USE OF MEDIATION IN INTERMUNICIPAL DISPUTE RESOLUTION

Literature Summary

prepared for the

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INTRODUCTION

Over the last several decades, there has been a dramatic increase in the use of mediation, and in the range of dispute types to which it has been applied. From its beginnings in labour law, the practice of mediation has spread to many other areas of dispute resolution, such as family law, commercial conflicts, civil law, professional misconduct, and public and environmental disputes. Mediation has also become well accepted at the municipal government level. However, it has been primarily limited to conflicts between municipal governments and individual applicants for required permission to carry out activities such as severing land, demolishing structures, building additions, and connecting to sewers. Less common has been the application of mediation in attempts to resolve disputes between municipalities and higher levels of governments, such as counties, regions, provinces/states, and (rarely) national governments. One of the most common examples of a mediated dispute between multiple municipalities and a higher level of government has its origins in the United States in the early 1980. It is the Negotiated Investment Strategy (NIS), addressing the allocation of state funding to municipalities. There has also been some attention paid by the literature to the issue of multi-municipal consensus-based or collaborative planning, especially that directed at regional problems. However, none of these initiatives made use of an independent neutral party serving as a mediator or facilitator.

There have been rare examples of, or research on, the application of mediation (or other forms of alternative dispute resolution such as unassisted negotiation and facilitation) to disputes *between* municipalities. However, there is an abundance of anecdotal evidence, and one survey of Alberta municipalities, suggesting that municipalities frequently find themselves in conflict with each other. Traditionally, municipal governments have relied on informal negotiation to reconcile their differences. When this fails, they resort to more adversarial, costly and time consuming channels such as hearings before a quasi-judicial tribunal or a court of law. The use of mediation to attempt to resolve these disputes is a relatively new development. The purpose of this document is to review the most recent and important literature on this rarely studied topic of intermunicipal mediation.

ORGANIZATION

Publications were selected for inclusion in this literature review based on the following criteria: degree of focus on the narrow topic of intermunicipal mediation, currency, Canadian content, and contribution of practical lessons and conclusions applicable to Canadian municipalities. This review is intended to be comprehensive but brief, and therefore it is not exhaustive. Sources are presented in chronological order, beginning with the most recent. With a few exceptions, the sources are available in the ICURR library. Omitted from this review are the large number of sources on the application of other alternative dispute resolution (ADR) methods such as negotiation and facilitation to resolve conflicts between municipalities; and those addressing the mediation of disputes between municipalities and other levels of government, such as provinces and states.

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City of Calgary and Municipal District of Foothills. 1998. *Municipal District of Foothills / City of Calgary Intermunicipal Development Plan.* Calgary: City of Calgary Planning and Building Department and Municipal District of Foothills Administration.

The plan addresses growth-related issues between the City of Calgary and the Municipal District of Foothills, which lies to the southwest. It deals with development issues as they relate to numerous key sectors, including agriculture; utilities; transportation; aggregates; and residential, commercial, industrial and institutional development. It also addresses other potential sources of conflict between the two municipalities, such as open space and annexation.

The most relevant section to this review is that entitled *Intermunicipal Dispute Resolution*. It establishes a five stage process for resolving disputes between municipalities over land use redesignation applications, area structure plans and plan amendments, and Intermunicipal Development Plan amendments. Each successive stage is used only if the preceding stage was unsuccessful, and if both municipalities agree to proceed. The dispute resolution process does not release municipalities from their obligation to meet certain time limitations and legislative requirements (*e.g*. the provision of notice).

