

**CITY OF LAKE MARY, FLORIDA
PLANNING AND ZONING BOARD MEETING
JUNE 28, 2016
6:00 P.M.
CITY HALL, 100 N. COUNTRY CLUB ROAD**

A G E N D A

- I. Call to Order
- II. Moment of Silence
- III. Pledge of Allegiance
- IV. Roll Call - Determination of a Quorum
- V. Approval of Planning and Zoning Board Minutes – June 6, 2016
- VI. Citizen Participation: This is an opportunity for anyone to come forward and address this Board on any matter relating to this Board or its actions. This also includes: 1) any item not specifically listed on a previous Agenda but discussed at a previous board meeting or 2) any item on tonight's Agenda not labeled as a public hearing. Items requiring a public hearing are generally so noted on the Agenda and public input will be taken when the item is considered.
- VII. P&Z Public Participation Process:

City staff and the applicant, or the agent for the applicant, will make their presentations first, followed by questions from the Planning and Zoning Board members. After the presentations from staff and the applicant, the Chairman will open the public hearing portion of the meeting to allow interested parties to speak for or against the item being considered. The public is instructed to keep their presentation factual, not be redundant, and to direct all comments to the Board, not to the applicant or to staff. From time to time, it may become necessary for the Chairman to limit the time that speakers may have. If a time limit is to be imposed, it will be announced at the time that the Public Hearing is opened. If a speaker wishes to be heard for the record but does not have any new information regarding the item being considered, the speaker shall give his/her name and address for the record and state that they agree with the presentation made by a previous speaker, giving the specific name of the person. When the Chairman believes that no additional information is forthcoming, the Chairman shall close the public hearing portion of the meeting.
- VIII. Old Business

None

IX. New Business

- A. 2016-CU-01, Recommendation to the Mayor and City Commission for a Conditional Use for the Ladybird Academy, a childcare center, located at 185 Timacuan Blvd. Applicant: Ladybird Enterprises, Ms. JeriAnn MacLean. (Public Hearing).
- B. 2016-SP-04, Request for site plan approval for the construction of a 2,000 sq. ft. expansion of the existing Ladybird Academy, located at 185 Timacuan Blvd. Applicant: Ladybird Enterprises, Ms. JeriAnn MacLean. (Public Hearing).

X. City Attorney Presentation on Sunshine Law and Public Records Law

XI. Community Development Director's Report

XII. Other Business

XIII. Reports of Other Members

XIV. Adjournment

NOTE: IF A PERSON DECIDES TO APPEAL A DECISION MADE WITH RESPECT TO ANY MATTER CONSIDERED AT THE ABOVE MEETING OR HEARING, HE OR SHE MAY NEED A VERBATIM RECORD OF THE PROCEEDINGS INCLUDING THE TESTIMONY AND EVIDENCE, WHICH RECORD IS NOT PROVIDED BY THE CITY OF LAKE MARY. (FS 286.0105)

PERSONS WITH DISABILITIES NEEDING ASSISTANCE IN ORDER TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE PERSONNEL ADA COORDINATOR AT (407) 585-1424 AT LEAST 48 HOURS IN ADVANCE OF THE MEETING.

1 MINUTES OF THE LAKE MARY PLANNING & ZONING BOARD MEETING held June
2 28, 2016, 6:00 P.M., Lake Mary City Commission Chambers, 100 North Country Club
3 Road, Lake Mary, Florida.

4
5
6 I. Call to Order

7
8 The meeting was called to order by Chairman Robert Hawkins at 6:05 P.M.

9
10 II. Moment of Silence

11
12 III. Pledge of Allegiance

13
14 IV. Roll Call

15		
16	Chairman Robert Hawkins	John Omana, Community Dev. Dir.
17	Vice Chairman Colleen Taylor	Steve Noto, City Planner
18	Member Justin York	Katie Reischmann, City Attorney
19	Member Steven Gillis – Absent	Mary Campbell, Deputy City Clerk
20	Member Sam Aycoth	
21	Alternate Member Scott Threlkeld	

22
23 V. Approval of Planning & Zoning Board Minutes – June 6, 2016

24
25 **Justin York moved to approve the Planning & Zoning Board minutes of June 6,**
26 **2016, seconded by Sam Aycoth and motion carried unanimously 5 – 0.**

27
28 VI. Citizen Participation: This is an opportunity for anyone to come forward and
29 address this Board on any matter relating to this Board or its actions. This also
30 includes: 1) any item not specifically listed on a previous agenda but discussed
31 at a previous board meeting or 2) any item on tonight's agenda not labeled as a
32 public hearing. Items requiring a public hearing are generally so noted on the
33 agenda and public input will be taken when the item is considered.

34
35 No one came forward at this time and citizen participation was closed.

36
37 VII. P&Z Public Participation Process:

38
39 City staff and the applicant, or the agent for the applicant, will make their
40 presentations first, followed by questions from the Planning and Zoning Board
41 members. After the presentations from staff and the applicant, the chairman will
42 open the public hearing portion of the meeting to allow interested parties to
43 speak for or against the item being considered. The public is instructed to keep
44 their presentation factual, not be redundant, and to direct all comments to the
45 Board, not to the applicant or staff. From time to time, it may become necessary
46 for the Chairman to limit the time that speakers may have. If a time limit is to be

1 imposed, it will be announced at the time that the public hearing is opened. If a
2 speaker wishes to be heard for the record but does not have any new information
3 regarding the item being considered, the speaker shall give his/her name and
4 address for the record and state that they agree with the presentation made by a
5 previous speaker, giving the specific name of the person. When the Chairman
6 believes that no additional information is forthcoming, the Chairman shall close
7 the public hearing portion of the meeting.
8

9 VIII. Old Business

10
11 There was no old business to discuss at this time.
12

13 IX. New Business

14
15 Chairman Hawkins said Items A and B are related and will be discussed together but
16 will be voted on separately.
17

18 A. 2016-CU-01: Recommendation to the Mayor & City Commission for a
19 Conditional Use for the Ladybird Academy, a childcare center, located at 185
20 Timacuan Boulevard. Applicant: Ladybird Enterprises, Ms. JeriAnn MacLean
21 (Public Hearing)
22

23 Mr. Noto said he would combine the presentations and will be sure to point out the
24 differences in the findings. Since we have a conditional use we have a different finding
25 of fact than the site plan request.
26

27 Mr. Noto showed the location map for 185 Timacuan Boulevard on the overhead. This
28 is the location for the Ladybird Academy which is the subject project we will be talking
29 about tonight. Ladybird Academy is a 9,900 square foot childcare facility that was
30 approved in 2004. The original conditional use was approved on April 15, 2004.
31

32 Mr. Noto said the conditional use request is for an expansion of 2,000 square feet of
33 additional space that would be added to the west side of the building. The current
34 facility operates from 6:30 A.M. to 6:30 P.M. with 14 employees and 122 students at the
35 peak hour. There are 27 parking spaces on site, two of which are handicapped. As part
36 of the expansion, they will be adding three employees and will increase their student
37 count from 122 to 144. As a result of those increases the applicant is going to provide
38 five additional parking spaces.
39

40 Mr. Noto said with the conditional use process we have seven findings of fact which are
41 outlined on Pages 2, 3 and 4 of the staff report. The first finding of fact deals with
42 compliance with the Comprehensive Plan. There is no change in zoning and there is no
43 change of land use category so this request is in compliance with the Comprehensive
44 Plan.
45

1 Mr. Noto said Provision No. 2 has to do with traffic flow and safety as it relates to
2 automobile access and pedestrian access. The original site plan was approved on May
3 25, 2004, by the Planning & Zoning Board. The only change they are making to the site
4 is they are straightening out a piece of sidewalk that is internal to the site. It was
5 designed with a curve in it and when we first looked at it we couldn't understand why
6 there was a curve there. After we looked at the landscape plan it was due to some tree
7 plantings and things like that. They are going to straighten that out and change around
8 some trees. Other than that they are not making any changes to access to the site and
9 are improving it by adding the parking spaces.

10
11 Mr. Noto said Provisions 3, 4 and 5 are not much to worry about. Since this is an
12 existing site they already have all of their utilities, landscaping and buffering. From a
13 noise perspective as outlined in Provision 3, this will actually improve noise on the site
14 because they are putting more of the students indoors. They will still have outdoor play
15 space but any noise that comes of the additional kids will be within that 2,000 square
16 foot classroom space.

17
18 Mr. Noto said Finding of Fact No. 7 is that we found as staff that the request to operate
19 a childcare center at 185 Timacuan Boulevard within the Timacuan Planned Unit
20 Development does not adversely affect the public interest and is a reasonable request
21 based on the six aforementioned findings of fact and we are recommending approval.
22 There was a similar conditional use request for StarChild Academy that we reviewed in
23 2007.

24
25 Mr. Noto said this was a minor site plan review due to the small nature of the request.
26 He showed Sheet C-201 of the set of plans the Board received. He pointed out the
27 2,000 square foot expansion. It is currently all play area. They are going to make the
28 play area smaller and provide this new classroom space. As part of that they are going
29 to rearrange some of the play space adjacent to it. They are going to add some play
30 structures including a splash pad.

31
32 Mr. Noto pointed out the location of where the new parking spaces were going to go:
33 three on the far west and two to the east of the main entry point. He pointed out the
34 location of where they are going to straighten out the sidewalk. It will run parallel with
35 the travel lanes. Where the spaces are going is where the trees are and were. We
36 identified a number of trees that have been taken out over the years. It has been 12
37 years since this was originally approved and over time things happen with trees and
38 they need to come out. As a result of this re-review, the applicant is going to provide
39 the necessary number of trees that were originally required in 2004. We have verified
40 that the rest of the site is in compliance including the trees around the stormwater pond
41 to the east, which were already there when the site plan was approved in 2004.

42
43 Mr. Noto said from a parking perspective they are adding five spaces. This will continue
44 to meet code. They are not altering any of the access points to the site. They have
45 shared access with the properties to the west. There is a roadway that travels from the
46 subject site through the bank property and up to the professional office center to the

1 northwest. There is a curb cut on Rinehart. They are working with those adjoining
2 property owners for parking during construction.

3
4 Mr. Noto said nothing else on the site is being modified aside from the sidewalk, the
5 parking, the additional classroom space, and bringing the landscaping up to code.

6
7 Mr. Noto said on Page 3 of the staff report you see our finding of fact that we are
8 recommending approval of the site plan based on its compliance with the Code of
9 Ordinances and the Timacuan Planned Unit Development. We have eight conditions
10 we want to see added to the site construction permit. He noted the applicant's engineer
11 was present.

12
13 Mr. Reischmann said a sign-up sheet for quasi-judicial is available.

14
15 Solange Dao, P.E. of Dao Consultants, 1110 East Mark Street, Orlando, Florida, 32803
16 came forward. She stated they are the civil engineers for the project. She said she was
17 available to answer questions. Ladybird Academy is expanding and we are very happy
18 to be in the area and glad to serve more citizens of Lake Mary.

