

Getting to Green:

*A case study of the negotiation methods used during the
Florida Building Commission Green Building Workgroup*

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EXECUTIVE SUMMARY

The Florida Building Commission Green Building Workgroup (hereinafter “Workgroup”) was created after the Florida Legislature passed Senate Bill 2802 to help decrease the amount of energy being used by homebuilders and the general public. With an ever growing population, legislators were concerned that if something wasn’t done to curb energy consumption and promote efficient energy use, Florida utility companies would not have enough energy to supply and support all of its citizens and the cost of energy would reach new highs. The Building Commission was charged with amending the current legislative building guidelines to promote “green” growth, but in doing so, they would have to take into consideration all parties what would be substantially affected by the legislation.

With such a broad reaching issue, there were dozens of individuals and groups who wanted to make sure that the new legislation was both fair and beneficial to their interests. The workgroup worked with Jeff Blair, a professional mediator from the Florida Conflict Resolution Consortium (hereinafter “FCRC”), to help bring all of these groups together and reach an agreement as to how the current legislation should be amended.

This case study takes a look at the techniques that were utilized by Mr. Blair, examines their efficiency and effectiveness, and then compares the techniques used by Blair with “A Practical Guide to Consensus,” a paper written on the methods used before, during, and after a consensus project is implemented to reach a collaborative and amicable solution. It is my opinion that the methods used in this particular scenario were very effective and that the vast majority of the participating parties were pleased with the final product and the efforts of the FCRC.

RESEARCH FOCUS

As a part of this project we were instructed by our professor Dr. Taylor to enumerate a list of personal interests and goals we wanted to achieve by doing our particular studies. My reasons for choosing the Workgroup are listed below:

1. To understand how parties with different interests come together to rally behind a specific agenda and then in turn strategize to get other groups to fall in line.
2. To learn how to facilitate a meeting involving a laundry list of interested groups.
3. To determine if I would be interested in this field of law/work and to see if I would enjoy it (admittedly, this type of law has a reputation for being a little boring and mundane).
4. I also wish to learn more about green buildings and the process of getting municipalities and developers alike interested in investing in such infrastructure.

METHODOLOGY

In order to examine this particular dispute I used several secondary sources to acclimate myself with the material. The main input for my analysis comes from the Workgroup Meeting Reports, the Public Awareness Campaign (PAC), the Green Building Ordinance, and speaking with Jeff Blair, Associate Director, Consensus Center (Florida Conflict Resolution Consortium).

I was fortunate in that Mr. Blair keeps detailed records of his projects and makes the information available via internet⁴. I read over the minutes of the meetings and was able to follow along with the entire process. If necessary I was willing to seek out some of the various parties who were involved with the process to get a different perspective, but based on the evaluation sheets an overwhelming majority of the participants were satisfied with the process and wrote their comments on the available evaluation sheets.

INTRODUCTION

The Problem

Florida is known for its tropical climate. With such hot and humid weather the demand for electricity for air-conditioning is extremely high. Florida's per-household consumption of electricity is among the highest in the United States¹. Florida builds an average of 160,000 new homes each year and Census Bureau data reveals that Florida will rank third in terms of population in 2010. With such growing numbers, energy efficient improvements to existing homes and the construction of new energy efficient buildings would significantly reduce Florida's energy consumption and costs.

"Green" is definitely the new "black." The problem is change takes time and most people aren't really sure what going "green" really is. Green building programs are more geared towards maximizing performance rather than complying with minimum codes. Many voluntary programs are gaining market share because consumers and builders are interested in "doing what's right." There is clearly a surge in consumer appetite for information about energy efficiency². However, with so much information out there it is sometime hard to decipher what works and what just doesn't. Moreover, many people question that even if a particular method saves energy does that necessarily correlate into saving money?

