

Right of Way Negotiation Skill Building

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Negotiation

According to BusinessDictionary.com the definition of Negotiation is:

Bargaining (give and take) process between two or more parties (each with its own aims, needs, and viewpoints) seeking to discover common ground and reach an agreement to settle a matter of mutual concern or resolve a conflict.

Brad will now speak about Negotiation Tactics.

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Do your Homework

- ▶ Study Plans and Plats
- ▶ Visit with the Designer
- ▶ Gain Landowner confidence by knowing the project specs

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Listen, and let them vent

- ▶ Listening may be the most important tactic
 - Landowner not happy with the design
 - Previous NDDOT negotiations not handled well
 - Wait for an opening then put them at ease
 - Always have a set of plans with you

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Develop a rapport

- ▶ Establish a relationship before discussing business
 - Grandchildren and family photos
 - Sports – fishing, hunting, professional sports
 - Crops – discuss your farm background

If offered coffee or snacks say thank you !

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Body Language

- ▶ Learn to read the Landowner
 - Are you pushing too hard?
 - Be perceptive
 - Back off when you need to
 - Let them think about it
 - Know when to ask for them to sign

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Empathize

- ▶ Explain that you understand their concerns
- ▶ Make sure they feel that they have been heard
- ▶ Tell them you'll check on things
- ▶ Get back to them in a timely manner

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Negotiate using Higher Authority

- ▶ Consultants – please explain that negotiation decisions are made by the NDDOT
- ▶ In-house negotiators refer decisions to Management
- ▶ You are the liaison between NDDOT and the Landowner

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Who is the Landowner?

- ▶ Person who doesn't have a lot of interaction in their life and may want to visit
- ▶ Corporate person wants you to "get to the point"

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Have a sense of humor !

- ▶ Dog and the shoe story

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Don't get defensive

- ▶ Defend the reason for needing their signature without shouting or getting angry
- ▶ Highlight benefits to them such as improved safety on the roadway
- ▶ Be aware of sentimental value such as trees

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Valuation

- ▶ Explain that the NDDOT pays fair market value
- ▶ Person valuing the property considered recent sales of comparables
- ▶ If Landowner disputes value ask them to provide proof of higher amount
- ▶ Eminent domain is a last resort
- ▶ Make them aware of the time constraints of bid dates and construction seasons

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Friendly Condemnation

- ▶ What is a “friendly” condemnation
 - Title problems
 - Owner of record has passed away and no PR yet
 - Sometimes the quickest way for Landowner to receive a payment

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Competency

- ▶ When there is a question of competency ask Landowner if there is a son, daughter or friend that you can meet with to discuss the project and the acquisition

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"Let us never negotiate out of fear.
But let us never fear to negotiate."

- John F. Kennedy

Inaugural Address on January 20, 1961 >>

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Uniform Act

- ▶ ...private consultants and other services shall conform to ... Uniform Act
- ▶ Offer and "owner's rights, privileges, and obligations" must be in writing
 - Memo of Offer
 - Yellow Pamphlet

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49 CFR Part 24

- ▶ Notice shall be personally served or sent by certified or registered first-class mail
 - Electronic communication is not allowed for the offer/documents. NDDOT must get original signatures on all documents.
 - Need permission from Landowner before communicating by email
- ▶ Each notice shall be written in plain, understandable language
- ▶ Records...sufficient detail to demonstrate compliance with 49 CFR Part 24

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24.102 Basic Acquisition Policies

- ▶ (a) Expeditious acquisition
- ▶ (b) Notice to owner
- ▶ (c) Appraisal
- ▶ (f) Basic Negotiation procedures
- ▶ (g) Updating offer of just compensation
- ▶ (h) Coercive action
- ▶ (i) Administrative settlement
- ▶ (j) Payment before taking possession

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Coercion

- ▶ ... Agencies (must) adhere to the Uniform Act ban on coercive action ...
- ▶ Coercion is
“the use of force to persuade someone to do something that they are unwilling to do”

Cambridge Dictionary

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Dr. Chester L. Karrass on Negotiation

