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# Conflict Resolution Skills

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## Training for Massachusetts Agricultural Commissions



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## OVERVIEW – MASSACHUSETTS OFFICE OF DISPUTE RESOLUTION

The Massachusetts Office of Dispute Resolution (MODR) is a state agency dedicated to promoting and facilitating alternative dispute resolution (ADR) within public entities. MODR assists people and organizations to recognize potential conflicts and approach, prevent, and resolve them in creative and constructive ways. MODR believes that government functions best when there is collaboration between citizens and decision makers. MODR provides tools and resources that support effective and responsive government, including consulting, conflict assessment, facilitation, mediation, arbitration, training and comprehensive dispute systems design. MODR assists public entities, including state agencies, municipalities, and courts to develop integrated conflict management systems that improve their ability to deal with conflict. In order to promote the highest quality ADR services, MODR is privileged to work with a panel of neutrals, including mediators, facilitators, arbitrators, case evaluators, trainers, and consultants. MODR developed and implemented a comprehensive performance-based evaluation process for selecting its panel of mediators. The excellence and diversity of this panel enable MODR to provide high-quality services to a broad array of issues.

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# Conflict Resolution Skills Training

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# Introduction

Conflict is all around us. It is not something we can choose to have or not have. It just IS. Conflict may center on something seemingly trivial, or it may be something of enormous magnitude. This course IS NOT about avoiding conflict. Avoiding is not only IMPOSSIBLE but UNDESIRABLE!!

This course IS about discovering productive ways of handling conflict – ways that make a difference in your work with the Agricultural Commission (AgCom). Often AgCom members find themselves in situations where they serve as conflict management facilitators or third party neutral interveners. This role will be referred to as a “neutral.” A neutral is a third party, (not involved in conflict or dispute) unbiased, facilitator, fact finder who assists parties in conflict to resolve their issues. This Guide is designed to provide information and processes to help you in your very important role as a “neutral.”

## COURSE OBJECTIVES:

- To assist participants in gaining knowledge and understanding of conflict
- To help participants learn to accept conflict as a normal part of every day life and manage it effectively
- To guide participants in identifying their individual orientation to conflict and their “conflict style”
- To assist participants in developing strategies to make them more “conflict competent”

## PARTICIPANTS IN THIS COURSE WILL LEARN:

- Tools and techniques for managing and resolving conflict
- How to effectively manage anger and emotion
- Basic principles of negotiation
- Basic mediation skills
- How to overcome impasse
- How to craft good agreements

## RECALLING A PERSONAL EXPERIENCE OF CONFLICT

Please write down your responses to these questions:

1) What do you consider “conflict”?

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2) Have you ever experienced a conflict?

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3) Think about one of your worst conflicts. Did you handle it well?

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4) Do you wish you had handled it differently? Why?

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5) Think of a conflict that has been handled in a destructive way. What are some of the outcomes in such a case?

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6) Think of a conflict that has been handled constructively. What are some of the outcomes in such a case?

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*We have probably all had the experience of conflict being handled constructively and destructively. The outcomes of conflict being handled constructively are SO MUCH MORE ATTRACTIVE; it's a wonder we ever settle for less!!!*

# THE MYTHS OF CONFLICT

## 1 **Myth: *Conflict is only negative.***

- Conflict is an opportunity for better understanding and growth through listening and discussion, which can lead to creative, more durable outcomes.
- Out of conflict, we may clarify issues, strengthen relationships and contribute to our own personal growth, as well as build greater awareness and understanding of “content” issues.

## 2 **Myth: *Conflict is only about outcomes.***

- Conflict is often about trust, relationships and feelings.
- Although people in conflict often focus on positions, conflict is often a “crisis of human interaction,” in which feelings, trust and personal relationships have become grayed and need to be acknowledged and healed.

## 3 **Myth: *There is only one right way.***

- A diversity of perspectives, values and experiences brings creative solutions to problems.
- We each bring to a conflict our personal back ground and culture, experiences, values, perceptions, skills, and education. There is not one right way to solve a problem.

## 4 **Myth: *Conflict is abnormal.***

- Conflict is normal.
- Conflict is a normal part of everyday life.
- The challenge is to deal with it in more constructive ways.

## CONFLICT MANAGEMENT STYLE SURVEY

In the spaces at the right, write the names or initials of three people (a family member, a friend and an employee or other colleague) with whom you occasionally have conflicts. After reading each one of the following statements, decide whether you use this kind of response *frequently* (write “3”), *occasionally* (write “2”) or *rarely* (write “1”) with each individual listed.

	<b>Family:</b>	<b>Friend:</b>	<b>Emp./ Colleague:</b>
1. Make sure you are understood.			
2. Take into account the other’s point of view as well as your own.			
3. Identify mutual concerns.			
4. Admit that you may be wrong.			
5. Prefer to let it go, not worth it.			
6. Likely to argue.			
7. Share decision making with others on important issues.			
8. Try to reach a compromise.			
9. Give in to the other.			
10. Try to change the subject.			
11. Firmly pursue your opinion until you are heard.			
12. Try to get all concerns aired.			
13. Give in a little and encourage the other to do the same.			
14. Pretend to agree.			
15. Lighten it up or joke about it.			

	<b>Family:</b>	<b>Friend:</b>	<b>Emp./ Colleague:</b>
16. Strongly assert your opinion.			
17. Try to find a new solution both of you will find acceptable.			
18. Try to develop areas of common ground.			
19. Sympathize with the other.			
20. Avoid the other person.			

### Survey Response Tally

---

<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>	<b>V</b>
1.	2.	3.	4.	5.
6.	7.	8.	9.	10.
11.	12.	13.	14.	15.
16.	17.	18.	19.	20.
<b>TOTALS:</b>				
<b>I ( )</b>	<b>II ( )</b>	<b>III ( )</b>	<b>IV ( )</b>	<b>V ( )</b>

# INSTRUCTOR GIVES ANSWER KEY

## CONFLICT MANAGEMENT STYLE SURVEY HOW TO TALLY RESULTS

1. When you have completed the survey turn to the “Survey Response Tally” sheet.
2. There are 5 columns numbered I – V. For each survey question (1-20) place your answer on the tally sheet next to the corresponding number.
3. If you answered for all 3 categories, “family, friend, colleague”, add the 3 numbers together and place the total next to the corresponding number on the tally sheet.
4. When you have finished populating the tally sheet, add the numbers in each of the five columns and place the sum under “totals”.