19
20 Chairman Hawkins asked Ms. Dao if she had anything to add to Mr. Noto's
21 presentation.

22
23 Ms. Dao said we have enjoyed working with Steve (Noto), Danielle (Koury), and staff.
24 You have great people working for you.

25
26 Chairman Hawkins asked if anyone wanted to speak for or against either of these items.
27 No one came forward and the public hearings were closed.

28
29 **Sam Aycoth moved to approve 2016-CU-01, recommendation to the Mayor & City**
30 **Commission for a conditional use for the Ladybird Academy located at 185**
31 **Timacuan Boulevard with the seven findings of fact, seconded by Justin York and**
32 **motion carried unanimously 5 – 0.**

33
34
35 B. 2016-SP-04: Request for site plan approval for the construction of a 2,000
36 square foot expansion of the existing Ladybird Academy located at 185
37 Timacuan Boulevard. Applicant: Ladybird Enterprises, Ms. JeriAnn MacLean
38 (Public Hearing)

39
40 This item was presented, discussed, and public hearing held under Item A.

41
42 **Sam Aycoth moved to approve 2016-SP-04, request for site plan approval for the**
43 **construction of a 2,000 square foot expansion of the existing Ladybird Academy**
44 **located at 185 Timacuan Boulevard with eight conditions, seconded by Justin**
45 **York and motion carried unanimously 5 – 0.**

1 Chairman Hawkins asked when the conditional use would go to the City Commission.

2
3 Mr. Noto said July 7th.

4
5 X. City Attorney Presentation on Sunshine Law and Public Records Law

6
7 Ms. Reischmann gave a PowerPoint presentation (copy attached). She distributed a
8 handout on Government in the Sunshine Issues (copy attached).

9
10 Ms. Reischmann said she wanted to give a presentation on something that the Board is
11 all familiar with. It is always good to go back because the Sunshine Law in Florida is
12 the strictest in the country. It is somewhat counterintuitive. It goes against what you
13 feel is in the best interest of the City sometimes to get more information to each other
14 and to the elected officials. Sometimes that can inadvertently result in a violation of the
15 Sunshine Law.

16
17 Ms. Reischmann said this applies to any matter which could foreseeably come before
18 you. A lot of these projects come before you in various forms over many months so you
19 have to not feel that there is an end to anything. Even when you are the terminal board,
20 there's an appellate right and sometimes there are just many aspects that you can't
21 ever feel confident that there is an end to something and now you can talk about it with
22 the fellow board members outside of a meeting.

23
24 Ms. Reischmann said it requires that the meetings be open. It sounds very simple:
25 open meetings, reasonable notice, and the minutes. It's not simple because the way it
26 has been interpreted is quite inconsistent with the plain meaning. There doesn't have to
27 be a meeting, there doesn't have to be a board, the words "which official acts are to be
28 taken" does not mean official acts. It can be any point in the decision making process
29 including stream of consciousness, including stream of consciousness coming up with
30 ideas about things, and just casually talking. What is most tempting to appointed
31 boards is to try to get your message to the electives. You are not on the same boards.
32 You are on P&Z and they're on Commission. You are technically not violating the
33 statute but in the process of trying to get them their message, you may inadvertently
34 violate because you are sending out an e-mail that has a position. You may copy
35 members of the Board or they may in the course of things get added on without your
36 knowledge and there is some inadvertent violation.

37
38 Ms. Reischmann said the other thing to keep in mind is we don't just have the Sunshine
39 Law that we are dealing with. You have quasi-judicial hearings so you are also dealing
40 with the fact that you have to be objective judges—blind Lady Justice—and you cannot
41 exhibit that there is any bias outside of these meetings. If you have a project that is
42 coming to you in spurts over many months, you want to avoid making any public
43 statements or public comments that could lead to a charge of bias. In this city we are
44 fortunate. We haven't had a lot of controversial matters that have created a lot of angst
45 and concern but that could always happen. It's good to keep yourself aware that there

1 is a possibility that someone at some point could claim there is some bias. If they claim
2 that it can negate the entire vote that you took. That's what some courts have done.

3
4 Ms. Reischmann said that statute could be rephrased to say any communication
5 between two members should be in front of the public where there has been notice.
6 This includes Facebook where it is very easy to make an inadvertent violation because
7 you post something and then another board member responds to that. E-mail is the
8 easiest way to violate inadvertently.

9
10 Ms. Reischmann said there are voting requirements. We all have to vote. There are
11 mandatory exceptions to that when the person has usually a financial interest personally
12 or with their business organization. She highlighted the exception recently adopted that
13 applies to quasi-judicial proceedings. This is to ensure there is no bias. One biased
14 person on a board can taint the whole vote. It is important to take advantage of this if
15 you feel that there is some reason you can't vote objectively based on the evidence
16 presented to you at the meeting. You all live in the real world. You go by the sites. The
17 fact that you even visit a site could be claimed to be a reason you are biased. In the
18 real world it helps to see the site. We know that. It helps a lot to see the site. She said
19 she was mixing things; this is not all straight Sunshine Law but thought it was relevant
20 to this statute. There is a certain amount of bias that is built in when you live in the city
21 you serve. You know you are naturally going to have some opinions. You don't come
22 in here tabula rosa. There's no way to do that.

23
24 Ms. Reischmann said we always have the meetings here. She thought it would be of
25 interest that the case Finch vs. Seminole County shows how far the Sunshine Law
26 extends. The School Board used to take tours of different areas where they were going
27 to rezone. No one would speak to each other. They sat a row apart. The press came
28 on the bus. There was no vote taken, no words spoken, and the courts said they
29 violated the Sunshine Law. No such thing as secret ballot. Anyone can tape anything
30 themselves. We have somebody in the City of Casselberry that tapes every single
31 meeting, every single time he gets up at the podium which he gets up on every item.

32
33 Ms. Reischmann said meetings of the staff are not subject to Sunshine but even those
34 can be if it's like the Development Review Committee. They have to meet in the
35 sunshine because they do have some ability to prove some things and they have some
36 final authority. You don't always have to agenda an item.

37
38 Ms. Reischmann said the new statute was a solution in search of a problem because
39 she didn't think we had this problem in Florida. You have to provide the right to speak.
40 It's not a problem for you all because you have provided the right to speak on every
41 item. It's a problem when you have work sessions and those types of things.
42 Everybody that wants to speak has to be provided the right to speak within reasonable
43 proximity and time before final action. What is that? Don't ask me. This is completely
44 untested and it will be interesting to see if someone calls foul on this. When in doubt we
45 always allow the right to speak.

1 Ms. Reischmann said the Attorney General put out a list of Don'ts. There are a lot of
2 inadvertent violations because we're humans and sometimes we get revved up about a
3 matter and we talk after a meeting. There was a case where some water board
4 members were so excited they were speaking in their respective stalls in the bathroom
5 and the person who was bringing the matter to the board overheard them. They got
6 dinged for violating for talking at a break.

7
8 Ms. Reischmann said the thing with working on quasi-judicial matters is you have to
9 limit your discussion because you don't know when something is going to come back to
10 you. Passing notes, whispering. Ninety-nine percent of the time you are whispering
11 something that is completely unrelated to the topic. She was advising that people have
12 been dinged for getting together for dinner. Getting indicted is no fun. It's something
13 that is unfortunate in the world we live in that if there is a controversy they will look for
14 someone to blame.

15
16 Ms. Reischmann said there is an inadvertent violation of speaking to staff and trying to
17 feel out staff about what they think the board is going to do. We all speak like that. If
18 there's an attempt to use staff to carry messages, that can be a problem.

19
20 Ms. Reischmann said remember the bottom one again for this board in particular.
21 Matters come back in different contexts. You may have a subdivision approval and then
22 you have a plat approval. You have the preliminary subdivision, final subdivision, the
23 PUD and all these matters that come before you. Sometimes they are appealed and
24 you have to hear it again sometimes. That hasn't happened very often but it can.

25
26 Ms. Reischmann said there are terrible penalties for violating including jail time which
27 has happened. Mostly it's a civil violation because it's considered to be a not knowing
28 violation and then it's a monetary penalty. She can't imagine anyone on this board
29 having a knowing violation. If there is a proven violation it makes the action void. There
30 is a cure for it. You can come back and reconsider the matter. Very often those cures
31 don't work because the litigant (the person who has challenged the board) will say you
32 didn't have the full debate; this was perfunctory.

33
34 Ms. Reischmann said there are so many examples of violations. There was one
35 commissioner responding to a fellow commissioner about interview dates. That person
36 was in the paper, had to pay a fine and court costs. Obviously not any kind of bad
37 intentions there.

38
39 Ms. Reischmann said if there are memorandums circulated among this board where
40 you are seeking others to agree with you then that's a violation and everyone knows
41 that. No. 2 is bizarre that a single member can be delegated authority and can have to
42 meet in the sunshine. That is very strange.

43
44 Ms. Reischmann said the third item, you all live in the same community, you attend
45 political events, you attend social events and the Attorney General recognizes that. But
46 even being seen together can arouse suspicion.

1
2 Ms. Reischmann said she threw in a little about public records. That includes anything
3 basically. If you have an official business e-mail that comes to your personal computer
4 then please forward that to the City Clerk. That's public record. If you ever have any
5 documents that are yours alone that you think are public record then those need to be
6 forwarded on. The public can inspect the records for free. A requester can be
7 anonymous. There are a lot of issues these days with spam mail so this can be a
8 problem. People can ask for these records for the worst possible reasons. They are
9 stalkers, they are horrible people, and our law says they get it. You have to produce
10 these records within a reasonable time and if you delay, that is considered the same as
11 denial. Just because you provide the records later doesn't moot the lawsuit. The cities
12 get dinged for a lot of attorneys' fees. You can't object because a request is over broad.
13

14 Ms. Reischmann said e-mails and texts. You know about "textgate" in Orange County
15 where they have been paying a ton of money and trying to recover all of their texts.
16 They are subject to disclosure. It doesn't matter if it's on your personal phone or
17 personal computer. The bottom line is if you have a doubt that something you have is
18 public record then give it to the Clerk. Obviously not copies of things that everybody
19 else has.
20

21 Ms. Reischmann said the main deterrent to violating public records is the cities get hit
22 with a ton of money. The City of Venice, \$750,000 in attorneys' fees. The little Town of
23 Gulfstream has had to increase their tax rate by 42% to pay for the records requests
24 that are made out of purely "gotcha" motives. There is a cottage industry where a group
25 of people go around and sue and try to hit the city with discovery and try to get a
26 settlement of attorneys' fees. It's all just a business. They don't care about what
27 documents they are asking for. She wanted the board to be aware that it doesn't matter
28 if you have pure motives. That includes Sunshine Law and public records. It's not
29 about motives. It is about recognizing that the scope of these laws have gone to such
30 tremendous lengths to try to impose this unfunded mandate on local governments.
31

32 Member York said if you are wondering about another member's attendance at a
33 meeting since attendance and a roll call comes up at a typical board meeting, is that
34 something about that would be considered so it comes up before a board it would be
35 covered.
36

37 Ms. Reischmann asked Mr. York if he meant is the attendance part of the business of
38 the board.
39

40 Member York said if he wanted to text Mr. Hawkins and ask if he was coming to the
41 meeting and he says yes. Since we do a roll call would that have to be brought up?
42

43 Ms. Reischmann said she would advise caution on that. It seems ridiculous but would
44 advise caution because potentially the board would have to discuss an absence of
45 someone for some reason like does the developer want to proceed if somebody is

1 absent. She said she didn't know. She was grasping at straws. She advised not e-
2 mailing or texting each other period. This way you don't have to worry about it.

