

Land-Use Issues and Conflict Resolution

by

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Livestock Options for the Future, June, 2001.
Winnipeg, Manitoba

Resolving Land-Use Conflict in the Rural Community

Good morning, I'd like to begin my presentation in a slightly unorthodox way. I don't normally read my presentations, but I am going to read 3 or 4 pages of text. As you know conflict involves people and often it can be exceedingly emotional and troubling for the parties involved. In Ontario we have a board known as the Farming and Food Production Protection Act. This legislation provides the opportunity for residents to refer complaints over farm practices to the Normal Farm Practices Protection Board. Similar "Right to Farm Legislation" exists in all provinces but Newfoundland. The example I will read is based on a true story where 10's of thousands of dollars will have been spent- I should mention that I have changed a few details to protect the innocent!

The section that I am going to read outlines the background to a conflict between 2 farm neighbours.

I would like you to think about the 5 observations that I have derived from this example

Five Observations Regarding Conflict

- Conflict often emerges out of routine circumstances
- Conflict is usually brought about by what is perceived to be a significant change
- Conflict, if not managed, can significantly affect peoples quality of life – both an emotional and financial strain.
- Conflict can often be managed at an early stage or avoided all together
- There is often no right or wrong when it comes to issues of conflict.

As I'm reading this to you I'd like you to try to imagine that you are the farmer who is telling these 2 stories – Put yourself in their shoes for a couple of minutes:

Resolving Land-Use Conflict in the Rural Community: Preamble

Two farmer's – Farmer A and Farmer B reflect on the circumstances that have lead them to an on-going and expensive conflict:

Farmer A's Perspective

My great-great-great grand-parents originally cleared a 100 acre farm out of the bush on the 7th Concession. It was good land, a creek went through the middle of the farm, there was water for the livestock and with the soils and climate they were blessed with they could grow some of the best crops in Canada. Gradually, over the years, they established a good sized barn that supported their cattle, pigs and horses. As the farm became more prosperous the old log house was eventually replaced by a red brick house that would stand the test of time.

They had good neighbours that lived across the road – their children played together, went to school together, and they supported each other in times of need. The farm was passed down from generation to generation and the cycle of neighbourly relations went on for more than 100 years.

Gradually, however, things changed. After the war the house across the road lost some of its luster, farm sizes were getting larger and larger and eventually the neighbour's farm was purchased by a farmer who lived several miles away. The house continued to deteriorate – no one was living in it now, but the barn continued to be valuable. Dairy heifers were kept in the barn – it was good to see it being occupied. The barn was kept in good repair and now and then there was a chance to speak to my new neighbour about the dairy business – something we shared in common. This went on for several years- trees had now grown up around the old house and while I longed for the days when

we had good neighbours close at hand there was something to be said for the solitude. This farm would provide a good home for my son and grandchildren.

And then one morning there were happenings across the road. The old dairy barn was being demolished and there was evidence that a new barn was about to be built. I soon discovered that there were plans for one or more hog barns. I've read and heard that these new larger barns can be a real problem- in fact, I once had pigs myself- and know how much they can stink. I contacted the Township but was told that everything was fine- appropriate permits had been issued. Still, this change caused me concern. This new barn seemed awfully close. I spoke to the Ministry of Environment and the Ministry of Agriculture and they informed me that while certain guidelines weren't met the Township did issue a legal permit. I've decided to contact my lawyer and now we'll see what happens....

Farmer B's perspective: *I'm proud to call Canada my home. When my parents left Europe for Canada I came along as a young man determined to work hard, to contribute positively to my new country and to farm in what seemed like wide open spaces. I worked hard to build up sufficient equity to purchase my first farm. It was a time of opportunity.*

Many people did not see the relative cheapness of Ontario's farmland, but with prudent acquisitions I was able to add several farms close to my home operation. The dairy business was good to me – that monthly cheque allowed me to keep the bills paid when crop prices were bad or when the high interest rates of the early 80's forced other farmers out of business. For me getting large was a survival strategy. My children wanted to farm and with Free Trade and ever reduced margins I sensed that if I wanted to keep in the business and compete with the Americans and Brazilians I needed to both diversify and achieve certain economies of scale.

Some years ago I picked up the farm on the 7th concession – a good piece of land – a decent barn but not much of a house – certainly not worth the hassle of trying to rent it out. I kept dairy heifers in the barn for a number of years- it was close to home – not so far for the hired hand to go for chores. The neighbour across the road was a good man and gave me a call if he saw anything unusual around the property.

