Crest Street Community negotiations

by Laura Bachle, Laura Hill and Tim Nifong

The specific factors essential to successful negotiations in an environmental dispute resolution is agreement on the essential parties to the dispute and on the critical issues, a balance of power between the essential parties involved in the negotiation, a sense of urgency, and flexibility and uncertainty regarding the ultimate correctness of each of the parties course of action.

The CREST STREET COMMUNITY COUNCIL meeting in the CREST STREET NEW BETHEL BAPTIST CHURCH.

Introduction

Twenty years ago a four-lane, controlled access expressway was planned to pass through the heart of Durham, North Carolina from I-40 on the east to I-85 on the west. Durham, a city of 120,000, was originally a tobacco center with chewing tobacco and cigarettes as its major economic resource. For approximately the past 30 years, Durham has become a center of a growing population because of Duke University, Duke Medical Center, the famous "Rice Diets," and the VA hospital. Recently Durham was named the City of Medicine. In addition, Durham's growth has been stimulated by its proximity to "Research Triangle Park," to the capital city of Raleigh, and the University of North Carolina.

In fact, the North Carolina Department of Transportation (NCDOT) had planned to extend the Durham East-West Expressway to U.S. 15-501 as early as 1959. Approximately 15 years ago only one-half of the planned expressway had been completed and opened to just east of the Duke University Campus. This part of the expressway went through a depressed area of Durham, taking down many homes, businesses, and churches and bisecting the city itself.

On December 15, 1982 the City of Durham, the North Carolina Department of Transportation (NCDOT) and the Crest Street Community Council agreed on a mitigation plan for a neighborhood allocation project with Durham. The route of the proposed expressway was to go through an essentially low income, black community, just north of Duke University and the Veteran's Administration Hospital. As part of the 1982 agreement an approximate three year time table was imposed to ensure timely compliance.

Today the project is about 95% complete and within the allocated 3 year projected time frame. Louis S. Allen, SR/WA, Assistant State Relocation Agent for NCDOT and Crest Street Project Coordinator summarizes and itemizes the complex problems that the project encountered and solved:

- *buying up an entire community and reestablishing that community on much of the same acquired land;*
- *moving a cemetery with over 1,000 graves*
- *resubdividing the lands*
- *moving some 70 homes*
- *rehabilitating these homes as available replacement housing*
- *building some 16 new homes*
- *constructing new streets, sidewalks, a park, a ballfield, housing for the elderly*
- *changing the lifestyles of the community from 10% home owners prior to the project to 95% homeowners after the project.*

This article was written by 3 graduate students at the University of North Carolina in Chapel Hill, North Carolina for the Department of City and Regional Planning. The research that preceded the writing of this article is unique in that one student talked only with the NCDOT, another talked solely with the City of Durham and the third talked only with the Crest Street Community. Starting from three separate vantage points the final report presents all parties to the dispute objectively and shows each to be winners even in the presence of conflict. The intent of this article is to present and analyze the negotiation process used for the relocation of the Crest Street Neighborhood.

PRE-NEGOTIATION PHASE

The major participants in the negotiations were the City of Durham (City), the Crest Street Community Council (Council), the North Carolina Department of Transportation (NCDOT), Duke University (Duke) and the Federal Highway Administration (FHWA). Outside groups also active at various stages of the negotiations included Durham County, the Durham Committee on the Affairs of Black People, the People's Alliance, and the Durham Voter's Alliance.

ISSUES, OBJECTIVES, AND INSTITUTIONAL CONSTRAINTS

Several issues surfaced after the project was first proposed in 1959 and after the first segment was opened in 1970. A major point of conflict for the Crest Street Community was the reluctance of

the City to use community development grants for improvements within the neighborhood. The Community Council representing the Crest Street Community also remembered the displacement and bisecting of the Hayti Community of the late 1960's and its resultant loss of homes, businesses and churches. The Crest Street neighborhood was determined to remain a cohesive community with adequate living conditions.

The City of Durham was in a dilemma: they saw the funds that they did have as inadequate to improve the neighborhood; they needed the Expressway to alleviate traffic circulation problems within the City; they were faced with a changed social climate of the community as evidenced by its willingness to hire attorneys and proceed through the courts.

The NCDOT presented numerous transportation plans at public hearings and committee meetings, but not until 1980 when North Carolina adopted last resort housing was the State finally able to legally provide the necessary housing assistance to displaced families. The NCDOT also had a public relations problem with the Council because of the displacement of the Hayti Community in the 1960's.

The use of last resort housing by a state agency makes it possible to allocate additional money for housing needs of those displaced by a state road. The housing must truly be "last resort." It must be proven that no other assistance is forthcoming and the beneficiaries have no other recourse. Last resort housing, although available at the federal level in 1970 was not adopted by the North Carolina state legislature until 1980.

