

**ACROSS THE NEGOTIATING TABLE OR AROUND IT? HOW TO ACHIEVE
CONSENSUS ON THE PATH TO A SUCCESSFUL MAJOR GIFT**

Speakers: Sue Ramsey of Boston College plays the role of a university’s development officer. Cameron Casey of Ropes & Gray plays the role of the attorney advising the institution. Daniel Carbonneau of CastleRock Advisors plays the role of the donor. Mary Phillips of GMA Foundations will moderate the discussion.

Premise: Confident that their own professional or business acumen can help solve social problems, many major donors now strive to be philanthropic entrepreneurs, focusing on measurability of results, accountability of the charity, and enforceability of gift terms. In many cases, donors have enlisted legal, tax and philanthropic advisors to help them develop complex proposals for donating illiquid or closely-held assets to charity to accomplish these detailed philanthropic objectives. Suddenly the negotiation of a major gift agreement takes on the tenor of a highly-charged corporate deal. Yet in many other ways the donor and the charity are friendly parties—true collaborators—whose interests in helping others are aligned. With the audience’s input, this panel will use a case study to explore the tensions and resolution on the path to a successful major gift.

Story: Over the course of the past year, the donor and the development officer have had multiple conversations about the possibility of the donor making a large gift to the university to benefit its nursing school. The donor has decided he is ready to discuss the gift in greater detail and today he and the development officer are meeting at the University Alumni Resource Center to negotiate the terms of the gift.

The donor, an alumnus of the university’s undergraduate and business schools, has been a consistent contributor to the university’s annual fund, but he has never made a major gift. The donor is the owner of a closely-held business that makes parts used to drill for natural gas in a process known as hydraulic fracturing. As the “fracking” business has grown in recent years, so has the donor’s wealth. He has always been charitably inclined, and he now feels he is in a financial position to increase the level of his philanthropy. Some years ago, one of the donor’s children was born prematurely and he credits the nurses in the neonatal intensive care unit with saving his child’s life. He is thrilled by the opportunity to give something back both to the nursing profession and his alma mater.

The donor has been interested in creating a research deanship for the development of techniques to provide sophisticated neonatal nursing care—the kind of care that helped save the donor’s child—to rural hospitals in the U.S. and health clinics in developing countries. Through his discussions with the development officer, however, the donor has come to understand that the university is focused primarily on the nursing school’s physical plant. The school is short on classroom space, particularly for clinical learning experiences. Its main classroom building is also technologically outdated and in need of structural repairs. The university board is debating whether to make additional renovations to the existing building or to use adjacent land to build a new facility, a much more expensive venture than renovating.

More excited about helping to fund a new state-of-the art facility than renovating the existing nursing school building, the donor has agreed to discuss a plan for funding a new building.

The donor begins the conversation by setting out some of the requirements he would attach to the gift:

- The donor will commit 60% of the funds needed for a new building, provided that:
 - The building must be completed within the next five years.
 - The donor will have final say over the design of the building and the choice of architect.
 - The donor will receive regular updates on the progress of the building, including whether and to what extent the project is on schedule and on budget.
 - The donor's name will be on the building in perpetuity.
 - A plaque bearing the donor's name will appear next to the main entrance with wording on the plaque to be approved by the donor.
 - If the building is ever torn down, the donor's name will be transferred to a new building with a similar function.
 - The building can be used only to house the nursing school.
 - The building will include a special wing for a neonatal care specialty program, which will be named after the donor's child.
 - The gift for the building will be made in equal installments over 10 years, 50% in cash and 50% in the stock of the donor's company.

The development officer comments that some of the demands may be challenging for the university to fulfill. The donor reminds the development officer that this is a large and generous gift and that he is accommodating the university's desire to build a new facility.

Possible issues to be raised on behalf of the donor:

- Is there a demonstrated need for this new building? Should the donor push harder for his more impact-driven neonatal research program, or should he go along with the university's stated priority of upgrading the nursing school's space?
- Is the project aligned with the mission of the university as a whole? How important is the nursing school to the university? Would the money be better spent at another nursing school? Does the school have the talent necessary to take advantage of the gift?
- Where will the balance of the funding for the building come from? What happens if the construction of the building is underway and funding from other donors is insufficient? Will the donor be under pressure to make an additional gift? Can the additional funds be raised in the established time frame for the building construction? What role or input will the other donors have in the development of the project?
- What kind of relationship does the donor really have with the university? How has the communication with leadership been over the years? As the project unfolds, will they listen to his thoughts and suggestions? Will they do everything necessary to make sure his family is proud to have its name on the building? What happens if the leadership changes? Is the board behind the project?
- How does the neighborhood feel about the university putting up another new building? What's the regulatory process going to be like? Can the school get all the permits it needs on a timely basis? Has anyone done a feasibility study?
- If the donor is not around, who will make sure the nursing school is doing a good job and adhering to the terms of the gift agreement? What happens if it isn't doing a good job—can the donor and his family get the money back or direct the funds to another charity?

Possible issues to be raised on behalf of the university:

- Is the leadership of the school and the board supportive of the new building initiative, as opposed to a renovation of the existing building? Would it be better to try to persuade the donor to apply the gift to renovation so that less additional fundraising for the project would be required?
- Are the funds available to complete the project in five years when the gift is staged in over 10 years? Will they have to raise other funds? Will the donor assist in that fundraising effort?
- Is the donor's gift large enough to warrant naming rights for the building? Should the university give the donor the right to have his name on the building (or a replacement building) in perpetuity? What would be a reasonable alternative?
- Should the university permit the donor to have control over the design and architect of the new building, as well as its exclusive use by the nursing school? Is giving the donor such control over the gift consistent with the board's fiduciary duty to oversee the institution's affairs prudently and in line with its charitable mission—rather than the donor's wishes? If the university provides regular reports to the donor regarding the building's progress, will the information encourage ongoing challenges and criticisms from the donor?
- Can the university accept gifts of closely-held stock? How and when will it be liquidated? What if the stock isn't worth what has been projected? Will the donor step up with additional funds?
- Will accepting gifts from a donor involved in hydraulic fracking cause the university any embarrassment or put it in conflict with other constituencies calling for it to divest from all investments related to fossil fuels?
- Neonatal specialties are important, but is it appropriate and consistent with the school's strategic plan to allocate funds to a special wing dedicated to that area of practice? Who will fund the neonatal programming initiative to be located there? How can the school build in more flexibility with respect to this requirement?
- Are there ways for the university to be responsive to the donor's interest in research on ways to scale high-quality neonatal care in underserved areas?