Example:

<b>I.</b>	<b>II.</b>	<b>III.</b>	<b>IV.</b>	<b>V.</b>
1. 9	2. 3	3. 6	4. 3	5. 4
6. 8	7. 3	8. 3	9. 3	10. 3
11. 9	12. 3	13. 3	14. 3	15. 4
16. 9	17. 3	18. 6	19. 3	20. 3
<b>TOTALS</b>				
<b>I. (35)</b>	<b>II. (12)</b>	<b>III. (18)</b>	<b>IV. (12)</b>	<b>V. (14)</b>

5. Once you have added your columns, identify where you have your **HIGHEST** score. In the example above the highest score is in Column I, with a total of “35”.
6. Determine what your “Conflict Style” is by matching your highest score to the key below.

### KEY

**Column 1 = Competitor**

**Column 2 = Collaborator**

**Column 3 = Compromiser**

**Column 4 = Accommodator**

**Column 5 = Avoider**

## CONFLICT STYLES (Answer Key) - When to use which Style

### COMPETING

#### Often Appropriate When

- An emergency looms.
- You're sure you're right, and being right matters more than preserving relationships.
- The issue is trivial and others don't really care what happens.

#### Often Inappropriate When

- Collaboration has not yet been attempted.
- Cooperation from others is important.
- Used routinely for most issues.
- Self-respect of others is diminished needlessly

### COLLABORATING

#### Often Appropriate When

- The issues and relationship are both significant.
- Cooperation is important.
- A creative end is important.
- Reasonable hope exists to address all concerns.

#### Often Inappropriate When:

- Time is short.
- The issues are unimportant.
- You're over-loaded.
- The goals of the other person certainly are wrong.

### COMPROMISING

#### Often Appropriate When:

- Cooperation is important but time or resources are limited.
- When finding some solution, even less than the best, is better than a complete stalemate.
- When efforts to collaborate will be misunderstood as forcing.

#### Often Inappropriate When:

- Finding the most creative solutions possible is essential.
- When you can't live with the consequences.

### ACCOMMODATING

#### Often Appropriate When:

- You really don't care about the issue.
- You're powerless but have no wish to block the other person.
- When you realize you are wrong.

#### Often Inappropriate When:

- You are likely to harbor resentment.
- Used habitually in order to gain acceptance (Outcome: depression and lack of self-respect).
- When others wish to collaborate and will feel like enforcers if you accommodate.

### AVOIDING

#### Often Appropriate When:

- The issue is trivial.
- The relationship is insignificant.
- Time is short and a decision not necessary.
- You have little power but still wish to block the other person.

#### Often Inappropriate When:

- You care about both the relationship and the issues involved.
- Used habitually for most issues.

## WHAT'S YOUR DOMINANT STYLE?

1) Stand with “your people”.

2) Discuss in your group:

What are the benefits of your style?

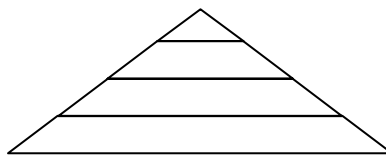
What are the drawbacks?

Do people find you easy to work with? Live with?

Another way to remember:

- |   |              |          |
|---|--------------|----------|
| • | Competitor   | MY WAY   |
| • | Collaborator | OUR WAY  |
| • | Compromiser  | 50/50    |
| • | Accommodator | YOUR WAY |
| • | Avoider      | NO WAY   |

## LEVELS OF CONFLICT



### How do we know there's a conflict happening?

There may be some very obvious signs that we can easily recognize, or there may only be a few subtle clues. It is this range that we are going to explore now.

If emotions are running very **HIGH**, if the conflict seems extremely **COMPLEX**, chances are.... its reached **CRISIS** stage.

## What is “CRISIS” like?

Could be:

- **Screaming**
- **Throwing things**
- **Not talking**
- **Divorce**
- **Leaving a job**
- **Storming away**
- **Violence**

**These clues are obvious – there is unresolved conflict.**

Often, if we’re on the look out we can see conflict brewing well before it reaches crisis. If we stay alert for conflict in its early stages, it is a LOT easier to manage.

We’ve probably all had a conflict that, because it was left to fester, escalated into something HUGE! As we’ve said, conflicts just don’t happen.... they BUILD. Learning to identify the levels of conflict can be a very valuable tool in both preventing and de-escalating conflicts.

The **FIRST** Level of Conflict is: **DISCOMFORT**

We’ve all been there! This is that initial awkward, creepy, “gut” feeling that things just aren’t right. It’s usually the very first signal you get that something’s brewing.



The next Level of Conflict is: **INCIDENT**

This is something that has happened, usually something minor, which has left someone upset or maybe just mildly irritated.

The next Level of Conflict is: **MISUNDERSTANDING**

This happens when the details of a situation are unclear or there has been some type of miscommunication or misunderstanding about motives or intent.

The next Level of Conflict is: **TENSION**

This is often caused by anxious feelings about one person's relationship with another. This is often the point where one more straw will break the camel's back and push someone over the edge to explode, resign, or maybe give someone a piece of their mind. Each subsequent experience with that person may confirm their already negative attitude toward him/her.

**What to DO? STAY ALERT and LOOK for SIGNS!!!**

Look for clues of conflict at the discomfort or incident level. Dealing with conflict at these levels, rather than at the crisis level, when emotions are running high, gives a greater chance of a CONSTRUCTIVE rather than DESTRUCTIVE outcome. Our response to the discomfort may be to choose an appropriate time, opportunity or option to tackle the issue.

## THE TOOLS OF CONFLICT RESOLUTION

In this module, we will cover a range of skills for dealing with conflict and helping you as an AgCom member become “conflict competent”.

These skills are like tools; we pull one or more out of our toolkit to suit a particular conflict. The rest sit in the toolkit ready to be used in another context.



Just as a tool can be used in many situations, so too can these skills. We can use the same skill dealing with a Town Board member as we might with a colleague at work or a family member.