Prior to 1981, the major objective of the State DOT had been to cover the costs of highway construction. This compounded the City's problem of relocating the displaced citizens because it was evident that funding assistance was needed from the State.

Another component of resource allocation conflict was the refusal of the Department of Housing and Urban Development (HUD) to release funds for the community until an agreement was reached among the other parties to the conflict regarding the Expressway.

The history of the pre-negotiation process, highlighting issues and concerns throughout the period is given in Table 1.

In 1978, the City Council directed staff to prepare a relocation plan for the Crest Street Neighborhood. General data on the neighborhood was collected and a Citizen Participation Plan devised to involve citizens in the rehousing plan. The plan was not implemented due in large part to its emphasis on broad representation. As meetings between the parties progressed, it was found that the perspective provided by a few citizens who had already gained respect and support from the neighborhood could best serve the community's interests.

In 1979 the City Council voted against the Expressway and work ceased. After the November elections, the new City Council made the Expressway a top priority and began to exert pressure on the NCDOT and the Governor's office for assistance in the relocation of the Crest Street Community. Governor James C. Hunt was a principal player in getting the parties together. Time, attitude, and resources were the major factors that resulted in all parties agreeing to negotiate a settlement of the conflict that had been stalemated for the past ten years.

NEGOTIATION PHASE — PART ONE APRIL 1980

Formation of a Steering Committee in April 1980 marked the beginning of the first phase of the negotiation process. The Steering Committee was formed at a meeting attended by representatives

TABLE 1

1959	City thoroughfare plan; East-West Expressway (I-85 to RTP) highest priority needs, adopted by city and NCDOT.
1963	Public hearing held in which preliminary design for entire East-West Expressway was presented with generally favorable comments.
1968	Freeway construction commences: East end.
1970	First segment opens.
1972	Draft EIS, pursuant to NEPA, finished and circulated; Ecos Inc. et. al. sues to enjoin construction re violations of NC EPA; State Superior Court rejects motion for preliminary injunction; Plaintiffs bring same suit in federal district court only on NEPA violations, DOT Act of 1966, 23 USC 128 (Public Hearing requirements).
1973	District Court, after hearing on the motion, grants preliminary injunction as to the "Crest St." portion of the Expressway, pending compliance with federal statutes; Decision appealed to 4th Circuit; Court Appeal affirms preliminary injunction.
1974	Freeway completed to Erwin Rd.
1975	Crest St. Community Council formed and organized.
1977	NCDOT representatives meet with City to formulate agenda for finishing the freeway.
1978	First Neighborhood Public Meetings to get citizen input; Durham City Council directs City Administrator to prepare a rehousing plan for relocation of the Crest St. neighborhood "as a community"; City begins collecting general impact data; City and neighborhood representatives meet to develop rehousing plan; CSCC files Administrative Complaint with the USDOT alleging racial discrimination against neighborhood by NCDOT in Expressway route choice.
1979	Durham City Council, in February, resolves *not* to extend the Expressway as proposed and urges alternatives and rehousing plans stop; November Elections; Council reverses.
1980	USDOT, acting on administrative complaint, advises NCDOT that construction of Freeway along proposed route violates Title VI of the Civil Rights Act of 1964; Meeting held between the City, FHWA, NCDOT, to develop plan of action for resolution of impact problems; Steering Committee formed; NCDOT proposes five alternatives designs; Durham City Council approves zoning request for parcel in neighborhood from residential to commercial; CSCC withdraws, charging a breach of faith; Steering Committee dies.
1981	NCDOT meets with participants separately behind the scenes in an effort to restart negotiations; CSCC indicates that, in order to be acceptable, any design must include an agreeable mitigation plan; Three alternatives are chosen; Task Force-CSCC, Durham, Duke, FHWA, NCDOT, meet in negotiations and CSCC accepts with a home ownership plan attachment.
1981-1982	Task Force meets 2-3 times a month in negotiations; CSCC accepts; Durham Council Approves.

CREST STREET coordination meetings were held monthly for three years. (left to right) Jerry Autry — City of Durham; Louis Allen — NCDOT — Crest Street Coordinator; Jack Baldwin — Manager of R/W — NCDOT; Richard Smith — Planner — NCDOT; Bob Scott — FHWA — R/W; Mike Calhoun — Attorney — Crest Street Community.

of the City, FHWA and the NCDOT whose purpose was to formulate a plan of action to resolve the conflicts. The catalyst for the meeting was the USDOT advisory opinion to the NCDOT that construction of the freeway along the proposed route was in probable violation of Title VI of the Civil Rights Act of 1964. The Steering Committee comprised of top officials from each interested party (the NCDOT, FHWA, City, County, the Crest Street Community Council, Durham Committee on the Affairs of Black People, Duke University and the People's Alliance) held its first meeting in June 1980.

