



Mediation Information

Mediation is a voluntary, confidential and flexible agreement-building process in which a trained neutral assists negotiations between disputing parties. The mediator is not a decision-maker, and other forums for resolution are not precluded by opting to mediate. Mediation is a vehicle for efficient and productive communication among multiple parties. It provides a forum for the exchange of the best available technical information (thereby saving time and money by reducing the need for dueling experts and legal testimony).

Because mediation can be a place for parties together devise creative solution, mediation is often successful in producing mutually acceptable, high quality settlements and durable agreements that offer greater satisfaction than litigation. Parties involved in land use disputes should consider mediation when the issues in dispute are clearly defined and are of significant public concern; key parties are willing to explore settlement; and the outcome of the dispute is uncertain.

The Housing Appeals Committee, with additional financial sponsorship from the Massachusetts Housing Partnership, offers a mediation program under the authority of Standing Order 07-01. The program is administered by the Massachusetts Office of Public Collaboration (MOPC)¹ and provides a neutral forum for developers, municipal officials, and interested persons to exchange information and create new options for the settlement of disputes arising under MGL Chapter 40B, §20-23, the state's Comprehensive Permit Law.

Mediation Screening – Following the Conference of Counsel with the presiding officer, a MOPC program coordinator, also trained as a mediator, will meet briefly with the parties (together or in private) to explain the program, answer questions and discuss the parties' interest in working toward a negotiated resolution. Unless the presiding hearing officer orders the parties to mediation, the parties may at this stage elect to mediate the appeal or they may choose to continue the hearing process, while reserving their right to elect mediation later.

Subsidized Mediation - In a case with three or less parties, a total of \$2,400 is available to the parties for mediation. If the case has four or more parties, a total of \$3,600 is available. This mediation case budget may be used for the mediator's preparation, mediation, site visit, and travel time. As a general guide, the mediator will consider allocating up to 4-6 hours for prep depending on the complexity of the case, and 1-2 hours for site visits if needed. The mediator's travel is capped at \$300 of the case budget.

Voluntary Mediation – When the parties elect to participate in mediation, including interveners and interested persons if the parties agree, the MOPC program coordinator works with parties to select a mediator and schedule a mutually convenient session.

Mandatory Session – The presiding hearing officer may order the parties to a mediation session if, in the hearing officer's opinion, the matter is appropriate for mediation and the parties would benefit from the opportunity to assess the case with a skilled neutral, and may be ordered at any point in the hearing process.

What are the possible outcomes of mediation? The parties may agree on the terms of a settlement of some, all or none of the issues in the appeal. A resolution of all issues would lead to an agreement for dismissal or judgment.

¹ MOPC is a statutory state-funded center at UMass Boston and serves as a state-level resource for public agencies seeking to employ mediation, conflict resolution and collaborative approaches in service of their public missions.

Mediators – The mediators are drawn from MOPC’s panel of qualified private sector dispute resolution professionals. They have specialized training and/or expertise in affordable housing issues and have backgrounds in the areas most critical to these disputes, including environmental law, land use and construction, municipal law and public policy. They have extensive professional experience working with municipalities and developers in complex multiparty disputes.

Preparing for Mediation

Who should plan to attend? All parties to the dispute and any other persons needed to agree to a settlement should attend the mediation session. It is important that all decision-makers are present to work with the mediator, or available by phone.

Who may attend? Parties may be accompanied by their counsel and financial and engineering experts who can assist them in weighing settlement options. All participants in each mediation session must be identified to the program coordinator in advance to permit checks of conflicts-of-interest with the mediator.

What materials will be needed? All participants must sign an “Agreement to Participate in Mediation” in order to invoke confidentiality protections. MOPC’s standard agreement outlines the responsibilities of the parties and the parameters of the mediation process. The MOPC coordinator will also work with the parties to decide what materials would be most useful in addition to the initial pleading submitted with the appeal to the Housing Appeals Committee. The mediator may also ask the parties to submit a brief written outline describing the facts, issues, and negotiation history of the case in advance of the session - this outline is confidential and provides the mediator with each party's perspective on the dispute.

Is the mediation session confidential? Yes, the confidentiality of the session is protected by M.G.L. Chapter 233, Section 23C.

What happens in a typical mediation session? At the outset in a meeting with all parties present, the mediator explains the mediation process, answers questions, and asks each party to describe the dispute. After this joint meeting, the mediator may meet individually with each party at which time the mediator listens to the parties' concerns, asks questions to learn more about the dispute, and helps the parties to identify areas for possible agreement. Once the mediator has this information, the mediator assists the parties to negotiate an agreement by clarifying misunderstandings and ambiguities; facilitating the evaluation of the strengths and weaknesses of each party’s case; exploring options for mutual gains and realistic trade-offs; enabling parties to shape their own settlement terms leading to a mutually-acceptable resolution.

How long does a mediation session last? The typical 2-3 party mediation session can be set up for a half-day or a full day. For a mandatory session, parties must make themselves available for a four-hour mandated session and this may include a site visit within the allotted hours. For all mediations, MOPC encourages participants to reserve a few additional hours so that productive sessions may continue.

Where is the mediation session held? Mediations may be held at HAC’s offices, the mediator’s office, counsel’s offices, in the local town hall or other local facility, such as a library or community center. The mandatory sessions ordered by the presiding hearing officer will typically be held at HAC offices unless a site visit is useful or parties agree to mediate at another mutually agreeable location.

Who pays the cost if mediation continues after the subsidized hours are used? In participating, each party agrees to pay an equal share of the mediator’s fee: for cases with up to three (3) parties the fee is \$200 per hour, and for four (4) or more parties, the mediator’s fee is \$300 per hour. The parties will also share the costs of mediator’s travel billed at \$75 per hour, if so requested by the mediator.

For Additional Information: Massachusetts Office of Public Collaboration; UMass Boston, 100 Morrissey Blvd., M-1-627, Boston, MA 02125; Tel: 617-287-4040