LEMON BLUFF RULEMAKING

CASE STUDY

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INTRODUCTION

In an effort to stay out of local affairs, the State allows the various local counties to establish their own speed zones in their local waters. The State is required by statute to do rulemaking in state or federal waters like the Intercoastal Waterway or river channels. The intent of this is to let the local people handle their local problems since they know more about their local needs. If they solve their own problems there will be less reason to blame or sue the state. If they can’t establish a local rule or have a public outcry for help, then the state steps in and helps settle the local disputes and makes the rule or explains why there is no need for a rule under state guidelines.

The purpose of this paper is to access what effect a State facilitated public meeting process policy would have on future situations where the State is asked to step in a local situation and settle a matter of local concern regarding rulemaking. First the paper will describe a brief history of present practices used to settle this type of local government matters. Next the paper will explain what happened in the Lemon bluff case. Then there will be an explanation of what might have happened had there been a policy in place at the time and in future situations similar to this in the State.

RESEARCH METHODOLOGY

The primary method used to obtain data and to analyze the events and conclusions over the time of this event is through direct observation, personal participation, and interviews with supervisors at a later date. As a State employee working for the
CASE HISTORY

A fork off of the St. Johns River runs between and is the County boundary for Volusia and Seminole Counties. There are several residents living along this portion of the river on the Volusia County side. There are no residents on the Seminole County side, only marshlands. This portion of the river is locally known as Lemon Bluff. In order for a rule to be established and be effective, it must include the whole width of the river. Since the county boundary is the middle of the river, both counties must agree to make the speed zone rule and participate in the enforcement of the rule.

Volusia County and the residents are in favor of the rule and Seminole County is against the rulemaking. After numerous meetings and phone calls to each other and a barrage of resident complaint calls to the two counties regarding speeding jet skis and damaging wakes to their property, the two counties contacted the State Department of Environmental Protection, Division of Law Enforcement, to proceed with rulemaking for the Lemon Bluff area.

The State has established its own criteria for rulemaking within the waters of the state. Therefore, prior to rulemaking, the state searches its records of accidents for that area to determine if there is a need for a slow speed zone in the area. After searching accident records for a period of the last five years, it is determined that there are no criteria to support a slow speed zone in this area. However, since the state is involved and the counties requested a public workshop, the state was required by law to hold a public
meeting. A public workshop was advertised in the Florida Administrative Weekly as required by Florida Administrative Code.

The department had become involved reluctantly because the counties could not come to an agreement that satisfied the residents on the Volusia County side and the local government of Seminole County. The Volusia County local government officials were caught in the middle and could not get Seminole County to agree on a mutual rulemaking. Seminole County had no interest in a new speed zone for their already stressed law enforcement budget to share in patrolling.

The State representatives at the meeting in no way acted as mediators or facilitators in this case. Volusia County made no creative suggestions like footing the bill for all law enforcement activity in that area or having volunteers of the auxiliary patrol come on weekends and sit in their boats. They wanted Seminole County to share in that expense and officer patrol duties.

The two counties requested in writing that the state intercedes and do rulemaking for them. This was supposed to take the heat off of both counties. The State made no attempt to get the two counties to sit down and discuss options with the state as a facilitator.

The attorney for Seminole County came to Tallahassee to review the accidents in the area after obtaining information on state requirements for rulemaking. This was not done to help facilitate an agreement but to help squash the possibility of a rule, because if the state determined that a slow speed rule was in order for that section of the river, then Seminole County would have to participate in the patrolling of the speed zone area.
The Volusia County Administrator was at his wits-end with the barrage of county resident complaints about speeding boats, property damage, noise, safety, and their general quality of life. His answer after a year of this non-agreement with Seminole County officials was to let the state handle it. So once that decision was made, guess who started getting the irate citizen calls? The Volusia County Administrator still got calls in addition to the calls that the state started getting. Now, the residents wanted him to put pressure on the state to make the slow speed zone.

They were at the top of the conflict spiral (Kennedy Carper 1988, p. 12) The workshop was advertised and the state was finally going to hear the resident’s and the counties’ sides of the story and solve all the problems and everyone was going to live happily ever after. All was well, except the state had already decided that the area did not warrant a slow speed zone and was just going to Volusia County to hear and answer the residents’ issues.

At the workshop, the citizens of Volusia County outnumbered everyone else. The County Administrator was elated to see the state was there to take over his problem. The attorney for Seminole County was steadfast and adamant and presented evidence that made it clear that Seminole County wanted no part of the slow speed zone. Even his body language told his story. Pass the buck.

The residents were organized and had a spokesperson, but the workshop allowed all who wanted to, to speak. There was not time limit to the workshop. It eventually concluded after 4 hours. The residents were frustrated and short-tempered. It appeared that they had been encouraged to believe that they would finally receive their speed zone, although the outcome led to more distrust of the government to solve problems. The
residents obviously had held meetings to come up with a list of their problems, but they had not come up with alternatives other than a slow speed zone in front of their houses. They had also obviously held meetings with the Volusia County Administrator and were frustrated with him. They had also called the Seminole County Administrator, which alienated him. They were also calling the State prior to the workshop trying desperately to convince them of the need for the speed zone.

