

Resolving Multiparty Disputes

Part six of six



Resolving a public dispute typically requires finding compromise between stakeholders who have competing positions. Bringing stakeholders to the point of agreement can be challenging. Doing so requires exerting interpersonal influence and structuring an environment conducive to agreement. This publication, the second of two publications dealing with the resolution of public disputes, focuses on structuring a process and shaping the environment needed to resolve public conflicts. The companion publication, dealing with negotiation, addresses the human interaction skills that can guide disputing parties to an agreement.

What is Conflict?

A commercial developer and a neighborhood homeowners association have different views about the use of property adjacent to the neighborhood. A school bond issue has parents and retirees in the community at odds. A city and county disagree about how to share the costs of a joint road construction project. All of these cases involve disputes that can generate conflict, damage local relationships, and create obstacles to getting the community's business done. Everyone knows what conflict is, but understanding its origins and determining how to resolve it may be more difficult.

Conflict arises when the realization of one's goal is blocked or perceived to be blocked by others who seem opposed to the goal. Unlike a disagreement that may occur in a congenial atmosphere, conflict often involves an active struggle. At least one party senses or experiences active interference from others. There is an emotional aspect as well. There may be feelings of anger or mistrust that influence resolution of the conflict.

Understanding conflict is the first step in resolving disputes. Many of the dynamics involved in private interpersonal conflicts also may occur in a public dispute. The situation may be even more complicated, however, in that the dispute can involve multiple stakeholders with widely differing interests.

About this Series

Public issues are matters of widespread concern in the community. They are resolved by group decision processes that create local public policy. We often assume the responsibility for resolving public issues is in the domain of government. But as society becomes more complex, and we acknowledge the limits of what government can achieve, we recognize the need for public and private interests to work together. Involving diverse interests in public issues, however, can often heighten local conflict and make the resolution of community issues more difficult.

Keeping on Track, a series of publications for local officials and community leaders, deals with managing controversial public policy. The issues vary, but all too often the problem is the same. Whether it's corporate farming, school bond issues, or new development proposals, communities often get bogged down in controversy, and nothing seems to get done. This series of publications presents strategies local leaders can use to navigate the minefield of controversial public policy so the community can resolve the issue and keep moving forward.

Understanding Conflict

Conflict can actually help stimulate creative new solutions to problems that have been long entrenched. This happens when (1) the causes of the conflict are understood from each stakeholder's perspective; (2) everyone involved in an issue is willing to listen to others' ideas; (3) no one has a fixed, nonnegotiable position; and (4) no one has a grudge or "get-even" attitude about anyone involved in the situation.



Turning conflict into a creative solution begins by understanding the source of the conflict. Understanding its genesis makes it much more likely a resolution can be found. Conflict generally arises from one of four sources.

Needs

Needs relate to life's essential requirements, such as water, food, shelter, health, or safety. People can disagree, however, about what constitutes a need. A need is defined by the individual based on what they deem essential. Some people may feel a community *needs* economic growth while others would say the very same development will change essential qualities the community *needs* in order to maintain quality of life. Thus, differences in perceptions related to public and private needs can spur conflict.

Values

Values are the principles upon which beliefs and actions are based. Land use is a good example of an activity about which different people may hold very different principles. Values can be shaped by experience, personal needs, religious beliefs, or background. Differences in value structures also can lead to conflict.

Perceptions

Perceptions are interpretations of events or experiences that are rooted in life circumstances. For example, what may seem like a reasonably efficient operating procedure to members of a planning board may seem perfunctory or curt to a group of homeowners. A key to resolving conflict is being able to understand another's perceptions. Similarly, having a sense of how the ideas and actions within a group may appear to those outside of it, and why, also is important in conflict resolution.

Power

Power is usually considered the ability to inspire or influence others. Being powerful also can mean being able to get things done. Power is important in the conflict resolution process because it can shape the way ideas are presented and the responsibility for implementing an agreement. Conversely, how power is used also can help generate conflict, especially if its application is considered inappropriate or unjust.

Identifying Interests and Positions

An important concept in resolving conflicts has to do with distinguishing between stakeholders' interests versus their positions. Typically, stakeholders will offer their

position, their desired solution or outcome. Beneath their position is an **interest**, some underlying goal to be accomplished or need to be fulfilled. A position is the proposed plan to meet the goal. While different stakeholders' positions may be incompatible, their interests may not be that far apart.