The first stage is Administrative Review, and involves the municipality in which the proposed development is located (the "initiating municipality") providing complete information to the other municipality (the "responding municipality"), which then completes a technical evaluation of the proposal. Should it not be possible to process the proposal at this level, either municipality may refer the dispute to an Intermunicipal Committee for review, which is the second stage. The committee consists of representative from both municipal governments. After hearing arguments from each municipality, the committee may render a consensus opinion either supporting or opposing the proposed development, may suggest revisions to the proposal, or may refrain from expressing an opinion if unable to reach a consensus. It may make use of a facilitator to assist it in reaching a consensus. If the dispute remains unresolved after this stage, the municipalities may agree to refer it to both Municipal Councils (Stage 3). Each council formulates its position on the proposal after reviewing the recommendations of the Intermunicipal Committee and its own municipal administration. If both councils decide to support the proposal, then the approvals process can proceed. If both oppose the proposal, then it is terminated. Only if one supports it and the other opposes it may the proposal be referred to Mediation (Stage 4), with the consent of both municipal administrations.

The cost of mediation is borne equally by the disputant municipalities, each of which has an equal number of representatives at the bargaining table. Each municipality participates in the selection of the impartial mediator, and in the setting of the schedule and location of the mediation sessions. Sessions are confidential until the termination of the entire mediation process. Participation is voluntary, as is adoption by the respective municipal councils of any agreement reached. At the end of the mediation, the mediator submits a report to each municipality. If a mediated agreement in achieved, it is recommended to the councils of each municipality, along with the mediator's report. No mediated agreement is binding on the parties, and must be approved by both councils.

In the event that no mediated settlement is achieved and the disputant municipalities agree to terminate the mediation process, the conflict moves to the final stage, the Appeal Process. This involves the initiating municipality simply passing a bylaw to implement the proposal. The responding municipality may then appeal the bylaw to the Municipal Government Board, which hears the case and renders a decision on it.

De Hoop, James B. M. 1997. *Municipal Restructuring in Kingston-Frontenac: The 'How' and 'Why' of Local Government Consolidation from a Central City's Perspective.* A project submitted in the Master of Public Administration program. Kingston: Queen's University.

The author is an administrator with the City of Kingston, and wrote this report toward his Masters of Public Administration. The report examines the reasons behind, and process used to implement, municipal amalgamation in response to the Ontario *Savings and Restructuring Act* of 1995 (Bill 26). It focuses on the amalgamation of the City of Kingston with its surrounding urbanized townships. The greatest contribution of the report is in offering municipalities facing amalgamation/restructuring advice on how to achieve greater fiscal equity and more constructive relationships with and between neighbouring municipalities. The recent policy initiatives of the Progressive Conservative government of Ontario which have reduced funding to municipalities, and their dissolution and reconstitution into larger amalgamated jurisdictions, has brought the debate about amalgamation to the forefront.

This report will be of interest to the many municipalities in the province contemplating restructuring in order to achieve financial viability in the face of dramatic budget cutbacks. The

documented experience of Kingston-Frontenac should assist local governments in judging the potential advantages and disadvantages of amalgamating with neighbouring municipalities, and in negotiating restructuring agreements. The report argues that the provincial government's restrictive objective of simply "less government" and its lack of attention to ensuring fiscal equivalency between and among urban municipalities has generated an unnecessary level of intermunicipal conflict and fear.

After summarizing the key literature discussing the theory and rationale behind municipal reform and restructuring, the report outlines the background leading up to the need for the restructuring of Kingston-Frontenac, and how the dispute was referred to mediation. Although it briefly discusses several key events that occurred during the mediation, the report lacks any information about the process that would be useful to other municipalities facing the same challenges. This is unfortunate, especially given the success of this mediation process in generating an amalgamation agreement between the constituent municipalities. Although the author cites mediation confidentiality as the reason this information is missing, there are several well accepted research techniques that may have allowed this obstacle to be overcome.

However, the author does address the strengths and weaknesses of applying negotiation in this situation, and uses an interview survey of members of the governance review committee to anticipate the consequences of the amalgamation and to draw conclusions on how the Government of Ontario could better facilitate municipal restructuring.

McCarty, K. S. and D. Lipsey. 1997. "Dispute Resolution: A Mediation Tool for Cities." *Issues and Options*. 5(10).