Here are some of the skills we’ll learn and practice:

- Active Listening
- Questioning Techniques
- Feeding Back, Summarizing and Reframing
- Managing Anger, Emotion and Rational Detachment
- Brainstorming and Option Generating

**Let’s try a little exercise first called, “Wedding Cake Blues” to see how “conflict competent” you already are!**

## **WEDDING CAKE BLUES – Terry vs. Robin**

### **Conflict Resolution Skills Exercise**

#### **Instruction to Trainers/Role Play Coaches:**

Divide trainees into groups of three – trainers float – write down examples of good/bad conflict resolution skills – debrief what was hard/easy... what worked/what didn't work)

#### **Background Information to Give Trainees:**

- *Terry, Robin and you have been good friends for years.*
- *Robin hired Terry to bake her/his wedding cake.*
- *Terry baked and delivered a cake that everyone believed was beautiful and delicious.*
- *Terry sent Robin a bill for \$450.*
- *Robin never paid the bill.*

\*\*\*\*\*

- *You are now caught in the middle between two friends who aren't speaking to each other.*
- *You've asked Terry and Robin to meet with you because the situation is awkward and stressful for you.*

#### **Instruction to Trainees:**

Your job is to help Terry and Robin get clear about their issues and create the opportunity for them to resolve their conflict.

You may not be directive or suggest any solutions.

## **FOR TERRY ONLY**

***Terry (angry/direct):***

*It's really simple. I did a job and want to be paid for it. Everyone said that the cake was wonderful. It's not like they didn't eat it. The fact that Robin was my friend makes this whole thing even worse. This is a pattern with her/him and its got to stop! She/he never even called me to talk about it. I want what is owed me. Business is business!*

## **FOR ROBIN ONLY**

### ***Robin (hurt/upset):***

*She/he did bake my cake. But I was stunned to get such an outrageously high bill. I know we didn't have anything in writing; but I didn't think we had to because we were friends. I called other bakers and found out she/he overcharged me at least \$150! The fact that we were friends makes this even worse. Now I have bad feelings associated with my wedding. She/he really took advantage of me and I'm not going to let her/him get away with it.*

## ACTIVE LISTENING

### Upon completion of this section you will:

- Understand why active listening is SO important
- See an example of POOR or PASSIVE listening
- Learn about “attending” to the speaker
- Learn tips on how to be a good active listener

### Why is it so important to listen actively to people in conflict?

- To show you're interested
- To build trust
- To encourage the flow of communication
- People, especially when they are in conflict or crisis, NEED to feel heard

### Demonstration of POOR or PASSIVE listening

**Watch as we demonstrate. See what you notice about the behavior of the listener.**

**Scenario:** Pat is an employee at XCorp. Pat's unit is grossly understaffed and s/he has not had a day off in weeks! Saturday is Pat's 10<sup>th</sup> wedding anniversary and s/he and his/her spouse booked a romantic weekend on the Cape to celebrate. Pat's supervisor, Morgan, left a message on Pat's answering machine that s/he had to work on Saturday because the unit is shorthanded. Pat is FURIOUS and comes to see Morgan in the office first thing in the morning to discuss the situation.

### CHARACTERISTICS OF POOR OR PASSIVE LISTENING

- Lack of eye contact
- Bad body language (fidgeting, etc.)
- Overall inattention
- Allowing outside distractions
- Finishing the other person's sentence
- Making assumptions or judgments before hearing the entire story
- Just being plain RUDE

## **“ATTENDING” TO THE SPEAKER**

It’s just human nature...people want to feel heard. They want to know someone cares and is interested in what they have to say. When people do not feel heard or feel that their being “brushed off”, they can react negatively or even violently.

### **To convey that you are REALLY listening:**

- Look at the speaker. Keep others in view so you can observe their reactions, but generally maintain eye contact with the speaker.
- Show that you are interested in what s/he is saying. Encourage by unobtrusive use of “yes”, “I see”, and “um-hum”.
- When possible, lean slightly toward the speaker. Keep an open, relaxed posture. Keep your physical movement to a minimum.
- If you must take notes, let the speaker know that you’re doing so because it is important to you to capture what they’re saying. Be careful not to let the note taking become a distraction or interrupt the “flow”.
- Draw the speaker out. Say things like:

“I’d like to hear a little more about that”

“Can you tell me what that was like for you”?

“Why is that important to you”?

- Engage the speaker by looking for opportunities to subtly mirror his/her clues. Do not mimic, but look for ways to be congruent. For example, if he/she speaks slowly, try to match his/her cadence.
- Try to listen for what is NOT being said – what’s missing that you might expect to hear under these circumstances.
- Observe HOW things are said – this is often as important as WHAT is being said. The emotions and attitudes behind the words can speak volumes.
- Say little yourself! You cannot listen if you’re talking.
- Do not feel COMPELLED to offer a corresponding experience! “Oh you think you have it bad...listen to what happened to me!” (Big “No-No!”)

- Show that you are fully engaged by asking questions, summarizing, and feeding back. (More about this later).
- Be careful, especially early on, not to interrupt the speaker's flow. Sometimes people are nervous when they first start speaking or they need to "VENT" before they can settle-in.

## QUESTIONING TECHNIQUES

**When you're trying to resolve a conflict as a third-party intervener, asking good questions can serve 3 purposes:**

- 1.) to show you're listening (especially in the early trust-building stage);
- 2.) to gather and organize information (particularly in the problem-solving stage); and
- 3.) to express in question form what otherwise might be an academic statement. (reality testing).

### **OPEN-ENDED VS. CLOSED-ENDED QUESTIONS**

**What are open-ended questions? Closed-ended questions?**

**In general:**

- Open-ended questions should be used when trying to resolve a conflict.
- Closed-ended questions do not promote exploration into what is causing the conflict...it simply encourages people to stop talking
- Open-ended questions invite a person to open up and tell his/her story.

**Examples:**

"Tell me more about [subject]"

"What happened next?"

"How did you feel when that happened?"

"What would you like to see as an outcome?"

Use closed ended questions sparingly – only to increase control over the flow of communication or to confirm certain important facts.

## FEEDING BACK, REFRAMING, AND SUMMARIZING

When the speaker pauses, there is an opportunity for you as the neutral to confirm that you have been listening; you understand what has been said. This is called “Feeding Back”.

