

**ABBREVIATED MINUTES  
PLANNING COMMISSION MEETING  
JANUARY 15, 2014**

The Planning Commission met in the City of Bradenton Council Chambers, 101 Old Main Street, Bradenton, Florida on January 15, 2014 at 2:00 p.m.

**Present:**

**Planning Commission Members:** Adam Buskirk-Vice Chair, Darin Autrey, Ben Bakker, Joseph Thompson, Richard Whetstone

**City Staff:** Tim Polk- Planning Director; Brady Woods-Development Services Manager; Arlan Cummings-Public Works; Tatiana Gonzalez-GIS/Planner; Karen Aihara-Executive Planning Administrator; Officer Camacho-Police; Guest Speaker: Attorney Lisch

**Absent:**

**Planning Commission Members:** Diane Barcus, Peter Keenan, Alternates: Steve Kastner and O.M. Griffith

**Staff:** Ken Langston-Fire Marshal

**REGULAR MEETING**

- Meeting was called to order by the Planning Commission Vice Chair, Mr. Buskirk at 2:00 p.m.
- Pledge of Allegiance was led by Mr. Buskirk.
- Election of Officers moved to after New Business
- Approval of Minutes – Mr. Bakker made a motion to approve the December 11, 2013 meeting minutes, second by Mr. Whetstone, approved 5-0.
- Speakers were sworn in by Ms. Aihara.

**NEW BUSINESS**

**VA.13.00070 WARD 3 NEIGHBORHOOD 1.01**

~~Request of Ronald Allen, agent for 3rd Avenue Associates LLLP, owner, for a Form-Based Code Adjustment regarding signage at 1001 3rd Avenue West (zoned T6).~~

~~WITHDRAWN BY APPLICANT~~

**VA.13.00071 WARD 3 NEIGHBORHOOD 1.01**

Request of Nancy Guth, agent for Hewitt D. Miller/Don Miller Development, owner, for a Form-Based Code Adjustment regarding signage at 1200 1st Avenue West (zoned T4-O).

Ms. Gonzalez introduced the request, staff presentation with stipulations.

**Planning Commission Questions/Comments to Staff:**

Nancy Guth, 1200 1<sup>st</sup> Avenue West, agent for Pier 22 Restaurant answered the Commissioners' questions.

- Mr. Whetstone asked about the size of the existing sign. Mr. Woods stated that there was a variance request granted in 1992 to increase to the existing 97.5 sq. ft. sign. The variance request before us today is to increase to 113 sq. ft. signage. Ms. Guth stated that the requested increased size is due to readability from the Green Bridge. Mr. Whetston asked if this sign is setting precedence by exceeding the form-based code sign size. Mr. Woods answered, no there is an existing variance from 1992 and the justification is the 600 foot distance to the Green Bridge.

- Mr. Woods confirmed that Ms. Guth understood the two stipulations and that a sign permit is need before start of construction. She confirmed.

Mr. Bakker disclosed that his company bid on the work and he would recuse himself from the vote. The completed Form 8B Memorandum of Voting Conflict is attached to the minutes.

**Public Hearing:**

- No one appeared for or against. Public Hearing was closed.

**Staff Recommendations:**

- **Public Works/Police:** No objections.
- **Planning Staff:** Recommends APPROVAL of VA.13.00071 with 2 stipulations:
  1. Sign shall not exceed a total area of 113 square feet.
  2. Applicant shall submit a building permit to the City PCD Department for sign installation..

**PLANNING COMMISSION RECOMMENDATIONS:**

Mr. Whetstone made a motion to approve VA.13.00071 with 2 stipulations, second by Mr. Thompson, motion approved 4-0 with Mr. Bakker abstaining from the vote.

**ELECTION OF OFFICERS**

Nominations opened with Mr. Buskirk nominating Mr. Bakker as Vice Chair, second by Mr. Whetstone. Mr. Whetstone nominated Mr. Buskirk as Chair, second by Mr. Autrey. With no other nominations presented, Mr. Thompson moved to close the nominations. 2014 Officers are Adam Buskirk, Chair and Ben Bakker, Vice Chair.