This document is one in a series published by the National League of Cities, entitled *Practical Ideas of Local Government Leaders*. It reviews several scenarios in which mediation has been used in a municipal setting, such as citizen mediation in the Portland Police Department and in town meetings held in Durham, North Carolina. Included are several case studies.

The only case that involved mediation *between* municipalities occurred in Durham, between the predominantly black City and the mainly white County, over the controversial merger of the two school districts. Inequities and disparities in funding, quality and facilities between the two districts had been a contentious issue for many decades, and there had been

many unsuccessful attempts to merge the two systems dating back to the 1920s.

Mediation began in 1988, between 41 organizations serving on a School Merger Task Force, and representing a broad spectrum of interests within the community. The mediation was designed and run by the Dispute Settlement Center of Durham, which provided a total of 15 volunteer mediators. The US$30,000 to US$35,000 cost of the mediation process was borne by the County. The mediation sessions took place approximately monthly, from August 1988 to May 1989. In addition, five subcommittees were formed, and met more frequently than the Task Force. Three public meetings were also convened to solicit input from the broader public, and were facilitated by the Dispute Settlement Center. The 10 month process culminated in the production of a report to the County Commissioners. The report included 153 recommendations for improving the two school board systems, and a general plan for merging them. This guided the eventual merger, which occurred in 1992 and has been widely accepted by the public.

Although it describes the Durham school board merger case only briefly, the document concisely captures the essence of this innovative process of public decision making involving contentious issues. It also identifies several key components of a public mediation process: making the process open to the participation of any interested organization; obtaining as broad representation at the bargaining table as possible; using an experienced and neutral organization to facilitate the process, while retaining its control in the hands of the participants; including public meetings parallel to the mediation sessions; and convening subcommittees to concentrate on particular areas of the dispute. This case provides a model for the use of mediated citizen forums, facilitated public hearings, town meetings, and publicly televised conferences in the resolution of other types of public disputes, especially those between adjacent municipalities.

British Columbia. 1995. *Reaching Agreement on Regional Growth Strategies*. Victoria: British Columbia Ministry of Municipal Affairs, Corporate Policy Branch, Growth Strategies Office.

In 1995, the Government of British Columbia enacted the Growth Strategies Statutes Amendments Act, to encourage municipalities and regional districts to cooperate and coordinate their planning for growth and change, since these issues transcend jurisdictional borders. It assists local governments in identifying shared concerns, and encourages them to build

consensus toward jointly beneficial solutions to growth-related problems.

This guide outlines how municipalities and regional districts can use alternative dispute resolution (ADR) techniques such as negotiation, facilitation and mediation to reach agreement on regional growth strategies and regional context statements. It also outlines the purpose and contribution of the new legislation, including its specification of the minimum contents of a regional growth strategy, and the required process of assembling a strategy.

After identifying the traditional channels of resolving conflicts between municipalities (including regions), such as voting, ministerial approval, adjudicative tribunals and the court system, the guide devotes the remainder of its contents to discussion of how ADR methods may be used within the "interactive regional planning" model established in the new legislation. This model strives to reduce the incidence of unresolvable conflicts between the government parties through consensus-based planning and decision-making, and to quickly and equitably resolve those conflicts that do arise.

The guide will be useful to municipalities and regional districts in British Columbia that have had little experience with collaborative planning and dispute resolution tools. It provides valuable guidance on a fundamental component of the Growth Strategies Statutes Amendments Act: the avoidance and resolution of disputes between local governments concerning growth management. One of its most useful features is the identification of principles of effective collaborative decision-making and dispute resolution processes. While it serves as a good introduction to these issues, the guide is weak in its shortage of specific, implementable strategies. Governments with prior exposure to collaborative planning and conflict management will find that the guide adds little to the large body of literature in this area.

Susskind, Lawrence. 1993. "Resolving Public Disputes." In Lavinia Hall, ed. *Negotiation: Strategies for Mutual Gain: The Basic Seminar of the Harvard Program on Negotiation*. Newbury Park, California: Sage Publications. 61-76.