3
4 Mr. Omana asked Ms. Reischmann to touch on ex parte disclosure.

5
6 Vice Chairman said if you do text you need to print that out and submit it because those
7 would also be records.

8
9 Ms. Reischmann said that is what the controversy in Orange County was about. She
10 thought it was \$120,000 in attorneys' fees they have paid so fair just on that issue.

11
12 Ms. Reischmann said the issue about ex parte disclosures, it's a little ridiculous again
13 for people to say I drove by the site. It is in a strict sense something that you should
14 disclose. Also any calls from the developer or meeting with the developer. The way the
15 law reads, we are hoping by disclosing we can eliminate any due process challenge
16 although it is not clear because this is a constitutional right of due process. It's not clear
17 that disclosure cures it but it's the best we can do. In an ideal world we wouldn't speak
18 with anyone outside of the meeting. We would come and be completely ready to hear
19 what's at the meeting. The statute has allowed us to pass a resolution saying if you
20 disclose you need to disclose it before you have the public come up and speak so
21 someone can ask questions about it. If you disclose who you met with and the time of
22 the meeting and so forth and what the subject matter was, then it can eliminate any due
23 process issue.

24
25 Member Aycoth said when you say drive by, we drive by these sites every day just
26 moving through the city. He asked Ms. Reischmann if she meant intentionally drive by.

27
28 Mr. Reischmann said she shouldn't have said drive by and was being flippant. She
29 meant actually go out to the site, walk around, check the soil, and get into that kind of
30 detail.

31
32 Chairman Hawkins asked if he had the right as a citizen of Lake Mary to contact his city
33 commissioner in any way he wished to express his opinion about matters that will come
34 before that commission.

35
36 Ms. Reischmann said you are not violating the Sunshine Law by contacting a
37 commissioner because you're not on the same board. You have that right. The
38 question is if someone found out about it would they say by contacting that
39 commissioner you are showing that you're extremely interested to push a particular bias
40 that may show up if that project comes to you again. There was a case where a
41 Brevard County judge threw out a vote because a commissioner had gone to the
42 planning & zoning meeting and spoke, she had gone to neighbors and gotten them
43 revved up about an issue, and the judge said he was going to throw out that whole vote
44 because that commissioner was obviously way beyond what he should have been for a
45 quasi-judicial matter. She said she was cautioning that should we have a controversial
46 matter that someone could say I know that there are board members that are lobbying

1 for a certain position and potentially claim there is bias. You are like a judge and the
2 very best of all worlds is the commission is like a judge and they look at the evidence
3 presented to them at the meeting as well. No one can tell you that you can't exercise
4 your right to speak to whomever you want to speak to. The commissioner will have to
5 disclose that contact with you as an ex parte contact.

6
7 Vice Chairman Taylor said in Volusia County where she had worked for a long time
8 there have been so many criminal complaints filed about Sunshine Law. It really isn't a
9 joke. There are certain people that when they decide they want to do it, that is all they
10 do is look for violations within boards that have made them mad. It may seem
11 innocuous and small but to them it's huge and they will spend their life seeking these
12 things out.

13
14 Ms. Reischmann said the courts will not be aware that the citizen is making this a
15 vendetta. The courts will generally only see big bad government versus poor little
16 citizen. There is a bias if you will.

17
18 Chairman Hawkins asked the Deputy Clerk to send a copy of the handout to Steve
19 (Gillis).

20
21 XI. Community Development Director's Report

22
23 Mr. Omana said at the June 16th City Commission meeting, the Board heard the John
24 Williams rezoning. That was a rezoning at Lake Mary Boulevard and Palmetto and was
25 approved unanimously by the City Commission.

26
27 Mr. Omana said at the same meeting the City Commission considered the two PSPs for
28 the Griffin property at Longwood-Lake Mary Road and Lake Mary Boulevard as well as
29 the final subdivision plan appeal for the southern portion consisting of the David
30 Weekley Homes project. The City Commission considered all three items and they
31 approved all three items.

32
33 XII. Other Business

34
35 There was no other business to discuss at this time.

36
37 XIII. Reports of Other Members

38
39 Chairman Hawkins asked about the Florida Hospital sign.

40
41 Mr. Omana said he spoke to their architect last week and they have approved the final
42 version and will be submitting that shortly.

43
44 Chairman Hawkins said he saw where the other person is building up their brick planter
45 as he drove by this week.

1 Mr. Omana answered affirmatively.

2

3 Vice Chairman Taylor asked if it was possible to have packets sent to members whether
4 or not they voice the possibility of not attending. To be able to read it since these things
5 do routinely come back and back and back. When you miss it it's hard to get a gist of it
6 from the minutes. It's easier to read the whole packet. She asked if that was possible.

7

8 Mr. Omana answered affirmatively.

9

10 Vice Chairman asked if it was unduly expensive.

11

12 Mr. Omana answered negatively.

13

14 Chairman Hawkins said if you don't attend the meeting it is helpful to return the plans as
15 soon as you can so they don't have to be duplicated before the next meeting.

16

17 XIV. Adjournment

18

19 **Colleen Taylor moved to adjourn, seconded by Justin York and motion carried**
20 **unanimously 5 – 0.**

21

22 There being no further business the meeting adjourned at 6:45 P.M.

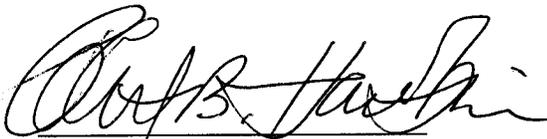
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Robert Hawkins, Chairman



Mary Campbell, Deputy City Clerk

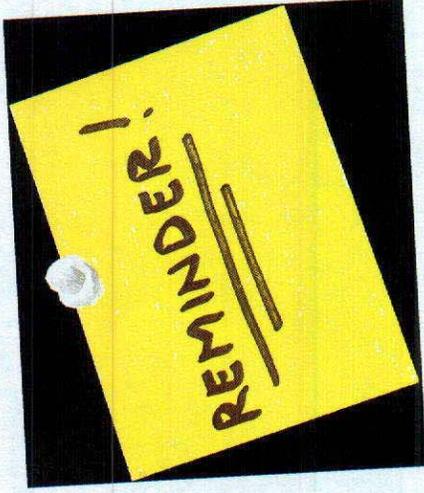
Government in the Sunshine Issues

Catherine Reischmann

Open Meetings Law

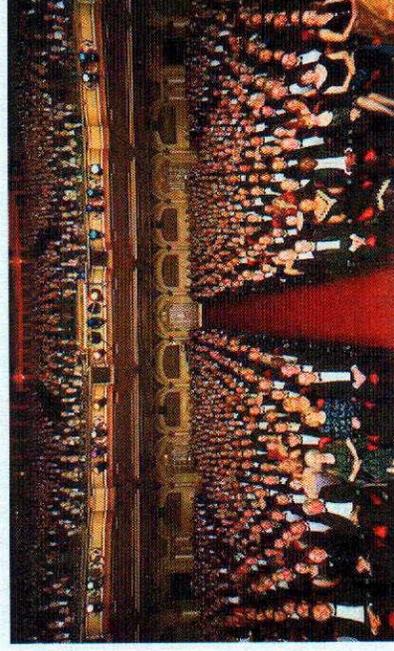
A. What does the law say?

It applies to any gathering of two (2) or more members of the same board, committee, commission or council to discuss some matter which will foreseeably come before that board, committee, commission or council for action. The Government-in-the-Sunshine Law applies to all discussions or deliberations as well as the formal action by a board, committee or commission. The law, in essence, is applicable to any gathering, whether formal or casual, of two (2) or more members of the same board, committee or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. There is no requirement that a quorum be present for a meeting to be covered under the law. Communications between board, commission or committee members can occur in many ways: orally in person, orally over a telephone, by writings, through e-mails, through conduit individuals, or by any other means. The Law provides that debates or discussions on issues should occur at open meetings noticed as required by law, not in letters, etc. – to whoever directed or at non-noticed meetings.



In essence, the “Open Meetings Law” (or “Government-in-the-Sunshine Law”) of the State of Florida requires that:

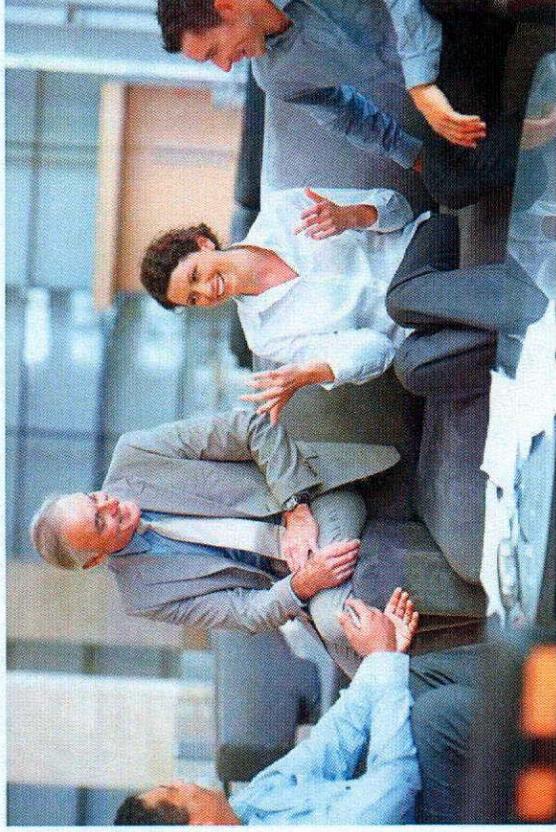
- 1) meetings of boards or commissions must be open to the public;
- 2) reasonable notice of such meetings must be given, and
- 3) minutes of the meeting must be taken.

