Case: Village of Tequesta versus Encon

Introduction

The Village of Tequesta covers an area of 1.9 square miles along the Loxahatchee River, the Intracoastal Waterway, and the Atlantic Ocean and has a year round population of 4,686. There is a manager-council form of government. Council members are elected for two-year terms. The Mayor serves a two-year term and the Village Manager is appointed (“Jupiter, Tequesta, Juno Beach Chamber of Commerce” 2000). The coastal village of Tequesta was the site of a six-year battle concerning a proposal to remove septic units and replace them with sewer lines. There were four principle parties and several basic issues. In addition, there were court fees, bruised egos, and bitter feelings on all sides of the proposal. This paper begins by identifying the principle parties, issues and group dynamics before moving into the history and nature of the dispute/mediation process. I will present and analyze the data throughout the paper. I end the paper by making a final assessment of the situation as far as what went well and what could have been done differently. I close with where the sewer proposal is currently.

The Principle Parties

The principle parties in the case were The Loxahatchee River Environmental Control District (Encon), the Village of Tequesta, Bermuda Terrace and Pine Tree Concerned Citizens, and the Loxahatchee River Political Committee. For almost thirty years Encon has had the mission to preserve and protect the Loxahatchee River. To accomplish this the organization has developed stormwater management, a regional wastewater management program, and a River Enhancement Project, among other initiatives (“Loxahatchee River Environmental Control District” 2000). To prevent further pollution of the Loxahatchee
River, Florida’s only Wild & Scenic River, Encon was asking sewer lines to be installed to replace the existing septic tank systems used by the Village of Tequesta. Richard C. Dent, the Executive Director, represented Encon in negotiations. The Village of Tequesta, described above, resisted the request of Encon. At the time, Carl Hanson was the Mayor and Thomas Bradford was the Village Manager. The Mayor stated that he, and the majority of Tequesta residents, did not feel they were responsible for a significant amount of pollution to the Loxahatchee River. Therefore, they thought it was unreasonable of Encon to demand each homeowner pay ten to twenty thousand dollars to finance sewer lines. The third group was the Bermuda Terrace and Pine Tree Concerned Citizens and was represented by John Drieth. This group consisted of homeowners in the area opposed to the Encon sewer project. Sharon Walker represented the fourth and final group, the Loxahatchee River Political Committee. The purpose of the committee, stated by Ms. Walker herself in a later article, was to protect and revitalize the Loxahatchee and to make a difference in the way citizens participate in government (Walker 1999). The fact that Sharon Walker was considering running for commission suggests the creation of the party might have had a political agenda. Neither the Loxahatchee River Political Committee nor the Bermuda Terrace and Pine Tree Concerned Citizens group existed prior to this issue. Richard C. Dent, Encon’s representative claimed they were formed strictly to litigate his organization. There were also some groups affected by the process but not directly a part of it. This included the South Florida Water Management District (SFWMD) who is responsible for actually issuing permits, certain parts of the Tequesta population not represented by the citizen groups, and future customers of Encon.