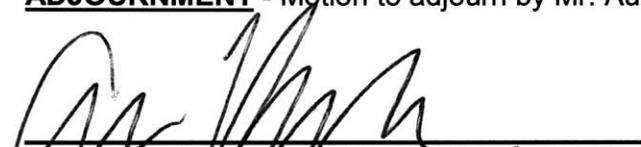
**SUNSHINE LAWS AND BOARD RESPONSIBILITIES**

City Attorney, William Lisch spoke to the Planning Commissioners about the Sunshine Laws and their responsibilities and communications within the Planning Commission. Handouts of Sunshine Law Basics and A Pocket Guide to Florida's Government in the Sunshine Laws: Open Meetings and Public Records were distributed to all attendees (Exhibits A & B).

**REPORT OF PLANNING & COMMUNITY DEVELOPMENT DIRECTOR**

- Welcome to Darin Autrey, our newest Planning Commissioner and Richard Whetstone continuing as a Commissioner.
- Introduction of Jesus Nino replacing Rebekah Brightbill as CCRA Manager.
- Thank you to Attorney Lisch for his overview of Sunshine Laws and Public Meetings.
- The Villages at Glen Creek which were annexed into the City 7 years ago, may be coming again soon.
- River Song (behind the Manatee Players) is underway with 179 luxury rental units.
- Welcome to the 2014 Officers - Adam Buskirk, Chair and Ben Bakker, Vice Chair. There is still one opening for an alternate on the Planning Commission, forward names to Tim Polk.

**ADJOURNMENT** - Motion to adjourn by Mr. Autrey at 2:53 p.m.



Adam Buskirk, Chairman

NOTE: This is not a verbatim record. An audio CD or DVD recording of the meeting is available for a fee upon request.

# FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <b>BARKER BENJAMIN BYRON</b>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <b>BRADENTON PLANNING COMMISSION</b>
MAILING ADDRESS <b>202 23RD ST. W.</b>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY <b>BRADENTON</b>	COUNTY <b>MANATEE</b>
DATE ON WHICH VOTE OCCURRED <b>1/15/14</b>	NAME OF POLITICAL SUBDIVISION:  MY POSITION IS: <input type="checkbox"/> ELECTIVE <input checked="" type="checkbox"/> APPOINTIVE

## WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

## INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

\* \* \* \* \*

### ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

\* \* \* \* \*

### APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

**IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:**

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

**APPOINTED OFFICERS (continued)**

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, BENJAMIN BAKKER, hereby disclose that on JANUARY 15, 2014:

(a) A measure came or will come before my agency which (check one)

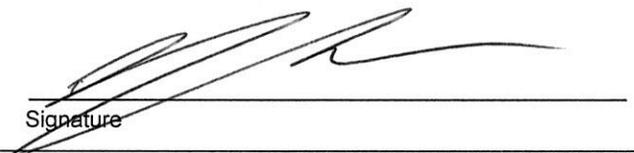
- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, \_\_\_\_\_;
- inured to the special gain or loss of my relative, \_\_\_\_\_;
- inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or
- inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

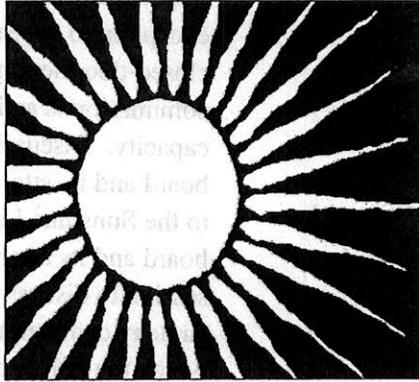
*I bid on a project that came before the Planning Commission. (BB)*

1/15/14

Date Filed

  
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.



**A Pocket Guide  
to  
Florida's  
Government-in-the-Sunshine  
Laws:**

**Open Meetings  
&  
Public Records**

FIRST AMENDMENT FOUNDATION

**THE OPEN MEETINGS LAW  
Section 286.011, F.S.**

Florida's Government-in-the-Sunshine Law applies when two or more members of the same elected or appointed public board or commission meet to discuss or take action on any matter which may foreseeably come before them in their official capacity. The Sunshine Law requires that: (1) meetings be open to the public; (2) notice be given; and (3) minutes be taken.