One of the committee's primary undertakings was to appoint a task force to study the neighborhood. In contrast, the task force members were not elected officials or particularly visible representatives of their respective agencies. As mid-level administrator and technicians, the first assignment of the task force was to coordinate a survey of Crest Street residents so that opinions on various issues could be compiled. Besides appointment of the task force, the Steering Committee reviewed five NCDOT-generated alternatives to the routing of the freeway.

One can surmise from the minutes and opinions expressed during this time that positional bargaining, posturing, and bad faith negotiations were the rule, rather than the exception, during this first phase of negotiations. If this is too harsh a judgment, then perhaps the best that can be said is that the Steering Committee was too visible to be effective. At any rate, power relationships were established at the expense of a negotiated settlement. Perhaps the establishment of legitimacy was essential prior to such a settlement. The first phase ended on November 10, 1980 when the City Council rezoned property in the West Fulton Street area (part of the Crest Street Community) from "residential" to "commercial." The neighborhood notified the Department of Highways that "...they were reassessing their role in the Steering Committee and would not participate in a task force meeting scheduled for November 24th."

A ten month impasse ensued in which a series of separate meetings were held between the NCDOT and the other parties. The NCDOT reassessed their own role in the negotiations and identified possible alternative courses of action in January of 1981. Essentially they had three alternatives.

1. Drop the project — a politically and economically costly alternative;
2. Push the project through and jeopardize the good relations they had established with all parties, including the FHWA, and eventually forced to go to court over the project; or
3. Negotiate a settlement.

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Of the three alternatives, the latter was the most desirable.

Between January and October of 1981, each of the major parties to the conflict met separately with the NCDOT. Basically, the NCDOT's aim was to get the neighborhood and the city to resolve their differences.

SECOND PHASE OF NEGOTIATION — OCTOBER 1981 TO DECEMBER 1982

On October 13, 1981 a full meeting of the task force took place signalling a new phase of negotiation. As in the first phase the same parties representing the same interests were present. However members of the politically visible steering committee did not attend.

Power relationships

When the task force reconvened, the relationships between the members were significantly different. Most of this change can be attributed to the legitimacy the neighborhood gained by virtue of the preliminary successful Administrative Complaint filed with the USDOT, and of the Council's 1980 refusal to participate in the Steering Committee in protest of city rezoning actions.

Of primary significance in this new round of meetings was the relative lack of any power struggles between the parties. The task force saw the Expressway extension as a problem to be solved by team effort. The staff from the City and the NCDOT ended up working closely together to solve the problem. The Council, after clarifying that they were only opposed to the effects of the freeway extension, made it possible for genuine progress to commence. The FHWA played a vital role in these sessions by interpreting the laws governing NCDOT conduct broadly so that solutions could be generated.

Time frame

Second phase negotiations took place from October of 1981 to December of 1982. Meetings were held two to three times a month. The negotiators themselves had severe time constraints that gave the proceedings a sense of urgency.

The time factor was also a stumbling block within the agreement process itself. The NCDOT was concerned that the City could not make the deadlines necessary to allow relocation and construction to commence unhindered. A second factor was that the rules governing timing of actions were different for both parties. For instance, the City required 60 days for condemnation proceedings whereas the NCDOT had immediate possession after filing with the Court. Such questions of timing continue to plague the parties.

During the course of the second phase of the negotiations, an approximate three year time table was superimposed on the agreement. This greatly aided all the parties in ensuring prompt and timely compliance with settlement provisions.

The New Bethel Baptist Church on Crest Street. A lot of the negotiations and meetings were held in the church. The church was a focal point and leader in the neighborhood.

Negotiation techniques

At the beginning of the negotiations, the NCDOT suffered from a poor image. In the eyes of the Crest Street Community Council this image was well-deserved as it was based on the precedent set in the late 1960's in which the Expressway displaced the Hayti community. This public relations problem had to be resolved before negotiations could continue. As a result of the meetings between the Council and the NCDOT, the Council's attitude toward the NCDOT changed and the neighborhood realized the NCDOT was willing to work with them.

If other parties had been involved, it is quite possible that last resort housing funds may never have been utilized and consequently, no settlement reached.

Strategies and alternatives generated

Despite the willingness of the parties

to work together, their sense of urgency, and their respect for the concerns of each actor, the mitigation plan and the negotiated settlement would never have been signed if some key events had not occurred. Primary among these was the state legislative approval of last resort housing funds for public agencies. The funds, approved in 1980, had been used before, but the NCDOT administration had not made a habit of using them. Individual personalities and attitudes of the negotiators (the NCDOT and the FHWA) made it possible for those funds to be used. If other parties had been involved, it is quite possible that those funds may have never been utilized, and consequently, no settlement reached.

