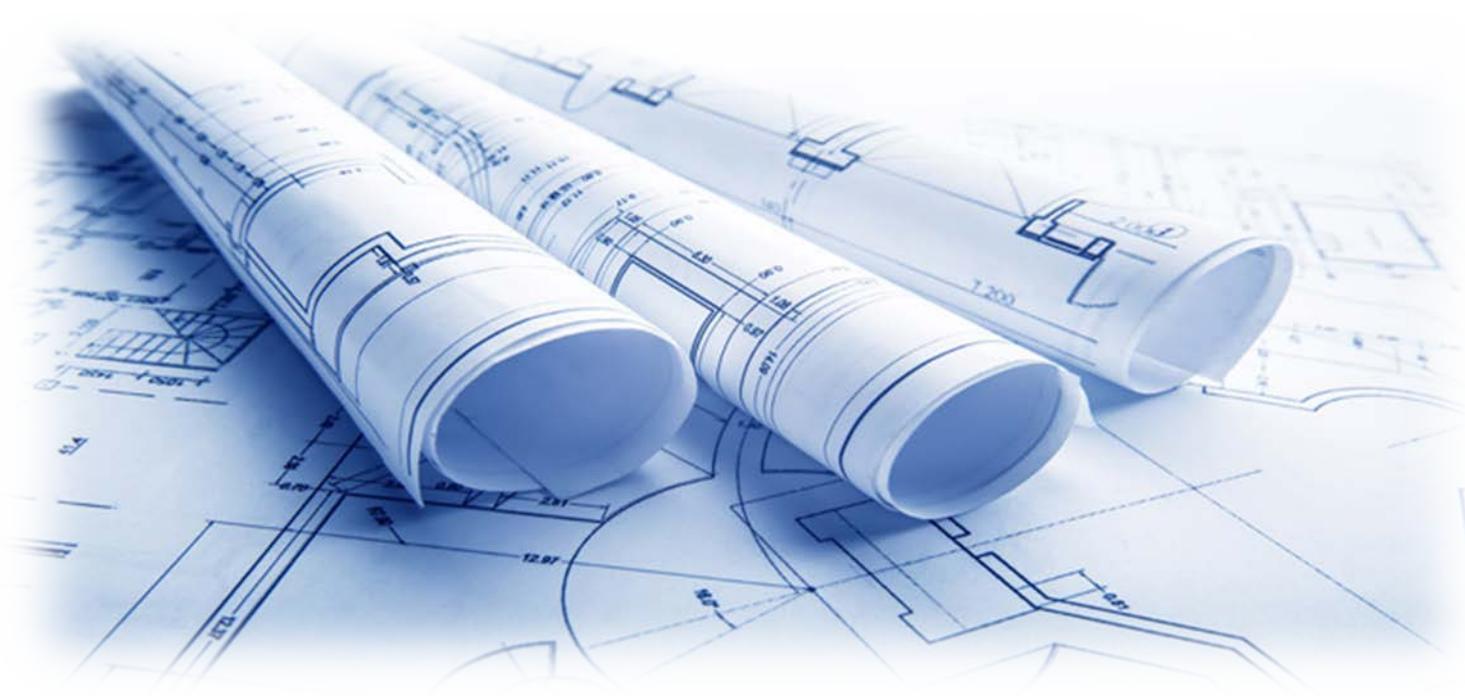


Public Policy Mediation: A Supplement to Capital Project Planning



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Mark E. Rubin
John W. Daniel II
L. Preston Bryant, Jr.**

Who we are ...

- **Mark Rubin**

Virginia Center for Consensus Building
Virginia Commonwealth University



- **John Daniel**

Virginia Alcoholic Beverage Control Authority



- **Preston Bryant**

McGuireWoods Consulting



What we'll cover today ...

- A bit of history on public policy mediation in Virginia
- Applicable Virginia statutes regarding public policy mediation
- Virginia Resources Authority's interest in project facilitation
- Who in State government uses mediators ... and why
- Case studies
- The next frontier for capital infrastructure mediation / facilitation
- Q&A

A Brief History of Mediation in Virginia

- Governors, Attorneys General, and the General Assembly didn't always readily embrace public policy mediation
 - The use of public policy mediators grew as legislators and others saw the successful use of ADR grow in Virginia courts
- 1987-89 – ADR recommended by the Commission on the Future of Virginia's Judicial System
 - Recommended “community-based practitioners” and the establishment of the Office of Alternative Dispute Resolution Services
- Early 2000s – Additional refinements to the ADR statute

Demonstrated Success of Judicial Mediation Led to Acceptance of Public Policy Mediation

- As the Supreme Court increasingly reaffirmed ADR – and as the General Assembly increasingly got more comfortable with ADR – the Governor’s office and especially the Legislature saw ADR more and more as a useful tool in resolving complex public policy matters.
- Local governments now use public policy mediation or facilitation, too.
 - Strategic planning
 - Avoid litigation
 - Achieve consensus on complex policies and projects

Growth in Public Policy Mediation

- In due course – beginning in the early 2000s – mediation became a proven and increasingly relied upon supplemental process to gain broad, consensus-based agreement to complex public policy issues.
- Today, public policy mediation is fully accepted and is routinely used.
- Mediation (or “facilitation”) is used in matters of state and local government infrastructure projects and policy – including to advance party consensus and project development.