The Issues

There were several basic issues involved in this case. The first was the prevention of environmental pollution from septic tanks and other sources. Both the South Florida Water Management District and the Palm Beach County Health Department claimed the
Loxahatchee River was being polluted by septic tanks in the Tequesta area. To alleviate the problem Encon was to take out septic tanks and install sewer lines to the area. Related issues were whether septic tanks were a problem and if they were, were they the most significant pollutant contributor? If the septic tanks were not the most significant problem then should everyone’s energy be put into solving what was? There was the issue of everyone doing their fair share to prevent pollution from entering the Loxahatchee River and the feeling of the homeowners that they were being forced to pay high costs just because they were easy targets. Basically, there was the question of what was a fair distribution of environmental safeguards costs to protect the Loxahatchee. Not all septic tanks leaked. One person may regularly flush their system while another may never. It was the aggregate effect of so many septic tanks that were only getting older. It is difficult to put a reliable figure on the level of degradation caused by even this aggregate number of septic tanks. Also it is difficult to determine what are the specific impacts of that particular factor are separating it from any other potential pollutant loadings. As old property was torn down new, often significantly larger, houses were being constructed. The old septic systems did not have the capacity to serve the higher demand. An incentive for the sewer proposal was that it would provide added capacity and facilitate the building of larger houses with more bathrooms. This point was not brought up by any of the participants, but was mentioned later on in an interview of the mediator concerning the Tequesta issue. Regardless of how much time or money was spent trying to convince Tequesta residents septic tanks were significant contributors to polluting the Loxahatchee River it was obvious to many that another contributor, perhaps even more significant, was the agricultural industry in the region. Agriculture is an important industry in the region. Fertilizer loading, from this industry, was thought to contribute significantly to the non-point source pollution problem.
The second set of issues related to the sewering proposal involved the cost and design of the project. Two types of sewer designs were being considered for the project. These were the low-pressure and gravity models. There were pros and cons over either designs and a certain degree of technical uncertainty over which was absolutely the best design to implement in the area. The benefits of the low-pressure system included some of the following points. First, there is a lower cost associated with low-pressure system – it costs only 30-40% of the gravity model price. There was no dewatering required which eliminates the threat of salt-water intrusion. No lift stations would have to be constructed in the neighborhoods and there was an overall shorter estimated construction time. Finally, low-pressure systems require only a 6-inch wide trench meaning minimal disturbance to streets and landscape (Walker 1999). Proponents of this design included Sharon Walker from the Loxahatchee River Political Committee, Encon, and John Dreith. Encon was in favor of the sewer design with the least cost, which turned out to be the low-pressure system design. John Dreith also favored this design, although initially he favored the gravity model. The low-pressure model was not favored by a majority of the residents in Bermuda Terrace.

Opponents of the low-pressure design claimed it produced loud grinder pump noise, offensive odors, and widespread sewage backups, occurring during extended power outages (Stoddard 1999). A large degree of their fear was due to misperceived fear. There is evidence that low-pressure systems do not produce loud grinder pump noise, offensive odors, and there is little real threat of sewage backups. However, the Village of Tequesta went so far as to officially protest health permits of low-pressure sewers. Gravity models were perceived as more safe. However, they do require dewatering to pump down the water table in order to install deep sewer mains. Since the Village of Tequesta is so near to the Loxahatchee River and Florida has a high water table, anyway, this leads to the threat of salt-water intrusion. There was also some question as to whether the Tequesta peninsula was too flat for the gravity model.
Nevertheless, residents of Tequesta largely supported the gravity model, at least partially due to the trust in misperceived facts over real information.

A possible third option might have been for vacuum sewer systems, which have been tested in other Florida locations. This design operates with one central pump that would be less likely to clog up than the low-pressure sewer because of the larger design of the sewer mains. They can be installed at shallow depths and are, therefore, less expensive than the gravity model (Stoddard 1999). This design was not an option in the Village of Tequesta case because Encon only installs the other two designs. They report that the gravity and low-pressure sewers require less maintenance and are the most cost-effective systems to install and run. The ex-Mayor of the Village of Tequesta largely supported this design. He had the potential of being a thorn on the Encon and the overall process. His health, however, prevented him from participating too much.

In mediation the low-pressure design was agreed to. The City Commission in Tequesta could not delegate the authority to settle. Instead they wanted the property owners to decide which sewer design would be put in. The outcome of the series of public hearings to get public input was the support of the gravity model. This created a new problem, which was what to do when the public mandated an alternative not agreed upon by the mediation. This further complicated the process.

The third issue concerned the allocation of costs. Initially the cost was estimated to be around ten to twenty thousand dollars per residence. After the court ruled in favor of allowing the Encon project to continue it seems the citizen organizations might have had little recourse other than mediation for protection against the higher range of cost. Following negotiations, a far more reasonable price was bargained for homeowners. Homeowners would be responsible for three costs. There was a cost for abandoning the septic tank and installing the sewer line, which varied. There was a connection charge to the sewer line. This was a fixed rate and
based on the age of the home and number of toilets. Finally, there was a non-ad valorem assessment to cover the cost of the sewer project within the property owners’ neighborhood. The total estimated cost per property came between $6,500 and $7,500 (Loxahatchee River Control District, 2000).

