

MEMORANDUM

To: Dr. Clare Ryan
From: Jacob Kovacs, negotiation facilitator (group 2)
Date: 3/4/2014
Re: Analysis of Open Lands negotiation

SUMMARY OF MEMORANDUM

This memo analyzes a seven-party negotiation held February 18th and 20th, 2014, to develop a consensus agreement for future development of Open Lands valley. First, concepts from mediation/negotiation theory are used to describe the negotiation. Second, specific facilitation strategies are analyzed for their effects on the negotiation. Third, a successful strategy is highlighted for its value in overcoming a central difficulty in the negotiation. Finally, this memo concludes with open questions to consideration for future facilitations.

APPLYING RELEVANT CONCEPTS TO KEY EVENTS

The convening party launched this negotiation early, before the issue had a chance to accelerate along the **conflict spiral** (Carpenter & Kennedy, 2001, p. 12). Listening to parties' opening and subsequent statements, I got no sense that sides had formed or positions had hardened, which places this conflict at the earliest stage of Carpenter and Kennedy's schema. In my estimation, the timing was proactive but not premature, because the problem was clear and serious enough that parties had sufficient reason to come to the table. While parties expressed their worries (for example, over their financial troubles, or their threatened viewsheds), none of them seemed panicky; they felt they had plenty of room to maneuver and multiple options, one of which was to engage with the negotiation process. This combination of willingness without desperation set a very good tone for the mediation.

Likewise, a friendly and cooperative dynamic made this negotiation easier. Sour **relationships** and challenging personalities did not emerge as complicating factors. This helped prevent the entanglement of "people" with "problems" that Fisher, Ury, and Patton (1991, p. 20) identify as a frequent cause of impasse. In the absence of difficult relationships and contentious personalities, other **drivers** of conflict were in effect: throughout the negotiation, parties made comments about "scarcity", "broader sociopolitical and cultural conflicts", "secular place attachment", and individual "sovereignty" with respect to government intervention (Nie, 2003, p. 311).

Parties entered the negotiation with knowledge of their own tradeable items, and probably some related assumptions about how much **power** they held. But a defining moment in the negotiation happened early on, when Eagle disclosed her very powerful BATNA (Fisher, Ury, & Patton, 1991, p. 102). She had little to lose, paired with the capacity to do catastrophic damage to many other parties. As Carpenter and Kennedy (2001, pp. 217-218) argue, this is a more useful measure of power. Eagle's disclosure sobered everyone up, making them revisit their assumptions and realize that other parties at the table might have the ability to damage them in ways they couldn't anticipate. Most likely Eagle's disclosure so early in the negotiation was crucial in shifting the boundaries of the discussion, helping parties realize that they couldn't meet their interests by insisting on their original positions. Instead, they realized they needed to collaborate.

ANALYSIS OF FACILITATION STRATEGIES

Questioning

As facilitator—following recommendations from the literature and building on lessons learned in my last negotiation—I used questions to **clarify** parties' statements (Carpenter & Kennedy, 2001, pp. 159-160); to

bring deeper **interests** to the surface (Fisher, Ury & Patton, 1991, p. 42); and to better **involve** quiet, shy parties (Carpenter & Kennedy, 2001, pp. 160-161). These three applications were necessary for the ultimate success of the negotiation; at my last negotiation, we failed to reach agreement because (among other things) I was not effective at uncovering interests and involving silent parties. This time I invited parties to clearly express their concerns and needs, using follow-up questions to dig deeper when necessary. I made sure that each party expressed themselves sufficiently, and checked in with all parties (especially the quiet ones) when testing preliminary proposals.

Pacing

Carpenter and Kennedy describe a common impulse of people to seek a “quick fix” for conflict (2001, pp. 22, 54-55). This general observation held true at both of my negotiations: parties tried to move very quickly towards a solution. This momentum is not necessarily a good thing. Moving too quickly means parties can fail to hear and understand each other sufficiently, and they might come up with a superficial solution that collapses in practice. Last time, I reacted to this ‘quick fix’ tendency by trying to slow down the process, questioning parties very thoroughly and trying to clarify each point to my satisfaction. My decision to work slowly and precisely contributed to our ultimate lack of agreement. While I remained wary of momentum towards premature agreement, after my experience in the last negotiation I wanted to experiment with a quicker pace. In this negotiation, I tried to strike a different balance between caution and productivity. As described below, I used caucuses as a mechanism for slowing down and deepening the quality of the parties’ engagement. Based on the foundation laid in caucuses, then, when we returned to a large group context I was willing to let the group to proceed past what I personally understood. I focused on faithfully copying caucus reports, but I didn’t keep my own mental tally of whether each party’s need were fully satisfied, or whether I understood all the subtleties of their proposals. Through copying proposals and then testing them on a party-by-party basis, I trusted each party to know and determine whether the process was meeting their needs. With so many parties, it was simply too much for me to hold inside my head. I think this was both a necessary and effective tactic for this negotiation, with seven parties at the table.

