11.255
Negotiation and
Dispute Resolution in the
Public Sector
Spring 2021
Class #5
Let’s discuss…

- The $20 Bill Auction, would you participate?
MUTUAL GAINS APPROACH TO NEGOTIATION

PREPARE
- Clarify your mandate and define your team
- Estimate Best Alternative to Negotiated Agreements (BATNA)—yours and theirs
- Know your own interests and think about their interests
- Improve your BATNA (if possible)
- Prepare to suggest mutually beneficial options

CREATE VALUE
- Suspend criticism
- Invent without committing
- Generate options that exploit differences
- Bundle options into multiple packages

DISTRIBUTE VALUE
- Behave in ways that build trust
- Identify standards/criteria for dividing value that all sides can support
- Keep at least two packages in play
- Use neutrals to suggest possible distributions

FOLLOW THROUGH
- Design nearly self-enforcing agreements
- Specify mechanisms to deal with “predictable surprises”
- Agree on monitoring arrangements, including metrics
- Keep working to improve relationships
What is successful negotiation?

- Satisfying outcome
  - Works for all parties
  - Long-term commitment

- Efficiently reached
  - Time not wasted
  - Nothing left on table

- Amicably ended
  - Relationship enhanced
  - Future dealings easier
Creating value

- Explore interests on each side
  - Suspend criticism
  - Play “what if…” to invent without committing

- Generate options that “make the pie bigger” by exploiting differences
  - Keep playing “what if…?”

- Bundle options into “packages”
  - Build more than one package
What it sounds like to explore interests:

- “What are the key things you need from an agreement?”
- “Why is that important to you?”
  - Listen for interests, principles, and assumptions
- “What else is important to you?”
- “Would you prefer [option X] or [option Y]?”
- “Could you live equally with [option X] and [option Y]?”
- “You’ve mentioned [X][Y][Z] as things that matter to you…among these, which is most important?”
- “Would we be moving in the right direction if…?”
Distributing value

- Behave in ways that build trust

- Discuss standards or criteria for dividing the “pie”
  - What reasons or criteria are compelling to both sides?

- Keep at least two packages in play
  - Avoid getting positional; keep working with choices and trade-offs

- Use third parties to discuss possible distributions
What it sounds like to explore criteria:

• “How did you arrive at that?”

• “What makes that fair?”

• “How can I justify this to my people?”

• “What kind of argument would your people need to hear to support this?”

• “How are others (people, organizations) handling this problem?”
Scenario #2
The Consensus Building Approach

- Residents of East Side face serious health and environmental risks
  no one (including the city) left accountable for cleanup

- A new player (a developer) wants to build a new shopping mall

- Residents are concerned about three things:
  (1) the city will not keep the developer accountable for cleanup prior to
      development taking place
  (2) residents were hoping for neighborhood oriented facilities built on site
      (such as affordable housing, teen recreation center) instead of a mall
      (primarily for out-of-town shoppers)
  (3) community should have the final say over what happens

- How would you design a consensus building approach for the
decision making process around redevelopment of this site?