



## When The Rules Change in the Middle of the Game: A Brazilian Negotiation Case

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### Abstract

This article illustrates a Type II negotiation, a real estate negotiation involving a development company and a landowner, impacted by changes in government regulations, which reduced the project's viability by limiting the number of floors and housing units. The company successfully renegotiated the land price, reaching a mutually beneficial agreement of \$ 1 million, highlighting the importance of collaborative negotiation, adaptability, and awareness of regulatory changes in business dealings. Discussion and recommendations comprise this work.

### Keywords:

Real estate; Type II negotiation; real estate negotiation.

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### 1. INTRODUCTION

This case describes a real estate negotiation in Rio de Janeiro, southeastern Brazil, involving two parties and multiple objects, a Type II negotiation (Dias, 2020). The negotiation involved a Developer and Construction Company, which focuses on the incorporation of projects in the *Minha Casa Minha Vida Program*<sup>1</sup>, started negotiating a plot of land located in the city of Duque de Caxias, in 2023.

<sup>1</sup> Literally, "My House, My Life," which is a Brazilian Federal social housing program, launched in 2009.



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Real estate negotiations have attracted scholars' attention recently (Dias, 2023; Dias, 2023a; Dias, 2023b; Dias et al., 2023; Navarro & Dias, 2024; Santos & Dias, 2024). Negotiation is determined as "a process in which individuals work together to formulate agreements about the issues in dispute. This process assumes that the parties involved are willing to communicate and to generate offers, counter-offers, or both." (Rubin and Brown, 1975, p.461).

Conversely, Negotiations are addressed as (i) integrant part of the communication process (Acuff, 1993; Fisher, Ury & Patton, 1981; Lax & Sebenius, 1986; Salacuse, 2003, 2006; Shell, 2006); part of conflict management (Zartman, 1988); as a (ii) social interaction between parties (Dias, 2016; Schatzki & Coffey, 1981); (iii) involving strategy Theory (Raiffa, Richardson & Metcalfe, 2002; Rubin & Brown, 1975; Pruitt, 1981); as a decision-making and policy- making process (Bazerman & Moore, 1994); (iv) involving diplomacy (Kissinger, 1969); (v) in virtual negotiations (Santos & Dias, 2024); (vi) in government negotiations (Navarro & Dias, 2024); in business negotiations (Dias, Toledo, Silva, et al., 2022; Dias, Lafraia, Schmitz, et al., 2024; Dias, Pereira, Teles & Lafraia, 2023; Dias, Leitão, Batista & Medeiros, 2022); (vii) family business negotiations (Dias, Pereira, et al., 2023; Dias, 2023; Dias, Pereira, Vieira, et al., 2023; Valente & Dias, 2023); civil negotiations (Cunha & Dias, 2021; Dias, Nascimento, et al., 2021); non-civil negotiations (Dias, Toledo, Silva, Santos et al., 2022; Dias, Pires, et al., 2022; Dias, Almeida, Silva, Russo, et al., 2022), for example.

This work addresses Type II negotiations, or a real estate negotiation between two parties and multiple subjects, following Dias (2020), as illustrated in Figure 1:



Figure 1 The Four-Type Negotiation Matrix  
Source: Dias, 2020. Reprinted under permission.

## 2. METHODOLOGY

This investigation used an inductive technique anchored in interpretive philosophy by the framework given by Saunders, Lewis, and Thornhill (2009). Inspired by Yin (2004), we

examined a real estate family business dispute comprising two participants meant to negotiate the incorporation of enterprises in the aforementioned government program. The direct participation of one of the authors enhanced this analysis much further.

### 3. BACKGROUND

On the occasion of signing the Promise of Purchase and Sale (PPS), two important advantages were presented by the owner of the lot for negotiation: (a) COMAER—Air Force Command issued a favorable resolution for implementing a multifamily residential building with up to 18 floors. This approval is required in areas close to airports, as with the lot; (b) a Prior Consultation (preliminary approval of the Architectural Project) with the Municipal Department of Urbanism of Duque de Caxias ensures the flexibility of urban parameters for the implementation of a multifamily residential building with up to 18 floors.

The city's building legislation is quite restrictive in some points, which can make low-cost projects unfeasible. For this reason, the Municipal Department of Urbanism analyzes requests for exemption from urban parameters such as distances, minimum number of car spaces, for instance. Having signed the PPS, stating the purchase value at \$1,520,000 and the payment format as a financial exchange, the Developer and Construction Company continued with its Real Estate Development treadmill, developing the Legal Architectural Project and all the studies and other Complementary Projects necessary for the project's launch into the Real Estate Market.

However, despite having already started licensing the project with the Municipality of Duque de Caxias, the company was surprised by a change in the COMAER (Aeronautics Command) Regulation. This change invalidated the favorable resolution previously issued, making the execution of 18 (eighteen) floors unfeasible and limiting the size to 12 (twelve) floors. The arrangement of the parties is illustrated in the following Figure 2:

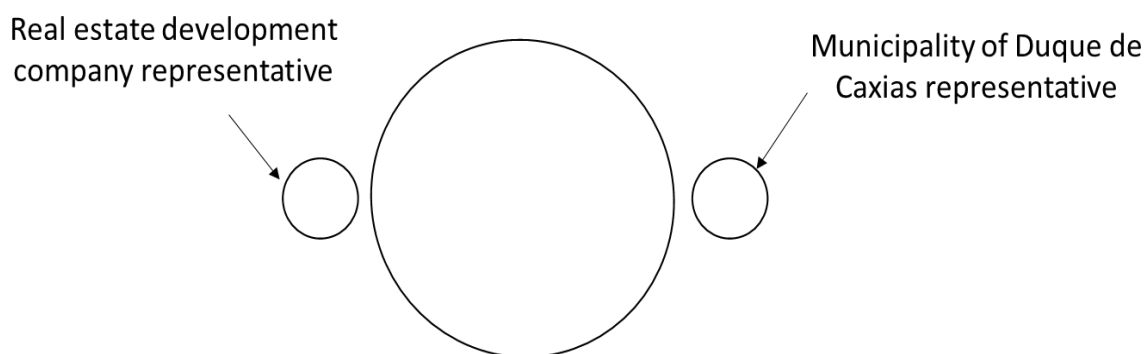


Figure 2 Typical Type IV bargaining table.