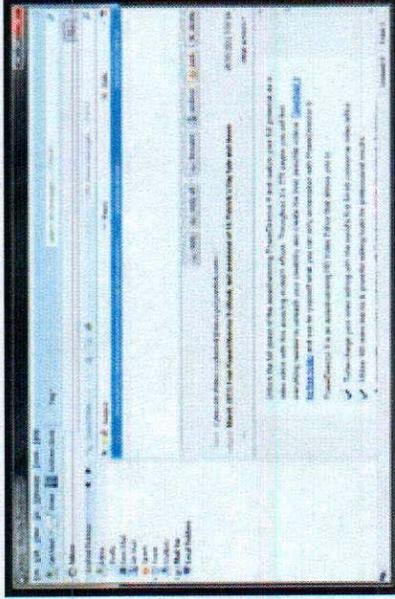


Interpretation of Statute

1. Inconsistent with Plain wording

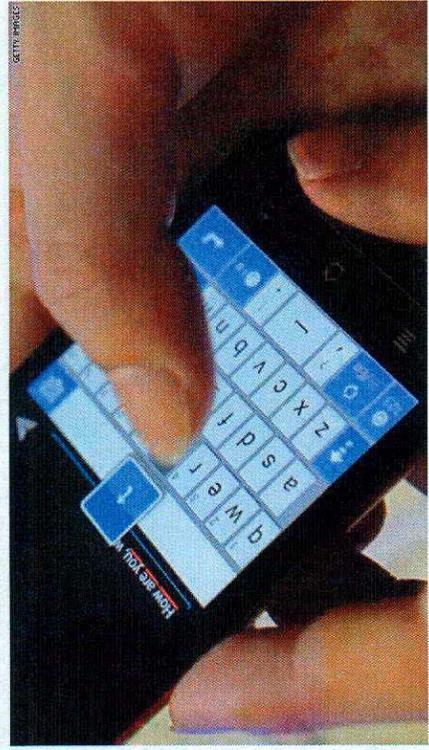
- a. The word “meetings” does not necessarily mean there has to be a meeting.
- b. There really does not have to be a board or commission for the law to apply.
- c. The words “at which official acts are to be taken” does not really mean that any action has to be taken in order for a violation of the Sunshine Law to exist.





2. Arguably the statute could be rephrased to state:

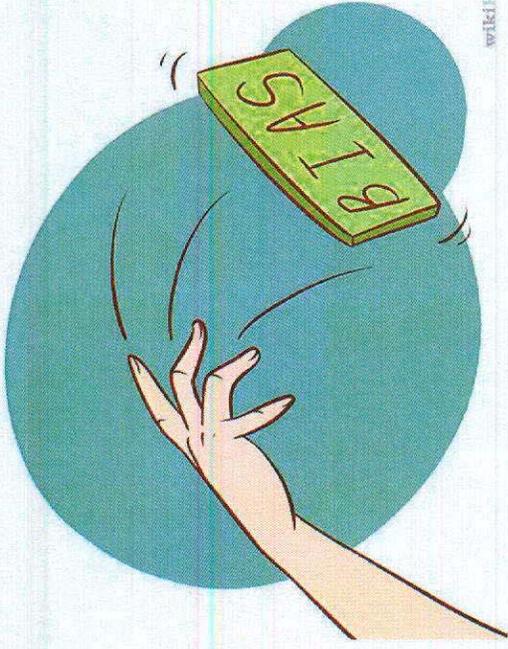
Any communication between two members of the same board on any matter which may reasonably or foreseeably come in front of the board must take place at a time and place of which the public has reasonable notice and location where the public has reasonable access.



Voting Requirements

1. A vote shall be recorded for each member present at a meeting. The Sunshine Laws **prohibit** a member of a city commission, council, board, or committee who is present at any meeting from abstaining from a vote.

Mandatory Voting Exceptions:



wikiHow

- a. An exception to the voting requirement exists only when the member has a possible conflict of interest.



- b. Another exception was recently adopted and applies to quasi-judicial proceedings where the member must abstain “to assure a fair proceeding free from potential bias or prejudice.”

Fla. Stat. 286.012.

Place of Public Meeting

Location:

One member, with a valid excuse due to “extraordinary circumstances”, per the AG, can attend by phone or other “interactive electronic technology”. There still must be a quorum physically present.



Place of Meeting

Location:

Boards with ultimate decision making authority cannot conduct inspection bus trips, since *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008).



May the members of a public body vote by secret ballot or coded numbers?

No. The Sunshine Laws specifically provide that a vote shall be recorded for each member present.

POLK COUNTY, FLORIDA
NOVEMBER 4, 2014

- TO VOTE, COMPLETELY FILL IN THE OVAL ● NEXT TO YOUR CHOICE.
- Use only a pencil, or a blue or black pen.
- If you make a mistake, don't hesitate to ask for a new ballot. If you erase or make other marks, your vote may not count.
- To vote for a candidate whose name is not printed on the ballot, fill in the oval, and write in the candidate's name on the blank line provided for a write-in candidate.

REPRESENTATIVE IN CONGRESS DISTRICT 15 (Vote for One) <input type="radio"/> Dennis A. Ross REP <input type="radio"/> Alan M Cohn DEM	CHIEF FINANCIAL OFFICER (Vote for One) <input type="radio"/> Jeff Atwater REP <input type="radio"/> William "Will" Rankin DEM	DISTRICT COURT OF APPEAL Shall Judge Chris W. Attenbernd of the Second District Court of Appeal be retained in office? <input type="radio"/> YES <input type="radio"/> NO
GOVERNOR & LIEUTENANT GOVERNOR (Vote for One) <input type="radio"/> Rick Scott Carlos Lopez-Cantera REP <input type="radio"/> Charlie Crist Annette Taddeo DEM	COMMISSIONER OF AGRICULTURE (Vote for One) <input type="radio"/> Adam Putnam REP <input type="radio"/> Thaddeus Thad Hamilton DEM <input type="radio"/> Write-in	DISTRICT COURT OF APPEAL Shall Judge Morris Silberman of the Second District Court of Appeal be retained in office? <input type="radio"/> YES <input type="radio"/> NO
<input type="radio"/> Adrian Wylie Greg Roe LPF <input type="radio"/> Farid Khavari NPA	DISTRICT COURT OF APPEAL Shall Judge Daniel H. Sleet of the Second District Court of Appeal be retained in office?	

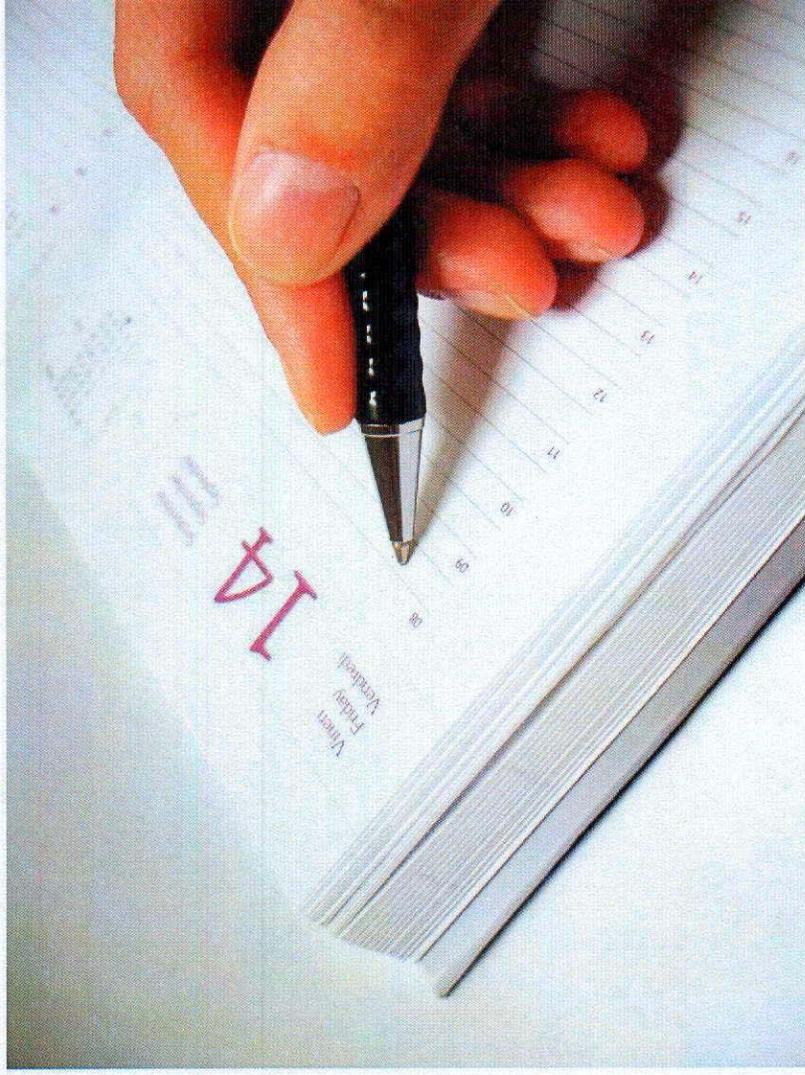
May restrictions be placed on the presence of recording devices? No, unless the devices are unreasonably disruptive. The Courts have reasoned that cameras and nondisruptive recording devices aid in making an accurate report to the members of the public who could not be present.

Meetings of the staff of commissions, boards or committees are not ordinarily subject to the Sunshine Laws. However, a staff member loses his identity as staff while serving on a commission, board or committee which has been delegated authority normally held by the governing body.



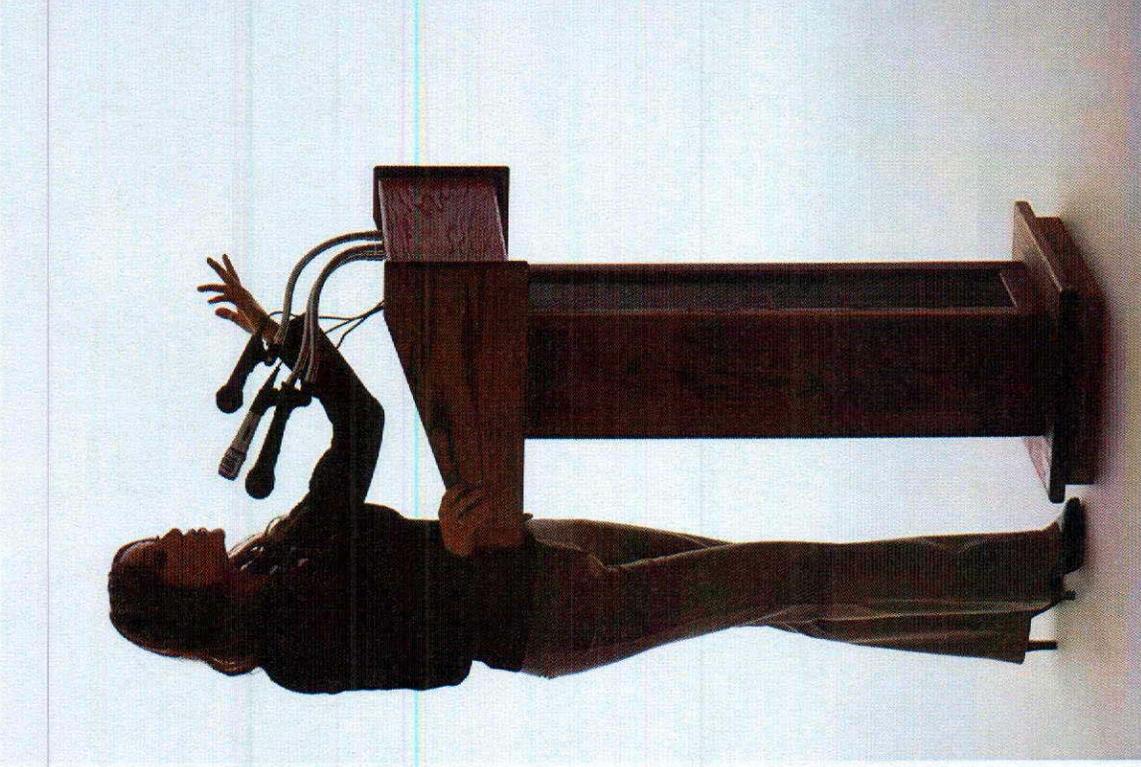
Does the Sunshine Law require an item be agendaed in order to take action?

