

**Connecticut Chapter of the
Environmental Business Council**

**Environmental ADR in
New England: Trends,
True Stories, and Tricks
of the Trade**

Upcoming EBC Meetings

Oct 31 - Nanotechnology: Applications and Implications for the Environment

Nov 3 - New Nuclear Power and Climate Change: Issues and Opportunities

Nov 6 - Env. Industry Forecast w/ Paul Zofnass

Nov 15 - EPA VOC Control/Stack Testing Workshop in Waterbury

Nov 30 - Reception – An Evening with Commissioner Gina McCarthy

Dec 6 – Winter Garden Party in Boston

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**Fred Johnson, Chair
EBC Connecticut Chapter**

Environmental ADR in New England: Trends, True Stories, and Tricks of the Trade

Program Chair

Kathleen Conway

Law Offices of Kathleen M. Conway, LLC

Who We Are

- **Kathleen Conway, Law Offices of Kathleen M. Conway, LLC**
- **Cindy Cook, Adamant Accord, Inc.**
- **Bill Logue, The Logue Group**
- **Matt Schweisberg, Wetlands Protection Unit, U.S. EPA**
- **Ellie Tonkin, Regional ADR Program, U.S. EPA**
- **Betsey Wingfield, Chief CT DEP Bureau of Water Protection & Land Reuse**

Who Are You?

- **How many of you have been a party in a mediation or other ADR process?**
- **How many of you have specific questions about ADR?**
- **How many are consultants, lawyers, business, public officials?**
- **What can we do --short of bursting into song--to make this morning an interesting and useful one for you?**

When we say “ADR” ...

-we mean *Alternative Dispute Resolution*, which includes several alternatives to litigation
- ... facilitated by a professional third party neutral helping to focus on *interests* (what people need) rather than *positions* (what people say they want).

Types of ADR

- **Mediation**
- **Facilitation**
- **Consensus Building**
- **Arbitration**
- **Policy Dialogues**
- **Public Involvement**
- **Negotiated Rule Making**

Land Use Disputes, ADR, Traditional Methods and the 80/20 Rule

- Traditional methods (permitting, zoning, enforcement, etc.) of addressing land use issues work well in most situations (80%) and take little time (20%).
- However, some (20%) difficult and divisive issues can take a significant amount of your time (80%).
- Trying to make these difficult land use disputes to “fit” the traditional process is trying and often doesn’t solve the problem.
- This can be frustrating, time-consuming and ineffective.
- True resolution of conflicting interests is unlikely.

Focus on Interests to Achieve Durable Solutions

- In ADR, the process is designed to fit the issues, rather than vice versa.
- Underlying interests define the issues and are addressed directly, opening the door to creative solutions.
- The result is outcomes are less likely to be challenged.

Principles of Effective Collaborative Processes

- **Transparency**
- **Equity & inclusiveness (stakeholder representation)**
- **Effectiveness & efficiency**
- **Clearly understood decision making process or role (advisory, participatory, consensus)**
- **Impartial neutral manages the process and is accountable to the participants**

ADR in Land Use Planning and Development Conflicts

Multiple issues can be “a good thing”

- **Increases potential for settlement.**
- **Provides opportunities to trade across issues, so that people get what is of most importance to them.**
- **Low cost concession by one party may be high value gain to another party.**

How Mediators and Facilitators Help

Mediators and Facilitators:

- **Help Design the Process**
- **Clarify interests**
- **Frame issues in ways that they're most likely to be resolved**
- **De-escalate personality issues**
- **Help develop objective information -- about both process and substance**
- **Explore options**
- **Reality test**
- **Focus not only on resolution but also on implementation**

Roles

- Stakeholder participant – public, private, civic, business, community, non-profit, advocates, et al
- Conveners – leader from government, community or other sector who is respected and can bring people to the table
- Sponsors – identify and raise the issue, often bear some or all of the process costs

Assessing Appropriateness

- **Formal & informal assessments**
- **A Few Indicators:**
 - **No single entity can control outcome**
 - **Need to move forward, decision makers willing to endorse collaborative approach**
 - **Traditional methods will meet resistance, cost a lot, take a long time**
 - **Potential mutual gains exist**
 - **People are frustrated with status quo**

Trends

- **ADR has become “mainstream” --it’s regularly used to resolve environmental issues.**
- **Increasing governmental use of ADR.**
- **Trend toward the “upstream” use of ADR in planning and policy development, as well as “downstream”, case-specific mediations.**

True Stories of ADR and Collaboration in New England

- **Public Policy Dialogues**
- **Local Zoning Regulation Examples**
- **Enforcement Cases**
- **Community Advisory Group Facilitation**

Tricks of the Trade – Coaching Advice From the Panel

- **Ground Rules**: No names, everything is hypothetical, share time with others.
- **Imagine**: You are in the midst of an environmental or land use dispute or one is looming on the horizon.
- **Tell us**: In less than 2 minutes, give the top 3 facts and top 2 issues as background.
- **Ask us**: One focused question.

For More Info re ADR

- Association for Conflict Resolution: Environmental and Public Policy Section (ACR EPP)
www.acrnet.org
- Policy Consensus Institute:
www.policyconsensus.org
- US Institute for Environmental Conflict Resolution(USIECR) www.ecr.gov
- Pace Land Use Law Center:
www.pace.edu/lawschool/landuse
- Land Use Leadership Alliance: www.ctlula.org
- International Association for Public Participation
www.iap2.org

How to Contact Us

Matt Schweisberg, U.S. E.P.A.
schweisberg.matt@epa.gov

Ellie Tonkin, U.S. E.P.A.
617-918-1726
Tonkin.Elissa@epamail.epa.gov

Betsey Wingfield
betsey.wingfield@po.state.ct.us

How to Contact Us

Kathleen Conway

Kathleen M. Conway, LLC

203-781-0884

kmconway@att.net

Cindy Cook

Adamant Accord, Inc.

802-223-1330

Ccook@adamantaccord.com

Bill Logue

The Logue Group

860-521-9122

Bill@LogueGroup.com

**EBC Seminar:
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England: Trends, True Stories,
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Thanks for Attend

**Special Thanks to Kathleen Conway
and
All the Speakers**