Finally there are those groups and individuals who just don't want to change. The status quo is comfortable and sometimes the new thing to do is also the expensive this to do. A look into the country's debate over Health Care Reform alone shows how hard it is to effect change, even if it is something that is good for you. Yet, if there is one thing that we can learn from history that is uncontroversial, we know that change...is inevitable.

The Solution

In order to promote this change, the Florida legislature passed SB 2802. In pertinent part the bill states that³:

Section 48. (1) The Florida Building Commission shall convene a workgroup comprised of representatives from the Florida Energy Commission, the Department of Community Affairs, the Building Officials Association of Florida, the Florida Energy Office, the Florida Home Builders Association, the Association of Counties, the League of Cities, and other stakeholders to develop a model residential energy efficiency ordinance that provides incentives to meet energy efficiency standards. The commission must report back to the Legislature with a developed ordinance by March 1, 2008.

(3) The Florida Building Commission, in consultation with the Florida Solar Energy Center, the Florida Energy Commission, the Florida Energy Office, the United States Department of Energy, and the Florida Home Builders Association, shall develop and implement a public awareness campaign that promotes energy efficiency and the benefits of building green by January 1, 2008. The campaign shall include enhancement of an existing web site from which all citizens can obtain information pertaining to green building practices, calculate anticipated savings from use of those options, as well as learn about energy efficiency strategies that may be used in their existing home or when building a home. The campaign shall focus on the benefits of promoting energy efficiency to the purchasers of new homes, the various green building ratings available, and the promotion of various energy-efficient products through existing trade shows. The campaign shall also include strategies for utilizing print advertising, press releases, and television advertising to promote voluntary utilization of green building practices.

In response to legislative and gubernatorial direction, the FCRC was hired to work with the Florida Building Commission and the Florida Solar Energy Center to facilitate a stakeholder workgroup that will seek consensus recommendations regarding the development of a model efficiency ordinance for residential development. The legislature created a two-prong approach to addressing the problem. The commission was charged:

1. To develop a Model Energy Efficiency Ordinance for Residential Development; and
2. To make recommendations regarding the development and implementation a Public Awareness Campaign that promotes energy efficiency and the benefits of building green.

IMPLEMENTING THE SOLUTION

The Stakeholders

The first step the FCRC took in reaching a solution was to compile a list of stakeholders. The legislature had already laid out some of the parties that had to be involved with the Workgroup, but what Mr. Blair did during the very first meeting was to sit down with the initial “key” stakeholders and come up with a broader list of people that should be involved with the discussion. This part of the process was a little easier for Mr. Blair because he had worked with many of the same individuals before and was relatively familiar with the process and the participants.

Below is a working list of the individuals (in their representative capacities) that attended the meetings. It is important to note, however, that as the meetings progressed the specific individuals and the list of participating parties fluctuated somewhat to account for changes in the direction of the negotiations and to consolidate interests. It is also important to keep in mind that there were still more individuals and groups who were involved with this entire process.

- Florida Building Commission, Dale Greiner
- Florida Energy Commission, Rob Vickers
- Department of Community Affairs
- Building Officials Association of Florida, Jim Schock
- Florida Energy Office (DEP), Michael Ohlsen
- Florida Home Builders Association, Bob Sisum
- Association of Counties, Shannon Staub
- League of Cities, Jeff Allebach
- Florida Solar Energy Center, Rob Vieira
- United States Department of Energy
- My Safe Florida Home, Tami Torres
- Water Management Districts, Linda Burnette
- Local Government, Paul Radauskas
- Legal, Thomas Ankersen
- Florida Solar Energy Research and Education Foundation, Colleen Kettles
- Product Manufacturer, Tom Geriak

Initial Consensus on the Process

The next thing that the Workgroup did was create an agenda. The agenda listed the meeting times, meeting objectives, member’s roles and rules, and an overview of what the project entailed and their mission. The purpose of all of this was to create consensus even before the negotiations began.