I'd been in the hog business for a while – the market was always up and down – but that new approach to production – a “loop” as they called it – with sows in one barn, feeder hogs in another and weaners in another barn held promise- of reducing disease, maximizing production and of achieving those economies of scale. As I thought about it, the farm I picked up a number of years ago on the 7th concession was a good spot to build. There was a sow barn in the next township, and I had plans to build finishing barns with a partner elsewhere. I needed a spot to build 2-4 weaner barns and I decided that the farm on the 7th Concession would work well.

I approached the Township for a building permit and they told me that I should get a Certificate of Compliance which determines the minimum separation distance to the neighbours house – this

would push the barns back further from his house than was practical (the property slopes away from the road and if the barns are too far back I wouldn't be able to use the gravity system for the liquid manure that I had planned to use. When I discussed this with the Township I discovered that the Certificate is simply a guideline – a recommendation and that the Township would issue me a building permit even if I didn't have a certificate. After all these barns aren't that large (2 barns at 1800 weaner pigs each) and these new barns will be downwind from my neighbour. It seemed like a good spot to build.

A few days after construction began I was in the coffee shop and heard that my neighbour was quite concerned about my new barns. I wasn't overly concerned- after all I did everything that the township asked of me. Just the other day, however, I was contacted by the Ministry and understood that my neighbour has hired a lawyer. Some years ago I discovered, that while I know pigs and cows – I don't know law. I think I'll give my own lawyer a call. What else can I do?...

Land-Use Issues and Conflict Resolution

Agenda

- understand the nature of conflict
- alternative dispute resolution techniques
- the municipal role in resolving conflict
- some specific examples

Introduction

Things that we won't do today

- 1) We won't generate the emotion that accompanies someone with tears in their eyes when they perceive that certain rules are affecting them
- 2) We won't replicate the time frame (i.e. instantaneous vs. months)
- 3) The hidden agendas (the things which may never be said)
- 4) The personal connections- my most difficult situations have almost always been where there is something very personal lurking in the individuals background (ex. a previously denied application, a feeling that they have been done wrong in the past, someone with cancer, someone who has lost two children recently to cancer, these are the unpredictables that lead an otherwise rational situation into the irrational.)
- 5) We won't adequately address the unease or feeling that the public sometimes feels that they are meeting with an "important bureaucrat". (a little bit like going to see the unknown professor for the 1st time)
- 6) we won't come close to dealing with the range of issues, circumstances, deviations inherent with negotiations
- 7) We won't adequately identify or simulate the variety of competing interests that might be part of negotiation.
- 8) We can't duplicate the presence of institutional constraints

What we will do is

- 1) provide a basic introduction to the concept of Alternative Dispute Resolution (focusing on negotiation and mediation)**
- 2) Stages in Negotiation**
- 3) We will review personal observations/ questions re. negotiations**
- 4) We will introduce some specific examples for review, discussion and role play**
- 5) We will build upon your personal experience**
- 6) and in a general way we will try to set the context/ considerations that you might be involved with in your career**

Conflict and Communications

- How Many people enjoy conflict?
- How many people enjoy conflict sometimes?
- How many people are scared to death?

- Become aware of your personal strategy
- Be aware of other strategies and options
- Be aware of choices you can make about strategies

How do we manage conflict?

Personal strategy

- **avoid the conflict**
- **compete**
- **accommodate**
- **compromise**

- **is there a win/win?**

three basic ways to resolve conflicts

- **power- if I have enough**
- **Rights- Stds of fairness or behavior**
- **Interests- nothing to do with power/
rights**

- **Interests- nothing to do with power/ rights**
- **negotiate with different interests**
- **acknowledge conflict and mutual gain**
- **4 tests**
 - **outcomes better than alternatives (BATNA)**
 - **efficient- can't waste time and money**
 - **Relationships should be better than before process started**
 - **Recurrence**
 - **reduce frequency of conflict + less impact**

The Dirty Dozen*

**Most of the conflicts affecting Canadian farmers
are about:**

- 1) Air pollution- odour, dust or noise**
- 2) Water pollution- surface & ground**
- 3) Waste management –handling & disposal**
- 4) Chemicals – of all kinds at all stages in the food production and processing system**
- 5) Land Degradation – erosion, compaction, salinization, depletion, contamination, etc.**
- 6) Wildlife and fish protection – including habitat protection**