Feeding back is also a good way to check that your perception of what you think you heard/observed is accurate, as well as a way to validate for the speaker what he/she is feeling.

### How to “Feed Back”:

- **Repeat or paraphrase** what the speaker has said (or displayed as unspoken feelings)

Examples:

“So, when that incident happened, you felt like....”

“It sounds like an important issue for you is how to deal with...”

“What I think I’m hearing is that you really need....”

“I can see that you really have strong feelings about that...”

Note: A common sign that you’ve done this correctly is the speaker will not vigorously or respond, “yes, that’s right!”

- **Do not repeat what the speaker says verbatim.** That will become annoying - paraphrase instead. However, DO be conscious of particular words that seem important to the speaker and use them, if appropriate, in your paraphrasing.

## REFRAMING

**Reframing is a special way of feeding back, and is one of the MOST important tools a third-party neutral intervener can use. It serves 3 important functions:**

- 1) to restate what a party has said to capture the essence;
- 2) remove negative overtones; and
- 3) move the process forward.

Reframing is also a way to translate a positional statement into a statement of interests or needs.

Example:

A member of the AgCom says angrily, “She’s so irresponsible! We can never depend on her to show up for meetings on time.”

Simple **FEED BACK** might be:

“So...it really bothers you when she is not on time for meetings.”

While a **REFRAMED** response might be:

“So...it is really important to you that AgCom members adhere to our established meeting schedules.”

The difference is subtle...but important!

**Let’s Try A Reframing Exercise!**

## REFRAMING EXERCISE

### Directions:

Define the issue in each phrase neutrally and impersonally in a way that both parties will be willing to work to try to resolve the situation.

### Key:

Depersonalize the issue. *Focus on the **problem** not the **person**.*

1. She's always trying to tell me what to do.
2. He wants everything done right now.
3. What a busybody! She wants to know every little detail of my life.
4. I can't believe anything he tells me.
5. She says one thing and does another.
6. You can't depend on her. She's always late.
7. I never know when he'll return what he borrows.
8. He has to second-guess everything I do! He thinks he knows everything and I'm an idiot.
9. Whatever I tell her ends up all over town.
10. She's neurotic! Every time I put something down she claims that I'm making a mess.

## SUMMARIZING

Summarizing is another tool neutrals use to signal to the parties that they've been heard and understood.

They are often used a major transitions in a conflict resolution or mediation session, such as after one party has told his/her story and before you turn to the other party.

When giving a summary:

- Hit the key points
- Focus on the “interests” not the “positions”
- Use neutral language but do not “sugar coat”
- Ask for confirmation, e.g., “Do I have that right?”

## MANAGING ANGER AND EMOTION

Can you think of a situation you were involved in when there was a LOT of anger? Maybe you were the one that was angry. Can you remember what effect anger had on the situation? Did it escalate it? How did you get past the anger? Did the situation ever get resolved?

In your roles as members of an AgCom, you are likely to encounter people who are angry or emotional. **It is important that you understand and manage anger, especially if you are being asked to intervene in a dispute as a neutral.** Anger that is poorly managed...or not managed at all will likely:

- Cause positions to become increasingly rigid;
- Generate demonizing of others;
- Lead to escalation (anger begets anger);
- Preclude parties from engaging in effective negotiation; and
- Cause parties to withdraw from the process all together

### SOURCES OF ANGER

- Anger is inherent in all disputes and/or difficult negotiations
- Anger resulting from other's specific behavior – e.g. disrespect, spiraling perceptions, etc.
- Anger from each party's individual history (intra-psychic)
  - Being angry = Being crazy
  - Being angry = Being strong
  - Being angry = Danger
  - Being angry = Being helpless

## **MANIFESTATIONS OF ANGER**

- At other party/parties
- At the mediator or neutral
- At absent parties
- At the process
- From the neutral/mediator toward one or more of the parties

## **TECHNIQUES FOR MANAGING ANGER**

1. Normalize and expect it.
2. Acknowledge and validate what someone is feeling.
3. Explore the meaning of each party's statement.
4. Repeat back what you have heard to make sure you understand
5. Explore each party's interests.
6. Find safe ways for parties to express their anger before it escalates out of control.
  - Use reframing
  - Refer to ground rules regarding "respect"
  - Separate the parties if absolutely necessary
7. Surface the anger and try to distinguish its source.
8. Find processes to establish trustworthy data both parties can agree on.
9. See and reflect to both/all sides as people in conflict.
10. Identify history of when anger began to escalate.
11. Recognize the purpose the anger has been serving, i.e. "to keep us engaged."
12. Establish "process" innovations:
  - Do a "check in" at the beginning of each session
  - Articulate hopes for each session
  - Do some "cheerleading" and remind the parties of progress made

## Chapter 3

# The Basics of Negotiation

Negotiation is a training course all its own. We could spend hours discussing this topic and not even scratch the surface. Here, we're just going to cover the basics.

There are some people that LOVE to negotiate. You know who you are! You are the one everyone takes with them when buying a new car or house because you always get a "GOOD DEAL". There are other people who HATE to negotiate. You know who you are too! You do not like to "barter" and usually feel very uncomfortable in this role. You cannot help feeling you're being taken advantage of.

Regardless of which person you are, **you will hopefully come away from this chapter with the tools you need to be a successful negotiator and also to help others manage their negotiations.**

## NEGOTIATION STYLES

There are 2 prominent negotiation styles

1. **Interest Based Negotiation (IBN)**
2. **Position Based Negotiation (PBN)**

What's the difference?

### **INTEREST BASED NEGOTIATION (IBN)**

The theory of Interest Based Negotiation or IBN is that a "win-win" solution to the dispute (allowing both parties to have their interests met by the same settlement) is POSSIBLE. This is referred to as "EXPANDING THE PIE"

### **POSITION BASED NEGOTIATION (PBN)**

The theory of Position Based Negotiation or PBN is where each party's gain is in proportion to the other party's loss. This is referred to as the "FIXED PIE" concept and disputing parties naturally engage in this style of negotiation.

