
Evaluating Systems of Land Use Mediation in Vermont

The benefits of using mediation, including cost and time savings and better outcomes, have been well documented in negotiation literature over the past three decades. When applied to the land use context, although mediation has successfully resolved disputes it is typically ad hoc, applied from jurisdiction to jurisdiction, case by case, as inclination and resources determine.

To evaluate the use and applications of mediation across a “system” of land use decision-making, the Consensus Building Institute and Green Mountain Environmental Resolutions (GMER) conducted an eighteen-month screening and evaluation study in the State of Vermont. The study sought to examine mediation across the land use system within the state, from local boards to the state court level, and to evaluate mediation screening to help determine if and how to identify cases where engaging in mediation may be appropriate, prior to the appeal stage. While the study focused on land use decisions in Vermont, it sought to identify lessons that can inform local land use decision-making processes in other states and across the country.

Our evaluation of data on over three hundred Vermont land use cases at the local, Act 250, and Environmental Court levels, resulted in the following lessons learned:

- Screening for mediation assists with settlement.
- Screening criteria are useful but not determinative.
- The screener’s qualifications and credibility matter.
- Screening program design is important for legitimacy among many users including other mediators.
- Land use mediation is more about identifying interests and options and reaching a settlement, rather than restoring relationships or building “community.”
- Even when mediation does not result in satisfying agreements, parties may find satisfaction in the process.

- The environmental court's embrace of mediation has salutary effects on settlement earlier and upstream.

Given our findings and experience, we have identified the following recommendations for designing a mediation screening program:

1. Mediation screeners and mediators should be trained and informed in land use issues, law, and the regulatory structure into which mediation outcomes must fit.
2. The screening process must be transparent and clear.
3. A screening program should allow parties to choose a mediator, should mediation be recommended.
4. The screening program requires feedback on its recommendation of cases for mediation.
5. While acknowledging the many barriers to establishing effective local screening and mediation programs, there are options for making the mediation screening at the local level more effective.

As disputes become more complex and as resources, time, and money for resolving land use disputes become scarcer, it will be important to find efficient and reliable methods for settling cases. Mediation and mediation screening hold great potential for the efficient and reliable resolution of land use disputes.

You can [download a copy of the study](#), which includes extensive details on the lessons and recommendations mentioned here). You may also refer to an article on this topic in [CBI Reports, Spring 2009](#).

If you would like more information, please contact Managing Director of North America Programs at CBI Patrick Field at pfield@cbuilding.org.