For example, a developer might want to build a new subdivision. Nearby residents might argue for no development in the area. These two positions seem dissimilar enough that one side will win and one lose. If the motives behind these positions were probed more deeply, however, there may be a way both sides can win. The developer has an interest in generating an economic return from the land. Residents may want to preserve open space and wildlife habitat. Local government is a third party directly affected by the dispute in that its interests are to maximize tax revenues, minimize new service costs, and protect water quality.

When **framing** the issue in terms of the underlying interest, compromise solutions may be feasible. In this example, it may be possible to approve a subdivision plat that includes an area of compact, high-density development and land area dedicated to a park and open space. The developer generates a return on investment. Area residents have a new park and their scenic amenities. The city gets new tax base, an efficient development configuration, and the opportunity to provide sewer in the subdivision rather than to permit private septic systems.

In resolving disputes, it is often helpful to understand the interests underlying the positions of stakeholders before entering into bargaining. In the context of discussing the issues it becomes possible to **reframe** statements to clarify interests rather than positions, and to seek solutions on the basis of the interests. This is termed "interest-based bargaining," and is a technique to help resolve disputes between different groups.

Key Concepts and Definitions

Stakeholder: anyone directly or indirectly connected to an issue or likely to be affected by a proposed solution to the issue.

Situation Analysis: a method of assessing all past and present components of an issue.

Positional Bargaining: a negotiation process where stakeholders sequentially present their respective solutions to an issue and gradually relinquish aspects of their solutions until agreement is reached.

Interest-based Bargaining: a negotiation process that attempts to satisfy as many of the underlying interests or needs of stakeholders as possible.

Framing: a statement or definition of the conflict situation, issue, or interest. Framing a problem is to state it in a way so it can be solved.

Reframing: a process of changing how a person conceptualizes an idea, belief, or situation. Reframing is to restate an assertion or position in such a way as to emphasize the underlying interest.

Mediation: a type of conflict resolution where a disinterested third party helps direct the negotiation process and offers clarification of the issues presented. Often used where tensions are heightened.

Consensus: a decision-making process where all involved must agree to the decision being made. Consensus is different from voting because each stakeholder has a role in the creation of the outcome. Any participant can block the outcome, or can choose to sit out and still abide by the decision.

What is Conflict Resolution?

Conflict resolution is a structured process where two or more stakeholders gather to forge a solution acceptable to everyone. The basic premise of conflict resolution is that parties holding competing positions can usually collaborate when they engage in interest-based bargaining. It tends to be a time- and labor-intensive process, but usually results in mutually acceptable outcomes. It is less costly if the alternative is likely to be litigation. Characteristics of the multiparty conflict resolution process include:

- the presence of multiple interests and a range of positions regarding an issue;
- the stakeholders are usually acquainted with one another;
- participation is voluntary;
- any interests and positions to be considered must be on the table. While outside lobbying and agreements are not uncommon, they must be brought to the table for full consideration to be honored;
- the benefits and costs of the agreement are rarely equally shared among stakeholders. That is, some will likely gain more than others;
- a facilitator may be chosen by participating stakeholders to help organize the process and keep discussion focused;
- implementation arrangements are usually put in writing with various stakeholder responsibilities clearly specified;
- solutions may be gradually phased in or evaluated over time with contingencies for adjustment as needed; and

- the process usually uses the consensus form of decision-making.

Preparing to Participate in a Conflict Resolution Process

Doing some background research and reflection before entering into a negotiation or conflict resolution process will move discussion forward more quickly. It begins by clearly understanding your own side's **positions and interests**. Identify the principles on which the interests are based, and consider the range of options that could be considered acceptable solutions.

Prepare for **positional trading**. This is the idea of coming to the discussion prepared to make concessions as a trade for the other side's concessions. Create a hierarchy of choices for concessions and what might be expected in return. Build **expendables** into your position with the intention of conceding them.

Know the **other stakeholders** in the process. Anticipate others' interests and positions, and develop strategies whereby interest-based arguments can be used and countered. Anticipate the degree of complementarity or exclusiveness across positions, whether alliances are likely to emerge, and whether alliances might be fostered.