* (Carter and Owen, 2000)

- 7) Biodiversity – including fears about dwindling wildlands and mono-culture farming.**
- 8) Resource management – including preservation of wild parklands & green spaces**
- 9) Public access- to public & private land used by farmers and trespassing**
- 10) Zoning and planning – farms and residential subdivisions too close together**
- 11) Unkempt farmsteads – offend neighbours and passers –by**
- 12) Aesthetic despoilment – due to berms, nets, buildings, fences and hours of operation**

Do's & Don'ts in Dealing with Complaints

Do's

- listen before you speak
- avoid being judgmental
- be open to all points of views
- use open, clear, straight forward questions
- acknowledge the limits of your mandate
- recognize over-riding interests of other parties
- clearly explain your role when meeting other people
- clearly understand and explain to people their options in the event there is no resolution
- involve the appropriate government level at the appropriate times
- seek more information when required

Don'ts

- don't become argumentative
- don't rely on questions that only require yes or no answers
- don't be judgmental
- don't allow yourself or your committee to become involved where you have no authority or jurisdiction
- don't come to conclusions until you have heard all the information
- don't make decisions or recommendations in the absence of required information

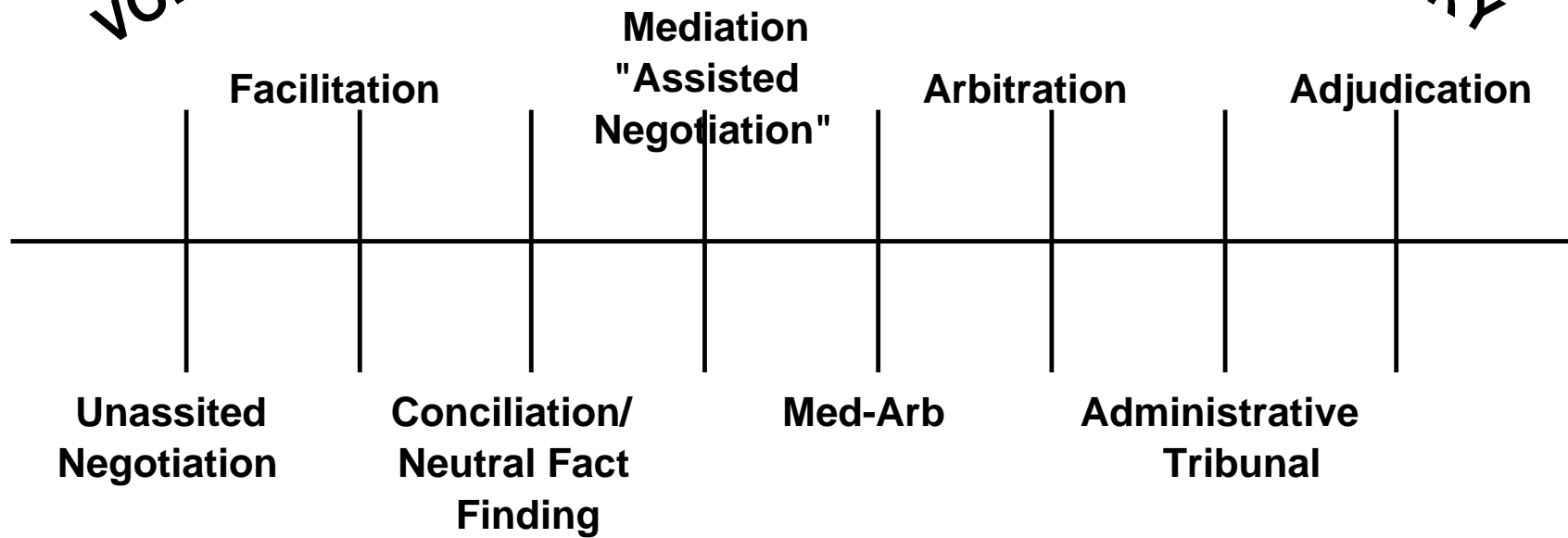
“The most valuable aspect of conflict is the energy that it generates and conflict management is not an attempt to suppress the energy but to use it constructively.”