**APPLICATION**

**Who else is covered?** Members-elect of boards or commissions are also subject to the Sunshine Law. Private entities doing business on behalf of a public agency may also be subject to the law.

**Who is *not* covered?** Staff meetings are not ordinarily subject to the Sunshine Law.

**What types of meetings are covered?** The Sunshine Law applies to all functions of covered agencies, boards, and commissions, whether formal or informal, which relate to their affairs and duties. The Sunshine Law also applies when an *individual* has been delegated the authority to act on behalf of or make recommendations to a public entity. However, when an individual has only been delegated the authority to gather information, the Sunshine Law does *not* apply. The Sunshine Law prohibits meetings between a member of a public body and an individual who is not a member when that individual is being used

City Of Bradenton

EXHIBIT A 3 011514

as a liaison between, or to conduct a *de facto* meeting of, other members of the public entity.

**What types of meetings are *not* covered?**

The Sunshine Law does not apply to a meeting between individuals who are members of different boards *unless* one or more of them have been delegated the authority to act on behalf of his or her board. If an official is *not* a member of the board or commission and does not possess any power to vote, the official may meet privately with an individual member.

There is no violation of the Sunshine Law for a board member to express views or voting intentions on upcoming issues to a reporter. Members of a public board or commission are not prohibited from meeting together socially under the Sunshine Law, as long as matters which may come before them in their official capacity are not discussed.

**What forms of communication are covered?** Members of a board discussing board business or holding a meeting by *telephone* must ensure that the requirements of the Sunshine Law have been satisfied by providing notice and access to the public. If a *memorandum* reflecting the views of a board member is circulated among board members with each indicating his or her approval, disapproval, or comments, there is a violation of the Sunshine Law. The use of a written report simply to inform is not a violation of the Law as long as there is no reply or interchange of information. The use of *computers* by members of a public

board or commission to communicate among themselves is subject to the Sunshine Law.

**What subjects are covered?** There is no exception to the Sunshine Law allowing closed-door hearings when a board or commission is acting in a "quasi-judicial" capacity. Discussions between a public board and its attorney are generally subject to the Sunshine Law. However, a public board and its attorney may meet in a closed session to discuss settlement negotiations or strategy concerning *pending* litigation to which the public board is a party. Numerous limiting conditions apply to such meetings, including transcription requirements, topic limitations, notice and procedural requirements, and release of the transcript upon completion of the litigation. Meetings at which *personnel matters* are discussed are not exempt. Negotiations by a public body for the *sale or purchase of real property* must be conducted in the Sunshine. The Sunshine Law is applicable to *investigative inquiries* of public agencies, and the fact that a meeting concerns *alleged violations* of law or regulations does not remove it from the scope of the Law. Sunshine Law policy on *collective bargaining* for public employees is divided into two parts: when the public employer is meeting with its own side, it is exempt from the Sunshine Law; when the public employer is meeting with the other side, it is required to comply with the Law.

**What are the requirements for voting?**

A board may not use secret ballots. Each member present must cast a vote either for or against each proposal, but it is not necessary to take a roll call vote to reflect each member's specific vote. The minutes must report voting results *either* by recording the vote of each individual member *or* counting the votes and reporting the totals. No member of any governmental board or commission who is present at any meeting at which a decision, ruling, or other official act is to be taken or adopted must abstain from voting. A vote *must* be recorded or counted for each member present, except when a member has, or appears to have, any conflict of interest.

**REQUIREMENTS**

**Where may meetings be held?** Public boards or commissions are prohibited from holding their meetings at any facility which discriminates on the basis of sex, age, race, color, national origin, creed, religion, or economic status, or which operates in a manner that unreasonably restricts public access. Public agencies should take reasonable steps to ensure that meeting facilities will accommodate the anticipated turnout. Public meetings should be held within reasonable proximity to the jurisdiction of the public board or commission.

**Can restrictions be placed on public attendance or participation?** The public may not be deprived of the right to be

present and to be heard at all deliberations where decisions affecting the public are being made. However, the extent to which public participation must be allowed has not been determined. Reasonable rules and policies ensuring the orderly conduct of a public meeting and requiring orderly behavior of those in attendance may be adopted. A rule or policy prohibiting the use of nondisruptive cameras or silent tape recording devices is unreasonable and, therefore, invalid.