Another significant event concerned the amount of land needed to build the interchange. This became a major problem in resolving the dispute. About the time the negotiations were underway, a new interchange concept, called the "urban diamond" was being tested in Florida. Its attractiveness was due to its conservative use of land as compared to contemporary interchange designs. Subsequently, this design was incorporated into the Crest Street plan.

The NDCOT, because it was able to use last resort housing funds, waived the usual requirement that the City acquire a share of the right-of-way for a major state roadway within its bounds. This waiver thereby freed money for rehabilitation and relocation, and encouraged cost-sharing efforts between the City and NCDOT. Previously, the City had a "bottom line" for monies to be used for Crest Street neighborhood improvements, which was not nearly enough to complete the needed rehabilitation for the neighborhood. Another event contributing towards the negotiated efforts was the large turnover in the City's community development planning staff at a time when new community development ideas (and plans) were welcomed.

Outcome settlement

The mitigation plan signed by the Durham City Council, the NCDOT and the Crest Street Community Council contains the mitigation efforts proposed by the above parties, including input from the FHWA. Funds to be used for the relocation project include Section 8, General Revenue Bonds, New Construction, Section 202; Section 8, Moderate Rehabilitation; and community development block grants. In the West Fulton Street area, the NCDOT pays all costs within the Expressway corridor, with area activities cost-shared between the State DOT (2/3 of the costs) and the City (1/3). Commercial redevelopment is proposed for the East Fulton Street area, with costs paid by the City and proceeds from sales shared by NCDOT and the City of Durham. Project costs for the City exceeded cost estimates by one million, with an additional $400,000 in expenses anticipated.

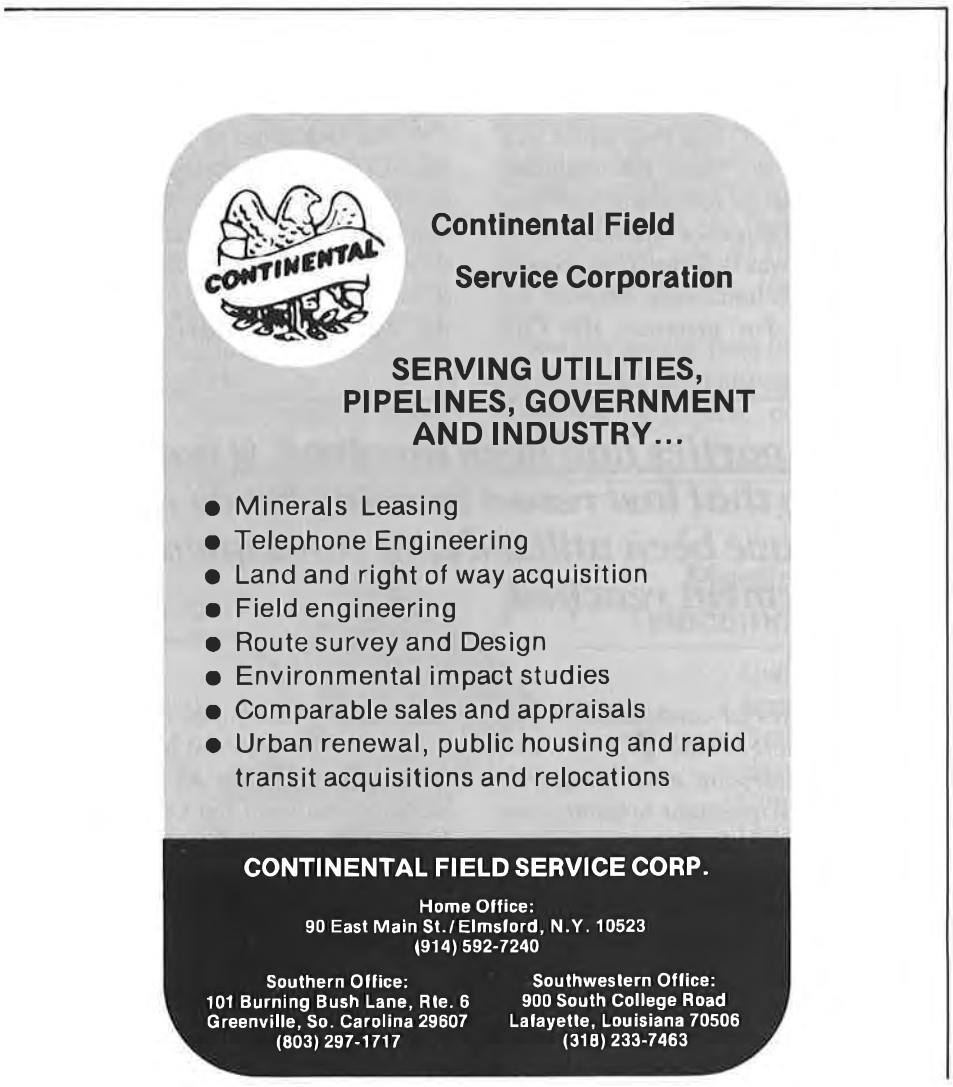
Construction and rehabilitation of dwelling units consists of the following:

