

# Chapter 7: The Process for Collaborative Negotiations

## Three key elements needed for collaborative negotiating

In order to solve a problem, negotiate a dispute or produce a mutually agreed consensus there will generally be three key elements involved. They are:

1. The People
2. The Information
3. The Process



Each of these elements must be brought into balance with the other two elements. In other words, if during a negotiation, one party dominates the conversation, spending an inordinate amount of time giving his or her "information" and has failed to understand or listen to the other "people" involved, the negotiation will not reach its ultimate goal.

A. **The People** – As stated before, all successful negotiations begin prior to the negotiation. Becoming *prepared* is perhaps the most critical part of the negotiations. However, even if all of the homework has been done, there will still be an *unknown* element brought into the negotiation – that being *the people on the other side of the table*. The only way a healthy understanding of their motives and or concerns is through information gathering during the negotiation.

Each person represents a lifetime of experiences, capabilities, needs, dreams, fears and disappointments. Simply meeting these people and making an offer to them may not be adequate. Their dreams, past experiences, needs and/or fears may be an extremely important underlying factor in the outcome and it becomes the responsibility of the negotiator to gain an understanding of these factors.



Meet David Swanson. Assume that he is a rural landowner. An oil and gas company wishes to negotiate an oil and gas lease with him and have sent you to acquire the lease. You do not know the man, have only recently met him; however, make a list of things about him that might be true. Something on this list could impact or influence the outcome of the negotiation.

Personal characteristics: \_\_\_\_\_

His culture: \_\_\_\_\_

His past experiences with others: \_\_\_\_\_

His interests: \_\_\_\_\_

His fears: \_\_\_\_\_

His needs: \_\_\_\_\_

Of course, even after spending an hour or two with the man, you will not be able to completely fill in the blanks; however, successful negotiations first begin with an understanding of the people involved.

**Question:** From a practical standpoint, how will you be able to gain an understanding about David Swanson that would help you to accurately know him and might help you achieve a successful negotiation?

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**B. The Information** – There are really three types of information needed when negotiating a successful agreement. For collaborative negotiations to work, the information must come in this designated order:

What the landowner knows. Because most people begin their negotiations with a certain *position* in mind, they believe that their information is more important than the other party's information. Since collaborative negotiations are *interest* based rather than *position* based, *gathering*



*information* about what the other party knows is more vital than *giving information* about what you know. It is during the information gathering phase that one begins to understand the hopes, hurts, needs and fears of the other person. As this information is gathered, the great negotiator begins to assess the hurdles that must be addressed. It is also during this phase that exceptional *listening skills* are required.

What you know. Information giving is also important for the success of the negotiation; however, this becomes, in some ways, the minor part. What you know is vital to the success of the conversation. The greatest success, however, will come when what the landowner knows (his concerns, fears, needs) are known and then merged into what you know.

The Unknown. Unknown information also becomes a part of the negotiation. Often the fears of a person are *unknown* even to that person and drive what is being thought and said by that person. Assume that during negotiations, David Swanson simply said, "I don't want anybody drilling on my land." It is possible that David Swanson is telling the truth but does not really know why he feels the way he feels. For many people, change equates to fear – fear of the *unknown*, fear of uncertainty, fear of making a mistake or fear of being taken advantage of by an oil and gas company.

The only way to tap into the knowledge of these types of issues is through listening. It can never be accomplished through talking.

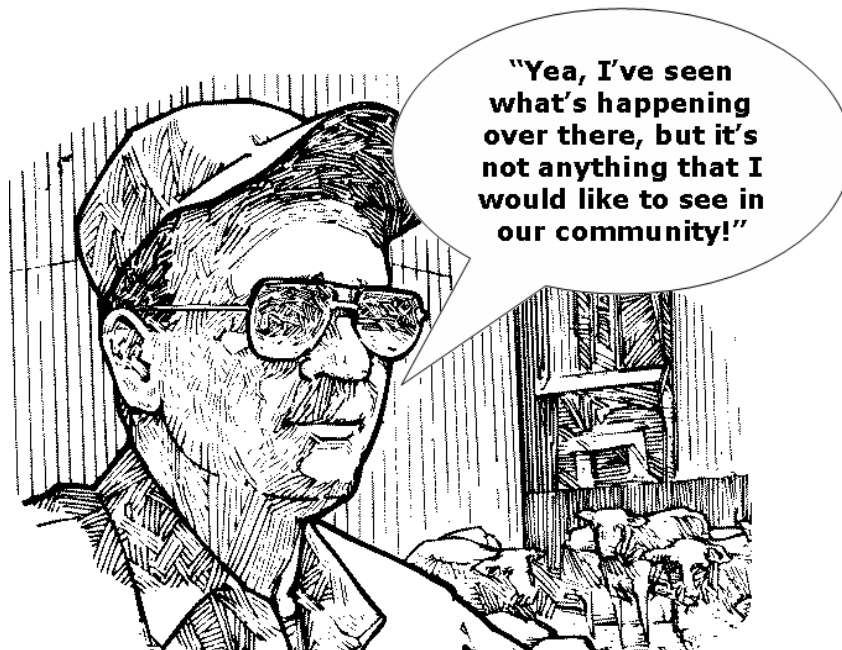
**Asking meaningful questions** – Meaningful questions are not the type that can be answered with a simple “Yes” or “No”. Nor are they questions with a “black and white” answer.

