



MASSACHUSETTS OFFICE OF
DISPUTE RESOLUTION & PUBLIC COLLABORATION
University of Massachusetts Boston



Housing Appeals Committee Mediation Program
Information Sheet

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. Other forums for resolution are not precluded by opting to try mediation first. 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 parties together devise *creative solutions*, 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 following factors are present: 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, administered by the Massachusetts Office of Dispute Resolution & Public Collaboration (MODR),¹ provides a neutral forum for developers, municipal officials, and interested citizens to exchange information and create new options for the settlement of affordable housing disputes arising under MGL Chapter 40B, §20-23, the state's Comprehensive Permit Law.

Mediation Screening – Following the initial meeting with the presiding officer at opening Conferences of Counsel, a MODR program coordinator, also trained as a mediator, will meet briefly with the parties to explain the program and answer questions. The coordinator may meet with each party in a private session to assess the ripeness of the dispute for mediation and the parties' interest in working toward a negotiated resolution. At this stage the parties may elect to mediate the appeal or they may choose to continue the hearing process, while reserving their right to elect mediation at a later time.

Voluntary Mediation – The MODR program coordinator works with parties who elect to participate in mediation, including interveners and interested persons if the parties agree, to select a mediator and schedule a mutually convenient session. There is no fee charged for the first eight hours of voluntary mediation, whether scheduled in one full-day or two half-day sessions.

Mandatory Session – In addition to a voluntary election by the parties, the presiding officer may order the parties to a mediation session if in the 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. This session may be ordered at any point in the hearing process. The mandatory mediation session is scheduled for three hours at no charge to the parties. These sessions are held at HAC offices unless the parties together make alternate arrangements. MODR's program coordinator assigns a mediator, who reports the outcome of the session to the presiding officer following the mediation.

Mediators – All mediators are drawn from MODR'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.

¹ MODR is an institute of the University of Massachusetts Boston providing high quality mediation, training, meeting facilitation, system design and other alternative dispute resolution services.

Preparation 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.

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. MODR’s standard agreement outlines the responsibilities of the parties and the parameters of the mediation process. Additionally, the mediator may ask disputants to submit a brief written outline describing the facts, issues, and negotiation history of the case in advance of the session. The 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 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 usually meets 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- to 3-party mediation session lasts approximately four (4) hours, but MODR asks participants to reserve the entire day so that productive sessions may continue.

Where is the mediation session held? Mediations arranged by the parties may be held at MODR’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 officer will be held at HAC offices.

Who pays the cost after the 8 free 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. A travel fee of \$75 per hour is allowed outside of a 25-mile radius of the neutral’s home or office.

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.

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