65 houses rehabilitated (moved)
21 units in Hicks Elementary School rehabilitated (in place for elderly housing)
8 condominiums rehabilitated in place
12 new single family homes
45 Crestview apartments
4 houses rehabilitated in place

Recreation facilities proposed include a park, baseball field, and community center. NCDOT is responsible for constructing a noise abatement wall and landscaping along the right-of-way.

In order to accomplish the relocation project, the City and NCDOT agreed to offer relocation assistance benefits (which includes last resort housing benefits) for all displaced Crest Street residents who stay in the community. Relocatees have basically three options under the last resort housing provision:

1. remain as *owner-occupants*, and purchase a replacement dwelling (with relocation assistance based on a new home, mortgage costs, cost of property acquisition, and fair market value of the existing lot.
2. remain as *tenants* eligible for rental assistance payments, through state



funding (last resort housing) and for federal assistance (Section 202 federal loans), or

3. to convert from tenant to homeowner through a deferred mortgage loan provided by the City, the city rehabilitation program, conventional financing and the down payment relocation program.

Both the City and NCDOT agreed to assist the community with grant and subsidy applications. Today, the relocation assistance has resulted in an increase in home ownership from 10% to almost 95% of the Crest Street residents.

A second plan (called the Crest Street Community Redevelopment Plan) completed by the City and NCDOT on March 31, 1983, provides a more detailed description of the overall agreement, indicating project costs, project proposals, and steps for implementation.

POST SETTLEMENT PHASE

For a while the task force continued to meet once a week; later meetings were held once a month at City Hall. The parties now attending the negotiations include Mike Calhoun, attorney for the neighborhood, Frank Parker and Dick Hales from the City, Richard Smith and Louis Allen from the NCDOT, and sometimes an auditor or other interested party. All problems and progress reports were discussed at the meeting.

Presently, the relocation of residents is almost complete. All residents have chosen sites, all homes have been moved onto the project area. Most relocatees have chosen to own their home as opposed to renting, and also have chosen renovation over newly built homes. As mentioned earlier, city costs have exceeded earlier estimates, and are up to 4.9 million dollars as a result of neighborhood preferences and ill-advised land appraisals.

The relocation site continues to be under enormous growth pressure. A portion of the potential relocation land was sold during the negotiation process to establish a racquet ball club. Currently, the VA Hospital located directly south of the relocation site wants to lease East Fulton property to build a five level parking deck. It is also anticipated that the East Fulton property will be high in commercial value as a result of the East-West Expressway.

Implementation

The NCDOT has a renovated house/office near the site to facilitate relocation. They maintain a staff that works closely with the City in improving the site and coordinating financing for the residents. The NCDOT also oversees all construction and moving of structures. The City and the NCDOT have a maintenance agreement for landscaping, site improvements, infrastructure, etc., all of which is explained at length in the Municipal Agreement.

Post Settlement — Settlement

Few changes have been made to the original Redevelopment Plan and Municipal Agreement. Largely due to the combined efforts of all parties in preventing further amendments and hence further complications to the project, those changes that have been made have been relatively minor. For instance, originally the City was responsible for testing street construction but it proved to be more expeditious for the NCDOT to do, so this was changed. Also, due to the number of people who wished to own their own home rather than to rent, the planned apartments were changed into condominiums.

Start of construction on the extension has been moved up to June of 1986. The NCDOT is busy acquiring right-of-way, outside the Crest Street project.

NEGOTIATIONS EVALUATION

Jim Arthur, as mediator for the New England Mediation Institute, has had extensive experience in dealing with parties to development disputes and in working with those parties to bring about a mutually acceptable resolution of the conflict. At a recent question-and-answer session following a guest lecture by Mr. Arthur at the U.N.C. School of Law, he was asked, based on his experience, to identify those specific factors he felt to be essential to successful negotiations in environmental dispute resolution. In response to that question he identified six factors.

1. agreement on the essential parties involved in the dispute,
2. agreement on what the critical issues at hand are,
3. a balance of power between the essential parties involved in the negotiations,

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The photos on this page represent the conditions and type housing in the "Crest Street" neighborhood prior to redevelopment.

4. a sense of urgency to settle among the parties,
5. flexibility as to an acceptable settlement, and
6. uncertainty regarding the ultimate correctness of the course of action being pursued by each party.