The author of this chapter is widely regarded as a pioneer in the field of alternative dispute resolution (ADR). In this piece, he turns his attention to disputes in the public sector. He begins by characterizing the types of public disputes, then identifies the inadequacies of the traditional judicial and legislative means of resolving them. He argues that these channels should

be supplemented (but not replaced) by ADR processes, since the former generate outcomes that are insufficiently fair, efficient, stable and wise. After discussing some of the limitations of ADR, Susskind calls for the creation of additional state offices of mediation, citing their success in experimental use in several states.

He then outlines three key principles to guide a consensus-building approach to conflict resolution. The first is that the real stakeholders in the dispute should select their representatives at the bargaining table specifically for that process. Second, the stakeholders should share a common goal of reaching a consensus agreement; and the process should be terminated only if a settlement is reached or the parties all agree that this goal cannot be achieved. Finally, in disputes with multiple issues, the representatives should jointly choose a neutral and mutually acceptable facilitator or mediator to assist them.

What makes this chapter useful in the study of intermunicipal mediation is the second of the two case studies examined: the author's successful mediation of a dispute over the funding and construction of a regional sewerage district in Camden, New Jersey. In 1979, the state passed legislation making several towns, cities and suburbs in the region part of a regional sewerage district. This was strongly opposed by many of the municipalities, for various reasons relating to the distribution of the project's costs. After fourteen years of litigation in the courts, a judge appointed the author as special master to mediate the dispute. Voluntary participants in the mediation were representatives of each municipality in the region, and the state and federal governments. The mediator worked with the parties to build consensus on the design of the new sewer system and the distribution of its cost among the municipalities. The constitutional issue of whether each municipality would be required to be included in the regional district was dealt with separately by the courts, as the judge deemed it inappropriate for mediation.

The author briefly discusses specific strategies that the parties successfully used to resolve this intermunicipal dispute. Key techniques included mutually selecting a single team of technical consultants, joint fact-finding, cooperative option invention, private caucus meetings between the mediator and individual parties, and synthesis by the mediator of a composite proposal based on input from the parties. The parties achieved agreement on all key issues, allowing all of the litigation to be terminated.

Godschalk, David R. 1992. "Negotiating Intergovernmental Development Policy Conflicts: Practice-Based Guidelines." ***Journal of the American Planning Association*****. 58(3): 368-378.**

Governments of neighbouring jurisdictions are often involved in development policy conflicts when their authority overlaps for land use, natural resources, infrastructure or area governance. Growth and development often confer benefits on one municipality, while imposing costs on an adjacent jurisdiction. Since these conflicts usually involve a broad and complicated range of issues and interests, they are poorly suited to resolution using conventional processes, laws and institutions. This article argues, however, that mediation is not the single answer, since it focuses on the *ad hoc* resolution of individual disputes, and must be redesigned for each. The author believes that governments should develop broader conflict management systems based on regular direct negotiations between equally matched parties. As government officials gain experience with regular and informal negotiation, they will be better able to resolve minor disagreements early before they escalate into large, contentious conflicts requiring more involved intervention.

The conflict resolution techniques used should be appropriate to the intensity of the conflict. The article identifies three levels of conflict: issues, disputes and impasses. Recurring issues and less intense disputes are the most prevalent between municipalities, and may not warrant mediation. Regular negotiations between officials from municipalities within a region, and the use of multi-municipal task forces may resolve most conflicts early in their development.

The author illustrates his point using four case studies, all of which involved negotiation rather than mediation. One involved coastal management issues between Volusia County, Florida and its ten coastal cities. Another was a dispute over growth management between Orange County, North Carolina and the cities of Chapel Hill, Carrboro and Amberly within it. These jurisdictions also negotiated the resolution of their conflict over watershed regulation. The final case involved a dispute over the compliance of Lee County, Florida's Comprehensive Plan with state growth management legislation. Parties included the cities of Fort Myers and Cape Coral; as well as environmental and development groups.