Source: elaborated by the authors

With the new Regulation, the Developer and Construction Company had to adapt the Architectural Project and lost 72 (seventy-two) housing units in the development. Given this scenario, the amount previously agreed upon for the land acquisition would make the development unfeasible, and the Developer and Construction Company was forced to return to the negotiation table with the lot's owner.

#### **4. NEGOTIATION PLANNING**

For the Developer and Builder, there were the following options: (a) Renegotiate the purchase value of the land, focusing on the ideal value to recover the profit margin with the loss of units; (b) Renegotiate the purchase value of the land, make the agreement value and/or payment format more flexible, and make an internal effort to reduce costs and recover the profit margin. This option was not the most favorable since the Developer and Construction Company already operate with restricted budgets, which reduces the possibilities of cutting and adapting. (c) Moreover, as an alternative (BATNA), only remained: give up the business, carry out the cancellation, and return to prospecting for land in the area. Already aware of the new conditions for incorporation and with the Architectural Project adjusted, seek conditions in line with this new scenario.

On the other hand, the owner of the lot was not aware of some data: (d) the Developer and Construction Company had no interest in declining, as it had already incorporated two developments on the same street as this land, which were sales success and guaranteed an excellent profit margin for the company; (e) the Developer and Construction Company had just lost the opportunity to launch another project on the same street due to legal problems with the acquired lot, and they needed to replace the Launch. This land represented, therefore, the "salvation of the Beloved Homeland" and was already being considered as a substitute.

Although the region had some other lots available, (f) the Developer and Construction Company had already prospected some and discarded them after identifying that belonged to the Union, which would imply an increase in the time needed for total licensing. (g) The Developer and Construction Company had already carried out the environmental, hydrological, drilling, and topography studies and found that the land had very favorable conditions for development. The Developer and Construction Company established the following ZOPA: between R\$ \$1,000,000 and \$1,200,000.

#### **5. FOLLOWING THROUGH**

After many meetings, the Developer and Construction Company and the lot's owner signed an agreement to purchase the land for \$1,200,000 and maintain the payment format previously signed: financial exchange. Therefore, it can be said that the "compromise" was reached as the parties divided gains and losses to reach an agreement.

Here, I emphasize that the parties performed very collaboratively because, despite the loss of the sale value, the lot owner demonstrated an understanding of the great impact suffered on the viability of the business due to the change in the conditions previously presented, which was decisive for the adhesion of the Developer and Construction Company at the time they signed the PPS.

#### **10. IMPLICATIONS AND DISCUSSION**

This article presents a real estate negotiation case study in Brazil, where a development company and a landowner had to renegotiate the land price due to changes in government regulations that impacted the project's viability. The article provides valuable insights into the complexities of real estate negotiations and the importance of adaptability and collaboration

in business dealings. Carrying out an analysis based on what we studied in class, the negotiation in this case took place collaboratively, as the parties were interested in reaching a common good; distributive, as it focused only on price and no other elements; and the interest was strictly material, related to the physical resources of money and time (since the Developer and Construction Company urgently needed to replace the Launch and that the owner of the lot did not suffer losses in the previously agreed receipt schedule, nor did it need to look for new buyers).

As lessons learned, we can highlight that although it is not possible to control changes in Regulations and Legislation, the entrepreneur must always be aware of the movements and keep informed about the possibility of suffering interference that impacts his business. It is also important to note that the Promises of Purchase and Sale must be very well prepared to ensure legal certainty and business health in cases like this.

Finally, there are also some implications in negotiations, including (a) asynchronous negotiations (Sartori et al., 2020; Dias, Lopes & Teles, 2020; Dias & Lopes, 2020; Dias & Navarro, 2020; Dias, Lopes & Duzert, 2020); (c) business deals (Dias & Lopes, 2021; Dias, 2021); (d) buyer-seller negotiations (Dias, Waltz & Oliveira, 2021; Dias, 2020a; Dias, 2020b; Dias, 2020c; Dias, Duzert & Lopes, 2021; Dias, Lopes, Cavalcanti & Golfetto, 2020; Dias & Silva, 2021; Dias, Netto, Oliveira et al., 2021; Dias, Andrade, Sotoriva, et al., 2021; Dias & Lopes, 2021), for example.

## **6. CONCLUSION**

This paper examined an integrative, Type II negotiation with numerous negotiated issues and a Zone of Possible Agreement (ZOPA). The managing partner agreed to buy the silent partner's share for between \$1,000,000 and \$1,200,000. In conclusion, considering that the negotiation has always had as elements the issues related to the Legislation and Regulations of Architectural Design, some instrument could have been provided, in compliance with the Constitution, that guaranteed the possibility of renegotiation in the event of a change in the conditions that made the deal viable. In the case of the company, only the instrument that guarantees the right to withdraw from the business by both parties was provided. Luckily, there was a mutual interest in reconciling, and we can say that it was a success story!

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