

Housing Appeals Committee Mediation Program Information

A mediation program administered by the MA Office of Public Collaboration

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 to devise creative solutions together, 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.

Following the Conference of Counsel with the presiding officer, the parties may elect to mediate the appeal or choose to continue the hearing process, while reserving their right to elect mediation later. The presiding officer also may order the parties to mediation.

Mediation Process

Once a case is referred to mediation, the MOPC program coordinator will email the parties a questionnaire for further information to return by a specified deadline and inform the parties whether the case is undergoing active scheduling or in queue for scheduling. If in active status, the program coordinator will schedule a brief conference call to explain the program, answer questions and discuss next steps for scheduling the mediation session. If the case is in queue for scheduling, parties will be asked to return the questionnaire and will be notified as soon as the case changes to active status. To schedule cases in a timely manner, MOPC will provide parties and interested persons, if any, with deadlines which if not met by the parties and interested persons, may result in the scheduling of the mediation being suspended and the case moved into queue until other cases are scheduled.

Subsidized Mediation – The program includes the mediator's case prep, the first mediation session up to four hours (incl. a site visit), travel time if a site visit is needed, and any brief post-mediation follow-up between the parties and the mediator. The mediator can request an additional two hours of mediation session time if needed.

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 withdrawal of the appeal, dismissal, or judgment.

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

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.

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 Housing Appeals Committee proceeding and any other persons on their behalf needed to agree to a settlement should attend the mediation session. If parties agree, non-party interested persons may participate in the mediation. It is important that all decision-makers are present to work with the mediator, or available by phone. Parties may be accompanied by their counsel, financial and/or engineering experts who can assist them in weighing settlement options. All attendees to a mediation session are “participants.” 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 and must sign the “Agreement to Participate in Mediation” (ATM) before attending.

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

What materials will be needed? Each party must submit the mediation questionnaire. 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 and the ZBA Decision. The parties have the option to submit a brief written statement describing the facts, issues, and negotiation history of the case in advance of the session - this statement is confidential and provides the mediator with each party's perspective on the dispute. All participants must sign an “Agreement to Participate in Mediation” to invoke confidentiality protections. MOPC's standard agreement outlines the responsibilities of the participants and the parameters of the mediation process.

What happens in a typical mediation session? At the outset in a meeting with all participants present, the mediator explains the mediation process, answers questions, and asks each party to describe the dispute. After this, the mediator may meet individually with each party to listen to their concerns, ask questions to learn more about the dispute, and help them to identify areas for possible agreement. The mediator also assists the parties to negotiate an agreement by clarifying misunderstandings and ambiguities; facilitates the evaluation of the strengths and weaknesses of each party's case; explores options for mutual gains and realistic trade-offs; thus enabling the parties to shape their own settlement terms leading to a mutually acceptable resolution.

Where is the mediation session held? Mediations are held virtually on Zoom. If a site visit is necessary, the mediation may be held in person, for example at the mediator's office, counsel's office, town hall, local library or community center.

How long does a mediation session last? The initial mediation session is scheduled for four hours (including a site visit if needed). MOPC encourages participants to reserve a few additional hours so that productive sessions may continue since the mediator may request an additional two hours of mediation time for the same day or an additional date. If the appeal is ordered to mediation, parties are required to only attend the initial 4-hour session.

Who pays if mediation continues beyond the subsidized hours? If the parties and the mediator agree to continue mediating beyond the subsidized program hours, the parties will work directly with the mediator regarding the mediator's fees and billing. Typically, the parties split the fee, and they are billed directly 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 (please indicate that your inquiry is about the HAC Program to be directed to the appropriate staff.)