The article concludes by summarizing four main lessons the cases offer for effective intermunicipal conflict management. The first is that courses and workshops should be used to train planners, government officials and interest group representatives in consensus building skills and techniques; and to establish clear procedures for identifying potential disputes between

municipalities, meeting to resolve issues, and deciding on which conflict resolution route to pursue. The author stresses the importance of mutually-designed on-going conflict management systems to address repeated disputes between municipalities.

The second lesson is that procedures should be established for the early identification of issues municipalities disagree on, before they escalate into full conflicts. Municipalities in dispute over a large number of issues should consider forming an interjurisdictional committee to meet regularly to try to head off potential conflicts.

The third lesson is that disputes that remain unresolved may become politicized, making them even more contentious. However, direct negotiation between patient and well-trained government representatives may still be successful. It is helpful for parties to consider their "worst alternative to a negotiated solution" (WATNA), as it often provides disputants with a greater incentive to negotiate and to level the playing field.

Finally, disputants should study the experiences of other jurisdictions to learn of possible ways to resolve their own differences. Other useful tools may be objective analytical methods to evaluate the merits of proposed consensus agreements, the "one-text" approach to joint drafting of settlements, and even computer-assisted negotiation methods currently being developed.

Plotz, David A. 1991. *Community Problem Solving Case Studies, Volume III*. Washington, DC: Program for Community Problem Solving.

The author presents 13 case studies in which diverse sectors of the community participated in cooperative planning in order to solve intractable and controversial problems. Five of these cases involve the use by local government and agencies of collaborative decisionmaking techniques in order to resolve contentious disputes over land use, growth policies and community development. By directly involving all of the affected parties in the planning and policymaking process, government was able to achieve effective solutions without alienating sectors of the community.

One of these five cases is of particular interest to this literature review because it involves the use of mediation between municipalities. In 1990 and 1991, a series of three mediated Community Unity Forums were held with participants from each of the four municipalities in Mohave County, Arizona; as well as citizens, aboriginal groups, developers, business groups,

officials from the state and federal governments, and the media. These parties were successful in collaboratively developing a new policy on issues relating to land use and rapid urban growth, and preserving the intergovernmental relationships that would be fundamental to effective implementation of the policy. This open mediation process ended the region's long history of poor communication and strained relationships between the county and its constituent cities, which contributed to many conflicts over land use and growth management issues such as zoning, water rights, public facilities and environmental damage. Mediation provided the previously lacking informal environment in which representatives of the various governments and other stakeholders in the community could communicate effectively. It also clarified the role of each government in the county, and led to both the creation of a commission to implement cooperative planning and policy agreements between governments, and new legislation granting the county greater authority for regulating urban growth. The new law and the parties' recent experience with the Community Unity Forums enabled the county to enter into mutually acceptable agreements with local municipalities to address long-term, regional planning for growth management. The author observes that the mediation process established a persisting environment conducive to communicating and resolving intermunicipal disputes more effectively in the future. The discussion of this case includes information on specific techniques that were used in the mediation, and how they contributed to the success of the process.

Susskind, Lawrence E. and Susan L. Podziba. 1990. *Affordable Housing Mediation: Building Consensus for Regional Agreements in the Hartford and Greater Bridgeport Areas*. Cambridge, Massachusetts: Lincoln Institute of Land Policy.

Providing an adequate quantity of affordable housing is a rapidly growing problem for municipal and state governments in the United States. The great challenges associated with bringing affordable housing plans to fruition have made it apparent that it is advantageous to build consensus with all of the relevant stakeholders. This publication discusses in detail two case studies illustrating the increasingly frequent use of mediation to reach consensus. Although there were also other stakeholders involved in mediation, both cases involved conflicts between multiple municipalities. Both arose from a 1988 Connecticut state pilot program to use intermunicipal mediation to address an acute shortage of affordable housing; one in the Capitol

(Hartford) Region and the other in the Greater Bridgeport Region. The authors were two of the three mediators in each case. In the Capitol Region, representative from 29 communities and several state agencies, with the assistance of the mediation team, jointly designed a "Fair Share Housing Compact" intended to develop 6,400 new affordable housing units over five years. Six municipalities in Greater Bridgeport Region and several state agencies achieved a mediated agreement providing more than 5,000 new units.