Be clear about the **goals** relating to both the process and your involvement. If the involvement is as a representative of a local government body, there are likely to be multiple goals in both the near-term and long-term. These should be explicit to all involved.

Choose the **appropriate representative** to engage in the negotiation. The person needs to have authority and respect, be able to communicate effectively, and be quick-thinking. This person will not necessarily be the chief elected officer of a municipal unit. Predetermine the scope of authority that representative will have. A substitute representative also should be designated and prepared to step in when needed.

The Conflict Resolution Process

There are numerous ways to structure a conflict resolution process. One model is offered here, but not all situations will necessarily need to use the same steps.

Analyze the conflict, background and appropriate role for local government.

Conduct a situation analysis, including identification of stakeholder's positions and interests. Research the history of the conflict. Determine whether to get involved or whether the alternative to a negotiated agreement is a sufficient or better outcome. From the standpoint of local

government, there might be multiple reasons to become involved in a dispute resolution. At times, local government might be an active stakeholder to a conflict, a mediator for other groups experiencing conflict, or supporter of community groups.

Organize and plan the process.

Inform likely stakeholders of the opportunity to participate. Ask stakeholder groups whether any other interested parties have been excluded, including groups traditionally underrepresented.

Prior to initiating actual negotiations, the stakeholders or a subgroup should draft an initial agenda and timetable for completion of the process. The full group needs to clarify what issues are to be discussed, the limits of discussion, and topics that are not up for discussion. Other support (clerical, etc.) or technical assistance (professional staff, experts) also should be secured.

The group will need to agree on meeting times, dates and places. In some instances, it may be appropriate to assist with transportation or child-care arrangements.

The meetings should be planned with plenty of time for informal discussion. Much of the business that may need to be completed is often done informally. Refreshments and breaks can facilitate these discussions.

To the extent local government officials are involved, care must be taken to follow open meeting and records laws. Consult with the municipal attorney in structuring participation and meeting arrangements.

Consider media relations. Generally, it is preferable to have an official spokesperson, and for participants to agree to not speak with the media between meetings. The potential for misunderstandings increases when people speak to each other through the media. If the meetings are subject to open meeting laws, news reporters may be present, but it remains advisable to not speak publicly outside the meetings.

When setting ground rules for conducting the meeting, consider such issues as information notification procedures and responsibility, meeting leadership, participant conduct, decision-making procedures, and when and how the process will be concluded.

Begin the negotiating process.

In the context of multiparty negotiations, a participant should remain alert as the process unfolds. Watch for potential allies with common interests or coalitions that might be advantageous. Make note of the various proposals, keeping in mind the extent suggestions meet multiple stakeholder interests and potential feasibility constraints. Watch for trading opportunities to foster the sense of

compromise, keeping in mind the threshold beyond which it is no longer acceptable to give up more.

Finally, watch for signs an external mediator may be needed. As tempers flare or discussions become redundant or unfocused, an unbiased third party may be needed to get negotiations back on track.

Local officials should watch for opportunities to use influence and resources to overcome obstacles or gain advantage for municipal interests. It is important to recognize when the direction of discussions turns in ways that are potentially disadvantageous local government interests. Be prepared to redirect or break off discussions. Note how the process is being represented to the public, and be prepared to initiate public relations or damage control.

Potential solutions will need to be subject to a feasibility evaluation. At a minimum, the evaluation needs to consider economic implications and distribution of costs; potential environmental consequences if any; legal and political constraints; and any unintended consequences that may result. It is generally desirable that all parties should gain as well as share in the costs of implementation.

Bring the process to a close.

To ensure a durable resolution in ending the process, the final agreement should be put in writing and signed by all participants. The agreement should include any contingencies for follow-up, evaluation or renegotiation as necessary.

Upon reaching an agreement, there is ample opportunity to share credit among all participants. In the attempt to use a formal dispute resolution process, a valuable precedent has been set to help resolve future conflicts. The effort to “debrief” participants may help to improve future conflict resolution initiatives.

Situation Analysis for Conflict Resolution

The situation analysis is intended to gather background information that will be useful in negotiation. Following is a list of questions organized by ideas or themes. These may not be the only relevant questions, but can serve as a starting point. While the perspective is representative of a municipality, concepts are more broadly applicable.

- Identify the alternatives to a negotiated agreement.
- If no negotiation took place, would your municipality be in better or worse shape?