**What kind of notice must be given?** A written notice containing the time, place, and general subject of the meeting should be given. Notice should be published, posted, and/or circulated in a way meant to allow members of the public who may be interested to know about the meeting. If a meeting is to be adjourned and reconvened later to complete the business from the agenda of the adjourned meeting, the second meeting must also be noticed.

**Must written minutes be kept of all public meetings?** Yes. Minutes of a public meeting must be promptly recorded and open to public inspection. A written transcript of a meeting may be used as the minutes.

**PENALTIES**

**What are the penalties for violations of the Sunshine Law?** No resolution, rule, regulation, or formal action is binding unless it is promulgated at an open meeting. Any member of a board or commission or

of any state or local agency or authority who *knowingly* violates the Sunshine Law is guilty of a misdemeanor of the second degree. If convicted, the officer or employee may be removed from office. Any public official who violates the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. Reasonable attorney's fees and court costs will be assessed against a public agency violating the Sunshine Law.

### **THE PUBLIC RECORDS LAW** **Chapter 119, F.S.**

Every person who has custody of a public record must allow the record to be inspected and examined by any person desiring to, under reasonable conditions. The custodian must furnish a copy of the record upon payment of the cost of duplication or of the fee prescribed by law.

#### **APPLICATION**

##### **What materials are public records?**

"Public records" include: all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or in connection with the transaction of business by any agency. The only exceptions are for records specifically made confidential by the Florida Constitution and records exempted by state statute.

**What agencies are subject to the Public Records Law?** "Agency" includes any state or local officer, department, division, board, bureau, commission, or other unit of government created or established by law and any other public or *private* agency, person, or business *acting on behalf* of a public agency. Records of advisory boards created by governmental entities to provide advice or make recommendations are subject to the Public Records Law.

#### **REQUIREMENTS**

**May an agency refuse a request because the agency believes disclosure could violate privacy rights?** No. Neither the custodian of records nor the person who is the subject of a record can claim a right of privacy as a bar to inspection of a public record without a specific statutory exemption.

**May an agency impose a waiting period or establish a specific time period for access to public records?** No. The only delay permitted in producing records is the reasonable amount of time it takes to retrieve the record and delete any exempt portions.

**May an agency require that a request for records be made in writing or that the requester furnish background information?** No. A custodian must honor a request for copies of records whether the request is in writing, over the telephone, or in person, as long as the required fees are paid. A requester *cannot*

be required to disclose his/ her name, address, or telephone number unless this information is required by law. If a public agency believes it is necessary to document a request for public records, the agency may require the *custodian* to complete the appropriate document.

**Must a person give a reason for his/her request?** No. The Public Records Law does not require a person to show a purpose or "special interest" as a condition of access to public records.

**May an agency refuse to allow inspection or copying of public records on the grounds that the request is "overbroad"?**

No. A custodian is not authorized to deny a request for access to public records because it is not specific enough. If a request is insufficient to identify the records, the agency has the duty to notify the requester promptly that more information is needed. Unless there is a statutory exemption, a custodian must produce the records requested regardless of the number of documents involved or any inconvenience. The agency is authorized, however, to charge a reasonable fee, in addition to the actual cost of duplication, for the cost of *extensive* use of technology resources or personnel if required by the nature or volume of the request.

**May an agency refuse a request because the record requested contains exempt information?** No. If a record contains information which is exempt from public

disclosure, the custodian must delete that which is exempt and provide a copy of the remainder. Also, if so requested, a custodian must state in writing the statutory citation authorizing the deletion.

**Is an agency required to answer questions regarding contents of public records?** No. The Public Records Law does not require an employee to answer questions regarding details of the contents of records or to excerpt or interpret them for the public. However, an agency must respond to all requests for any information about copying costs.

**Is an agency required to produce records in a particular form?** An agency is not ordinarily required to produce records in a particular form. For example, if the health department keeps a chronological list of dog bites involving rabies, a requester cannot require the department to reorganize the information by geographic area. However, an agency *is* required to provide a copy of a public record in any medium maintained by the agency.