Although the authors describe each mediation in considerable detail, the real strength of this report is its trenchant analysis of each mediation. This will be of great value to any municipality embarking on a similar consensus building exercise.

The authors conclude each case with a clear definition of the "key to agreement." For the first case, it was assembling a set of goals and principles for a potential agreement (*e.g.* a definition of "affordable housing") that all of the participants could endorse, and then modifying them to accommodate the unique needs of each participating municipality.

For the second case, the key component was retaining in the agreement the flexibility for municipalities to use different, customized strategies to achieve their goals. The ability of the mediators to create a sense that the process was fair to everyone (which the authors also mention for the first case) and that the settlement was politically feasible was also instrumental to the success of this mediation.

One troubling aspect of this otherwise thorough analysis of two affordable housing mediation cases is that one of the key sections, "Roles of the Mediation Team", is repeated nearly verbatim in the discussion of each case. This includes a list of major lessons offered by the cases: the importance of representatives communicating effectively with their constituencies, the need for mediators to liaison with the media, the importance of mediators helping to create possible solutions, the key role of technical experts and subcommittees, and the need for mediators to remain involved in the case post-settlement.

The Appendix to the report contains a handbook on the application of mediation to the development of affordable housing initiatives, written by Michael Wheeler. It offers practical guidance on creating an affordable housing coalition, examines the root causes of conflict over housing issues, outlines the impediments to collaborative planning among stakeholders, and explains the roles that each party plays in the consensus building process.

Madigan, Denise, Gerard McMahon, Lawrence Susskind and Stephanie Rolley. 1990. *New Approaches to Resolving Local Public Disputes*. Washington, DC: National Institute for Dispute Resolution.

This report is a handbook for using mediation to resolve local public disputes. These disputes tend to be focused on one or more of three key types if issues: policies and/or budget priorities; proposals for developments that may affect a land or water resource; and/or standards for facility design or siting. Many are intergovernmental conflicts; between municipalities, between a municipality and a county, or between a municipality and a state or federal agency. The document is aimed primarily at government officials, businesspeople, community leaders and concerned citizens.

The report begins by introducing the mediation process, including a discussion of various types of local public disputes, the judicial system traditionally used to resolve them and its inadequacies, and the need for mediation as a dispute resolution alternative. This introductory chapter also identifies several fundamental principles of effective mediation: its basis on face-to-face negotiation, the use of a neutral party, the need to get to the interests behind the parties' positions, the voluntary nature of the process and the settlement, and the fact that the process is collaborative rather than adversarial.

Next, the authors use six case studies from throughout the United States to demonstrate that mediation is a viable and efficient alternative to traditional channels of resolving a broad cross-section of local disputes; most often simply a decision by a government authority, but often also involving litigation. Not all of these cases were overwhelmingly successful. Next, the report outlines the key stages common to most mediation processes, giving examples of how each stage was carried out in the cases. The next section identifies the conflict situations most amenable to mediation. Finally, the report addresses the typical costs of mediation, and how such a process might be funded.

Two of the six cases discussed involved the mediation of disputes between municipalities, over the issues of: siting a waste landfill for the city of Eau Claire, Wisconsin in the neighbouring town of Seymour; and the town of Leesburg's annexation of land from Loudoun County, Virginia. The Eau Claire mediation occurred in 1978, and was funded by the Ford Foundation as a demonstration project of how mediation could be used instead of litigation. The state Department of Natural Resources (DNR) and the state Office of the Public Intervenor

(OPI) were also parties to this successful mediation. There were really two related conflicts: between the two state agencies; and between the two municipalities. The Leesburg case was successfully mediated in 1982, avoiding an annexation hearing before the courts. The report provides a detailed and educational account of how the mediation process proceeded in each case, giving special attention to the contributions made by the mediators.