(Sherman and Livey, 1992)

ADR Continuum

**INFORMAL
VOLUNTARY**

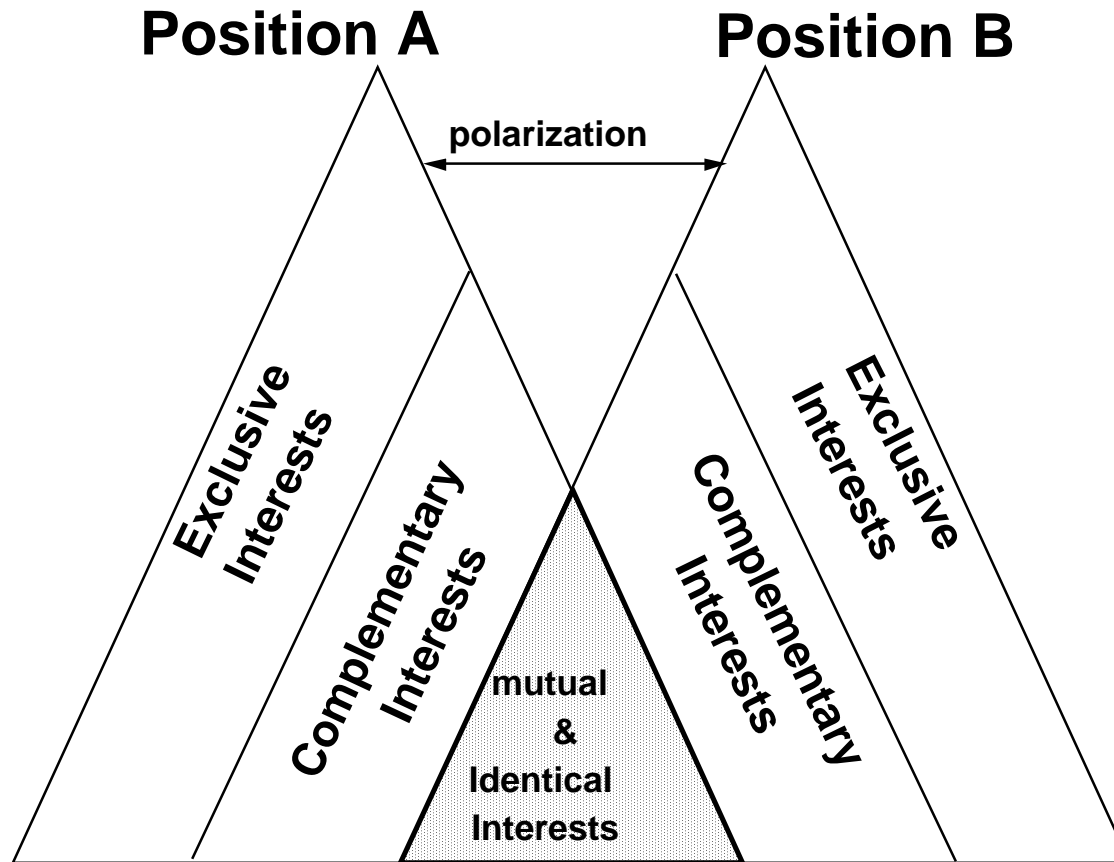
**FORMAL
MANDATORY**



- ***Potential for Win-Win High***
- ***Disputants Directly Involved***
- ***Relationship Central***