- What is the acceptable range of solutions for your municipality?

Conduct a stakeholder analysis.

- Who are the groups involved in the negotiation?
- What is the relative importance of each group to the municipality?
- How are the other groups organized?
- What is the power base of each group?
- What is the relative distribution of power among all the stakeholders?
- What has been the municipality's historical relationship with them?

Clarify the issue.

- How did the conflict arise?
- What are the main and secondary issues?
- Can negative issues be recast to emphasize a positive side?
- Are the issues negotiable?
- Would litigation save time and render a fair solution?
- What positions have been taken, and what are the underlying interests?
- What information is known and needed, and are there experts available and acceptable to all sides?

Consider possible strategies.

- What type of decision-making process should be used?
- Should a mediator be used, and who will pay?

Proposal Evaluation Grid

In the course of negotiation, any number of proposals may be offered. Feasible solutions should be evaluated for actual or potential constraints. Following is an evaluation checklist. It is offered as a sample of the type of constraints that may hinder implementation of solutions and is not a comprehensive list.

Economic Issues

- Does the solution cost money to the public or private sector, either directly or indirectly?
- Is there an allocation in the budget for whomever will be paying for it?
- Can the idea be sustained beyond its initial implementation?
- How will the costs be shared among all stakeholders?

- Are there other potential sources of funding for the proposal, such as grants or other aids? Who can find out?

Environmental Issues

- Will this solution cause actual or potential environmental consequences for anyone?
- Will the solution promote environmental awareness and protection?
- Are there any potential environmental costs that will have to be assumed by either a public or private entity?

Legal Issues

- Has the proposed solution been reviewed for any potential constitutional, or federal, state or local statutory violations?
- Are there any potential loopholes that the designers can anticipate and fix?

Political Issues

- Are there any constituencies who may find the proposal objectionable in any way?
- Does the proposal potentially violate anyone's civil rights?
- Have multicultural, gender, and accessibility concerns been taken into consideration?

Unintended Consequences

- Will implementation of this solution have unintended effects on other people, places or at other times? Should this be considered?

Conclusion

A key element to the resolution of a public issue is the ability to find compromise between competing interests. In this publication, a number of ideas about how to resolve complex disputes between competing interests were presented.

In addition to the ability to resolve conflict, other elements to resolving public controversies include demonstrating leadership capacity and the ability to effectively communicate. These topics are included in the other editions of this series.

This is one in a series of publications dealing with the issue of managing controversial public policy. The entire series includes:

- Leadership in the Public Arena
- Informing the Public Debate: Public Education Strategies
- Meaningful Input to Public Policy: Citizen Participation Strategies
- The Public Relations of Public Policy
- Successful Negotiating Skills
- Resolving Multiparty Disputes

Individually or together, these resources are intended to help local officials and others develop greater leadership capacity.

John Leatherman

Assistant Professor

Department of Agricultural Economics

Kansas State University

Marlene Howell

Former Research Assistant

Office of Local Government

Kansas State University

The Office of Local Government is a unit of K-State Research and Extension, housed in the Department of Agricultural Economics at Kansas State University. The Office of Local Government provides educational outreach, technical assistance, and applied research services to Kansas local governments in areas related to community and economic development, local public finance and public service provision, and environmental and natural resources management. Dr. John Leatherman, director of the Office of Local Government, can be reached at 785-532-2643 or olg@agecon.ksu.edu

Publications from Kansas State University are available on the World Wide Web at: <http://www.oznet.ksu.edu>

Contents of this publication may be freely reproduced for educational purposes. All other rights reserved. In each case, credit John Leatherman and Marlene Howell, *Resolving Multiparty Disputes*, Kansas State University, November 2000.

Kansas State University Agricultural Experiment Station and Cooperative Extension Service

MF-2496

November 2000

It is the policy of Kansas State University Agricultural Experiment Station and Cooperative Extension Service that all persons shall have equal opportunity and access to its educational programs, services, activities, and materials without regard to race, color, religion, national origin, sex, age or disability. Kansas State University is an equal opportunity organization. Issued in furtherance of Cooperative Extension Work, Acts of May 8 and June 30, 1914, as amended. Kansas State University, County Extension Councils, Extension Districts, and United States Department of Agriculture Cooperating, Marc A. Johnson, Director.