The report then outlines the key stages common to most mediation processes, drawing examples from the case studies. The process begins with "pre-negotiation", consisting of: clarification of the nature of the dispute and the scope of the mediation; identification of stakeholders and their representatives; selection of a mediator; agreement on the schedule, groundrules, and agenda for the mediation; identification of resources to support the process; and joint fact-finding. The second major phase is the actual mediation, consisting of formulation of a single negotiating text to focus the discussions; exploration of each party's underlying interests; trading off interests to assemble a package of options; drafting the final agreement; and ratification and signing of the final agreement. The "post negotiation" phase binds the parties to their settlement; implements the agreement; establishes a program for monitoring and remediation (if needed); and evaluates the mediation process.

Chapter 3 provides questions disputants may ask themselves to help them to decide whether to use mediation, others they may use to assist their effective negotiation. It concludes with a list of criteria for evaluating the quality of a mediated agreement. The report concludes with a chapter on the costs of conducting a mediation, and possible sources of funding for the process.

Richman, Roger, Orion F. White, Jr. and Michaux H. Wilkinson. 1986. *Intergovernmental Mediation: Negotiations in Local Government Disputes*. London: Westview Press.

Although somewhat dated, this book is the seminal text on the infrequently studied topic of mediating disputes between municipalities. The authors use case studies involving mediation of municipal annexation disputes in Virginia to carry out a comprehensive analysis of the dynamics and interpersonal interactions that occur during this process. Particular emphasis is placed on the role of the mediator. Two of the authors are mediators who developed the application of mediation to municipal boundary disputes, and one was at the time director of the

Virginia Commission on Local Government (CLG), the state agency responsible for administering the process of changing municipal boundaries. Proposed annexations have a long history of generating contentious disputes between municipalities and counties. Since 1902, these conflicts have been settled by rulings of specially appointed courts.

The book provides substantial evidence to support its thesis that mediation is an effective means of resolving public policy disputes between local governments. The ten cases reviewed all occurred between 1980 and 1985 in Virginia, and underwent formal mediation administered by the CLG. Agreements were achieved in seven of the cases, and mediation continued in the remaining three.

The book describes the development of Virginia's mediation program for annexation conflicts, addresses the role of the CLG in the program, summarizes the experience and success of the program to date, provides comprehensive analysis of the mediation in each case, explores the interpersonal and psychological dynamics that influence mediation, and outlines the functions and responsibilities of the mediator in a variety of different settings and situations. The authors focus on two of the cases in order to study how several fundamental variables affect the mediation process. These variables are: the extent to which the parties made use of bargaining positions, how effectively the parties interacted with each other, the role of the mediator in organizing and providing structure for the mediation sessions, and the nature of the administrative and legislative context within which the process was conducted.

Perhaps the greatest contribution is made by the final chapter, which discusses the various roles and activities of the mediator in different types of negotiation settings in intergovernmental disputes. In joint negotiation sessions, mediators may promote good faith negotiation, facilitate the exchange of information between parties, help identify joint interests, draft agreements, and liaison with the media. In caucuses within a negotiation team, they may frame issues into negotiating positions, provide legal information, and assist the parties in developing and presenting proposals. In meetings between representatives and their constituencies, mediators may represent negotiation as an alternative to conventional conflict resolution channels, present the results of joint sessions, validate the work of the representatives, and provide advice on the formation of negotiation teams and the structure of the mediation process.

