

November 2008

Some personal notes regarding a typical mediation

Preparation

- Review of the file(s).
- Main room setup conducive to a comfortable and inclusive meeting (one large table with all parties and Board sat around, water, display easels/flip charts).
- Securing other rooms for parties to meet privately and for caucusing.

Introductions

By the Board Member including:

- Name and welcome. Benefits of settling. Rough schedule for the day.
- Matters of conduct including “without prejudice”/confidential nature of the process and Board Member non-disclosure in any future proceeding.
- Involvement of participants.
- Interests v. positions explanation. Encouraging the language of interests.
- Authority of the parties to settle. Actual authority v. recommending authority. Understanding the nature of other approvals that might be necessary if a settlement is reached (without prejudice, in-camera).
- Use of caucusing at the request of the Board or any party. Rules of caucusing such as disclosure of matters by the mediator to the other parties.
- Termination circumstances.
- No mediation report.
- Consent of the parties for attending Board Member to dispose of the matter if a settlement achieved.

By the Parties including:

- Name and a short introduction of their interest, not position, in the matter.
- Options for addressing interests. “Thinking outside the box.”

Engagement

Open Session including:

- Establishing an order of addressing the issues.
- Correlate issues with interests.

.....2

- List and agree on reasonably feasible alternative options for satisfying interests.
- Prioritize options if possible without animosity.
- Seek consensus of any obvious solutions.

Caucus

- Maintain calmness.
- Establish appreciation of other party positions, interests and options for resolution.
- Hear proposals for acceptable resolution.
- Explore deal breakers and deal makers.
- Consider requests for neutral evaluation (preferably as late in the day as possible).
- Consider commencement of shuttle diplomacy with the parties.
- Confirm what may be shared with other parties.

Conclusion

- Confirm settlement conditions, agreed facts and outstanding issues or failure to succeed.
- Timing to resolve any outstanding conditions.
- Procedure leading up to any necessary final decision/order including any issues of disclosure.
- Reinforce the sanctity of “without prejudice” and “non-disclosure.”

Ontario Municipal Board Mediation Streams, Criteria and Process

- A Mediation Assessment is a prerequisite for all mediations.
- Requests for mediation must be confirmed in writing.
- Conversion of any hearing event into mediation is subject to a Mediation Assessment.
- No mediation reports will be produced by the Board.
- More information at www.omb.gov.on.ca

Respectfully submitted,
Don Granger
Vice Chair, Ontario Municipal Board