

TRANSCRIPT OF THE WORKSHOP OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
October 17, 2013

LET IT BE REMEMBERED, that the Collier County Planning Commission, in and for the County of Collier, having conducted business herein, met on this date at 11:25 a.m. for the SUNSHINE LAW AND PUBLIC RECORDS REQUEST WORKSHOP INFORMATION in Building "F" of the Government Complex, East Naples, Florida, with the following members present:

Stan Chrzanowski
Brian Doyle
Charlette Roman
Mike Rosen

ALSO PRESENT:

Heidi Ashton-Cicko, Assistant County Attorney
Ray Bellows, Zoning Manager

MS. GREENE: There is an outline for those of you that are going to stay.

Good morning. I'm Colleen Greene, Assistant County Attorney.

And it's my understanding we have some new members on the Planning Commission, so I'm here to give your new members some tips on the Sunshine Law and the Public Records Law and any old members of course who would like to stay of course are welcome.

What I've given you is a summary of the outline of an overall presentation. As advisory board members, the Sunshine Law and the Public Records Law applies to you. These are laws based in the Florida Statutes, okay.

The first section we're going to talk about is the Sunshine Law, found in 286, Chapter 286 of the Florida Statutes. And the Sunshine Law was enacted in 1967. So this law has been on the books for many years.

And the Sunshine Law applies to any gathering, any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken.

And that's the important part. It's either -- it's not only your formal business meetings, but it's any gathering of two or more members of the same commission. If you are discussing anything that may foreseeably come before your board, that meeting has to be publicly noticed.

Now, to have a meeting that meets the requirements of the Sunshine Law there are three requirements: Number one, meetings of the board must be open to the public; number two, reasonable notice must be given; and number three is minutes must be taken. And the minutes have to be taken at the same time as the meeting. They could be summary minutes. The Planning Commission, you have verbatim minutes, but not all advisory committees have verbatim minutes due to the cost.

So we look at each of the elements individually. Number one, open to the public. The meeting must be open to the public. That means two or more of you cannot meet someplace where you can't invite members of the public.

The place must be accessible and of sufficient size for the turnout. And the facility may not discriminate based on a protected class.

And generally the location has to be within Collier County. There are limited exceptions that apply.

Effective October 1st of 2013, this is brand new legislation, the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission.

And this is brand new in the Sunshine Law. In the past there was no requirement to allow the members of the public to speak. Now that's always been Collier County policy, but that was never part of the law. This is a brand new aspect of the law.

And you'll see in my notes it says the board may establish policies to maintain orderly conduct and decorum and they may establish time limits.

And most of our advisory boards follow what our Board of County Commissioners do. And we have public comment for three minutes on action items before a committee.

Reasonable notice: Your meetings should be noticed to the public approximately 72 hours. That is the least amount of notice. Usually we give two weeks or 10 days in Collier County, but if you're calling a meeting with short notice, the minimum amount of notice is 72 hours.

The minutes have to be taken and made available promptly. Sound recordings may be used in addition to written minutes. So having a tape recorder does not eliminate the need for minutes. Minutes including drafts are public records. And minutes must record the votes.

Now, this group is a decision-making committee. You take votes and you make recommendations to the Board of County Commissioners. So all of these rules of the Sunshine Law apply to you as a decision-making committee.

The Sunshine Law applies when two or more members of a board, such as the BCC, discuss a matter that may foreseeably come before the governing board. And I know I've said that before, but it bears repeating. So if two of you meet for lunch at the Russell's, you know, in front of the government center, you may not discuss anything that may foreseeably come before your board. Anything that may foreseeably come before this board must be discussed at a Sunshine Law properly noticed meeting.

Here are some tips for advisory board members. Number one, no pre- and post-meeting discussions.

And that's because members of the public may see you standing in a group before the meeting and say well, they're all on the same board, they must be discussing something that's going to come before their board. And we want to avoid the appearance of an impropriety.

No private conversations on the dais. Sometimes it's hard, you're waiting your turn to talk and you're on the opposite end from the action. No private conversations on the dais.

Avoid texting on the dais.

You may not use non-members as liaisons between board members. And the example is to use a staff person to carry information between members. You can't give information to Ray Bellows and ask him to distribute it to the rest of the board if you're trying to have a communication or a conversation. Any conversation, including any electronic conversation. So you can't have an electronic conversation. Any conversation has to be in a Sunshine Law meeting. You cannot have dialogue on email.

MR. CHRZANOWSKI: Can I ask you a question?

MS. GREENE: Yes.

MR. CHRZANOWSKI: When I was on staff I had to make presentations in front of the EAC about the project hydraulics, hydrology, whatever, and I used to distribute -- or I used to bring up a LIDAR topography of the site. What I've been doing is getting the LIDAR topography now from the graphics department, sending it to the planner and asking the planner to send it to all the board members.

MS. GREENE: Yes, and that's correct. Because one-way communications allowed, but no dialogue. So if your staff liaison has information that all of the members of the board need before a meeting, the staff liaison should send a one-way communication and there should be a reminder on that email that says this is intended to be a one-way communication. There should be no response. Because you want to avoid it looking like a dialogue between Planning Commission members.