No, but sometimes procedural rules do.

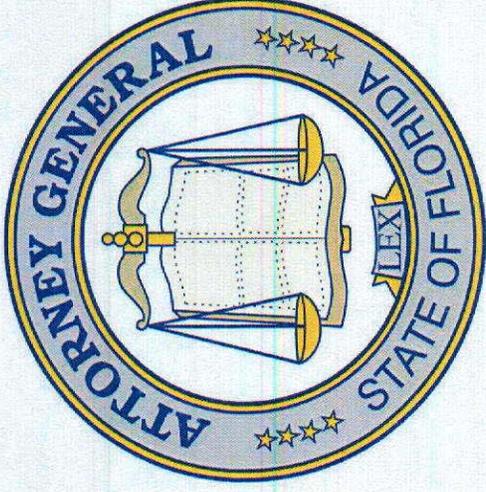


Can a board limit public participation?

Yes. However, under the **Right to Speak Act, Fla. Stat. 286.0114**, the public now has a right to be heard on all “propositions” before the Board. The right to speak must be provided during the decision making process and within “reasonable proximity in time” before final action is taken.



2005 Attorney General List of Don'ts



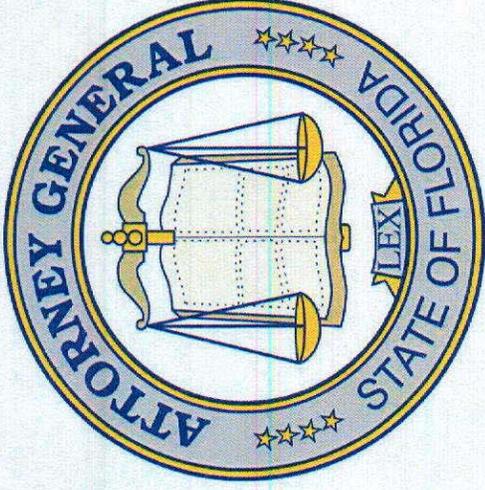
Do not talk about matters during recesses.

Do not talk about matters before meetings.

Do not talk about matters after meetings.

Do not talk about matters between meetings
(even at City Hall).

2005 Attorney General List of Don'ts



Do not whisper to another member or pass notes to another member during a meeting.

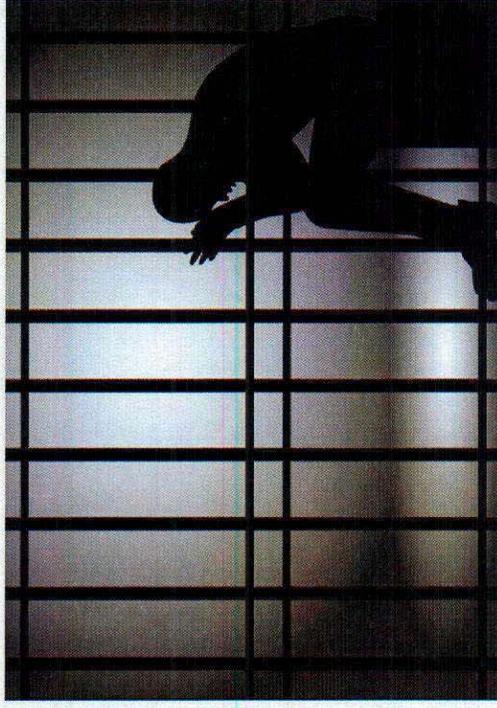
Do not talk about public business at social settings.

Do not talk about votes, hearings, actions AFTER the public meetings as these matters may come back in different contexts.

Sanctions for Violation of Sunshine Law

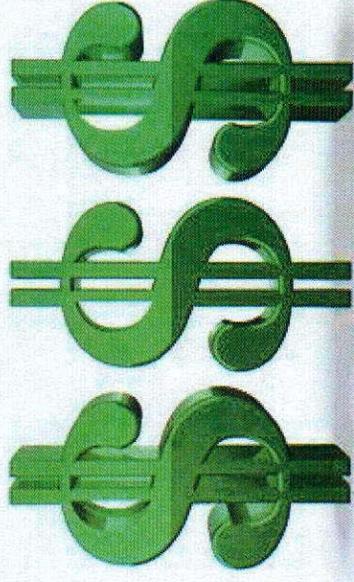
1. Criminal

- a. Any public officer who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082, Section 775.083 or Section 775.084, Fla. Stat. (jail, fines, surcharges, etc.).



2. Civil

- a. Any public officer who violates any provision of this section is guilty of a non-criminal infraction, punishable by fine not exceeding \$500.00.
- b. Local governments may also be required to pay attorney's fees on behalf of those who enforce the Sunshine Laws.



3. Validity of Actions Taken in Violation of Sunshine Law.

- a. The violation makes the action **void ab initio**. No resolution, rule or formal action shall be considered binding except as taken or made at an open meeting. For example, a zoning ordinance was declared invalid because of Sunshine Law violations by a citizen's planning committee. Also, a contract for the purchase of real estate was held non-binding.

- b. The violation can be cured by reconsidering the matter at a later public meeting, however the meeting must include a **full debate** and a public hearing. The Board must take "independent final action", not just perfunctory action.

Example of Violation

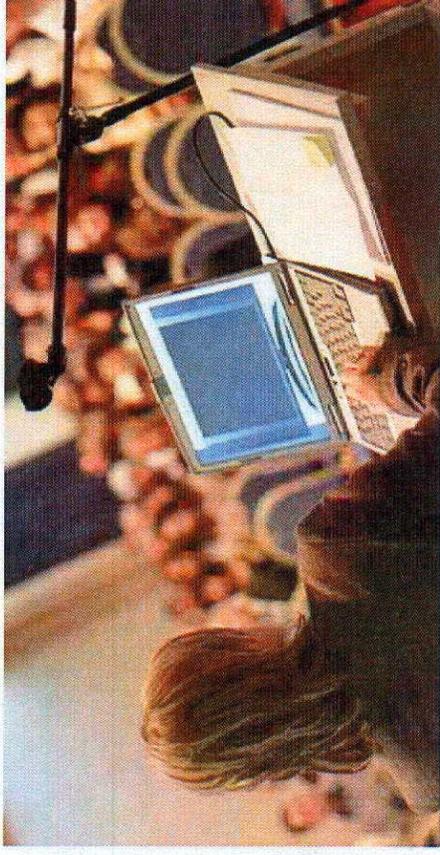
August 2011: A member of the Florida Keys Mosquito Control District pleaded guilty to a non-criminal violation of the Open Meetings Law. Joan Lord-Papy, a five term commissioner, must pay \$250 fine along with \$270 in court costs.

Lord-Papy was charged after responding to an email from a fellow commissioner discussing interview dates for district director applicants. The original email, sent by Commissioner Jack Bridges, included a warning that other commissioners should not reply to avoid violating the Open Meetings Law.

Violations



- For example, the circulation of written memoranda seeking the concurrence of other members is a violation.
- Additionally, the Laws are applicable where a single member of a committee or board has been delegated authority to negotiate on behalf of the commission, committee or board.
- Sunshine Law is not violated by attendance of all members at a “candidates’ night” as long as the board members don’t speak among themselves about government issues.
- Remember sometimes just being seen speaking together can give rise to suspicion, so use caution.



Public Records

1. **Definition.** Section 119.011 defines public records as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.
2. **Includes:**
 - a. Anything in writing.
 - b. Tapes and recordings.
 - c. Photographs and film.
 - d. Emails and texts and computer data storage (including citizens' email addresses).

What are the procedures for production?

- a. Public has the right to inspect records for free. Public also has a right to copy the records, but agency can charge for that.
- b. The requestor can remain anonymous by sending an email request. The request can be oral. Anyone can make a request, even if the purpose is monetary gain or partisan politics.
- c. The documents must be produced “within a reasonable time”, to allow time to review for exempt or confidential information. Many governments have been penalized for delay.

What are the procedures for production?

- d. There's no objection for an "overbroad" request. Requests can be made throughout litigation and can tie up staff.
- e. Government must state the legal basis for refusing to provide a document or a part of a document.

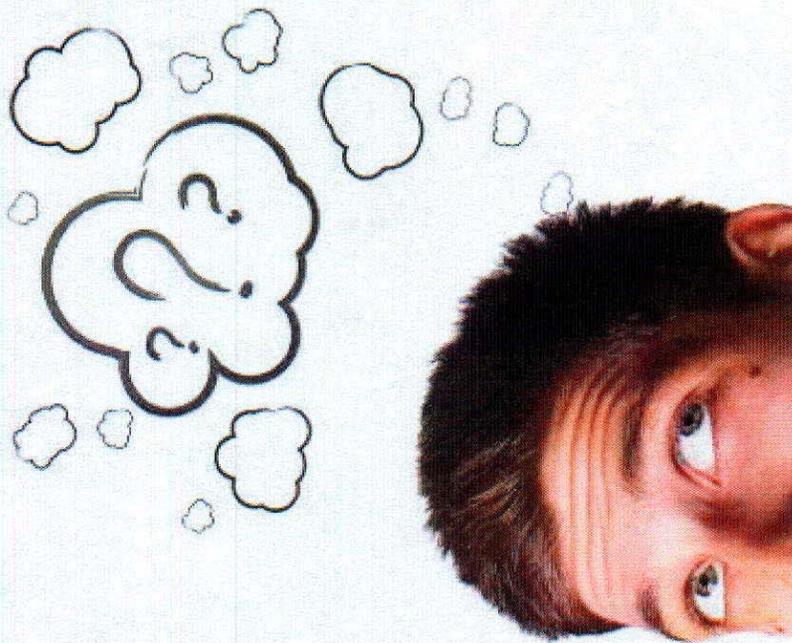
Email/Text Receipt and Retention

Emails and texts made or received in connection with official business are public records and subject to disclosure in the absence of a specific statutory exemption.
Emails and texts are also subject to the statutory restrictions on the destruction of public records requiring records be retained for a certain period of time. Email addresses of constituents are also public records, necessitating a disclosure statement on City emails.
Any City related email or text received on personal computers should be forwarded to the City Clerk or to Commissioners' City email address for proper retention.



Doubts

When in doubt about whether a document is public record, give or forward the document to the City Clerk.