Richman, Roger. 1985. "Formal Mediation in Intergovernmental Disputes: Municipal Annexation Negotiations in Virginia." ***Public Administration Review*****. 45(4): 510-517.**

This article discusses the use of a formal program in Virginia for mediating disputes between jurisdictions over municipal annexations. Annexation involves the transfer of land (and therefore also its associated tax base and service responsibilities) from a county to a city within it. An annexation is usually strongly opposed by the county, which sees it as a net loss. As a result, annexation disputes usually escalate into contentious intergovernmental battles between the municipal petitioner and the county, which uses all of its political and legal capacities to protect its territory. Annexation petitions in Virginia have traditionally been heard by the judiciary. However, over the last several decades there have been increasingly frequent attempts to resolve these conflicts using informal negotiation between the governments. In nearly all cases, negotiation has proved to be inadequate to produce a consensus agreement and avoid protracted and costly litigation. Since 1980, formal mediation of intergovernmental disputes such as those over annexation has been sanctioned and coordinated by a state Commission on Local Government (CLG). This is an example of a mediation program for a specific type of public conflict, as many states have established.

This article reviews the experience of Virginia's innovative mediation program with ten intergovernmental annexation disputes occurring between 1980 and 1985 (the same cases used in Richman *et al*. 1986). Most of these cases used mediation followed the parties' unsuccessful attempt to resolve the dispute using unassisted negotiation. Seven of the cases were successfully resolved through mediation. Independent mediators are provided by the CLG, and are jointly selected by the parties. The author provides useful analyses of the particular techniques used in the mediations, the dynamics of the bargaining process, and the role of the mediator. He also discusses the negotiation programs set up by Massachusetts in 1981 for addressing the siting of hazardous waste treatment facilities, and by Wisconsin in 1982 for conflicts over solid waste facility siting. These initiatives illustrate alternative models of institutionalized alternative dispute resolution (ADR) methods for public conflicts. Many of these types of disputes involve multiple municipal governments.

The article concludes that mediation is a successful alternative to litigation for resolving intergovernmental disputes, provided that there is state legislation that endorses the process and encourages the government disputants to work together to reach a consensus agreement.

Talbot, Allan R. 1983. *Settling Things: Six Case Studies in Environmental Mediation*. Washington, DC: The Conservation Foundation.

Although the six cases studied in this early work involve the mediation of environmental disputes, three of them include multiple municipalities as the principal parties. The cases represent a cross-section of types of conflicts and jurisdictions. The first of the three intermunicipal cases is a dispute over the extension of Interstate 90 into Seattle. Among the many parties involved in this complicated dispute were five different municipalities. Mediators assisted the disputants in reaching a settlement in about nine months, following 12 years of conflict. The second case is a conflict between a county park board and an aboriginal reservation over the ownership of, and access to, parkland on Portage Island, Washington. Mediation averted the conflict from being heard before the U.S. Supreme Court. The third case, also studied in Madigan *et al*. (1990), involves the proposed siting of a waste landfill for the city of Eau Claire, Wisconsin in the nearby town of Seymour. Five months of mediation, first between the two municipalities and then between two state agencies, was successful in achieving an agreement.

The book relies on the case studies to demonstrate that mediation, if properly used, can be an effective alternative to traditional channels of environmental conflict resolution, such as litigation. In each case studied, litigation was either already in progress, or was inevitable had mediation not been used or had it been unsuccessful in settling the dispute. The author concludes that while it is often difficult to determine the amenability of a dispute to mediation, effective mediators and public agencies can greatly contribute to the establishment of the conditions in which mediation may be successful. He also observes that an important measure of mediation success is implementation of the agreement. Although several of the cases studied encountered implementation difficulties, these offer important lessons for mediation practice.

Given its date of publication, this book's description of how mediation is conducted made a strong contribution to the conflict resolution field. The author was among the first to raise two fundamental questions that have yet to be satisfactorily resolved. The first is whether and how funding for mediation may be institutionalized, without jeopardizing mediator neutrality. The second is whether and how the application of mediation may be expanded to a broader variety of conflict types. The author calls for additional research efforts in two areas: the identification of conditions that make a dispute amenable to mediation; and the widespread dissemination of information on the success of mediation, to encourage its broader use.