## RESOLVING DISPUTES

IBN is the preferred negotiation style in our context because:

- There will typically be an ongoing relationship between the parties (AgCom members, neighbors, town boards, etc.)
- An agreement satisfactory to BOTH parties is desirable

### FOUR PRINCIPALS OF IBN

1. Separate the people from the problem
2. Focus on interests not positions
3. Invent options for mutual gain
4. Insist on objective criteria

#### 1. SEPARATE THE PEOPLE FROM THE PROBLEM

As we've discussed, most disputes become emotional and often animosity runs high. Some factors that can hinder resolution are:

- Misperceptions
- Emotions
- Communication Problems

Lucky for you, we've already learned some techniques to manage these!

### PERCEPTIONS

Help the parties to "walk a mile" in the other party's shoes. It can be very powerful! Helping one party see the other side of things can help to uncover interests rather than positions.

When acting as a neutral, you should understand that each side will interpret the other's motives through his/her own perceptions and fears. Be sure to explore these perceptions with each side and NOT make any assumptions. Remember...when you're trying to assist others in resolving conflict you cannot "choose sides".

## **EMOTIONS**

Anyone intervening in a dispute must understand that emotions play a primary role in almost EVERY dispute. If you were not aware of that going into a dispute...you will certainly learn it within the first few minutes of a dispute resolution session!

Emotions play an important role in IBN and should be embraced – not feared. Allowing people the opportunity to express their emotions or “VENT” often leads to a lasting resolution!

## **COMMUNICATION PROBLEMS**

Communication problems are often, if not always, at the root of the dispute. Good communication is a necessary element of any resolution.

By using thorough questioning, you can ensure each party has a correct and clear understanding of the statements of the other party.

You should also make sure YOU are speaking clearly and are being understood. Parties should be encouraged to ask for clarification from you and from each other if something is not clear.

## **2. FOCUS ON INTERESTS.... NOT POSITIONS**

**POSITIONS** are **PRE-DETERMINED** outcomes that may not easily be satisfied.

**INTERESTS** are the needs that can often be met to both parties satisfaction.

Can you think of some examples of positions? Of interests? Can you tell the difference?

The role of a neutral is to help the parties to express their needs/interests rather than their positions.

## **3. INVENT OPTIONS FOR MUTUAL GAIN**

Once the interests of the parties are known, options for mutual gain can be brainstormed. Potential solutions should attempt to address issues and concerns of all parties. Be aware of barriers that restrict option development such as:

- Making premature judgments

- Searching for a single solution
- Assuming one side must win – one must lose

#### **4. INSIST ON OBJECTIVE CRITERIA**

Once parties have determined their interest – the next step is to agree on objective criteria that will be used to evaluate potential settlement options. Criteria should be known by each party and address the interests of each party. Often parties will be able to describe the settlement they desire...but may not be able to articulate the details of such a settlement.

Using objective rather than subjective criteria allows the parties to FAIRLY evaluate the settlement options developed. Examples of OBJECTIVE CRITERIA:

- Past Practice
- Industry Standard
- Historic Data
- Established Regulations/Procedures
- Laws

Once settlement options are developed, you can walk parties through objective criteria to see if everyone's interests are met.

## EXERCISE

### Stable Owner v. Conservation Commission

#### Scenario:

Joe Morgan is a stable owner in Jonesville. He has 35 acres and his family has been raising horses there for 3 generations. Joe is very proud of his stable and takes a great deal of care to keep his stable and his property clean and well maintained. Recently, his neighbor Connie Fink, who also happens to be a member of the Jonesville Conservation Commission, observed Joe dumping excess manure from his stable in an area designated as “wetlands”. Connie confronted Joe and an argument ensued. Things got a bit ugly but luckily...Jonesville has an AgCom. Joe and Connie agreed to take their disagreement there.

#### Joe Morgan

Joe just does not understand what all the fuss is. Who are these Con Comm people anyway? Who are they to tell him what to do? He’s been bringing his manure to that field for many years. It doesn’t hurt anything. Heck...manure is natural fertilizer for the earth. It’s not like he’s dumping chemicals or something bad. He takes a tremendous amount of pride in running a clean operation and Connie’s making him feel like a common criminal. What is this talk about “wetlands” anyway? The land doesn’t look particularly wet to Joe. It’s not like it’s a swamp or anything. Joe wants this resolved as soon as possible. People were looking at him funny when he went into town the other day to buy feed. Joe’s convinced that Connie has been running around telling everyone he’s “polluting the environment”.

#### Connie Fink

Connie is shocked and appalled that Joe could have such disregard for the environment. Who does he think he is? Why is it that some farmers think they can just do whatever they want and don’t have to follow the rules? She feels she has a responsibility to do something about Joe’s carelessness and disregard for others. After all...she’s not only a member of the Con Comm, but she lives in this area and she is fearful for her safety and the safety of her children!! What the hell is he thinking?

**Directions:** The parties have asked you to assist them with their “dispute”. Using what you’ve learned in this module...see if you can help move them toward a mutually acceptable resolution.

## EXERCISE DEBRIEF

### Some Questions for Neutrals:

1. Did you find that exercise difficult? If so, why?
2. Describe some of the barriers you ran into and how you overcame them?
3. What were each of the parties POSITIONS?
4. What were their INTERESTS?
5. Were you able to help the parties generate options? If so, what criteria did you use?

### Some Questions for Parties:

1. Describe how you felt during this session. Did you feel heard? Respected?
2. Was the role the neutral played helpful to you? If so, in what way? If not, why?
3. Did you feel empowered to explore ideas and options?
4. Did you feel that this process was “fair”? Discuss
5. Is there anything you felt the neutral could have done better?

# The Basics of ADR and Dispute Intervention

## WHAT IS ADR?

ADR stands for Alternative Dispute Resolution. One definition is:

*“Any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, and the use of ombuds, or any combination thereof”.*

**The skills that we’ve been focusing on are skills used predominately by mediators, facilitators and conciliators. All three of those processes have a common theme...they do NOT impose a solution on the parties.**

Another way to think of ADR is as a set of common sense techniques and processes to resolve disputes in a FASTER, CHEAPER, LESS ADVERSARIAL, and LESS FORMAL way.

What are some of the other benefits of ADR?

- Provides the parties with more control to shape the outcome of the dispute.
- Enables the parties to focus on the future rather than the past.
- Makes efficient use of diminishing resources.
- Offers creative ways of handling unique problems.
- Hones listening and communication skills.