**Is an agency required to comply with a request for records stored in a computer?** Yes. Information stored in a computer is as much a public record as written pages in a book or file folders, and are governed by the same rules as other public records. An agency that maintains a public record in an electronic record keeping system must provide a copy of a requested record in the medium requested if

the agency maintains the record in that medium.

**May an agency refuse a request to inspect or copy the agency's records on the grounds that they are not in its possession?** No. An agency is not authorized to refuse to allow inspection of its public records on the grounds that the documents are in the actual possession of someone else (such as the agency's lawyer). Public records may not be removed from the place where they are ordinarily expected to be kept, except for reasonable business purposes.

**May an agency charge a fee for the mere inspection of public records?** No. Public records must be open for public inspection without charge unless otherwise expressly provided by law. But if the volume of records to be inspected is large, requiring the *extensive* use of agency resources, a special service charge could be applied. (See below). It is irrelevant whether the requested public record is a written document, a videotape, or information stored in a computer. Providing access is a statutory duty of all records custodians. It is not a revenue-generating operation.

**What fees may be charged for copies of public records?** Agencies *are* permitted to provide copies of public records *without* charge. An agency may, however, charge for copies, as long as the fee does not exceed that established by law. If no other fee is set in the statutes, the custodian may

charge up to 15¢ per one-sided page for paper copies that are 8½ by 14 inches, or smaller, and no more than 20¢ for two-sided duplicated copies. Up to \$1.00 per page may be charged for certified copies. For other copies, the charge is limited to the actual cost of duplication. The phrase "actual cost of duplication" is defined to mean, "the cost of the materials and supplies used to duplicate the record, but it does not include the labor and overhead cost . . . ." No fees designed to recoup the original cost of developing or producing the records may be charged. An agency may also charge a reasonable fee, based on actual costs incurred, for the extensive use of agency resources.

**How long must an agency retain a public record?** Whoever has custody of public records must give them to his/her successor at the expiration of his/her term or, if there is no successor, to the records and information management program of the Division of Library and Information Services of the Department of State. Florida law requires agencies to give the Division a list or schedule of records that are no longer needed in the transaction of business and that do not have enough administrative, legal, fiscal, or historic significance to justify keeping them. The Division has rules, binding all agencies, concerning the disposal of public records.

## PENALTIES

**What are the options if an agency refuses to produce public records?** *Mediation.* For more information about the voluntary Public Records Mediation Program, please contact the Office of the Attorney General.

*Civil action.* Any person denied the right to inspect and/or copy public records may file a civil action in circuit court against an agency to compel compliance with the Public Records Law. These actions are entitled to an immediate hearing and take priority over other cases. A public agency's unjustified delay in complying with a request until after litigation is filed amounts to an "unlawful refusal."

While an action is pending, the custodian may not transfer custody, alter, or dispose of the record. If a civil action is filed against an agency and the court determines the agency unlawfully refused to permit a public record to be inspected, examined, or copied, the court shall order the agency responsible to pay the costs of enforcing the law, including reasonable attorney's fees and court costs.

Attorney's fees are recoverable even if access is denied on the mistaken belief that the requested records are exempt from disclosure.

*Criminal penalties.* A public officer who *knowingly* violates the Public Records Law is guilty of a misdemeanor of the first degree, punishable by penalties of up to one year in prison, a \$1,000 fine, or both, and is subject to suspension and removal. A violation is also a noncriminal infraction, punishable by a fine not exceeding \$500.

## Sunshine Law Basics

As an appointed officer of a Citizen Board, you are subject to many of the rules of the "Government in the Sunshine Law." Basically, this law was enacted to ensure fairness and openness in governmental affairs. Where this comes into play for the Planning Commission is in the matters of Land Use Decisions such as Variances, Rezoning, and Site Plan Approvals (Planned Developments).

Violations of the Sunshine Law are serious and repercussions can range from fines to jail., and can cause delays in the process that could trigger a lawsuit on behalf of the parties affected. There are countless number of cases that have been filed recently on Sunshine Law violations, even the minutely innocent ones. Below, are several key items to keep in mind as it pertains to your service as a Planning Commissioner.