These "success factors" appeared to be descriptive of the Crest Street negotiations. Moreover, the list of factors seemed apt for evaluating most development disputes. As a result, the Crest Street negotiations are examined in terms of each of the six listed factors.

Examination of the Crest Street negotiations

Essential parties

The old adage "too many cooks spoil the broth" is clearly as applicable to negotiated settlement as it is to culinary preparation. If too many parties are involved in an attempt to resolve a dispute, negotiations may become so complex as to make final settlement impossible. But in the long run, for any negotiated settlement to be implementable and durable, all parties critical to the settlement must be involved in the negotiation process.

Resolution of the Crest Street dispute entailed a process wherein the number of parties involved was pared down from those interested to those essential to implement and carry out the negotiated settlement. During the approximately two years during which negotiations to resolve the problems associated with the impact of the proposed Expressway segment on the Crest Street neighborhood took place, no fewer than nine separate groups were, at various times, represented at and offered the opportunity to participate in the negotiations (see Pre-Negotiation Phase). However, all parties eventually realized that while each of the listed parties had a legitimate interest in the negotiations at hand, no more than five of these groups were vital to the success of the negotiated outcome. Therefore, the task force which forged the final mitigation plan included the City (within whose municipal limits are located both the Crest Street Neighborhood and the proposed Expressway segment); the NCDOT (project overseer and final authority over the proposed freeway); the Council (representing the neighborhood to be displaced by the Expressway); Duke (a major landowner of significant properties both adjoining and within the proposed neighborhood relocation area); and the FHWA (a de facto mediator representing substantial federal interests, both legal and monetary, in the dispute resolution). It was soon realized that only three parties — the City, the NCDOT, and the Council — were essential to the resolution and implementation of the final mitigation plan. Consequently, the roles of the FHWA and Duke diminished as the

The issue that confronted the parties to the Crest Street conflict was whether a state, where no viable alternative corridor exists, could route a much-needed highway through a poor, minority-dominated, but close-knit community with little or no political clout, so as to destroy the very ties which make the neighborhood a community.

negotiations progressed and only the three listed parties signed the final agreement.

Critical issues

Just as it is important that all parties critical to the settlement implementation be involved in the negotiation process, it is likewise critical that the negotiators are in accord as to the critical issues at hand. The issue that confronted the parties to the Crest Street conflict was whether a state, where no viable alternative corridor exists, could route a much-needed highway through a poor, minority-dominated, but close-knit community with little or no political clout, so as to destroy the very ties which make the neighborhood a community? But even though this overriding issue was recognized early on by all the major parties involved in the conflict, the interests held by each major participant not only biased its perception of sub-issues and the relationship between parties in the whole process, but also colored its own interpretation of the overriding issue.

On the one hand, the City in 1979 received what was essentially a mandate from the electorate that the East-West Expressway was to be completed at any social or economic cost, given that this was a major plank in the platform of the mayor and many of the city council members elected at that time. The Crest Street Community, meanwhile, had watched the physical condition of its neighborhood deteriorate steadily over the years. City aid and reparation services to the area had diminished, due presumably to the belief that, one way or the other, (i.e., via either the Expressway or encroaching commercialization on the area) the Crest Street neighborhood was "on its way out." On the other hand, the NCDOT was subject to the constraints of relatively intense commercial, industrial, and institutional development in West Durham in planning the route for the final segment of the East-West Expressway, and as such had little real political or economic choice in proposing the freeway corridor as it did, through the Crest Street Community.

It was only when the individual interests of each major party to the dispute were recognized by the other principals as legitimate that the parties were able to view the major issue in the same light, placing the negotiations in a perspective capable of rendering them at least potentially successful. This focus was linked in large part to the attainment of power and legitimacy by the essential parties in the negotiations. As such, that balance of power appears critical, at least in the Crest Street case, to agreement by the parties as to interpretation of the critical issue(s) at hand.

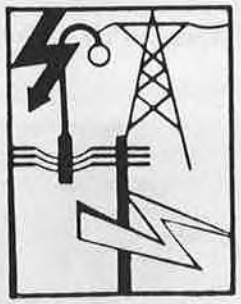
Balance of power

Both in the context of focusing attention on the critical issues involved in a dispute, and of guaranteeing that each party's interests are considered fairly, the balance of power among parties attempting to negotiate a dispute settlement is essential. Given the political nature of the setting surrounding the Crest Street neighborhood conflict, it is probable that there would have been no negotiated settlement of the case had each

Examples of rehabilitated houses that displaced families moved into.

major actor in the dispute not possessed legitimacy. And with legitimacy came the power represented by status substantially equal to that of the other parties involved.