Penalties for failure to comply

- a. If a requestor files suit, and a court determines that the agency unlawfully refused to provide records or a timely basis, then the plaintiff is entitled to attorney's fees.
- b. Attorney's fees are also awarded where access is denied in good faith but it turns out the documents are not exempt from disclosure. In a recent case, a county quickly responded to a request by stating the county would provide the records, but then delayed complying with the request, and the plaintiff was entitled to attorney's fees.
- c. An agency that misplaced the request was also dinged with attorney's fees.
- d. In addition to attorney's fees, a public officer who knowingly violates the statutes is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree. A violation of Chapter 119 is a noncriminal infraction, punishable by a fine not exceeding \$500.

GOVERNMENT IN THE SUNSHINE ISSUES

I. Open Meetings Law.

A. What does the law say?

It applies to **any gathering** of two (2) or more members of the **same** board, committee, commission or council to discuss some matter which will **foreseeably** come before that board, committee, commission or council for action. The Government-in-the-Sunshine Law applies to **all** discussions or deliberations as well as the formal action taken by a board, committee or commission. The law, in essence, is applicable to **any gathering**, whether formal or casual, of two (2) or more members of the same board, committee or commission to discuss some matter on which **foreseeable action** will be taken by the public board or commission. There is no requirement that a quorum be present for a meeting to be covered under the law. Communications between board, commission or committee members can occur in many ways: **orally in person, orally over a telephone, by writings, through e-mails, through conduit individuals**, or by **any other means**. The Law provides that debates or discussions on issues should occur at open meetings noticed as required by law, not in letters, etc.— to whomever directed or at non-noticed meetings.

In essence, the “Open Meetings Law” (or “Government-in-the-Sunshine Law”) of the State of Florida requires that:

- 1) meetings of boards or commissions must be open to the public;
- 2) reasonable notice of such meetings must be given, and
- 3) minutes of the meeting must be taken.

B. Statute and Constitution.

The law is codified at Section 286.011, *Florida Statutes*. The State's commitment to open government was buttressed by the inclusion of a provision in the State Constitution guaranteeing public access to public records and meetings. See, Article I, Section 24, *Constitution of State of Florida*.

C. Communications, Not Meetings.

It is important to note that although the Government-in-the-Sunshine Law speaks of “meetings”, the construction and interpretation of the Law results in the conclusion that the Law relates more to “communications” than it does to meetings. A meeting under the Government-in-the-Sunshine Law is not what one would typically think of as a meeting. The Sunshine Laws are applicable to any gathering or communication where the members deal with some matter on which foreseeable action will be taken. The Sunshine Laws extend to discussions, deliberations, briefing sessions, workshop meetings, informal discussions, electronic and telephonic discussions, including e-mails and texts, and all phases of the decision making process. When two (2) members communicate in any way about public business that contact or communication can be a “meeting” even if the communication is remote by means of telephone, email, text, etc.

Interpretation of Statute

1. Inconsistent with Plain wording.
 - a. The word “meetings” does not necessarily mean there has to be a meeting.
 - b. There really does not have to be a board or commission for the law to apply.
 - c. The words “at which official acts are to be taken” does not really mean that any action has to be taken in order for a violation of the Sunshine Law to exist.
2. Arguably the statute could be rephrased to state:

Any communication between two members of the same board on any matter which may reasonably or foreseeably come in front of the board must take place at a time and place of which the public has reasonable notice and location where the public has reasonable access.

3. Statute also prohibits one person from acting as a liaison or “go between” between board members to tally votes. One court held a series of meetings between the School Superintendent and the School Board about a controversial school rezoning, followed by a quick decision at an open meeting, provided circumstantial evidence that the Superintendent was acting as a liaison and the Sunshine Law was violated. The court held the rapid fire meetings constituted a de facto meeting of the school board, where they concerned one specific subject matter. To prevent accusations, citizens and staff should avoid asking each commissioner to state their view on a specific matter outside of a meeting.

D. State and Local Meetings.

Florida's Government-in-the-Sunshine Law provides a right of access to governmental proceedings at both the state and local levels, although it does not apply to the state legislature, which has its own constitutional provision requiring access. The Sunshine Laws are applicable to all meetings of all city and county commissions, councils, boards, and committees at which official acts are to be taken or at which discussions relating to matters which may come before commissions, boards or committees occur. The Sunshine Laws are equally applicable to elected (including members-elect) and appointed bodies. Ad hoc advisory boards (composed of private citizens and/or staff) whose powers are limited to making recommendations to a city agency are also covered by the Sunshine Laws, including those members appointed to such boards who are non-voting members.

E. Voting Requirements.

1. A vote shall be recorded for each member present at a meeting. The Sunshine Laws prohibit a member of a city commission, council, board, or committee who is present at any meeting from abstaining from a vote.

2. Exceptions:

- a. An exception to the voting requirement exists only when the member has a possible conflict of interest.
- b. Another exception was recently adopted and applies to quasi-judicial proceedings where the member must abstain "to assure a fair proceeding free from potential bias or prejudice." Fla. Stat. 286.012.

3. Steps for Conflict Disclosure:

In the event of a conflict of interest, the member must disclose the nature of his or her interest in a written memorandum incorporated in the minutes of the meeting at which the vote occurred prior to the matter being heard. The Florida Commission on Ethics published a form for this purpose. The memorandum must be filed within 15 days of the meeting.

Appointed members may not participate (attempt to influence a decision) if the member has a conflict of interest with regard to the item being voted upon.

4. Missing a Vote:

The Commission on Ethics has determined that it is improper to intentionally miss a meeting or a vote with the intent to avoid a vote on which a conflict of interest exists.

F. Notice/Place of Meeting.

1. Notice:

- a. The Sunshine Laws require the giving of reasonable notice to the public and media as to the time, place and subject matter of the meeting. The attorney general has opined that this means at least 24 hours notice of a meeting must be provided.
- b. Notice must also be given that, if a person decides to appeal any decision, he or she will need a record of the proceedings and may need to ensure that a verbatim record of the proceedings is made.

2. Location:

- a. The Sunshine Laws prohibit meetings from being held in facilities or locations which discriminate on the basis of sex, age, race, creed, color, origin or economic status or which operate in such a manner as to unreasonably restrict public access to such a facility.

- b. In addition to the obvious definitions of discrimination and economic status, it has been determined that holding a meeting in a location which serves food or beverages and charges a fee for them, should be discouraged. Any place which may discourage public attendance is inappropriate.
- c. Additionally, it should be noted that the Americans With Disabilities Act requires that citizens with disabilities be accommodated at public meetings. A notice requirement exists under that Act also.
- d. A local agency may not conduct public meetings via electronic media technology, although state agencies can. A local agency cannot use an electronic bulletin board.
- e. One member, with a valid excuse due to “extraordinary circumstances”, per the AG, can attend by phone or other “interactive electronic technology”. There still must be a quorum physically present.
- f. The Attorney General has opined that a city cannot hold commission meetings outside the city, except for cities with populations under 500.
- g. Boards with ultimate decision making authority cannot conduct inspection bus trips, since *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008).
- h. Board can limit participation in certain ways. However, under the Right to Speak Act, Fla. Stat. 286.0114, the public now has the right to be heard on all “propositions” before the Board. The right to speak must be provided during the decision making process and within “reasonable proximity in time” before final action is taken.

G. Sanctions for Violation of Sunshine Law.

1. Criminal.

- a. Any public officer who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082, Section 775.083 or Section 775.084, Fla. Stat. (jail, fines, surcharges, etc.).

2. Civil.

- a. Any public officer who violates any provision of this section is guilty of a non-criminal infraction, punishable by fine not exceeding \$500.00.
- b. Local governments may also be required to pay attorney’s fees on behalf of those who enforce the Sunshine Laws.

3. Validity of Actions Taken in Violation of Sunshine Law.

- a. The violation makes the action void ab initio. No resolution, rule or formal action shall be considered binding except as taken or made at an open meeting. For example, a zoning ordinance was declared invalid because of Sunshine Law violations by a citizen's planning committee. Also, a contract for the purchase of real estate was held non-binding.
- b. The violation can be cured by reconsidering the matter at a later public meeting, however the meeting must include a full debate and a public hearing. The Board must take "independent final action", not just perfunctory action.

COMMONLY ASKED QUESTIONS:

1. What is a meeting? Anytime two members of a board, commission or committee discuss the business of the commission, board or committee, regardless of the place of location or the nature of the discussion. Examples could be discussions in elevators, at social dinner gatherings, on golf courses, or on the Internet.
2. May the Sunshine Laws apply to situations where a single member is present or where two members are not present? Yes. The Sunshine Laws are normally applicable to meetings where two or more members discuss matters on which foreseeable action might be taken. However, for a violation to occur, the presence of two individuals may not always be necessary.
 - a. For example, the circulation of written memoranda seeking the concurrence of other members is a violation.
 - b. Additionally, the Laws are applicable where a single member of a committee or board has been delegated authority to negotiate on behalf of the commission, committee or board.
 - c. Sunshine Law is not violated by attendance of all members at a "candidates' night" as long as the board members don't speak among themselves about government issues.
 - d. Remember sometimes just being seen speaking together can give rise to suspicion, so use caution.
3. May the members of a public body vote by secret ballot or coded numbers? No. The Sunshine Laws specifically provide that a vote shall be recorded for each member present.
4. May business be conducted by means of memoranda or correspondence between members? Conducting Board business through the use of memoranda or letters, where the discussion takes place on paper circulated among the members of a board, or through an electronic bulletin board, is improper.
5. May restrictions be placed on the presence of media recording devices? No, unless the devices are unreasonably disruptive. The Courts have reasoned that cameras and nondisruptive recording devices aid in making an accurate report to the members of the public who could not be present.
6. What meetings can be held in private? Meetings of the staff of commissions, boards or committees are not ordinarily subject to the Sunshine Laws. However, a staff member loses his identify as staff while serving on a commission, board or committee which has been delegated authority normally held by the governing body.