MEMBER'S ROLE

1. The Workgroup's/Forum's meeting process is an opportunity to explore possibilities. Offering or exploring an idea does not necessarily imply support for it.
2. Listen to understand. Seek a shared understanding even if you don't agree.
3. Be focused and concise—balance participation & minimize repetition. Share the airtime.
4. Look to the Facilitator to be recognized. Please raise your hand to speak.
5. Speak one person at a time. Please don't interrupt each other.
6. Focus on issues, not personalities. Avoid stereotyping or personal attacks.
7. To the extent possible, offer options to address other's concerns, as well as your own.
8. Represent and communicate with member's constituent group.

FACILITATOR'S ROLE

1. Design and facilitate a participatory meeting process.
2. Provide consensus-building and conflict resolution guidance.
3. Assure that participants follow ground rules—Assist participants to stay on task.
4. Facilitate public participation and input.
5. Prepare agenda packets and provide meeting summary reports.

GUIDELINES FOR BRAINSTORMING

1. Speak when recognized by the Facilitator.
2. Offer one idea per person without explanation.
3. No comments, criticism, or discussion of other's ideas.
4. Listen respectfully to other's ideas and opinions.
5. Seek understanding and not agreement at this point in the process.

THE NAME STACKING PROCESS

1. Determines the speaking order.
2. Members raises hand to speak. Facilitator will call on participants in turn.
3. Facilitator may interrupt the stack (change the speaking order) in order to promote discussion on a specific issue or, to balance participation and allow those who have not spoken on a issue an opportunity to do so before others on the list who have already spoken on the issue.

These guidelines help to facilitate a cordial and effective meeting. From the onset it can sometime be assumed that different parties will have conflicting agendas with your own and that certain individuals will be more vocal and domineering in the discussion. These rules help to balance out those factors and facilitate a more open-minded environment. It is important to have everyone agree to the “norms” of the meeting because it aids in dissipating the seemingly competitive atmosphere. Even the facilitator's role was laid out in the open so that everyone would know what to expect. If at anytime a party was not happy with Mr. Blair services, he was willing to step down and away from the project.

A poignant part of the process is having each party state what they think the key issues are. In the absence of dialogue, it is common to feel that their interest are key in shaping the outcome of the debate, but only by having everyone state what they feel are the key issues and then get consensus on those issues, can you have a clear picture-of the big picture. Mr. Blair uses an acceptability ranking scale to determine if something should be addressed or amended

ACCEPTABILITY RANKING SCALE

During the meetings, members will be asked to develop and rank options, and following discussions and refinements, may be asked to do additional rankings of the options as refined. Members should be prepared to offer specific refinements to address their reservations. The following scale will be utilized for the ranking exercises:

Acceptability Ranking Scale	<i>4 = acceptable, I agree</i>	<i>3 = acceptable, I agree with minor reservations</i>	<i>2 = not acceptable, I don't agree unless major reservations addressed</i>	<i>1 = not acceptable</i>
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Mr. Blair utilized a 75% acceptance rate to determine if an idea should become a key issue. However, by even accepting only 75% of the people involved you are still leaving out ¼ of your population. A series of seemingly majority votes may still have the affect of ostracizing a stakeholder (or group of stakeholders) and create dissention among the group. So even though Blair stated that 75% consensus was acceptable, he rarely moved along without attempting to get at least 95%. On all of the issues they discussed there almost always 100% consensus.

To make sure that everyone had an opportunity to have their voice heard, after the stakeholders had there meeting, the Workgroup held open public forums to get feedback from the general population. They would invite people that they knew had in interest on what was going on, but made the meeting completely open for anyone to come and comment. At these meeting, the Workgroup used some of the same exact techniques that they incorporated in their stakeholder meetings. There gathered ideas verbally and on written evaluation forms and voted on each of them fairly. Participants were then

asked to rate the process and give critiques on how things could be more effective. The point was to give everyone a say, and even though Mr. Blair's process has been vetted, he is open to new ideas to continue to get better.