Ask questions like,

- *“What are your thoughts on oil and gas development in this area?”*
- *“What concerns have you had concerning oil and gas development in the area?”*
- *“I’m sure you have heard about the successful wells 10 miles east of here; what is your opinion about what is happening?”*
- *“What issues have you discussed with your neighbors?”*

**Repeat and encourage** – Often the answer to these types of questions is not what a person might expect to hear.

David Swanson might not like the idea of wind development and say...



Repeating back some of the things said by the speaker is often an effective way to draw out the real issues. Perhaps the real issue isn't about the community at all. Assume that when David was a child his father had been taken advantage of in a business venture and, as a result, lost the family farm. He can still remember the stress and heartache that permeated his

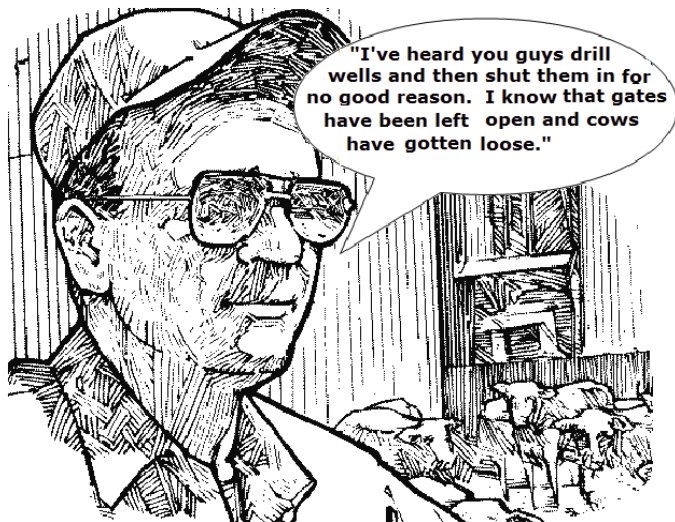
family during that time. Assume that David had recently heard neighbors talking about how the “Big Oil” companies were taking advantage of the landowners. Perhaps David’s real issues are grounded in fears of being taken advantage of.

Repeating back might simply look like this, “So you’re really not in favor of oil and gas development in this area. Is there more to it than that?”

If the landowner feels safe to share and really believes that you are interested in his opinion, he might respond by saying...



Again, repeating back might look like this, “I know you guys are on top of what is happening in your county. What concerns do you have about drilling or what have you heard?”

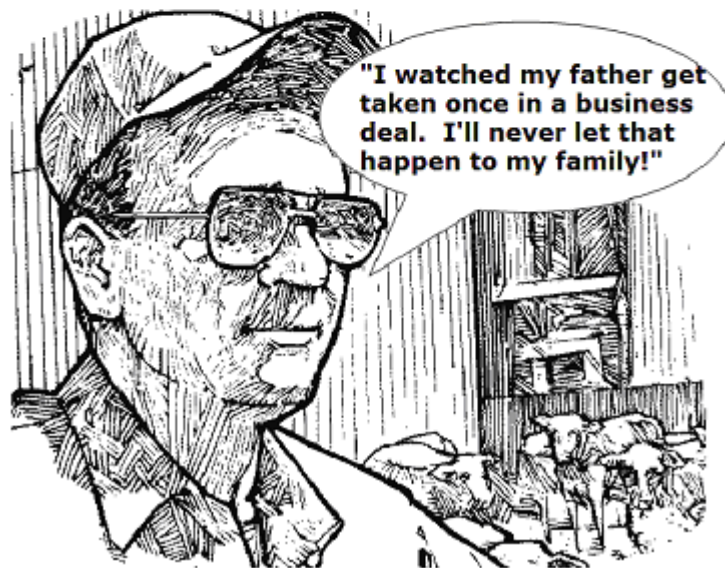


The mistake that many negotiators make at this point is to jump in, offering their information about the value, success, worth and safety of oil and gas development. That might be a mistake. Continue getting to know David Swanson.