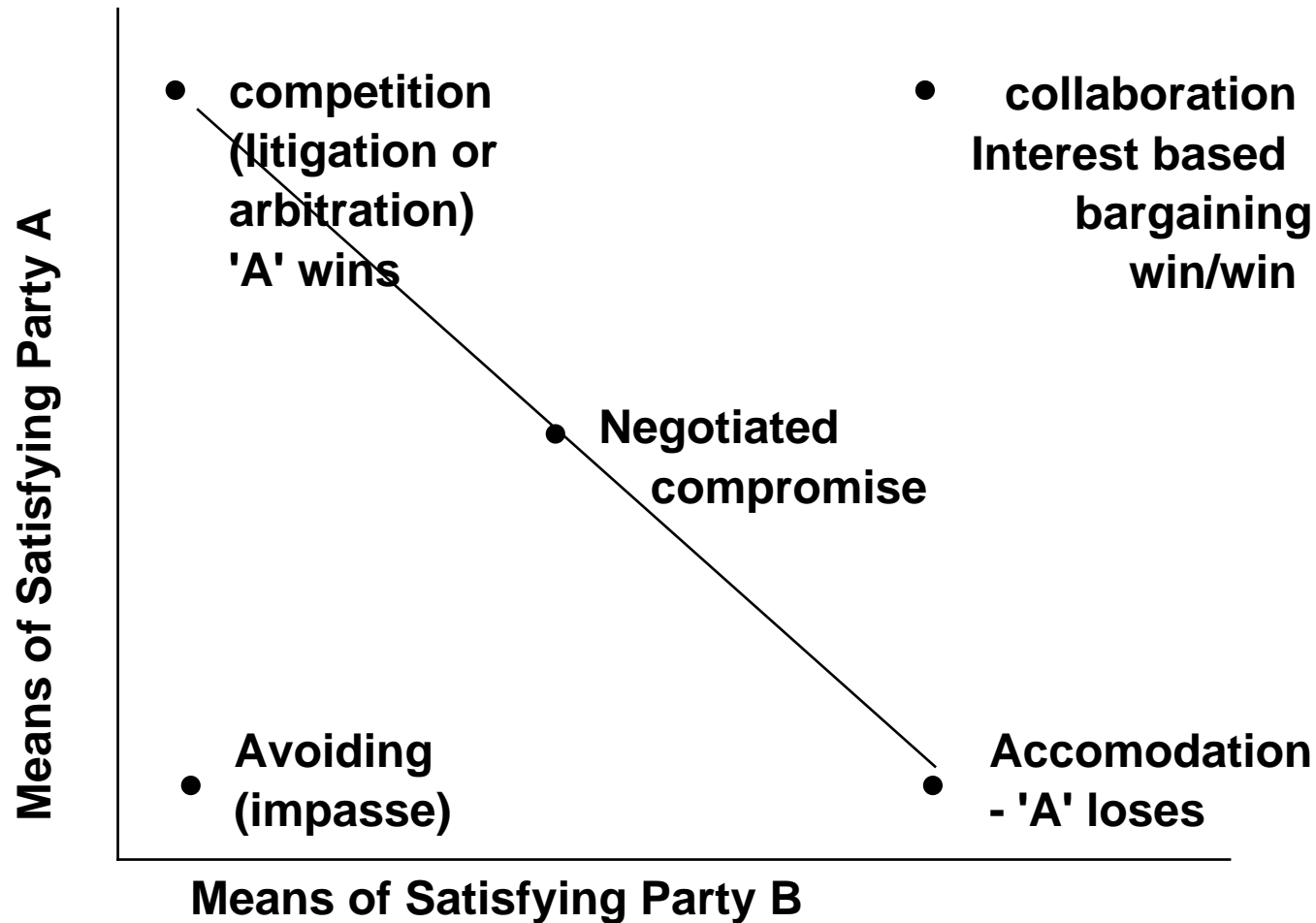
- ***Win-Lose***
- ***Disputants Not Directly Involved***
- ***Relationship Peripheral***

