact on the process and the actors. That is, we should utilize at least a portion of each interview to begin influencing behavior in the direction it was assumed we would be heading. Thus, the assignment itself became a process for change, and we became agents of change during a portion of each interview. Just to be assured, early in the assignment I checked out our game plan/technique with a couple of senior friends at McKinsey & Co., and they validated this approach.

The assignment terminated in a five hour off the record workshop with the pension fund trustees. Interestingly, all the good practices we recommended came from the interviews with the pension fund advisors. It now appears that we will have some impact on our client. The extent to which this is borne out in future practice will, in our opinion, be as much the result of the pro-active interview process we adapted for our counseling, as it will to the final workshop and written recommendations.

#### **Los Angeles City Hall Seismic Project**

Los Angeles City Hall is a designated historical monument and a cultural icon (which means it has been featured on "Dragnet" and in "Batman" movies). Our panel was handed a list of seven options. The instructions from the office of the mayor were to undertake a comprehensive fresh look at the project and seek more cost effective solutions. Because of the cumbersome move-ins and move-outs of tenants and the working and reworking and reworking again of the same space, some portions of the seismic rehabilitation were costed out at as much as \$600 a square foot. Following initial consultant presentations, which felt more like indoctrinations, the panel opted to be sequestered for the balance of its discussions. One unfortunate result of this process was that we had no opportunity to engage in a comprehensive counseling process. Our report was issued to the mayor and city council, became public immediately, and we became adversaries to the project team as well as others within the Los Angeles City Hall.

The project suffered from a governance system led by a strong but divided City Council, an equally strong mayor with very limited mayoral power and a somewhat independent Department of Public Works. Responsibilities were blurred; focus was lost. There was no organic process to gain closure or consensus. As usual, the project became packed with Christmas tree ornaments from every participant, including deferred maintenance, the newest fire and safety regulations, the most modern office set-ups (on 7,500 floor plates in the upper

tower). Lack of control of the budget and the process provided a field day to the consultants, project managers, architects and engineers who piled project upon project, ripped out leasehold improvements, evicted office occupants into other space and labored profusely over three or four layers of plans. Indeed, the project had come under the control of the consultants who obviously resented the panel and, subsequently, may have attempted to discredit its recommendations. It seems they have even held off the repair of superficial wall cracks in the offices of City Council members as a form of daily psychological reminder of the presumed inherent danger in the structure.

Our findings were comprehensive. In general we agreed it made sense to save the building as a cultural icon, but that no more than \$165 million maximum (a bit over \$200 a square foot) should be spent on the project. As a frame of reference, this is in a market where Class A buildings can be procured for \$40-\$100 a foot or for as little as one-third of current reproduction costs. We also offered detailed advice on the governance process for the project. Our ultimate impact is not yet apparent, but the process of debate and discussion among key decision makers is well underway.

#### **Suggested Criteria For Public Policy Counseling Decisions**

The following criteria are suggested as a possible model for real estate counseling in the area of public policy:

**Identify relevant stakeholders.** In many cases the public policy process identifies a huge list of potential stakeholders and then lacks the will and process for setting priorities and assigning values. In the public arena, this list ought to be drawn with awareness and imagination. Although the list of stakeholders may become long, being on it does not assure priority.

**Identify potential conflicts.** Stakeholders must be heard and respected. However, rather than decorating every decision with a conceivable social goal, the public process must begin to develop a context for decision making which focuses on a cost-effective solution to the basic problem be it locating a convention hall, repairing a structure, allocating sewer permits or leasing office space.

**Seek creative solutions.** Too often the political process becomes binary. You are either for me or against me. There is a need for more awareness of the ambiguities and uncertainties in decision making. Room must be left for open exploration of other options. Perhaps a project can be staged or deferred to spread out the

costs. Perhaps there are other options for cleaning up downtown rather than reducing the effectiveness of government workers.

**Maximize long term benefits.** This utilitarian concept is self evident, but it is often lost in the political process. Short term solutions produce greater long term problems. We saw this in the Los Angeles Finance Task Force as well as the City Hall Seismic Project. This is an extraordinarily difficult process for politicians. Perhaps not quite so difficult for statesmen. We need only look to our federal government which appears fundamentally lacking in long term budgeting, capital budgeting and the multitude of short and long term policy trade-offs.

**Respect the public process.** Public servants deal with their own kinds of problems: conflicting objectives, multiple stakeholders and intense political pressures. Many governmental activities are inter-connected and cannot be isolated. Sometimes government requires soft judgments, rather than pure business judgment. Political pressure is not an evil. It is a reality in the public sector and in its best sense embraces public interest and public trust. Too often we denigrate the public servant who must come back every day to deal with massive problems, insufficient funds and an often hostile press. In the meantime, we journey back to the suburbs with a self-righteous glow from a week of service to the community. Extremely capable, intelligent and caring men and women represent our interests in the day-to-day workings of government. They deserve to rest confidently in our trust as well as our scrutiny.

**Be a consensus builder.** Consensus building is possible only when all participants in the assignment trust and respect the real estate counselor's unbiased desire for success in their individual roles. The pro-active multiple interview process can be a more potent vehicle for developing that trust and respect than the final written document or presentation. It is possible to employ the suggested criteria and still not attain consensus in your assignment; conversely it is impossible to reach consensus without employing them. Our goal as real estate counselors is to leave behind a cohesive unit of government, empowered by trust in and respect for each other.

### Criteria Application

The Los Angeles City Hall Seismic assignment is evaluated here utilizing the proposed criteria.

The **stakeholder** issue was immense. When one considers the tremendous cost of rehabilitating a pop-culture icon against the immense needs of the city for public security, health, education, etc., it is

easy to trash the structure. Yet, the city needs a centering structure in the downtown, but at what cost—\$100, \$200, \$400 per square foot?

The **conflicts** were overwhelming: City Council members' safety and comfort, public access, seismic engineers, consultants, historical preservation. The list goes on and on.

**Creative solutions** included purchasing a modern structure with no civic identification, closing off 80 percent of the tower structure, demolition of City Hall or rebuilding a modern structure.

What would be the **long term benefits** for the city? What would be the trade-off between \$200 million for health, safety and education today versus a cultural icon a half century from now?

**Respect for the public process** exposed us to attack from the City Council, Department of Public Works, various consultants and the local media. An ad hoc group of advisors can be made impotent in the face of such ingrained interests. Yet, how is the public voice to be heard?

**Consensus building.** Perhaps our sequestration was incorrect. Yet we felt we had to perform as independent agents. There was too much self interest in the programmed presentations. Perhaps we should have overridden the imposed agenda and the schedule so that we not only made our independent evaluation but, perhaps, also reached consensus.

### Conclusion

I have established two personal conditions for accepting a public process counseling assignment: Can I tell the truth as I come to understand it? Can I have an impact? Although I have encountered some rough spots along the way, the first condition has been met in each of the public service assignments described in this article. The second issue is problematic. Coming from the business world, my idea of having impact is much more concrete than anything I have experienced in the public process counseling arena. I would say that my own efforts in this area are mixed to date, but they are not without some impact in each assignment.

Process counseling is far more complex than transactional counseling. As is the case with any type of business practice, the only way to master it is by doing it and learning from your successes and failures. The role of a real estate counselor in public process assignments is to help clear away the debris and focus on the primary issues. It is to develop an orderly procedure for prioritizing important issues; to evaluate, admire and defend good practice and to critically and objectively evaluate bad practice; to create an atmosphere of professionalism and calm in the midst of controversy. It is, as usual, to help guide our clients to do the right thing.