Applicable Virginia Statutes

- Virginia Administrative Dispute Resolution Act
 - Virginia Code § 2.2-4115 et seq.
 - Passed by General Assembly in 2002; modeled on Federal law
 - Any public body may use dispute resolution proceedings to narrow or resolve any issue
 - Agreements are nonbinding unless the public body affirms the agreement
 - FOIA: Documents and communications are exempt

Virginia Resources Authority – Interest in Project Approval Facilitation

- VRA's mission

“... to encourage the investment of both public and private funds and to make loans, grants, and credit enhancements available to local governments to finance ...” numerous kinds of infrastructure projects

- Successful project financing and investment requires
 - party agreement, not dispute
 - confidence, not questions
 - certainty, not speculation

Virginia Resources Authority – Infrastructure Finance Areas

- Water, Wastewater
- Local Government Buildings
- Public Safety
- Transportation
- Energy
- Parks & Recreations
- Solid Waste
- Airports
- Brownfields
- Federal Facility Development
- Flood Prevention, Dam Safety
- Land Conservation, Preservation
- Broadband
- Site Acquisition, Development
- Administrative and Operations Systems
- Defective Drywall Correction, Restoration
- Oyster Restoration
- Dredging

Who in government calls on mediators?

- Governor's Office
- General Assembly
- Attorney General
- Executive Branch Agencies
- Local Governments



Why might mediation be used to supplement the capital infrastructure planning process?

- Projects can be very complex, with multiple parties and a hyper-engaged public
- General lack of expertise in specific project elements
- Local government resources – limited and stressed (staff, funding, etc.)
- Can allocate more time for a more deliberative process, focused on resolving project issues, party responsibilities, ultimate desired outcomes
- Can tap into stakeholders' and others' expertise
- If consensus is achieved, then stakeholders are vested and become advocates for seeing solution implemented

Elements of public policy / infrastructure facilitation

- Public involvement (at some point)
 - Confidential vs. Open to the Public
- Ultimate decision makers are not at the table
- Define consensus / dissent
- Ground rules
- Collaboration v. Compromise
- Separating interests from positions

Case Studies – Mediation / Facilitation as a Supplemental to the Capital Planning Process

- Water Supply Planning (2002) – Regulation
 - Issue: Several-year drought; had to determine where Virginia's water is and how to collaboratively plan for supply distribution
 - Stakeholders: Local governments, state environmental agencies
 - Resolution: Regulation; process developed for water supply planning

Case Studies – Mediation / Facilitation as a Supplemental to the Capital Planning Process

- Albemarle / Charlottesville (~ 2015) – Regional Water Supply
 - Issue: Need to increase capacity and conveyance; additional infrastructure needed; how to pay for it
 - Stakeholders: Local governments, regional water authority
 - participants included engineers, financial experts, administrators, elected officials
 - Resolution: Project cost-share

Case Studies – Mediation as a Supplemental to the Legislative Process

- Cobbs Creek Reservoir (2002) – Infrastructure Project
 - Issue: Two localities agreeing to develop a very large water supply project
 - Stakeholders: Cumberland County, Henrico County, Department of Environmental Quality, Department of Forestry, private-sector utilities
 - Resolution: Consensus agreement on project location, general terms – project currently under construction (expected completion: 2020-2021)

Case Studies – Mediation as a Supplemental to the Legislative Process

- Oyster Aquaculture / User Conflicts (2018) – Legislation, Regulation
 - Issue: Open water and shoreline conflicts between industry, waterfront property owners, and other users of Virginia waterways
 - Stakeholders: shellfish aquaculture industry, waterfront property owners, local governments, academics, state regulatory agencies, General Assembly members
 - Resolution: Consensus legislation for 2019 General Assembly

Case Studies – Mediation as a Supplemental to the Legislative Process

- Virginia Joining Regional Greenhouse Gas Initiative (2017) – Regulation
 - Issue: Rulemaking – Informing regulators re: most optimal circumstances under which Virginia would join multi-state carbon dioxide trading program
 - Stakeholders: Dominion, Appalachian Power, environmental organizations, local governments, large industrial users of electricity (major manufacturers)
 - Resolution: Useful technical information to regulators to guide drafting of regulations

Case Studies – Mediation as a Supplemental to the Legislative Process

- Virginia Grid Transformation and Security Act (2018) – Legislation
 - Issue: SB 966; improving, securing Virginia electricity grid; developing renewable energy; increasing energy efficiency; ratepayer impacts
 - Stakeholders: General Assembly, Governor, Dominion, Appalachian Power, environmental organizations, local governments, renewable energy developers, consumer advocates
 - Resolution: Consensus legislation in 2018 General Assembly

What's the next frontier for public policy mediation or facilitation for Local Govts?

- Greater use of public policy mediation or facilitation by local governments
 - Policy studies, land use, comprehensive plans, infrastructure, economic development)
- Regional Planning Projects
 - Resiliency Infrastructure
 - Climate change, sea-level rise
 - Regional governments – prioritize projects, expenditures

Questions ... and thank you ...

- **Mark E. Rubin**
Virginia Center for Consensus Building
Virginia Commonwealth University
merubin@vcu.edu
804.241.9890
- **John Daniel**
Virginia Alcoholic Beverage Control Authority
john.Daniel@abc.Virginia.gov
804.213.4400
- **L. Preston Bryant, Jr.**
McGuireWoods Consulting
pbryant@mwcllc.com
804.775.1923