The context wherein each party derived its power was somewhat different. The NCDOT, representing the state, possessed a number of powers. One was its legal authority as the instrument of the State, wherein it could utilize its powers of eminent domain. With this power it could move pretty much whomever and whatever it needed, while compensating those moved fairly, in order to secure right-of-way for a public thoroughfare. Further, the NCDOT possessed the "power of the purse." As such, within it's statutory authority, it was able to finance the Expressway by whatever means were suitable and necessary. Indeed, it was this very power relative to legislative authorization for last resort housing payments in 1981 which was viewed by all parties as a major turning point in the negotiations. Yet, as the 1980 advisory memo from the USDOT Director of Civil Rights advising the State DOT that construction of the freeway as proposed would violate the civil rights of the Crest Street citizens points out, the State's powers represented through the DOT were clearly not without limits.



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The City's power was also multidimensional. With its zoning power the city was able to tighten or loosen the noose around the neck of the neighborhood. The City could do this with the knowledge that rezoning carries with it a presumption of legal validity so long as reasonable and in accord with an existing comprehensive plan. Possibly of even greater importance was the derivative power of the City conferred upon it by the voters, in the 1979 city election who clearly stated their desire that the freeway be quickly completed. Nevertheless, like the powers of the other state arm — the NCDOT — both of these powers are legally constrained (zoning designations, for example, cannot be arbitrary) and politically constrained (as when the Crest Street Community Council withdrew from the negotiations in November of 1980 when the Durham City Council was perceived as acting in bad faith in rezoning a residential neighborhood parcel as commercial).

The ultimate power of the Community Council was largely de facto, deriving from two incidents alluded to above. The Community Council's September 1978 filing of an Administrative Complaint with the USDOT alleging racial discrimination, and subsequent preliminary agreement on the matter by the USDOT, established the Council as a power to be reckoned with. Absent some intervening event, at the very least the State was subjecting itself to the burden and expense of future litigation; at the most, the Council had the potential ability to preclude the disputed Expressway segment altogether. In the negotiations that ensued after this event (Council's act of terminating negotiations when the City acted in bad faith in the rezoning incident), make it clear that in the negotiations themselves, the Council had no intentions of "lying down and playing dead," but would have to be dealt with honestly and with integrity, as an equal. But as with the other parties, the Council's powers were not absolute — the act of walking out of the negotiations could well have resulted in the final breakdown of negotiations, consequent court action, and a non-guaranteed verdict of the racial discrimination complaint.

The effect of the substantial, but not unrestricted, powers possessed by each party to the negotiations was to create a climate wherein each side was likely to give due consideration to the views and interests of other parties, in order to have that courtesy reciprocated. Moreover, the existing balance of power — where no clear winner was likely to emerge via any non-negotiated settlement route — greatly increased the likelihood and desirability of a negotiated settlement on the Crest Street case.

Sense of urgency

Also increasing the probability and desirability of a negotiated settlement in the Crest Street case was the sense of urgency for a relatively quick settlement placed upon each of the parties by the chronology of events that took place before and during the negotiations. In the City's case, the electorate had made it clear that it wanted the Expressway finished quickly. Traffic congestion in West Durham was ever worsening, and continuation of the situation in limbo created a political liability for the then current City Administration. All of these facts and events helped to spur the parties toward a negotiated settlement. But there was a single urgency factor which was in the end one of the most important catalysts for the February 1982 final settlement. The City of Durham had, when the negotiations began, already been allocated by HUD monies to rehabilitate as many as 75 low-income rental units plus 20-year rent subsidies for those units. Pursuant to that end Durham had already considered and rejected a number of locations for these units, and unless they (or some portion of them) were placed by March of 1982, the allocation was to be withdrawn by HUD. So when the chance to utilize those allocated monies presented itself in the Crest Street case, the parties seized the opportunity and carried on marathon negotiation sessions in order to beat the HUD-imposed deadline for use of the subsidized housing funds.

With respect to the NCDOT, the Department had already invested tremendous sums of time and money in planning and in overseeing completion of approximately 60% of the East-West Expressway. Consequently, it could hardly back away from the proposed "Crest Street" freeway segment. (For example, even when the Durham City Council voted in February 1979 not to extend the Expressway as proposed, the NCDOT made it clear that the Express-

way was going to be finished, with or without the City's cooperation). And every day of delay in construction pushed up the final cost of the project a little more. Moreover, then Governor Hunt had his eye on the U.S. Senate seat up for grabs in 1984, and concerned with potential negative effects the dispute might have on his campaign, unofficially directed that the project conflict be resolved as soon as possible.