7. May public business be conducted at luncheon meetings or social gatherings? Meetings in a social environment are highly discouraged. The Sunshine Laws state that meetings are prohibited in facilities that unreasonably restrict public access. The Attorney General has advised that the public may be reluctant to attend a luncheon meeting if financially unable to purchase lunch. Moreover, the openness requirement for hearing and speaking could not be satisfied at most luncheon tables and social establishments. In general, the Attorney General has cautioned that two or more members meeting socially at a private gathering should diligently avoid discussing matters upon which foreseeable action may be taken.
8. Are telephone and electronic conversations covered by the Sunshine Laws? Yes. Telephone discussions or discussions via electronic means, such as the Internet, of public business in a place inaccessible to the public constitute a violation of the Sunshine Laws.
9. Are written minutes required of all meetings? Yes. The law requires the minutes of any public meeting be promptly recorded and open to public inspection. Sound recordings may be used so long as written minutes are also promptly prepared.
10. What restrictions can be placed on the public's attendance at a meeting? A public agency may adopt reasonable rules and policies which ensure orderly conduct and behavior on the part of those attending a public meeting. Otherwise, the public may attend and speak in many instances.
11. Can board members meet with Staff without violating the Sunshine Law? Yes. Staff is considered "information gatherers" rather than "decision makers".
12. Does the Sunshine Law require an item be agendaed in order to take action? No.
13. Can anyone be excluded from a public meeting? No, unless the person violates state law or the commission/council rules, and is disruptive. A board cannot request that people leave "voluntarily".
14. Can a board limit public participation? Yes. However, under the Right to Speak Act, Fla. Stat. 286.0114, the public now has a right to be heard on all "propositions" before the Board. The right to speak must be provided during the decision making process and within "reasonable proximity in time" before final action is taken. There are four exceptions: 1) emergency actions; 2) ministerial actions, like approving the minutes; 3) meetings like attorney client sessions; 4) quasi-judicial actions. The law also provides that Boards can adopt reasonable rules regarding participation, including limiting the time the public can speak, designating a specified time on the agenda for public comment to occur, etc. The public does not have a right to speak on all issues. The chairman can hold the speaker to the agenda topic. Also, a city can limit the speech of non-residents.

Florida Public Records and Open Meetings Attorneys' Fees Cases.

The following is a chronology of examples of cases in which plaintiffs obtained litigation expenses in legal actions filed under the Florida Open Records or Open Meetings Law. In some of the cases, the court awarded attorneys' fees or court costs, or both. In other cases, litigation expenses were included as part of a settlement agreement. The chronology also notes those cases in which government actions were nullified. The amounts of litigation expenses awarded or agreed to in settlements have been provided when possible. In some cases, judges awarded litigation expenses, but did not specify amounts.

The chronology lists known cases in which public officials either pleaded no contest or guilty to or were convicted of criminal or civil charges under the Open Records or Open Meetings Law. In a recent 1999 case, a school board member was jailed for violating Florida's open records law. In another case, a judge admitted to falsifying records and was removed from office by the Florida Supreme Court. Many of the officials paid fines or courts costs, or both. In some cases, charges were dropped in exchange for commitments by officials to study the open government laws or perform community service.

SEPTEMBER 1997: Lee County Judge Edward Volz fined former Estero Fire Commissioner Vernon Conly \$500 after a jury convicted Conly of violating the Open Meetings Law. Judge Volz fined three other members of the Fire Commission \$250 after the three -- Georgia Gates, George Horne and John Kelley -- pleaded no contest to a similar criminal misdemeanor charge. Volz withheld formal adjudication of guilt for all four commissioners, who in return promised not to seek reinstatement to the Fire Commission. Gov. Lawton Chiles suspended the four from office after they were charged with violating the Open Meetings Law in connection with an April meeting. Members of the public filed complaints against the commissioners after a public meeting that lasted only a few minutes. Spectators at the meeting said the commissioners called the meeting to order, voted to purchase two vehicles, and adjourned before most members of the public could get into the meeting room and get seated. The room was locked until just before the meeting was called to order.

JULY 1997: The Martin County Commission agreed to pay The Palm Beach Post \$15,900 in legal fees to settle a lawsuit alleging violations of Florida's Open meetings Law. The newspaper claimed the commission had approved lawsuit settlements totaling \$4.1 million in private sessions without making the settlements public as required by law.

JUNE 1997: The Lantana Town Council voted to pay a local resident \$1,426 in legal fees to settle a lawsuit in which the town was accused of violating the Open Meetings Law. The town did not admit wrongdoing. The resident sued after the town released a statement indicating the council had decided not to seek prosecution of former Mayor Robert A. McDonald, who resigned and repaid the city \$50,000 that he had deposited into his business' bank account. Town Manager Ron Ferris said the statement was poorly worded and that the council members had not formally decided what to do about McDonald. Ferris said the statement was based on his conversations with individual board members that indicated "a general feeling" that McDonald should not be prosecuted.

MAY 1997: The 3rd District Court of Appeal ruled that a Miami-Dade Community College committee's recommendation to award a contract was void because the panel violated the Open Meetings Law. The court said that a committee appointed by the college purchasing director to review and rank proposals for providing flight-training services at Kendall-Tamiami Airport was

subject to the Open Meetings Law. Because the committee failed to give the public notice of its meetings, it violated the meetings law and its recommendations and the subsequent decision to award a contract to Husta International Aviation Inc. were void.

MAY 1997: Martin County commissioners admitted violating the Open Meetings Law by settling lawsuits in closed-door meetings and agreed to pay *The Palm Beach Post* \$15,900 in attorney's fees. The *Post* had sued in February after learning that the commission had agreed to settle a number of lawsuits in executive session without taking a public vote on the settlements. The settlements were approved in a public vote when the commission voted to settle the lawsuit by the *Post*.

SEPTEMBER 1995: The 4th District Court of Appeal upheld a lower court's order that ruled invalid a contract awarded by the Port Everglades Port Authority. In the case, the port authority's selection and negotiation committee had asked bidders on a port authority project to leave the meeting room voluntarily while their competitors presented proposals, violating the Open Meetings Law. In overturning the contract, the appeals court rejected the port authority's claim that the violation was technical and non-prejudicial to the bidding process.

JULY 1995: The 4th District Court of Appeal upheld a lower court's judgment that declared invalid a land-swap contract between Broward County and Nathan and Maria Conner because the contract had not been acted upon by an official county body at a public meeting.

JUNE 1992: A Palm Beach circuit judge ruled that the Royal Palm Beach Village Council violated the Sunshine Law when it sold a parcel of land. The judge voided the sale and reserved jurisdiction to award costs and attorneys' fees.

MARCH 1990: Circuit Judge Kevin Davey awarded \$7,000 to an environmental group after ruling that nine Jefferson County officials violated the open meetings laws on four occasions in 1989. Davey ruled that a recess of a County Commission meeting and several inspection tours were in violation of the law. All the violations related to the commissions consideration of a proposed Texaco petroleum terminal in Lloyd.

JUNE 1986: Lee Circuit Judge James R. Thompson ruled that the city of Fort Myers violated the Sunshine Law during bargaining sessions in December 1985 between a police union and city representatives. Thompson ordered the city to pay the Fort Myers *News-Press'* attorneys fees.

JUNE 1996: Dade Metro Commission Chairman Arthur Teele Jr. agreed not to contest a civil Open Meetings Law charge and to pay a \$250 fine. The State Attorney's Office alleged that Teele met secretly in 1994 with Commissioners Bruce Kaplan and Maurice Ferre, who paid fines in 1995 to settle similar charges against them.

AUGUST 1995: Two Dade County commissioners agreed to pay fines stemming from civil charges of Open Meetings Law violations. Bruce Kaplan agreed to pay \$500 and Maurice Ferre agreed to pay \$250 to settle charges that they met secretly in December to discuss the selection of a new county manager. Ferre offered an apology for meeting with Kaplan. Kaplan denied that the meeting with Ferre and commission Chair Arthur Teele constituted a violation. However, he acknowledged a lack of judgment and agreed to pay the fine so that he could put the matter behind him.

II. Public Records.

A. Definition. Section 119.011 defines public records as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

B. Includes:

- a. Anything in writing.
- b. Tapes and recordings.
- c. Photographs and film.
- d. Emails and texts and computer data storage.

C. Who is subject to the public records act? Not just governmental entities. Also private entities under contract with or receiving funds from a public agency where the private entity is providing services in place of the government (a company that operates a jail or provides fire protection).

D. What are the procedures for production?

1. Public has the right to inspect records for free. Public also has a right to copy the records, but agency can charge for that.
2. The requestor can remain anonymous by sending an email request. The request can be oral. Anyone can make a request, even if the purpose is monetary gain.
3. The documents must be produced “within a reasonable time”, to allow time to review for exempt or confidential information. Many governments have been penalized for delay.
4. There’s no objection for an “overbroad” request. Requests can be made throughout litigation and can tie up staff.
5. Government must state the legal basis for refusing to provide a document or a part of a document.

E. Email/Text Receipt and Retention.

1. Emails made or received by Commissioners in connection with official business are public records and subject to disclosure in the absence of a specific statutory exemption. Email is also subject to the statutory restrictions on the destruction of public records requiring records be retained for a certain period of time. Email addresses of constituents are also public records, necessitating a disclosure statement on City emails. Any City related email that Commissioners receive on their personal computers should be

forwarded to the City Clerk or to Commissioners' City email address for proper retention. See "City Elected Officials Email Policy" and talking points regarding emails/texts, including article regarding Venice. If emails and texts are not forwarded to City, a court will impound board members' private home computers and cell phones.

2. If emails are found by government employees whose job is to locate employee misuse of government computers, then even personal emails, which are generally not public record, could be public records.

F. Notes. Even handwritten notes made during a public meeting are arguably public record. Any notes or drafts of documents which are shown to another person are public records even if marked "draft".

G. Doubts. When in doubt about whether a document is public record, give or forward the document to the City Clerk.

H. Facebook. Material placed on government's face book page is public record.

I. Transitory Messages. Transitory messages can be discarded once they are "obsolete, superseded, or administrative value is lost". "Transitory" refers to messages of "short-term value based upon the content and purpose of the message", and includes reminders about meetings, most phone messages, announces of parties. They are "not intended to formalize or perpetuate knowledge and do not set policy, establish procedures, certify a transaction, or become a receipt". (State records retention law).

J. Exemptions of interest:

1. Bank account numbers, and debit and charge card numbers.
2. There is no "attorney client privilege", but a limited work product privilege for those records which reflect the mental impressions or legal theories of the body's attorney. Must be prepared exclusively for or in anticipation of litigation.
3. Social security numbers are confidential and exempt.
4. Difference between "confidential" (cannot be revealed) and "exempt" (agency can waive exemption).

K. Costs.

Recovery of costs in connection with producing public record. Section 119.007(1)(h) calls for the payment by the party requesting a copy of the record for:

- i) a fee authorized by statute;
- ii) if no statutory fee authorized, the actual cost of duplication; or
- iii) a special "service charge" for extraordinary requests.

L. Shakedown. Recent activity by certain individuals has been described as a “public records shakedown” creating the public records “industry”. Possible legislative solutions including requiring notice before filing suit, like in tort cases, at least where the request is made to private agencies receiving public funds. There is movement to change the rules to require Board Attorneys be copied on all public record requests, at least if made by another attorney.

M. Penalties for failure to comply.

1. If a requestor files suit, and a court determines that the agency unlawfully refused to provide records or a timely basis, then the plaintiff is entitled to attorney’s fees.
2. Attorney’s fees are also awarded where access is denied in good faith but it turns out the documents are not exempt from disclosure. In a recent case, a county quickly responded to a request by stating the county would provide the records, but then delayed complying with the request, and the plaintiff was entitled to attorney’s fees.
3. An agency that misplaced the request was also dinged with attorney’s fees.
4. In addition to attorney’s fees, a public officer who knowingly violates the statutes is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree. A violation of Chapter 119 is a noncriminal infraction, punishable by a fine not exceeding \$500.

