

## **KCBA Land Use Mediation Focus Group Summary and Recommendations (Phase 1)**

### **I. Introduction**

In early 2010, the King County Bar Association Alternative Dispute Resolution Section formed a Land Use Mediation Focus Group to examine the role of mediation in land use disputes. Land use disputes include disputes relating to private development proposals, a city or county's adoption of zoning regulations, annexations, and public infrastructure projects.

The Focus Group is composed of land use attorneys and hearing examiners representing a wide range of interests in the land use community, including developers, property owners, local jurisdictions and community groups. The group has met on a monthly basis and has held a total of six meetings, as of August 2010. The Focus Group has discussed the following topics:

- What is the current role of mediation in land use practice and why?
- What factors should be considered in determining which issues are appropriate for mediation?
- What strategies and incentives does the group recommend to encourage the use of mediation?

### **II. Findings**

Mediation is used infrequently in land use matters. Barriers to the use of mediation include difficulty in identifying parties, the procedural requirements of land use law (including land use permitting processes and open public meetings requirements), the significance of delay in the permitting process, distrust between the parties and the lack of mediators with substantive expertise in this area.

Nevertheless, mediation can provide a valuable tool for the resolution of land use disputes. Land use disputes are costly and time consuming for all parties. Mediated agreements reduce the cost and delay associated with administrative and judicial appeals. They also allow the resources otherwise devoted to conflict to be put to better use, to produce a project with higher quality design and increased environmental protection, or a regulation that better serves the interests of all stakeholders.

### **III. Strategies**

The Focus Group has identified several strategies and incentives for encouraging land use mediation. These are many and varied, ranging from raising awareness of this option to making legislative changes to land use laws. The group believes several of these strategies are viable but that raising awareness should be pursued as a first step. The group has identified a number of methods for raising awareness, including compiling a

list of land use mediators, making presentations to interested groups, and coordinating with other alternative dispute resolution and land use organizations.

#### **IV. Short-Term Recommendations**

The group has developed the following recommendations for the remainder of 2010:

- Compile a list of persons with basic mediation training and land use expertise with an interest in providing mediation for a moderate fee. Alan Alhadeff has agreed to be the “keeper” of this list. A document describing the list is attached.
- Give presentations on land use mediation to a variety of different groups, including but not limited to the WSBA Environmental and Land Use (ELUL) Section (CLE scheduled for 9/16/2010), Association of Washington Cities (AWC), Washington Cities Insurance Authority (WCIA), Washington State Association of Counties, Washington State Association of Municipal Attorneys, Washington Association of Prosecuting Attorneys, Hearing Examiners Association of Washington (conference on October 14-15, 2010), Washington Association of Planning Directors, and Master Builders.
- Coordinate with Dispute Resolution Centers (DRCs), particularly the Kitsap County DRC, regarding providing mediator with land use expertise to assist in land use cases. Kitsap County recently mandated mediation for some types of Hearing Examiner land use cases.
- Coordinate with the State Bar ELUL and ADR Sections and County Bar Real Property, Probate & Trust and ADR Sections.
- Coordinate with Department of Commerce. The Department has developed a list of mediators for Growth Management Hearings Board cases and may be able to assist with outreach and potential legislation.

#### **V. Long-Term Recommendations**

- Consider drafting a model ordinance that would allow individual jurisdictions to adopt appropriate mediation schemes (including criteria, timeframe, who mediates, who pays, whether mediation is mandatory or voluntary).
- Consider working with a local jurisdiction with a strong mediation program (such as Bellevue) on a land use mediation pilot program
- Consider potential legislative amendments to (1) provide risk of attorneys fees if mediation is not used; (2) allow change in prior government decision on project to implement settlement agreement; (3) provide tax credit or other financial incentive for developers who participate in mediation; (4) impose time frames for

mediation to reduce concerns about delay; (5) allow “fast tracking” for projects participating in early mediation.

## **VI. Next Steps**

Implement short-term recommendations in 2010. Based on input, develop a work-plan for 2011.

## **ATTACHMENT** **RESOURCES FOR LAND USE MEDIATION**

### **Mediation in Land Use Matters**

Mediation can provide a valuable tool for the resolution of many land use disputes. Land use disputes are costly and time consuming for all parties. Mediated agreements reduce the cost and delay associated with administrative and judicial appeals. They also allow the resources otherwise devoted to conflict to be put to better use, to produce a project with higher quality design and increased environmental protection, or a regulation that better serves the interests of all stakeholders. Yet, the use of mediation in land use matters is rare.

### **WSBA/KCBA ADR Focus Group**

The Washington State Bar Association and King County Bar Association Alternative Dispute Resolution Sections have formed a Focus Group to examine the role of mediation in land use disputes. The Focus Group has identified the scarcity of trained mediators with land use expertise as one barrier to the use of mediation in land use matters. As a result, the Land Use Mediation Focus Group is compiling a list of land use practitioners interested in serving as mediators.

### **Mediator Qualifications**

Mediators will have at least 40 hours of basic mediation training. Basic mediation training is available from a number of providers, including the University of Washington Professional Mediation Skills Training (<http://www.law.washington.edu/clinics/mediation>), government sponsored dispute resolution centers (see the training resource list on the Washington Mediation Association web page, <http://www.washingtonmediation.org/organizations.html>) and private mediators, including Alhadeff & Forbes ([http://www.mediationservices.net/training\\_services.html](http://www.mediationservices.net/training_services.html)).

In addition, mediators will have significant experience with land use disputes. Land use disputes include disputes relating to private residential, commercial or industrial development proposals; the adoption or amendment of comprehensive plans, zoning, critical areas regulations or shoreline regulations; annexations; and public infrastructure projects.

There are a number of other types of disputes that relate to property but are not considered land use disputes by the Focus Group because they are primarily about the payment of money. These disputes include, for example, who should pay for the cleanup of contaminated property, whether a builder is liable for construction defects, or whether a government entity charged too much in development fees. While real property disputes, such as those involving boundary lines or easements, are often matters that would benefit from mediation, they are not considered land use disputes by the focus group because they do not primarily involve land use permitting or legislation.

### **Contact**

If you are interested in serving as a land use mediator, please contact Alan Alhadeff at [alan@mediationservices.net](mailto:alan@mediationservices.net) or (206) 281-9950.