Of all the people attending the meetings, from the 50 public participants, to the 15 stakeholders, and the 4 staff members, 1 always stood out in particular...and that was the lawyer. It was his job to reword some of the accepted suggestions to fit the mold of a legislative amendment. He also served as a sort of buffer in that he was able to serve as an impartial expert and inform the Workgroup as to what they legally could and could not do. His facilitative role was very different than that of Mr. Blair's, but just as necessary to help the group as a whole reach an acceptable resolution.

The original negotiation process was scheduled to involve just 3 meetings: Meeting I October 1, 2007 Tampa, Meeting II October 31, 2007 Gainesville, Meeting III November 28, 2007 West Palm Beach. As time went on it became evident that they would require at least one more meeting (Meeting IV January 16, 2008 Orlando) to work everything out. It took the Workgroup 6 months to come to an agreement. One of the reasons why things went so smoothly was because this was a legislative mandate. This particular dispute was not over custody or property, but was ordered by the legislature, to the Florida Building Commission to create this ordinance. Yet with such an tall order, came the ever looming issue of time.

If there was an elephant in the room, it was the clock. Mr. Blair kept most meetings as short as possible (the structured agenda was key in this regard), but they still had to get everything done by the next legislative session. Time always tends to play a factor in negotiations, as a reminder that something has to get done soon, or that nothing will get done at all. Fortunately, for the workforce (and the general population) there weren't any issue that they couldn't resolve.

EVALUATION

A Practical Guide to Consensus (hereinafter “Guide”) was written to introduce the consensus process to help solve government related issue and has been used for years to resolve policy conflicts.

In summation, the Guide focuses on 8 key steps in reaching true consensus:

1. An **agenda** should first consider whether a consensus approach is appropriate
2. **Stakeholders** should be supportive of the process and willing and able to participate
3. Agency leader should support the process and ensure sufficient **resources** to convene the process
4. An **assessment** should proceed a consensus process
5. **Ground rules** should be mutually **agreed** upon by all participants and not established solely by the sponsoring agency.
6. The sponsoring agency should ensure the **facilitator’s neutrality** and accountability to all the participants
7. The agency and participants should **plan for implementation** of the agreement from the beginning of the process.
8. Policies governing these procedures should not be **overly prescriptive**⁵.

In relation to these prescribed guidelines, I think Mr. Blair and the Workforce did an acceptable job (95% or better). I will address each guideline with its corresponding number below.

1. The agenda was one of the first things agreed upon by the group
2. The legislature mandated it and everything needed to be agreed upon for it to be discussed by the group. As stated earlier, nearly every issue that was brought up received a 100% acceptability rating.
3. The Commission paid for the entire process and the government had the resources and authority to implement and enforce it.
4. Done. On the group level but also the legislative level before that.
5. This is Blair’s key focus before beginning any project.
6. Blair was a neutral party and willing to leave if the participants felt that he was being impartial. He was familiar with the subject area and had “no dog in the race.”
7. As stated earlier the government had every intention of implementing the agreement and they also had the workgroup device a Public Awareness Campaign to promote going green.
8. The rules were exceedingly short and simple...though I will admit that the ordinance itself can be a little confusing to the untrained eye.

CONCLUSION

At the end of this case study (and the class) I think I accomplished everything I set out to do and much more. I learned quite a bit from a vetted process and even more when it comes to dealing with disputes. I was not familiar with consensus building and collaborative agreements before I began this journey, but now it is one of the things that I will never forget.

References

1. “Green Building Public Awareness Campaign Plan” prepared by the Florida Solar Energy Center
2. National Association of Business Journalists
3. <http://www.leg.state.fl.us/data/session/2007/Senate/bills/amendments/pdf/sb2802e1403404.pdf>
4. <http://consensus.fsu.edu/FBC/GBW.html>
5. A Practical Guide to Consensus by Jim Arthur et al. (emphasis added)