### Communications

The easiest way to remember this is who you are allowed to talk to – City Staff. All other communications are forbidden by Sunshine Law. This is to remove any indications of bias in your decisions, as conversations can be slanted depending on which side of the project you are on. A common tactic in controversial issues is to force a member of a Citizen Board to have a conversation "off the record" which can then be brought up later. Another trap is someone asking about the meeting then edging into conversations about the project. If someone asks you about a project under consideration, encourage them to attend the meeting or submit their comments to the PCD Director.

You are, however, free to have one on one conversation with the PCD Staff over any issue with the project under consideration. This is a right that you are entitled to. The only caveat is that you cannot ask, nor can you have any conversation about the questions and/ or comments of another commissioner.

You can also have conversations with the designated Alternates, provided that they are going to cover your position should you not be there. This is discouraged with our Planning Commission as we do not have an alternate each. The Chair can have communications with the Vice-Chair, provided that the Chair will not be attending the meeting.

Post vote, we are allowed to converse with anyone except for the City Council, who is the ultimate deciding authority, and subject to the same rules above. We can also address the City Council as **Private Citizens** only, it is best not to even mention your role as a Planning Commissioner.

Finally, when it comes to the media, you are bound by the same rules: you cannot talk about pending projects, only items that have been voted on.

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### Site Visits

According to the Sunshine Law, we are not allowed to visit the site, or conduct a site inspection. However, you are free to visit a site so long as you disclose that you visited the site during the public meeting.

### Disclosure

We are not allowed to have conversations, but if these conversations do take place, however accidentally, they must be declared in the public meeting. Simply stating that you had a conversation with an individual, the date, the approximate time, and the subject matter and putting it on record may nullify the situation so long as you have not given your opinion to the party. If you have discussed your opinions prior to a meeting, which will show bias and your best recourse is to abstain from voting. You will still be able to participate in the deliberations and commentary, but your vote could be used against you, the applicant, and the City should you choose to vote.

Conflicts of interest should also be brought up as well at the introduction of the project. Additionally, if you have a conflict of interest, there is a form that must be filled out and attached to the permanent record of the meeting.

The most important item to remember about disclosure is to disclose the issue succinctly and early to give both sides a chance to respond.

### Other information

Attached to this memo is a basic outline of the Quasi-Judicial Procedures taken from the Manatee County Attorney's Office Local Government Law Seminar.

Further information can also be found at: [www.myflsunshine.com](http://www.myflsunshine.com)

## XXIV. QUASI-JUDICIAL PROCEEDINGS

### A. When are the formalities of a quasi-judicial proceeding required?

The key factor is how the decision is classified:

1. Generally, the following will be treated as legislative decisions:
  - a. Amendments to the text of the Land Development Code;
  - b. Amendments to the text of the Comprehensive Plan and Map Amendments;
  - c. Street and right-of-way vacations; and
  - d. Governmental-initiated area-wide rezones.

### 2. The following are examples of quasi-judicial decisions:

- a. Site plan approvals;
- b. Site specific rezoning;
- c. Developments of Regional-Impact;
- d. Variances;
- e. Final subdivision plat approvals or vacations;
- f. Historic designations and Certificates of Appropriateness;
- g. Development agreements approved simultaneously with other quasi-judicial matters; and
- h. Such other decisions as are required to be treated as quasi-judicial matters under applicable law.

### B. What is the burden of proof?

1. For legislative matters, the burden of proof is on the party who challenges the governmental action to show the decision of the government is arbitrary and capricious. Legislative decisions are reviewed under the deferential "fairly debatable" standard of review. The fairly debatable standard of review requires approval of a planning action if reasonable persons could differ as to its propriety. An ordinance is found to be fairly debatable when for any reason it is open to dispute or controversy on grounds that makes sense or points to a logical deduction that in no way involves constitutional validity. Martin County v. Yusem, 690 So.2d 1288, 1295 (Fla. 1997).

2. For quasi-judicial matters, certain additional formalities are applicable. See Board of County Commissioners of Brevard County v. Snyder, 672 So.2d 469 (Fla. 1993). For example, if a property owner seeks to rezone property, the owner has the burden of proving that the proposal is consistent with the Comprehensive Plan and complies with all procedural requirements of the zoning ordinance. Snyder, 627 So.2d 469, 475. At this point, the burden of proof shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. Snyder, 627 So.2d 469, 476.