For its part, the Council knew that no improvements were going to be made to its neighborhood by the City until and unless the Expressway problem was resolved. Further, the Council feared the conservative national trend then occurring relative to the dispute: the USDOT officials who had advised the NCDOT that its proposed plan for the Expressway probably violated the civil rights of the Crest Street Community citizens had served under President Carter; by 1981 they had all been replaced by new officials who, it was believed, were likely to reverse the advisory opinion on the Administrative Complaint filed by the Council. Thus, the Council, as well as the City of Durham and the State DOT felt pressured by factors beyond their control to act in resolving the Crest Street conflict as quickly as was judiciously possible.

Uncertainty

When a party involved in a conflict maintains an almost fanatical mindset as to the correctness of its present course of action, a negotiated settlement becomes impossible. But where some uncertainty exists as to the correctness of the chosen course of action, that lack of assuredness can be used in the negotiation process to bring the parties toward a more central, mutually agreeable compromise solution to the issues in dispute. Lack of certainty in this context means only that a party is unsure as to the most correct course to achieve its objectives, and not that the party lacks conviction as to those objectives.

In the Crest Street negotiations, each party had specific and concrete interests in mind, but uncertainty existed as to how to best realize those interests. The City, for example, clearly wanted the East-West Expressway completed for economic and political reasons. But the City was unsure as to whether it was essential to displace the Crest Street neighborhood in the first place, and if so, how to mitigate such massive community disruption. For the NCDOT as well, there were political risks and associated costs related to the conflict which resulted in uncertainty. NCDOT was used to getting things done, and from an investment standpoint needed to finish the proposed Expressway segment as quickly as possible. Yet, while they were more insulated from the repercussions of displacing the Crest Street Community than the City, the State Administration in power at the time had a very real interest in minimizing the social and political impacts of displacement. The subsequent dilemma for NCDOT-whether to push forward as planned, or put things on hold until a viable alternative proposal could be derived — was fraught with uncertainty as to:

1. how much time and money to spend developing new alternative designs for the freeway in order to mitigate its social impacts.
2. the role the State should play in relocation of displaced residents (both administratively and financially), and
3. its role in relation to the desires and authority of the City in the dispute.

The Community Council, as representatives of the neighborhood to be affected by the Expressway, wanted both to maintain the integrity of the Crest Street Community and to improve the quality of life for its residents. But even with what appeared to be a strong potential case of racial discrimination against the State concerning placement of the Expressway, the Council was unsure whether stopping the freeway altogether was the proper path to pursue. After all, Durham did need the Expressway to improve traffic flow and relieve congestion in the western portions of the City (including the Crest Street area), no really viable alternative route for the freeway existed, and putting a halt to Expressway construction in no way assured the neighborhood of any improvements in terms of housing, or roads and other City services.

The net result was that the inherent uncertainty among the major actors in the Crest Street dispute contributed to a climate conducive to, and to the probability of, a successful resolution of the conflict through negotiations. The final mitigation agreement signed by the parties replaced the uncertainty experienced by each side with a sure path acceptable to, and presumably in the best interests of, all major parties to the Crest Street conflict.

Flexibility

Settlement of a dispute is enhanced where flexibility regarding resolution of pivotal issues exists. This allows a range of potential outcomes from which a mutually acceptable choice may be selected. In the Crest Street case it would be fair to say that by the time negotiations began, all essential parties believed in the reality, if not the necessity, both of constructing the Crest Street segment of the East-West Expressway and of relocating the Crest Street neighborhood as a community. And as the case history discussion makes clear, a number of alternative ways existed wherein these priorities might be accomplished. This is shown by the fact that the final negotiations task force came up with three different basic alternatives and accompanying mitigation plans that might have resolved the conflict. The alternative chosen was the plan that proved to be the most acceptable to the respective constituencies represented by each of the negotiators. (IRWA)

References

Information was obtained from interviews and a review of reports, plans and newspaper articles.

Allen, Lewis. NCDOT Crest Street Project Coordinator, Personal interview, April 16, 1985.

Calhoun, Mike. Attorney for NC Legal Aid Services in Durham County, Personal interview, April 20, 1985.

"Crest Street Community Impact Statement."

"Crest Street Redevelopment Plan," March 31, 1983.

Del Costillo, Linda. Former planner with the City of Durham, Personal interview, April 12, 1985.

"Final Mitigation Plan," December 15, 1982.

Hails, Dick, Planner with the City of Durham, Personal interview, April 11, 1985.

Memorandum to W.F. Caddell from Richard Smith.

Patterson, Willie. President of the Crest Street Community Council, Personal interview, April 15, 1985.

Smith, Richard. NCDOT Environmental Impact-ment Statement Coordinator, Personal interview, April 5, 1985 and April 9, 1985.

USDOT, FHWA and NCDOT. Final Environmental Impact Statement and Section 4(f) Statement. Durham East-West Freeway from I-85 to U.S. 70, Durham County, 1981.