Another issue dealt with politics. The Mayor, Carl Hanson, felt he needed to be tough for his constituency. Over the course of the six-year debate he kept telling residents of Tequesta that he did not support Encon’s sewer line proposal. This lended to the approach of trying to stop Encon in any way rather than try to come to a mutually acceptable solution. Also, there was the ex-Mayor of Tequesta that threatened to stir things up in the background. Finally there was Sharon Walker who had political aspirations. The politics of the situation complicated matters and reinforced the spiral of litigation.

The resolution of outstanding lawsuits needed to be addressed in mediation. The Bermuda Terrace and Pine Tree Concerned Citizens first brought this matter to court in 1994 over the issue of Encon’s authority. As stated previously the court ruled Encon did have sufficient authority to sewer Tequesta. Encon prevailed in appellate court and a 1996 administrative hearing. When mediation began there was one pending administrative hearing and one hearing awaiting the ruling. Both the hearing and the decision were postponed. Part of the resolution was the agreement of both sides not to pursue any pending litigation. As a result, the final administrative hearing was dropped.

**Group Dynamics**

Group dynamics needs to be addressed next. It had a significant effect on the approach taken by the parties and became part of the issue. To a large degree this developed over the course of the struggle. To put it mildly, neither side was liked by the other. Econ did not take an approach that could be described as kind or gentle throughout the process. In fact, Encon was taking the cost of their litigation fee and adding it to the cost of the Tequesta sewer
project. Encon’s reasoning was lawsuits are sometimes just a part of the design process. It was Tequesta that was initiating “frivolous” lawsuits. Therefore Tequesta should have to pay for the lawsuits rather than other Encon customers subsidizing the lawsuits in the form of higher costs. Tequesta took the position that the dispute was with Encon. They wanted to stop the sewer proposal from being inacted in the first place. They felt it was unfair they were being forced to pay for the whole process. There was a lot of resentment of Encon because of the practice of billing Tequesta for their court fees. Litigation fees were $400,000 for each side by the end of the process. Tequesta was forced to pay.

There seemed to be a lot at stake for everyone involved. Each party had taken a positional approach. Encon said it was putting in the sewers, everyone else said they would see to it that did not happen. Egos were on the line. The process seemed to have a momentum. Without someone stepping in and saying they wanted to change things litigation could have continued a great deal longer. If six lawsuits were not enough to stop this kind of approach how many was enough?

The History and Nature of the Dispute/Mediation Process

One factor that proved important in changing the approach taken by the participants was the election of a new director of Encon. Part of his election campaign was the promise to settle the Village of Tequesta issue. It was apparent that a new approach was needed. Tequesta had already lost numerous cases opposing Encon but at the time of the mediation there was still a pending hearing. When asked, the negotiator of the process stated that he felt had mediation not occurred there would have been several more court cases and attempts to halt the sewer project. The new director of Encon contacted Dr. Tom Taylor requesting mediation services. The next significant turning point was having all the key participants agree to the mediation process. By doing this they were recognizing that the sewer proposal
was going to happen. However, there were still significant obstacles to overcome and not a lot of time.

Fortunately, trust in the negotiator, Dr. Tom Taylor, was not a major issue. He contacted each of the participants prior to the process in order to gather information and establish this line of trust. There was agreement to split the cost of the negotiation between Encon and the Village of Tequesta. Starting out the process there was a fair amount of hostility present. To overcome this the negotiator encouraged constructive listening and taking turns presenting their point of view. He also used the technique of restating what one group stated in a less hostile way.

Time was a factor for several reasons. The low interest rate on the project construction had a time limit. Secondly, getting the delay on the scheduled administrative hearing had been difficult. Encon had lost a contractor due to construction delays. They were eager to get things moving. In addition, the administrative hearing officer from the case whose ruling was delayed still had not written his decision. Every litigation effort was an additional cost. The longer the dispute went unresolved the higher the court fees would be. Finally, the general costs of construction, for things such as labor and materials, were going up with time. To avoid spending more money on higher interest rates, litigation, and materials the dispute needed to be solved quickly in mediation.