Carol Foster

From: Catherine Reischmann <creischmann@orlandolaw.net>
Sent: Wednesday, June 08, 2016 12:51 PM
hawkro@cfl.rr.com; taylorcs@hotmail.com; Saycoth@aol.com; Elvisgillis1@aol.com; Justin York; scottthrelkeld@att.net
Cc: Carol Foster; Jackie Sova; Juan Omana; Sid Miller; Jo Anne Lucarelli; David Mealor; Gary Brender; George Duryea; Nancy Ham
Subject: RE: Griffin Farms emails

All: Correction, the City Commission meeting is on June 16. Katie



Garganese, Weiss & D'Agresta, P.A.

Catherine Reischmann

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Any incoming e-mail reply to this communication will be electronically filtered for "spam" and/or "viruses." That filtering process may result in such reply being quarantined (i.e., potentially not received at our site at all) and/or delayed in reaching us. For that reason, we may not receive your reply and/or we may not receive it in a timely manner. Accordingly, you should consider sending communications to us which are particularly important or time-sensitive by means other than e-mail.

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From: Catherine Reischmann

Sent: Wednesday, June 08, 2016 12:42 PM

To: 'hawkro@cfl.rr.com'; 'taylorcs@hotmail.com'; 'Saycoth@aol.com'; 'Elvisgillis1@aol.com'; 'Justin York'; 'scottthrelkeld@att.net'

Cc: Carol Foster (cfoster@lakemaryfl.com); 'Jackie Sova'; jomana@lakemaryfl.com; 'smiller@lakemaryfl.com'; 'jlucarelli@lakemaryfl.com'; dmealor@lakemaryfl.com; 'gbrender@lakemaryfl.com'; 'gduryea@lakemaryfl.com'; Nancy Ham

Subject: Griffin Farms emails

Importance: High

Dear Planning and Zoning Members: I have reviewed some recent emails from a couple of members of the Planning and Zoning Commission to the City Commissioners regarding the Griffin Farms Project. While the emails were written with the best of intentions to convey important information to the Commissioners, this kind of correspondence can be very problematic due to the Sunshine Law. For this reason, I wanted to remind all Board members that no one on P&Z (or City Commission) should reply to these emails by fellow Board members. It is very easy to inadvertently hit "reply all" and copy a fellow Board member by mistake, thereby violating the Sunshine Law.

For this reason, I would suggest that P&Z Members refrain from copying other P&Z Board members on future emails to Commissioners. Further, I would go so far as to suggest it would be best to refrain from any further emails or phone calls to Commissioners regarding the Griffin Farms Project, since the P&Z Board may be called upon to render future quasi-judicial decisions on this project. Board members should not present their positions outside a public hearing, as courts have held this can be the basis for a claim of bias, which could taint future proceedings.

The Commissioners all have access to the audio tape of the June 6th P&Z meeting, and I am assured that the Commission will be well informed by Staff on all P&Z members' views on the project at their meeting on July 16.

Thank you for your conscientious service and your understanding. Katie Reischmann

PLEASE DO NOT REPLY GLOBALLY TO THIS EMAIL.



Garganese, Weiss & D'Agresta, P.A.

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Carol Foster

From: scott threlkeld <scottthrelkeld@att.net>
Date: Wednesday, June 08, 2016 10:52 AM
To: David Mealor; George Duryea; Gary Brender; Jo Anne Lucarelli; Sid Miller
Cc: hawkro@gmail.com
Subject: Griffin Farm
Attachments: plan view 1.pdf

David Mealor dmealor@lakemaryfl.com
George Duryea gduryea@lakemaryfl.com
Gary Brender gbrender@lakemaryfl.com
Jo Ann Lucarelli jlucarelli@lakemaryfl.com
Sid Miller smiller@lakemaryfl.com

Hello everyone,

My name is Scott Threlkeld and I'm a member of the Planning and Zoning Board. I'm a fan of developing Griffin Farm, but I admit, I'll miss the cows because I live across from Griffin Farm on Crystal Drive and we all loved them. By virtue of proximity, this development is going to impact my families life in a very personal way, good and bad. I have a lot of good things to say about it, but unfortunately and with a heavy heart, I must speak to you about serious deficiencies in the overall site plan for Griffin Farm.

Parking and traffic:

The overall site plan for Griffin Farms' residential section lack adequate parking for the residents' guests and visitors. Some town homes have no additional parking for guests and visitors anywhere near their homes. Some town homes have street parking which they must share with all the single family homes nearby. At the meeting Monday night, a board member shared his experience with parking disputes at Fountain Parke and the threat of physical violence including gun violence erupted by others over parking spots!!! He stated he doesn't want to live there anymore because of this problem; what a shame, disgrace and failure of our oversight to foresee and correct this DESIGN problem before it's laid down in asphalt and concrete and maybe someones grave. Good fences make for good neighbors, the same could be said of adequate parking. I understand the P & Z were cut out of the process of oversight for Fountain Parke, maybe this would have been addressed back then, but we'll never know.

On another issue of traffic is Washington Avenue becoming a major route to and from Griffin Farm. Traffic controls need to be installed, to slow traffic or discourage non-residents from using it. I recommend they make Washington Avenue a residents only access road with signage, stop signs, copious speed bumps and a signal so residents can turn left (or right) onto Longwood Lake Mary road without taking their life into their own hands.

2. Design:

I have a serious problem that there are no single floor options in any of the residences being proposed in the overall site plan. Many buyers can't navigate stairs; the elderly active and frail, families with small children, our disabled residents and our wounded veterans. There is a serious lack of open play areas for kids and families, or any designated dog walks/runs and few park like amenities for the residents. The town house layout is claustrophobic, oddly configured and too dense

with neighbor facing neighbor, cavernous alleys punctuating the layout like a housing project, with little separating the front yards from facing directly into each others business. The density of design will make this look like a condo/apartment house complex that surrounds the development as seen from Longwood Lake Mary Road with no indication that lower density single family homes are inside. The pricing is stratospheric for the 1500 square foot town home at well over \$200 a sq ft, not counting HOA fees. The marketing is directed squarely at a small segment comprising down-sizers and some millenials according to the developer. I'm deeply concerned that this plan ignores so many residents and their quality of life needs for the profits of so few. I would recommend that all fast-tracking of this project be reconsidered and these issues be corrected, addressed and presented to the Planning and Zoning Board for evaluation, consideration and then approval. I feel that we are being railroaded by a big powerful developer, that promise a lot yet only deliver what makes them money. Quality of life is not a dollar figure on a companies P & L statement. Lake Mary is better than that, that's why I choose to live here and argue for the interests of my neighbors and fellow residents. Nothing is more expensive than cheap and that goes for design driven by greed. It always ends up devalued over time. Look at Fountain Parke as a cautionary tale, don't make the same mistake again, please. Thank you for taking the time to consider this. I attached a copy of the site plan and outlined the area discussed in this letter.

Kindest regards,
Scott Threlkeld

Scott Martin Threlkeld
Sales Associate

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Carol Foster

From: Robert B. Hawkins <hawkro@cfl.rr.com>
nt: Tuesday, June 07, 2016 1:42 PM
TO: Sid Miller; Jo Anne Lucarelli; Gary Brender; George Duryea; David Mealor
Subject: Griffin Farms

Dear David, George, Gary, Sid and Jo Anne,

I'm writing to you because I don't think the fast tracking of the Griffin Farms project will not allow the normal flow of comments from P&Z to get to you before the June 16th meeting. I would encourage you to ask the staff to get you those comments, but for now here is my take on the two portions of this project.

The North commercial portion WILL not have enough stacking on any of the turn lanes on LM Blvd for the addition of 6,000 trips a day. Yes the staff and developer are all touting how well they all worked together, and Randy Morris facetiously says everyone is a traffic engineer. I asked for specific traffic study of the counts at every intersection and roads affected by this project, Randy nor the staff had any figures for me. They have lengthened the turning lanes in and out of the project both in and out of LM Blvd and LW-LM Rd. so that they literally hold 6 instead of three cars! Take all the turning lanes, add them up, multiply by 6 and then multiply that by the number of times those lights change during business hours(15 to 30 times and hour) per day. I have not done the math but it will not add up to anywhere near 6,000 trips even with their touted 20-22% re-capture rate. LM Blvd will be clogged here. LM Blvd is already clogged east bound between 4-6 pm because of the Sun Rail crossing gates recycling the lights at Country Club during rush hour in the evening 4 times/hr. for Southbound trains and 2 times/hr for Northbound train. Each and every day eastbound evening traffic is backed up from Country Club past not only 5th St. but all the way to 7th St. AS WELL AS from LW-LM Rd. to almost Rinehart Rd.

This traffic back up has caused cut through traffic into neighborhoods on the north and south of LM Blvd. specifically Lakeview/Crystal Lake on the north and Washington on the south. All these streets not long ago were mostly dirt, then paved with cold mix and then asphalt over that. None can handle two way traffic let alone the extra burden we are placing on them with additional cut through traffic.

Here's the problem with all that that I couldn't get an answer to: What is the exact number of additional trips down Washington(the worst of the cut-through roads) will have. I know the county is planning on using the 3rd generation penny to widen LW-LM Rd. but that still doesn't help the resident of the cut-through neighbor hoods like Washington as well as its side streets.

I voted in favor of the Commercial portion of Griffin Farms because I think it will be a high end development and I liked the hidden parking garage, however the clogging of LM Blvd here at LW-LM Rd. as well as Country Club is and will continue to decrease the quality of life for all of the city's residents. Isn't that why we are all on these city boards in the first place – to keep the quality of life we have become accustomed to.

Now on to the residential south side of this development.

These homes, both the patio homes and especially the town homes do not have enough on-street parking and the on-street parking is nowhere near where it is needed the most, by the northern set of 25+ town homes. IF ALL this development consisted of 1-2 bedroom homes it would be one thing, but the 3-4 bedroom 3 story ones like what's in Fountain Park allow for extended family and rebound college kids as well as families to occupy these homes, each having an average of three cars. Plus vehicles like a Suburban/Yukon XL or a pick-up truck like a Ford F-250 or F350 that will not fit in these two car garages and thus have to be parked on the street.

One of my P&Z board members, Sam Aycoth, lives in Fountain Park(a community that the City Commission bypassed the P&Z when it was developed – and yes that is a dig!). He is on the HOA and I've asked him to give you his personal experiences with the community violence that he and his residents are going through because of lack of additional parking with these types of townhomes with 2 car garages and grossly under planned on-street parking for 3-4 bedroom homes. Sam, Scott Thelkeld, and I voted against not only a recommendation to the commission for the Pre-Lim. Subdivision but the Final Subdivision as well. My hope is you will agree with us and have the developer re-plan this tract and have it brought back before us.

Your comments and questions are welcome,

Bob Hawkins

SPRINGS FAMILY DENTISTRY,PA.

Robert B. Hawkins, D.M.D.

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