**What ADR is NOT:**

- Appropriate for every dispute.
- An excuse to settle a dispute that should be litigated.
- A one size fits all approach to every dispute.

## **SHOULD YOU INTERVENE IN A DISPUTE?**

As we've just discussed, ADR or dispute intervention is not appropriate in every case. You need to make careful judgments. An important rule of thumb for any mediator or third party neutral intervener is:

**"FIRST...DO NO HARM"**

The role of a neutral should be taken very seriously. If a dispute is not managed properly, the consequences can be devastating and the parties can suffer tremendous harm. This is precisely why there are such strict training requirements, especially here in Massachusetts, for mediators, arbitrators, and other neutrals. If you are not 100% confident in your ability to be an effective, neutral third party, then you should decline to act in that capacity.

### **FACTORS TO CONSIDER BEFORE ACCEPTING ROLE OF NEUTRAL**

- Do you have the necessary training and expertise?
- Can you truly be neutral?
- Do you have good communication skills?
- Can you facilitate a dialogue and ensure the parties remain respectful to one another?
- Are you certain you do not have a stake in the outcome of this dispute?
- Do you have the trust and confidence of all parties involved?
- Have all parties agreed that you are the person they want to assist them in this dispute?

### **FACTORS TO CONSIDER IN DETERMINING IF ADR IS APPROPRIATE:**

- Are the parties genuinely interested in seeking a resolution to the matter?
- Are there underlying interests that cannot be resolved by the traditional processes available?
- Is a continuing relationship between the parties important or desirable?
- Would an open, frank discussion of the situation with someone they all respect and trust in a "neutral setting" dislodge the unruly parties?
- Is there a need to avoid an adverse precedent?
- Have traditional settlement negotiations reached an impasse?

## STEPS IN A TYPICAL DISPUTE INTERVENTION PROCESS

Every dispute is different and has different dynamics associated with it. We are not suggesting that you take a “cookie-cutter” approach to every dispute, but instead are offering some “guidelines” for managing a dispute intervention process.

### **Step 1: The Introduction**

There should always be some introduction by the person facilitating the session. An introduction should include some background information about you as the “neutral”, your training, experience, etc. If not already informed, the parties should be told how long you anticipate the session lasting and what the process is likely to entail. This is also a good time to discuss and agree to ground rules, if necessary.

### **Step 2: Opening Statements**

Each party should be given an opportunity to explain what has brought them to this point, in other words, “to tell their story”. Each should be given the opportunity to speak without interruption, unless clarification is necessary. The “neutral” should feedback and summarize as appropriate, but at least at the conclusion of each party’s opening.

### **Step 3: Exploration of Interests**

After hearing each party’s “story”, the neutral should explore what the parties’ interests are by asking open ended questions and helping them to articulate what they were hoping to gain by participating in this process. Find out what’s REALLY important to them. Be sure that each party feels heard and validated.

### **Step 4: Private Caucus (Optional)**

You may sense that one party is not comfortable speaking in front of the other or is “holding back”. One technique that can be used is a private caucus. This is where the neutral meets with each party privately to further explore the interests, concerns, or dynamics of a conflict. Neutral should be very careful to ask both parties what they are comfortable with sharing, if anything, when they return to the joint session. They might want to keep certain information confidential.

### **Step 5: Option Generating**

Once you have helped the parties to identify their interests, you are now ready to help them to generate options. Allow plenty of time for this. Do NOT try to impose your ideas on the parties. Instead, help them generate their own options by asking questions and testing out ideas.

### **Step 6: Help Parties to Evaluate their Options**

Once the parties have developed options, it is important that you help them to evaluate them to insure they meet the parties “interests”(just as we discussed in the “Negotiation” section). Again, by asking good questions, a neutral can help the parties “reality test” various scenarios to see if they are viable solutions that meet their interests.

### **Step 7: Reaching an Agreement**

If it seems that parties are reaching an agreement, you may suggest that it be reduced to writing in order to “memorialize” everyone’s understanding of what was agreed to. While some people are not comfortable putting things in writing, it can be very helpful in preventing future misunderstandings. Whether the parties agree to written agreement or not, the neutral should make sure that there is a clear understanding between the parties. Who will do what, when, how, etc. What will happen if someone does not do what they agreed to? These are all important elements of an agreement. (More on this later).

### **Step 8: No Agreement is Reached**

If no agreement is reached, the session was not a failure! Parties should be congratulated for the progress that was made and for their willingness to come to the table in the first place! Things should always end on a positive note!

## DEMONSTRATION OF DISPUTE INTERVENTION SESSION

### Cows v. Flower Beds

#### Scenario:

Lily Rose is a retired surgeon from Boston now living in Smithtown. Her children have all grown and moved away and she decided to abandon city life to pursue her passion, gardening. Lily bought 10 acres just next to a farm owned by Zeke. She has spent the last 3 years cultivating the most beautiful flower gardens in all of Smithtown. Her flowers have won top honors at all the local flower shows. Zeke is a life-long resident of Smithtown. He has about 50 acres of farmland and raises cows. No matter how hard Zeke tries, his cows have a way of breaking free and making a beeline for Lily Rose's flowerbeds. The cows have trampled and destroyed two different flowerbeds in the last 2 months. One afternoon while Lily Rose was out watering, she saw two of Zeke's cows heading straight for another one of her prized flowerbeds. She snapped. Lily Rose picked up a shovel and started waiving it in front of the cows to scare them off. Zeke's 8-year old grandson happened to be visiting and saw Lily Rose chasing after the cows with a shovel in her hand. He ran and told his grandpa that Ms. Rose was trying to hurt his cows. Zeke confronted Lily Rose and they argued. Zeke threatened to call the cops and Lily Rose threatened to sue him for the damage to her property but luckily....Smithtown has an AgCom and Zeke and Lily Rose agreed to take their disagreement there.

#### Lily Rose

Lily Rose has had enough! She's worked hard her whole life and now ...when she finally gets to enjoy herself..it's all being ruined by these dumb cows! She's tried to be nice. She's tried to understand. She even went over to Zeke's a couple of times to let him know that his cows had gotten out on him. He seemed grateful and promised it would not happen again but...it did! That's it! No more Ms. Nice Gal...she's going to take out a restraining order on Zeke's cows and sue him for the damage to her precious flowerbeds. After all she knows plenty of lawyers from Boston who would be only too happy to take her case. She will not be treated like this. Zeke is going to PAY!!