There was one day of face-to-face mediation. The process included, however, a week of time where phone mediation was used and several drafts of the solution went back and forth. In addition, because the Board of Commissioners did not have the authority to settle and had already guaranteed the public the choice of sewer design. A series of four meetings were conducted on one day. These meetings were designed to get information to the public concerning sewer design and let them decide which was most appropriate. Before leaving each hearing participant voted on which design they preferred. The majority favored the
gravity sewer design. This was a new issue that emerged that required some additional time and process modification.

The mediation itself was done as a settlement meeting. Upon completion the press published the agreement. At the beginning of mediation common goals were agreed upon by the various groups. These goals included protection of the Loxahatchee River, lows costs for the sewering, minimization of disruption caused by construction, and completion of the project as soon as possible. Mitigation measures were present in many of the creative details arrived at by the mediation. Some of the specific negotiation techniques used in the meeting included getting people to understand things from a different point of view, creatively approaching a set of issue that have commonly agreed upon, and trading off between issues and options.

There were two keys to making this mediation a success, according to Dr. Taylor. The first was transforming an adversarial role to a problem solving one. This requires listening to one another and working together to solve the problem rather than each party attacking the other. The problem must be separated from the individual. After six years of fighting this is not an easy task. The most challenging task however, and the second key to the negotiation success, proved to be trying to make the agreement politically acceptable. The agreement had to be framed in a way the Mayor of Tequesta could take it to his constituents and say this is what we are going to do now. For six years the Mayor had been saying he would not allow the sewer proposal from Encon. Now he had to bring them a mediated settlement, which he agreed to, saying the sewer proposal would go through. Mediation has a role not only in fixing the problem at hand but in preventing some future problems as well.

**Recommendations of went well and what could have been done differently**

Following the initial request for mediation things in the Village of Tequesta v. Encon case seemed to go quite well. The negotiation process itself is a case study of how to bring around
hostile parties to the negotiation table. What could have gone better are the timing and the initial approaches of the different participants. Since the mediation went so well when it did the obvious question to ask is would the negotiation have been as successful if it was initiated earlier. When asked, Dr. Tom Taylor replied that he was not sure. If facilitation had been sought in the very beginning then the process might have worked. The adversarial role was assumed instead early on and the litigation was initiated. After one or two cases the parties really became locked into this role and the objective shifted from resolving the problem to winning in court.

Facilitation was not sought in the beginning of this process due to a couple factors. There was a lack of trust between the Village of Tequesta and Encon. In addition, no one felt Encon representatives were really listening. For facilitation to work a neutral forum is required were participants constructively listen to one another.

From the beginning Encon did not take the approach that would suggest it was open to a facilitated process. The organization was convinced of its own authority to complete the sewer proposal. The fact that it was billing the court fees to Tequesta did not help either. Encon had never been opposed to a sewer proposal before this case. I think it is safe to say they learned something from this six-year struggle. Hopefully, a slightly different approach will be taken should a similar dispute come about and representatives at Encon might be more willing to take the facilitation path instead of the litigation one.

**Current Status of Sewer Proposal**

The final topic of discussion is where the sewer proposal is currently, following the negotiation. A construction proposal, which is part of the implementation phase, was worked out. The sewer proposal was divided into two phases. The initial phase included Bermuda Terrace and the a third of the Tequesta Country Club. Construction was scheduled to begin the end of February 2000 and continue for six to eight months. Following the completion of
the first phase the second phase is scheduled to start sometime in fall 2000. This phase includes installation of gravity sewers into the rest of the Tequesta Country Club, County Club Pointe, Anchorage Pointe, and Martin County. This phase is also expected to take six to eight months (Loxahatchee River Environmental Control District 2000). The Village of Tequesta and Encon are now able to work with one another, although as can be expected, there is some remaining tension.
Bibliography

---“Parties Say Agreement may be Near in Sewer Dispute.” The Jupiter Courier 19 September 1999.