C. Procedural due process

1. Quasi-judicial hearings require the parties be given notice of the hearing and an opportunity to be heard. The parties must be able to present evidence, cross-examine witnesses and be informed of all facts upon which the commission acts in the record. Jennings v. Dade County, 589 So.2d 1337 (Fla. 3<sup>rd</sup> DCA 1991), rev. den., 598 So.2d 75 (Fla. 1992). See also Lee County v. Sunbelt Equities, 619 So.2d 996 (Fla. 2<sup>nd</sup> DCA 1993).

D. Ex-parte communications—ethics

1. Defined as: Communications between a member of the approving authority such as a Planning Commission member, a Historic Preservation Board member, City or County Commission member and another person outside the context of a duly noticed public hearing. The subject matter would have to be related to an upcoming quasi-judicial proceeding. Communication solely between a Board member and staff are not considered ex-parte communications.

2. Consequences: Once an ex-parte communication is proven to have occurred, a presumption of prejudice arises. Ultimately, if an ex-parte communication is found to have violated another party's due process rights, then a decision of the approving authority may be overturned and the case remanded back to the approving authority for a new hearing. See Jennings 589 So.2d 1337 (Fla. 3<sup>rd</sup> DCA 1991), rev. den. 598 So.2d 75 (Fla. 1992).

3. In the event an ex-parte communication occurs, then the member of the approving authority should disclose at the hearing the date and subject matter of the items discussed at the ex-parte meeting. In the event there is an e-mail or a letter received, then the letter or e-mail should be made available for public review and comment and entered into the public hearing record. Ex-parte communications also include visits to the site of the property proposed to be rezoned. Another example is if an approving authority member receives expert opinions or conducts an investigation, then the existence of the investigation or expert opinion is also required to be a part of the record before final action on the quasi-judicial matter. In theory, the disclosure of such ex-parte communications occurring near the beginning of the public hearing enable persons who have opinions contrary to those expressed in the ex-parte communication to have a reasonable opportunity to refute or respond to the communication at the hearing and thereby rebut the presumption of prejudice.

4. There is a statutory provision in Section 286.0115, Florida Statutes, that allows a county or municipality, by ordinance or resolution, to remove the presumption of prejudice from ex-parte communications. This procedure, while not exclusive, provides guidance as to an option for disclosure in the public hearing records. Whether the disclosure is legally sufficient to remove all presumption of prejudice in an individual case, would be determined on a case-by-case basis through adjudication by a court of law.

E. Who are parties?

1. Party status is determined in part by who is required to receive notice under the requirements of the local code.

2. A person who will suffer an adverse effect to an interest protected or furthered by the comprehensive plan or zoning code as a result of the quasi-judicial action. The adversely affected interest may be shared in common with other members of the community at large; and shall exceed in degree the general interest in community good that are shared by all persons. See Renard v. Dade County, 261 So.2d 832 (Fla. 1972).

3. Parties may cross-examine witnesses.

a. A component of affording to a party procedural due process is the right to cross-examine witnesses. A recent circuit court decision has held that allowing parties to cross-examine witnesses by asking questions through the Chairman sufficiently affords due process to the parties. Greene and Hastings v. Marion County, (5<sup>th</sup> Judicial Circuit 2010), FLW SUPP 1704GREE.

F. What are the remedies for failure to provide procedural process?

1. In the event there is a failure to adequately disclose an ex-parte communication and the presumption of prejudice is not rebutted, the complaining party may be found to be entitled to reversal of the Board's decision and a new hearing must be held.

2. In the event a court of law determines that under a review by the filing a certiorari challenge, that procedural due process was denied the appellant, the case will be remanded back to the approving Board to hold another public hearing.

G. Conclusion.

The members of advisory boards and boards with final approval authority should review the procedural rules of their respective governing body prior to a public hearing on a quasi-judicial land use matter. The staff of local governments should be aware of the procedural rules guiding their testimony at quasi-judicial hearings. Advisory board and governing board members should consult with their respective attorneys as to specific legal issues that may arise.