The attorney and expert rule making authority for the state, Captain Richard, explained the rulemaking process to the workshop groups then the state proceeded to hear anyone wishing to speak on the record. The Captain’s explanation did not address any suggestions of mediation or facilitation. He simply stated the criteria for boating safety speed zone rulemaking used by the state. He stated that notes would be taken back to Tallahassee for compiling and determining by the state if rulemaking in this area at this time was necessary. The state would make the final decision. The residents’ issues of safety, wake damage, noise, and quality of life were answered in a technical manner as not meeting the criteria for the rulemaking purposes of the state.

NEW APPROACH

Had a new policy of a facilitation process been in place, the State could have acted as a facilitator by law and possibility helped the Counties produce a mutually agreeable solution to their local problem. That problem now became the State’s problem and the State takes the heat for the non-rulemaking. This new policy could be triggered when the Counties write and ask for the State to intercede and do rulemaking because the counties can not make an agreement. The State’s job as facilitator would be to gather
information from the different parties, lay down some ground rules regarding meetings and guide the process to the completion of negotiated rulemaking at the local level.

CONCLUSION

The most critical challenge in this case was to get the parties to sit down together and come up with a win-win solution. It didn’t happen. The attorney for Seminole County won, the residents are angry, the County Administrator passed the buck (blame), and the state is now distrusted more than ever by the residents of Lemon Bluff. It appears that if the state representatives had acted in more of a mediation or facilitator role, the results may have solved all party’s problems partially.

The residents are still upset, the Volusia County Administrator is still receiving calls, and Seminole County is still not willing to participate in sharing responsibility for a speed zone.

The State falls in the Solomon Trap in most cases where they are asked to intervene, as related in the readings from Fisher and Ury. Which means that the State listened to all then made a decision that did not satisfy any of the parties. Residents feel betrayed. The state’s focus was not on solving the problem, but on telling residents why they could not have a speed zone there. If the employers of the state had been trained in dispute resolution, they could have been better facilitators and realized better outcomes for all concerned using group concerns and negotiation regulation techniques. The only ground rules established were that each person should have a chance to have their say.

No drafts of proposals were drawn up for the different parties to review and amend as suggested in the readings from Carpenter and Kennedy. No options were
suggested by anyone. The state did not examine issues of the parties for mental grounds or issues to work toward. No one helped the resident’s through the “groan zone” as described in the Kaner readings. The state used its power to solve the counties’ dilemmas of not being able to come to agreement instead of negotiating an agreement to help everyone. The residents represented themselves and should have had someone professionally trained to represent them. The state did not ask if alternative solutions were possible.

If a trained State facilitator or professional mediator had become involved early in this situation, the outcome could have been favorable for everyone involved. Once the lines were drawn, it became extremely difficult for anyone to manage and certainly was not a situation to expect a collaborative effort on finding a solution using untrained personnel.

The process for this rulemaking workshop failed to meet the guidelines that are identified as a facilitation or mediation meeting. This type of meeting falls into the category of manipulating the public and causing more distrust of government in general, than it shows coming into alignment with groundworking, citizen participation, and consensus building. This was not a collaborative effort but seemed more like a “seeking accommodation from the public” meeting. Active citizen participation as stated by 1000 Friends of Florida, is the “foundation of growth management” and the foundation of this dispute between these two counties and their citizen’s. If the State Agencies responsible for rulemaking could make policies of facilitation to handle cases like the Lemon Bluff case, the public would be better served, the State would hold a better image, and the Counties would have an added resource to handle stressful local political problems without forcing the State to be the bad guy. The State would need to enact a policy to
establish the timing of events, the training required for the facilitators, the delegation of responsibility, and the ability to monitor the results of the outcomes of the events to promote sustainable agreements.
AGENDA

Objectives:
To identify mutual problems of Volusia County, Seminole County, and the residents of lemon bluff.
To identify all options available for solving these mutual problems.

8:00 Coffee and doughnuts

8:30 Meeting Starts
   Introductions
   Welcome by Volusia County Administrator

9:00 Open discussion of agenda objectives

10:00 Break up into groups for listing of issues as understood from discussion

10:30 Break

10:45 List all issues

11:00 Prioritize issues and discuss any unsettled issues

11:30 Discuss mutual solutions of interest

12:00 Lunch - Furnished by Volusia County

12:15 Volusia County Attorney to speak on Alternatives to Negotiated Agreements

1:00 Discussion of mutual agreements

2:00 Break out session to discuss agreement solutions

2:30 Present and discuss suggestions as a group

3:15 Break

3:30 List all solutions

3:45 Vote on solutions of agreement

4:00 Set date, time, and location for final meeting of agreement

4:15 Adjourn
References


Florida Administrative Code, Chapter 120, Title X.