#### Zeke

Zeke just doesn't get it. Why did this city slicker buy property next to his farm if she did not like cows? She knew the cows were there! Does this woman honestly believe that he has time to watch his cows 24 hours a day? Of course they break out...they're curious creatures. What's the big deal? They did not kill anyone...they stepped on or maybe munched on a few flowers...so what? He does his best to keep the fencing in good shape – but the cows are persistent (and heavy). She must be crazy! Chasing a cow with a shovel trying to harm it...his poor grandson should not have seen that! Now he's traumatized!

**Directions: Break into groups of 3. Have one person play the role of the neutral. Practice the steps outlined above. [Remember...you do not HAVE to do every step. Use your judgment and follow the parties' lead.] Debrief in small groups to determine what worked well and what could be improved upon.**

## Chapter 5

# Dealing with Impasse

Impasse, “getting stuck,” can be a significant challenge to resolution in any ADR process. There are a number of tools that can assist the parties and getting past impasse.

Let’s look at 2 of them:

### REALITY TESTING

Reality testing can be a critically important part of the dispute resolution/intervention process. It is the process by which you get the parties to understand, through a series of questions, the weaknesses of their case, issue or demand.

If a party has no case, weak case, no legal claim to what they seek OR an unrealistic expectation of the other party...reality testing may be necessary. Reality testing is accomplished by “checking in” on things like:

- What would you have to prove in court to prevail?
- What has been done in similar situations in the past?
- Do you have all of the information you need to make that claim?
- How much money and time are you willing to spend on this issue?
- Is what your looking for a remedy available under the law? (Even if you went to court and prevailed...would you be entitled to this?)

Hard, tough-hitting questions are not always required for effective reality testing. Sometimes they are effective though in getting a party to a reasonable understanding of his/her claim.

Neutrals must try to remain OBJECTIVE and OPEN-MINDED when reality testing – otherwise people will retreat to their “POSITIONS”.

## BATNA & WATNA

Because there are not enough acronyms in the world...here are 2 more!

**BATNA:** Best Alternative To a Negotiated Agreement

**WATNA:** Worst Alternative To a Negotiated Agreement

These are GREAT techniques to use with parties who threaten to leave the table or are not willing to work toward a settlement.

Discuss with the parties their BATNA and WATNA – what will happen if?? Look into the future.

## EXAMPLES OF “BATNA & WATNA”

Let’s go back for a moment to the scenario between Joe the stable owner and Connie from the Con Com. If Joe and Connie decide they are not going to negotiate a settlement to their disagreement – then what?

Looking at it from **Joe’s** perspective: What’s the best alternative to negotiating an agreement with Connie on this issue or his **BATNA**?

- He keeps dumping the manure until DEP or someone catches up with him
- He stops dumping the manure and finds somewhere else to dump it
- Other ideas?

Question to ask: Are these feasible and/or attractive options to Joe?

Now let’s figure out what Joe’s worst alternative to negotiating an agreement with Connie is, or his **WATNA**.

- Connie reports him to DEP or other environmental enforcement officials.
- He is fined for dumping manure
- He is sued for creating a public health hazard
- His neighbors turn on him
- Other ideas?

Question to ask: Are these feasible and/or attractive options to Joe?

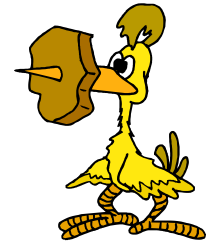
Recognizing a party’s BATNA is important because many times that BATNA will NOT be a desirable option to them – looking at worst case scenario often compels the party back to the table or to be more amenable to settlement.

## WHAT TO DO WHEN YOU GET STUCK

### How can you **RECOGNIZE** when you are stuck?

Look for signs of “stuckness”:

- People are repeating positions over and over
- You feel locked in to your position
- You feel anger mounting
- You feel trust has been broken
- People are bogged down in symbols or “principles”
- Who’s turn it is? One side refuses to make a move because “it’s their turn.”
- People are not listening to one another



### What to **DO** when you get stuck:

- Sequence issue to address an “easier” issue first and save more difficult issues until you have momentum
- Take a step back from positions to look at interests
- Go back to fractionating (tackle things in small pieces, one issue at a time)
- Explore the interest underlying the symbols
- Move on to another issue
- Remind yourself of alternatives to negotiated agreement
- Pause to summarize progress to date, put current stuckness in perspective, identify options for how to proceed
- Bring in somebody with a fresh perspective

## Impasses: How to Get Un Stuck

1. **Recognize** the impasse.
2. **Caucus.** Take a Break. Don't think about walking out.
3. **Recap.** It helps to determine if change is possible.
4. **Doomsday** tactic. Describe negative result of not negotiating.
5. **Express** how you feel.
6. **Change** subject. Set aside the problem; go on to a new issue.
7. **Agree** on common interests. Desire to continue relationship, need to reach agreement, need to work out differences.
8. Get agreement on "**bridge**" or easiest-to-settle issues.
9. **Discuss** remaining alternatives; there are always some.
10. Make **strategic disclosures** that can benefit other party.
11. Ask a **hypothetical** "what if" question. Structure it carefully, and don't ask it too early or you may be pressed for concessions.
12. Give or get **empathy**.
13. **Diagram** differences. Use a blackboard, flip chart to show differences are slight.
14. **Give** something to get something.
15. Talk about **future** needs. Get off the past and present.
16. Use **history** and your good relationship.
17. Change **locations**.
18. **Walk out** – as a last resort.



*Adapted from Winning the Negotiation, Henry H. Calero, Hawthorne (1979), by Richard A. Salem for "The Settlement of Liability Claims," workshop sponsored by ITT Chicago-Kent College of Law and RESOLVE Dispute Magazine, Inc., March 5-6, 1987.*

## THE VALUE OF VENTING

While emotions may make some people uncomfortable, they are important to recognize – especially when you are trying to resolve a dispute.

Often acknowledging emotion and allowing a party to vent is the key to resolution. **It is important for the parties to have the opportunity to be heard by each other and to be able to speak plainly and honestly about their feelings.**

This type of talk can become loud and argumentative and can be difficult for a neutral to manage. But be advised, what seems to be non-productive arguing can actually be the cathartic event which makes settlement possible.