Moving From POSITIONS to INTERESTS
expands solution potential

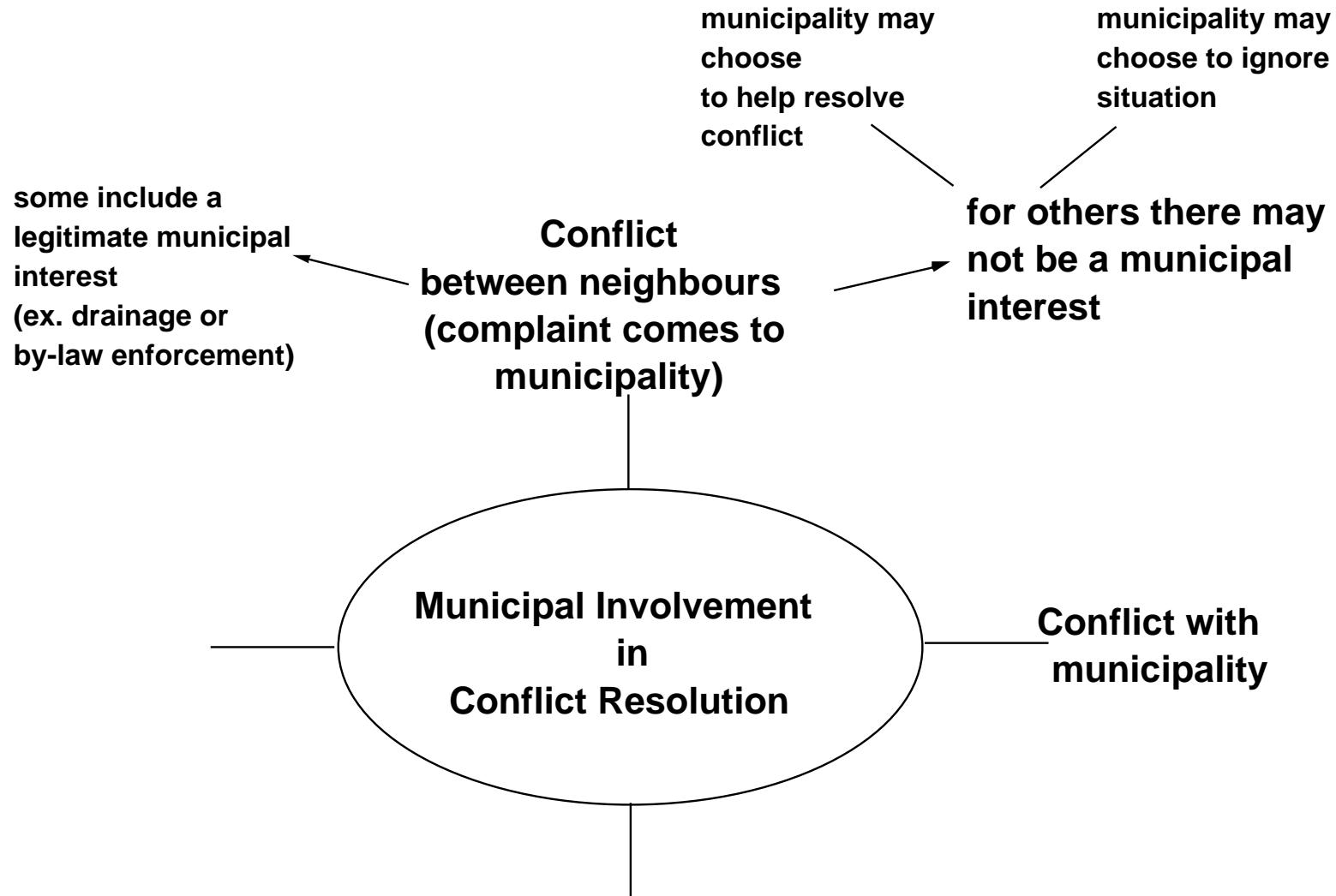


Interests (needs, desires, concerns, fears, hopes)

Conflict Resolution – Winners and Losers



How Do Municipalities Get Drawn Into Conflict?



Conflict between neighbours

- i) may include a legitimate municipal interest
- ii) there may not be a municipal interest

Conflict Resolution: The conflict will:

- remain unresolved
- resolved informally (perhaps over a beer!)
- resolved formally (ex. the courts)
- if a municipal interest the municipality may become involved in dispute resolution (ex. fence viewing) or may resolve the issue through a given action (ex. send in the dog catcher)
- other

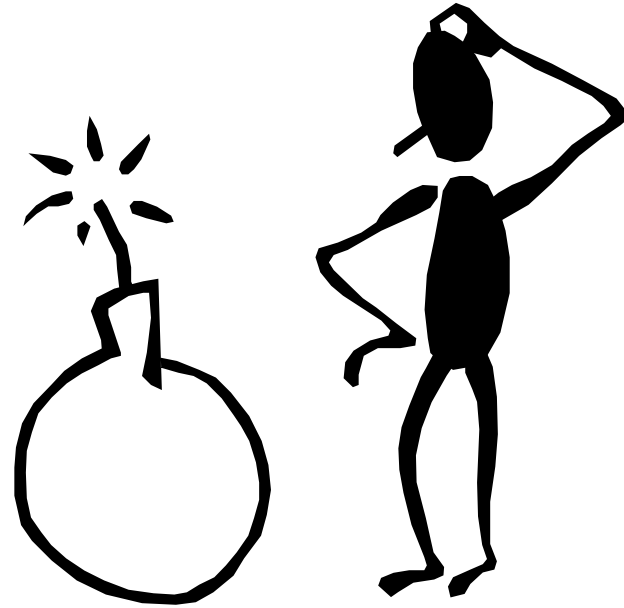
Conflict between ratepayers & municipality

- Concern over municipal action or inaction
- staff dealings with public
- concern over council related issues
- concern over taxes
- concerns over services

Conflict Resolution: The conflict will:

- remain unresolved
- resolved informally (discussions with council or staff)
- resolved through formal procedure (ex. the courts)
- resolved - municipal action (more garbage collection)
- resolved through ADR - boards to adjudicate conflicts in which the municipality is a stakeholder (ex. OMB)
- other

How do we resolve conflict?