- ▶ Negotiation is not a contest
- ▶ Write down your plan
- ▶ Don't talk. Listen without being critical
- ▶ Don't be intimidated by status or authority
- ▶ Negotiate in depth
- ▶ If, in a negotiation, you have pushed the other party too far, have the grace and goodwill to negotiate
- ▶ Be prepared, work hard, be patient, take your time, and be persistent

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- ▶ Identify your hardest questions
- ▶ Brainstorm responses
- ▶ Practice your answers
- ▶ Adapt your response
- ▶ Go beyond the question
- ▶ Improve your results
 - Coalition
 - Escalate
 - Take advantage of deadlines

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Program on Negotiation Harvard Law School

- ▶ Be ready to make mistakes
- ▶ Take a proactive approach
- ▶ Consciously practice your skills
- ▶ Aim high
- ▶ Goals and backlash
- ▶ Manage wins and losses

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Program on Negotiation Harvard Law School

- ▶ Convey Understanding
- ▶ Take a Short Break
- ▶ Test your assumptions
- ▶ Deal with emotions effectively and move forward

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Negotiate with the Decision Maker

- ▶ Gather all parties
- ▶ Evaluate the group
- ▶ Ask if anyone is missing
- ▶ Take notes during the meeting

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Negotiators

- ▶ Some reminders
 - Know the project
 - Willingness to listen
 - Tenants or other involved parties
 - Relationship to other Landowners, i.e. Life Estate
 - Take notes about their questions or concerns
 - Do not disclose information about other Landowners
 - Emphasize points you have reached agreement on
 - Ask what the Landowner needs to be willing to sign

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Aug 4th FHWA Webinar

“Description of the Utah Corridor Preservation Program”.

Long-range future planning is a key part of all state highway transportation programs. The planning activities help identify possible corridors for future highways. The Utah DOT has found that state's Corridor Preservation Fund to be a very effective tool in helping the agency meet its future highway needs. The agency is among the leaders in this area. Mr. John Olschewski, PLS, CET, Deputy Director, UDOT Right of Way Division, will share information about the experiences, successes and challenges that UDOT has encountered. There will be time allotted for discussion and questions.

Thursday, August 4, 2016
1:00 – 2:00 p.m. Eastern Time.
rmcphail@nd.gov if interested

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Final Words

Mike Knox, Program Manager

- ▶ In Summary...
- ▶ Know your project...
- ▶ Understand your plats...
- ▶ Understand the project plan and profile sheets
- ▶ Know what and where your impacts are...
- ▶ Know what your potential challenge areas are...
 - Drainage issues and concerns
 - Identify potential encroachments.
 - Understand and recognize any potential damage issues.

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Final Words

Mike Knox, Program Manager

- ▶ Thoroughly understand the Basic Data Book...
- ▶ Know and understand the parcel values...
 - Waiver valuations
 - Appraisals
 - Ask / understand / seek out clarification

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Final Words Mike Knox, Program Manager

- ▶ KNOW WHAT YOU ARE BUYING...
...think of it as if you are buying the property.

- ▶ An ounce of prevention...
... is worth more than a ton of headaches!

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Upcoming Meetings

- ▶ September 21st – Environmental Topic:
 - NEPA
 - Programmatic Agreement

- ▶ November 16 – Environmental Topic:
 - Threatened & Endangered Species
 - Programmatic Agreement

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LUNCH & LEARN

September 21, 2016

12pm-1pm CST

ENVIRONMENTAL TOPIC:

NEPA & Programmatic Agreement

LOCATIONS

In Bismarck at Central Office
Room 310-312 (DOT Building – 608 E Boulevard Ave)

Or

Video conferencing at NDDOT district offices
(Dickinson, Minot, Williston, Valley City, Fargo, Devils Lake & Grand Forks)

Or

Conference call-in is available

RSVP

Amy - amfredrickson@nd.gov

Please include which location you will be attending

**PIZZA WILL BE
SERVED AT
CENTRAL OFFICE**

\$5 suggested
contribution

**MARK YOUR
CALENDARS**

NOVEMBER 16

Environmental:
Threatened &
Endangered Species
& Programmatic
Agreement

JANUARY 18

Right of Way:
Appraisal &
Waiver Valuations

**SUGGESTIONS
QUESTIONS OR
COMMENTS?**

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NDDOT
North Dakota
Department of Transportation