Let parties VENT their emotions and frustrations to the greatest extent possible.

AVOID the urge to move immediately to caucus if the environment gets uncomfortable or heated.

Things to remember about VENTING:

- Don't overreact to a party's emotional display
- Try to remain neutral or empathetic
- Venting should be embraced and not feared but if someone is clearly losing control – take a break!
- Safety first! Trust your instincts!

**The goal of a dispute intervention session is for the parties to agree on a resolution of their disputes.** As we've discussed, it is preferable that such settlements be memorialized in writing and accurately reflect the terms and conditions agreed upon by the parties.

One person (usually the neutral) takes responsibility for physically drafting the settlement agreement but it should be frequently read-back to the parties to ensure terms of agreement are clear.

All parties attending the session should sign agreements and PARTIAL settlements should also be documented.

If NO agreement is reached – all parties should sign a “NO AGREEMENT” declaration.

## **Guidelines for Crafting a Quality Settlement Agreement**

1. Have the appropriate approving authority available. If they are not physically present, have him/her available by telephone.
2. The terms of agreement should include the “Who, What, Where, When and How?” Make sure time frames for completion are realistic.
3. Make sure parties have the authority to satisfy the agreement. If there is uncertainty about this, consult the appropriate subject matter expert.
4. Agreement should contain standards so that each party can be sure that its stipulations are being followed. Use of terms such as “good faith”, “best efforts” or “reasonable” are often necessary and desirable but can also be ambiguous and lead to problems.
5. Addressing confidentiality concerns. Remember that although most of what is discussed in the session is confidential – the settlement agreement must not contain provisions that exceed these limits or parties will be left with unrealistic expectations regarding confidentiality. (Consult experts or legal counsel if unsure)
6. Agreements reached should be binding on all parties. Parties should discuss in advance what will happen in the event of a breach.

## CHARACTERISTICS OF A GOOD AGREEMENT

- It captures the interests of all parties
- It is clear, specific and accurate
- It is realistic
- It is written in the language of the parties (not legal-ease)
- It is balanced in terms of the perceived interests/concessions
- It is concrete – it describes particular actions and is future oriented
- It anticipates contingencies

### PRACTICE WRITING AGREEMENT

Directions: Go back to the dispute between Lily Rose and Zeke and use those facts to draft a settlement agreement. Try to incorporate the elements of a good agreement we just discussed.

## Sample Settlement Agreement Form

Name of Party: Lily Rose

Name of Party: Zeke

Date: March 17, 2006

*We the undersigned, having participated in a dispute resolution session and being satisfied that the arrangements below are fair and reasonable, agree as follows: (NOTE: if agreements are time sensitive, include dates to be completed by)*

1. Zeke agrees that by June 1, 2006, he will reinforce the fence on the boundary of Lily Rose's property to attempt to prevent his cows from getting on to her property.
2. Lily Rose and Zeke agree beginning immediately, they will take turns inspecting the fence between their property for since of damage. Lily Rose agrees to check the fence on Monday, Wednesday and Friday and Zeke agrees to check the fence on Tues, Thursday, Saturday and Sunday.
3. Lily agrees to report any damage to the fence to Zeke immediately and give Zeke a reasonable opportunity to fix the damage (24 hours).
4. Zeke agrees to pay Lily Rose the sum of \$250.00 by March 31, 2006 to compensate her for the damaged flowerbeds.
5. Zeke agrees to provide Lily Rose with free organic fertilizer for one (1) year for her flowerbeds.
6. Lily agrees not to attempt to harm Zeke's cows in any way.
7. Lily and Zeke agree that if any problems arise in the future, they will seek the assistance of the AgCom before pursuing legal action or contacting law enforcement.

Signature of Participant: \_\_\_\_\_

Signature of Participant: \_\_\_\_\_

Signature of Neutral (optional): \_\_\_\_\_

## ADDITIONAL ROLEPLAY/EXERCISE IDEAS

- 1) Farmer Green operates a dairy farm in Berkshire County on land his family has farmed for four generations. Last year, a developer constructed 30 new houses surrounding the farm. Farmer Green's new neighbors enjoy looking out their windows and seeing open fields and grazing cows. When summer arrives, however, the pungent odor of cow manure pervades their homes. The neighbors can no longer tolerate the odor and believe the farm is interfering with the enjoyment of their new homes.
- 2) Farmer Damon, a vegetable farmer in Bristol County, needs a new barn. She wants to construct the barn 15 feet from the property line, but a municipal ordinance requires a 25-foot setback. Farmer Damon applies for a variance, but is doubtful the municipality will grant it.
- 3) The Martinez family lives next to a nursery who has recently expanded its operations. Every day starting at 5:00 am the soil-mixing and truck activity begins at the nursery. Not only is it incredibly loud, but it is generating a tremendous amount of dust. The dust seems to be causing respiratory problems for little Gil Martinez who is 8 years old.
- 4) In order to remain profitable, Farmer Dye has decided to open a retail store on his property and also to give hayrides during the Halloween season out to his fields where people will be able to pick their own pumpkins. The idea has really caught on! Each weekend in October hundreds of people, including buses full of school children, flock to Farmer Dye's place for hayrides and pumpkin hunting. Farmer Dye's neighbors are less than thrilled with all of the new noise and traffic in the area. Last week a group of drunken teenagers leaving Dye's farm were smashing beer bottles and vandalized some of the neighbors' mailboxes.

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## Resources

### Dartmouth Agricultural Commission Conflict Resolution Protocol

Location where complaint originated:

- Review and attach complaint
- Contact farmer: \_\_\_\_\_ Date: \_\_\_\_\_
- Neighbor: \_\_\_\_\_ Date: \_\_\_\_\_
- Date of visit and findings:
  
- Comments from surrounding neighbors (if applicable, include dates of visit(s), phone call(s), etc. **This information shall remain confidential**):
  
- Agricultural Commission Recommendations:
  
- Discussion with collaborating Board (date and brief narrative):
  
- Agreed upon resolution to be signed and dated by the neighbor, the farmer and a representative from the Board and the Ag Comm (each shall receive a copy)