You can see that active listening is intentional. In our scenario, several exchanges might take place before the landowner's fears about being taken advantage of is established.



After your last question, the response from David Swanson might look like this...



*Now we are getting somewhere! David Swanson doesn't trust "Big Oil".*

Another mistake that someone might make at this point is to begin offering information in order to solve this one issue. Problem solving will come later.

Again, ask another meaningful question. "What other issues or concerns do you have about oil and gas companies in their dealings with landowners?"

**Summarize, restate and validate** – Summarizing and restating what the speaker has said also becomes very helpful. Restating what has been said gives the listener the confidence that you were in fact listening to his or her

concerns. Such confidence builds trust. Restating also gives both parties the opportunity to correct and clarify everything that has been said.

“David, I think I understand what you are saying. Your father was obviously taken advantage of in a bad business deal and you feel that oil and gas companies are taking advantage of landowners. Is that correct?”

If David says, “Yes”.

The next statement should be a statement of empathy, one that *validates* David’s feelings. Often, negotiators respond to the David Swanson’s of the world in such a way that *invalidates* them rather than validating them. “David, oil companies really don’t take advantage of landowners and we would never take advantage of you” or “That’s not what I am trying to do.”

Instead, empathy is stepping into David’s shoes and trying to understand his thought process. Everyone wants to feel listened to or feel good about themselves. *Empathy* and *validation* look like this, “David, if I was in your shoes, I would feel the same way you do. I’d be leery.”

*Remember, building trust becomes more important than being right.*

David’s issue revolves around lack of trust. Listening and validating often will address many of his concerns. Once that begins to happen, the third phase of collaborative negotiations begins.

**C. The Process** – The third key element in a successful collaborative negotiation is *the process*. Picture a funnel. The top of the funnel is larger than the bottom and represents the amount of time needed to accomplish each of the four tasks.



### **1. Information Gathering**

Information gathering is critical, requires excellent listening skills and will be important for the negotiation’s success. This is the largest portion of the funnel and that part of the process we just covered.

### **2. Information Giving**

Information giving is also important. When giving information, a person should always be truthful, upfront, treat the other party with respect and make sure that the other party clearly

understands the terms and conditions of any agreement.

At this point in the process, all of the potential issues have been placed on the table including David's fear of entering into an unwise business venture with an oil company. Although you have offered important information to David, you have not attempted to address any of his issues.

### **3. *Problem Census***

Once all available information has been given, it is time to make a list of the problems that would stop the deal from being made. These are the issues that must be resolved. This is called *problem census*. Again, these issues will be identified during the information gathering phase.

Before attempting to negotiate a compromise on any one of these issues, it is suggested that all of the issues first be identified.

Making this list helps both parties identify specifics or helps one of the parties re-define an issue. After the list of issues has been established, David Swanson may very well say, "Oh, we don't need to put that on the list. It's just not that important."

Mike H. Covol, general manager for U.S. operations at Bitam, a business intelligence provider puts it this way, "Make sure that you understand the whole picture of issues, prioritize them, and keep the most difficult ones to the end,"

### **4. *Problem Solving***

The *problem solving* aspect of the negotiations is next. Once the problem census list is made, each item should be placed in a priority order, beginning with the easiest to solve, ending with the hardest problem to overcome.

The problem solving stage is where both parties must begin thinking outside the box. Inventing options for mutual gain might become necessary. Most issues can be solved and again, with a clearer understanding of the needs and fears of the other party, each has a clearer vision of how to solve each of the problems.

Many times, solving one problem is as simple as tweaking the language in the agreement. These types of issues will appear at the top of the list and can be quickly addressed and fixed. Other items may require a different approach and may require gathering additional information.

As each item is checked off the list, trust continues to grow stronger. Trust diminishes fears. Since fear may, in fact, be the catalyst for items toward the bottom of the list, these issues may not seem nearly as ominous as they did when they were first discussed.

As each item is solved, it is then checked off the list. The visual affect of this sends a message to both parties – *differences have been bridged, disputes have been resolved and a successful agreement is in the works.*