What positive results are there from conflict?

John Forrester identifies 6 strategies

- Identifying the relevant facts, regulations and impacts;
- Pre-mediation, representing anticipated concerns of all parties and searching for compromise
- Acting as resource; bringing the parties together; encourage back and forth meetings
- Shuttle diplomacy – probe and advise both sides separately
- as active and interested mediator
- as negotiator, as a planner-instigate neutral mediation.

Figure 3: Five Steps to a Win-Win Situation in Mediation

Step 1 - Clarify issues and interests

Step 2 – Review available information

Step 3 – Explore options

Step 4 – Use objective criteria to seek settlement

Step 5 – Report results of mediation

Figure 3: Five Steps to a Win-Win Situation in Mediation

Step 1 - Clarify issues and interests

As mediator confirm that each party understand the underlying interests that they have and the interests of the other parties.

As mediator your responsibility is to determine what the issues are and what the interests are of the parties that have raised the concerns(i.e. is the complainant a neighbour? is the issue a concern of safety?)

Step 2 – Review the available information

Is new or additional information required? Is there new information since the complaint was made?

Step 3 – Explore options

What is the common ground between the complaint and the complainant? Is there potential for agreement or compromise?

What types of solutions might potentially be used in dealing with the complaint? What is feasible and what is financially and technically possible? Will it have the desired outcome? Is it likely to be perceived in a positive way by neighbours?

Conversely, is the complaint not founded? And do you have adequate information to properly explain that to the person who has raised the complaint?

Step 4 – Use objective criteria to seek settlement.

Remember your responsibility as mediator is to not necessarily side with either party but rather establish criteria that allows you to come to an appropriate win-win situation (i.e. Is there an odour problem? Is there a potential water quality problem? Are there other irritants that exist that can be responded to?)

Make sure that the solution can be implemented.

Make sure that the parties understand how it will be implemented.

Step 5 – Report the results of mediation.

It is advisable to accurately record the results of a mediation decision while both parties remain together. By recording the mediated agreement in written form, including terminology and definitions, this helps to ensure that both parties know what has been agreed to and establishes a 'paper trail' should the mediated solution require review at a future point.

Conflict Resolution: *Healthy Ways to Reduce Conflict*

- 1) Focus on problems not personalities
- 2) Separate people from problems
- 3) Speak to be understood
- 4) Prepare
- 5) Invent options for mutual gain
- 6) Use objectives and criteria
- 7) Seek win/win
- 8) Put yourself in their shoes
- 9) Celebrate differences in opinions & ideas
- 10) Try to achieve self solving of problem

Conflict Resolution: *Unhealthy Ways to Reduce Conflict*

- 1) Fight to win
- 2) Blame the other party
- 3) Promote only your solution
- 4) Don't divide the pie!
- 5) React with heavy emotion
- 6) Focus on the past
- 7) Use rigid thinking – “one” right solution
- 8) Lock into an idea- entrench
- 9) Put personalities before issues
- 10) Be passive – aggressive, defensive

key items to remember:

- Almost always, the complaint will be legitimate in the eyes of the complainant
- All parties have an interest in the issue (and these may be different).
- Lack of effective communication is the principal evil of all conflict
- Ideally, all parties need to win in a win-win situation, but there might be situations where this will not occur.

- Confidentiality is an important component of the mediation process. The details and contents of discussions with people should remain in confidence.
- Each situation is unique and will need to rely on the willing participation of each party.
- Allow parties to determine solutions – you'll get better commitment.

IDEAS TO CONSIDER

- Discuss solutions throughout process
- Transition – test proposals with parties as they develop
- Use of deadlines “the ticking clock”
- Tough on issues – Soft on People (keep trust)
- Don’t try to mediate values or ideology
- Restate agreement points – clarify
- Use a single text agreement – Write it down
- Emphasize the agreement “package”
- Parties may need to ratify with host group
- See to detail – Who, what, when, follow through dates

Some Examples

Irrigating Problems

What do you mean you can't open your door

So what's a long weekend

Farmer A and Farmer B – still at it