MR. CHRZANOWSKI: This is strictly for perception. Because why would they do a prohibition against a post-meeting discussion?

MS. GREENE: It is for perception, absolutely.

MR. CHRZANOWSKI: Okay, but that's not a Sunshine Law violation.

MS. GREENE: Oh, it's not, no. But if you're discussing anything that may foreseeably come before your board, that would be a violation.

MR. CHRZANOWSKI: Right. But if it's --

MS. GREENE: But if you're talking about sports or politics or the weather, you may talk.

MR. CHRZANOWSKI: What about an item that's been before the board and, you know, I run into Brian like a week from now and, you know, something crossed my mind and I say hey, look, you know, I forgot about this. That's not a Sunshine Law violation, right?

MS. GREENE: Well, you would have to use your best judgment. Because the determination --

MR. CHRZANOWSKI: It may come before the board again?

MS. GREENE: -- is it coming back. Right.

So I don't really know, you know, in terms of the Planning Commission when an item is final such that you won't see it again. But let's say you make a recommendation that's going to the BCC, there's always a chance that the BCC sends it back to you. So you want to make sure that if you're talking about something that happened in the past that it's not going to come back in the future.

MR. CHRZANOWSKI: But if the BCC has heard it and I --

MS. GREENE: And it's final.

MR. CHRZANOWSKI: -- and I mention it --

MS. GREENE: The building is built.

MR. CHRZANOWSKI: It's probably okay.

MS. GREENE: I would say yes. That's why I have to ask you, you know, use your best judgment.

MR. CHRZANOWSKI: Which is not always all that great, but I'll give it a shot.

CHAIRMAN STRAIN: Your best, yes.

COMMISSIONER ROMAN: That's on the record.

MS. GREENE: On Page 2 my notes continue and we talk about -- this is where I talk about written correspondence and emails. Because the Sunshine Law applies to written correspondence. And that's why I was saying earlier is that one-way communication should go through your staff liaison. It's just a much

cleaner way to do it. And there should be no two-way communication outside of the Sunshine.

And I recommend that the staff liaison include a reminder on all of the emails.

Social events are of course permissible but be mindful of the Sunshine Law.

Inspection trips: I'm not sure if the Planning Commission has done any inspection trips lately. We recommend against two or more members doing an inspection trip together. If an inspection trip is required, you'll have to work through the County Attorney's Office and your staff liaison, because all elements of the Sunshine Law have to be strictly followed at all times.

Yes, Stan?

MR. CHRZANOWSKI: When they had the pre-meeting disclosure here, I'm so used to talking to staff about every project that it never occurred to me that I should mention that I talked to staff about this project. You know, I mention the attorney and the engineers and all, but do I have to disclose that I talked to staff about a project?

MS. GREENE: Oh, you mean in terms of an ex parte communication?

MR. CHRZANOWSKI: Yeah.

MS. GREENE: You know, I don't know the answer. I think that I've heard the Board of County Commissioners say that they've reviewed staff reports. And I would say to err on the side of, you know, the most disclosure.

MR. CHRZANOWSKI: I should always say that I talked to staff.

MS. GREENE: I would say yes. Yes, I don't have a cite for that, and I can certainly follow up with you, but I would recommend that you include it in your disclosures.

MR. CHRZANOWSKI: Okay, thanks.

MS. GREENE: Telephone participation: You must have a quorum physically present in the room. And if one of your members wants to appear by phone, then somebody in the quorum has to make a motion to allow the member to appear by phone and to make a finding that the absence is due to an extraordinary circumstance.

Once that motion and finding is made, the member can appear by phone and they can participate and vote fully in the meeting.

There are penalties for knowingly violating the Sunshine Law. And that could be a second degree misdemeanor, a fine, removal from position. We haven't had any violations in a long time, and now that you have this reminder, this refresher course, I'm sure we won't have any violations going forward.

The second part is the Public Records Law. The Public Records Law is a separate law. It's found in Chapter 119 of the Florida Statutes, but it works hand-in-hand with the Sunshine Law.

A public record is really all materials, it's not just a document. It's all materials made or received by an agency in connection with official business, which is used to perpetuate, communicate or formalize knowledge, regardless of whether such materials are in final form.

Public records include documents, papers, letters, maps, books, tapes, photographs, films, et cetera, et cetera.

The question is whether it is made or received pursuant to law in connection with the transaction of official business. So your agendas -- as you were talking about earlier this morning, your agendas are public records. If you make notes on your agenda that are substantive notes pertaining to the issue at hand, then that is a public record and it should be maintained by your staff liaison.

Stan?

MR. CHRZANOWSKI: If we just highlight a certain thing to remind us to talk about it during a meeting, that's not a public record.

MS. GREENE: It's not a public record, that's a personal note for your own memory. It's not shared with another person. There's no intent to, like, communicate knowledge. You can keep that document yourself.

The public record is the official -- the final version of the agenda. So if you're not modifying the agenda, you're making highlights or notes for yourself, you can keep that public record. But anything substantive, any substantive note that you keep on that agenda, you should turn it into your staff liaison.