Caucusing

I believe that caucuses were very effective in our negotiation. They helped generate creative options, build empathy between parties, and inspire common ownership of the problem. I consciously tried to manage the caucuses so that they contributed to large group consensus, avoiding some of the pitfalls that were pointed out in class.

First, I convened caucuses in the spirit of **generating options**, not in the spirit of making fine-tuned, final deals between caucusing parties. Fisher, Ury, and Patton recommend generating options before evaluating options, structuring them as entirely distinct activities in the negotiation process: “separate inventing from deciding” (1991, p. 60). Unless this is done deliberately, they note, “people involved in a negotiation rarely sense a need [for options]”; instead they cling to the position they’ve staked out (1991, pg. 57). Caucuses served this purpose in our negotiation, creating a dedicated space for brainstorming preliminary solutions. As a result, we were able to come up with some creative arrangements (like architectural rights, an easement for Rights, and individualized parcel size limits—some set at 640 acres, one at 320).

Second, I think that caucuses were a good device for encouraging **empathy** between parties. In caucus, parties became more familiar with each other’s options and constraints, which helped keep a destructive dynamic of “their problem is their problem” from emerging (Fisher, Ury, & Patton, 1991, p. 59). In a large group, parties might have relied on me as a go-between, interacting with me courteously but failing to engage directly with each other. Caucusing meant that each party was required to practice listening, taking some of the burden off me and helping us to generate an agreement that met everyone’s needs.

There was a risk of tight, mutinous coalitions emerging from the caucuses, if participating parties built enough solidarity that they felt they could jointly bully the rest of the group into accepting their caucus' proposal. In fact one party later confessed that she came out of the first round of caucuses with the intention of boycotting the process, unless her group's proposal was accepted by everyone. But I believe I successfully managed caucuses in a way that kept this problem in check, inspiring **common ownership** of the problem and building commitment to a consensus solution. I did this by asking returning parties to report their caucus outcomes, then rotating them immediately into new caucus pairings. This way they were able to acquaint themselves with multiple parties, and see how their needs to be met through many different arrangements. Ultimately, if we had not used caucuses, I think our solution might have been less successful at meeting everyone's needs; people might have caved to large group pressure, then later resented their deal and violated the agreement. A dynamic could have emerged where more powerful members in the group, like Wealth, or natural coalitions like Wealth and Taxes, became prematurely fixated on a potential solution and pressured the group into accepting it, at the risk of losing **mutual gains** later identified (Fisher, Ury, & Patton, 1991, p. 70). Along these same lines, I often tested for agreement, but never called for a group-wide vote, which might have activated majority-democratic norms. Instead, I always tested proposals very tentatively, individual by individual, affirming that **consensus** was our goal and signaling that I, as facilitator, would be willing to defend the consensus nature of the process. For example, if a caucus had returned with the desire to mutiny I would have been proactive in reminding them of ways in which other parties could do them damage, whether immediately or in the long-term.

OVERCOMING DIFFICULTIES

With so many participants, it was challenging to **keep track of the proceedings**. I did quite a few things to assist the group in this respect. At a basic level, I made name tags for parties. For visuals, I sketched a map on the chalkboard and updated it in real time as we considered the location of homesites. At one point, I photographed and texted the map to parties so that they could refer to it while caucusing in another room. I also took notes diligently, then put our working proposals from Day 1 into chart form for Day 2, following Carpenter and Kennedy's advice to "manage activities between meetings" (2001, pp. 164-168). We began day two by visiting this chart, filling in details that were absent and correcting details that were wrong. This chart was invaluable for organizing the many options and deals that were on the table at that point. I think it also created a sense of having made progress, keeping parties from becoming frustrated.

OPEN QUESTIONS

There was a fair amount of **technical information** that became a slight sticking point in our negotiation. In the interest of time, we made assumptions (about easements, grazing requirements, property values, etc.) to simplify things for ourselves. With the luxury of more time or perhaps with a different scenario, we might have been able to incorporate some of the best practices suggested by Dietz and Stern (2008, p. 138). At a minimum, we could have adopted Carpenter and Kennedy's goal to "agree on an acceptable range of figures" (2001, p. 265). This aspect of the negotiation would have been interesting to delve into more, rather than assuming it away.

Similarly, there was little time in this scenario to discuss **implementation and enforcement**. In fact, we were missing an entire four (of eleven) steps from Carpenter and Kennedy's suggested public dispute management process: "establish a monitoring system", "work out details", "renegotiate sections", and "handle violations" (2001, p. 67). As we reached agreement, it was easy to break into premature celebration of our achievement, and forget to negotiate crucial details that could make or break our agreement. Next time, though, I would want to manage time well enough to work in some discussion of implementation and enforcement.

References

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