COMMISSIONER ROMAN: And what qualifies as substantive?

MS. GREENE: Anything going to the merits of the issue.

COMMISSIONER ROMAN: Okay, thank you.

MS. GREENE: Public records are required to be maintained by the agency for three to six years. The records retention law varies, depending on the type of the record.

But I always advise my advisory board members, when you have a public record and you're done using it, turn it over to your staff liaison, and then you're no longer responsible for it. You know, during the course of a year you may keep a binder at home, put all of your public records in one place and then when you're done turn them into your staff liaison. That's the best way to do it. Let the county staff be responsible for your public records.

Now, remember, public records include emails. I think that all members of the Planning Commission have county email addresses, which really works to your benefit. Because if there's a public records request, we can search for it internally in the county. If you use your personal email address to write an email pertaining to the official business of your Planning Commission, then that email is a public record.

COMMISSIONER ROMAN: I have a question on that. There may be a petitioner that comes before us that may know our -- or learn of or get our personal email, being that it was on some of the rosters before we got our Collier government email.

Is it suitable to forward from our personal email that email to our government account so that then it becomes a part of the --

MS. GREENE: Yes.

COMMISSIONER ROMAN: That's the way to handle that?

MS. GREENE: Yes, I think that's the best way to do it. Because then it's in our archives, our vault, we can pull it up for you any time.

But that being said, don't delete any emails that are sent to your private email address if they're regarding county business. If I were you, if you forward it, go ahead and print it that has your yahoo address on the top. Turn it over to your staff liaison and then you'll be done with it. You'll be certain that not only the personal email address with the official information but also the email sent to the county, that they're both preserved in the event that there's a question.

COMMISSIONER ROMAN: Okay, thank you.

MR. CHRZANOWSKI: So we're better off responding to the person that sent the email saying don't email me at home, send this to --

MS. GREENE: Right, here's my county email address.

MR. CHRZANOWSKI: -- my county email address.

MS. GREENE: But if you create an email using your county email address and it's on business regarding your role as a Planning Commission member, then that is a public record and it needs to be maintained.

COMMISSIONER ROMAN: Now, that's maintained though on the website if we're using our county --

MS. GREENE: Correct. Right, it's only if you're using your home email account that it just becomes, you know, one extra step to maintain it. Which is why it's easier to use the county.

MR. CHRZANOWSKI: Everything is maintained on the server. Everything.

COMMISSIONER ROMAN: Yeah, that's good. I was so happy to get my email. I mean, that was one of the first --

MS. GREENE: It's great.

COMMISSIONER ROMAN: -- things I did.

MS. GREENE: It is, absolutely.

When you're talking about public records, there are documents that are exempt from disclosure under the Public Records Law. But the exemption has to be based on a Florida statute. So there are limited exemptions that are defined by law. For example, Social Security numbers are exempt, we can't disclose them. And documents prepared for or anticipation of litigation.

But one thing about the Public Records Law is even if we have documents that are exempt for example during the course of litigation, once the litigation is over the documents become public records. So just consider when you're creating documents regarding your role in the Planning Commission that those are public records and they will be around for a long time. So be mindful of that.

Public records requests. We have a resolution that governs public records requests in Collier County. We get so many public records requests every day, you wouldn't believe it.

We do have a centralized system in the County Manager's agency with Mike Sheffield in the Communications and Customer Relations office. And also in the Growth Management Division you have Connie Dean who's your public informations officer. And they will help you respond to public records requests.

Should you ever get a public records request from a citizen, please forward it to your staff liaison and let your staff liaison work with county staff to get their response. You don't need to handle public records requests to yourself, they should be handled by our agency representatives.

At the bottom of my notes I made a reminder that social networking -- the Sunshine Law and the Public Records Law applies to social networking. So if you're on Facebook, Twitter, YouTube, you have to be mindful that you cannot have a two-way communication on a social networking site about something that may become -- may come before the Planning Commission. Because any two-way communication has to be held in the Sunshine.

So be mindful, if you're on Facebook and you're posting things about your Planning Commission work, number one, shouldn't be a discussion with another Planning Commission member. And number two, you need to maintain that record because it's a public record.

Any questions?

(No response.)

MS. GREENE: That's the brief overview of the Sunshine Law and Public Records. When in doubt, please feel free to call my office, work with Heidi Ashton, work with your staff liaison. We're always available to help you answer any of these questions.

Thanks for staying and learning about the Sunshine Law.

MR. CHRZANOWSKI: Thanks.

COMMISSIONER ROMAN: Thank you.

MR. BELLOWS: Thank you.

(At which time, the Planning Commission workshop concluded at 11:35 a.m.)

CERTIFICATE OF REPORTER

State of Florida)

County of Collier)

I, CHERIE' NOTTINGHAM, Notary Public, in and for the State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings. I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I financially interested in the action.

Dated this 30th day of October, 2013.

Cherie' Nottingham

CHERIE' NOTTINGHAM

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Expires: July 12, 2014