

MINUTES OF JOINT WORKSHOP
CAPITAL REGION COMMUNITY DEVELOPMENT DISTRICT
PINEY-Z COMMUNITY DEVELOPMENT DISTRICT

A joint workshop of the Capital Region Community Development District and Piney-Z Community Development district was held Thursday, February 10, 2011 at 5:40 p.m. at the SouthWood Community Association, 3196 Merchants Row Boulevard, Suite 130, Tallahassee, Florida.

Present were:

Barry Brooks	Capital Region - Supervisor
Wayne Toothman	Capital Region - Supervisor
Eli Nortelus	Capital Region - Supervisor
David Ramba	Capital Region - Supervisor
Glenda Herrera-Gray	Capital Region - Supervisor
Jan Bridges	Piney-Z Supervisor
Rosemary White	Piney-Z Supervisor
Richard Kessler	Piney-Z Supervisor
Michael Lee	Piney-Z Supervisor
Lance Rogers	Piney-Z Property Manager
Chasity O'Steen	Piney-Z District Counsel
Joe Brown	Capital Region District Counsel
James A. Perry	Capital Region District Manager
Pat Gleason	Attorney General's Office

FIRST ORDER OF BUSINESS

Roll Call

Mr. Brooks called the meeting to order at 5:40 p.m. and stated we want to express our appreciation for the Piney-Z board coming on campus here at SouthWood. Hopefully, we will get some wonderful information tonight that we both can use throughout the year. I will introduce Joe Brown our general counsel to make the introductions for our guest speaker tonight.

Mr. Brown stated as everybody knows we really set this up with the elections that just occurred and new supervisors elected. Everybody has a good base with respect to the sunshine law and public records and to that end I have been coordinating with your general counsel to try

to organize this workshop and recognize Pat Gleason who is with us today from the attorney general's office who graciously agreed to come and do a presentation for us and take questions.

SECOND ORDER OF BUSINESS

Presentation

Ms. Gleason stated it is such a pleasure to be here especially with two boards. I apologize for having gotten so many phone calls but the attorney general's office keeps calling me because two city commissioners in a small town have just been found guilty of violating the sunshine law. I suspect almost all of those kinds of things occur at least in my experience when the city commissioners have not had training in what the sunshine law requires. Over the years they may think there are reasons that justify them meeting in private. It is almost never to cook up some secret deal or something like that, that might be the popular impression but almost always it is people thinking well we really don't like the city manager and we think we might have to get a different person in there or perhaps it is buying a piece of property or something like that. The bottom line is they think there are no consequences if they have these kinds of conversations but a willful violation of the sunshine law is a crime, it is not often prosecuted by the state attorney but this example is one where apparently it just occurred and as a result I guess the governor's office is calling into the attorney general's office finding what their legal obligation is with regard to removing those people from office. I always like to think that people undertake public service for all the right reasons and I'm sure this is a sad end to what probably started out as a very promising career. That sets the stage if you don't listen to me it is jail so it is either me or jail. I used to start off a lot of my talks with remarks about the consequences for violating the sunshine law and one group I would speak to is a state-wide commission and there were a couple of judges on there and I went through the whole situation about what the sunshine law requires and at the end one of the judges took me aside and said, I listened to all of that but basically who cares. So for a long time I started off with the consequences because while it is unusual obviously most of the state attorneys have a lot more pressing things to do than investigate conduct and violation of the sunshine law because it is very hard to prove, it has to be knowing and willful and the consequence is a second degree misdemeanor. It is a very low, \$500 fine up to a year in jail. I will give you an example of a former state senator in Pensacola happened to be the last one convicted who made the novel argument that he wasn't violating the sunshine law when he and another county commissioner were in front of the county

administrator and Senator Childers was saying to the county administrator while the other county commissioner was there, I want you to do X, Y, Z, bring it to the county commission, this is the way I want it and he and I will vote for it. He argued that didn't violate the sunshine law because he and the county commissioner weren't talking it was just a soliloquy. Unfortunately a state attorney did not buy that soliloquy argument and it failed.

Let's talk over why I even have to come here and talk about the sunshine law. First of all you already know this I think probably a lot of people within the community simply don't realize that CDDs are governmental entities. I think it is one of these things where being a governmental entity has a lot of advantages probably complying with the sunshine law is not normally one of them but because you have many of the powers that any other governmental agency does you are subject to the sunshine law, so are all other elected or appointed boards in Florida with the exception of the legislature and the judiciary. Many local elected officials express great dismay that the legislature is not subject to the sunshine law but it is a matter of separation of powers. They are another branch of government and they have their own constitutional amendment relating to access not as strict as the sunshine law.

Given that the sunshine law applies to the CDD what does that mean? Sometimes people think what is the big deal. The reason the sunshine law is so important in Florida is because of the definition of a meeting. You probably have already heard it many times any gathering of two or more members of a public board is subject to the sunshine law when they need to discuss any matter on which foreseeable action could be taken. Sometimes when I talk to newly elected officials someone raises their hand and asks me a question that is essentially a restatement of what I just said. Do you mean to tell me that the sunshine law applies to any gathering of two or more members of a public board when they need to discuss any matter on which foreseeable action may be taken by the board? There are no exceptions. Board members cannot ever have private discussions about board business unless the legislature has created an exception and there are so few that board members on their own can't as in other states decide if a certain matter should be discussed in executive session. In fact my dad was a member of a house services agency, I'm not sure what that was in New York, and he talked about how he and other board members sometimes would talk together before the meeting and discuss how various things should go or at the lodge they would come up with ways to get their proposals adopted. I had to say something that perhaps every person never likes to say to their parent, if you did this in

Florida you could be arrested because all of the things that are routinely done in other states cannot be done in Florida. Everything has to be done in the open, in a session like this one. Given that the sunshine law is that broad that meetings have to be open to the public, the only other two requirements are done by staff, notice the meetings to the public and they keep minutes or you can keep a written transcript but I don't see a court reporter here so I assume minutes are kept. All meetings are the same regardless of whether or not they are workshops or full board meetings where you take action the requirements are not different. The requirements are not different for boards that are advisory in nature. The courts have no distinction between advisory committees whose function may seem kind of silly like a beautification committee, subject to the same requirements as a county commission. There is no gradation in other words of responsibility. The sunshine law generally has not applied to private organizations like homeowners associations this is something that people who are in homeowners associations are dismayed about, they would like to see the boards of their homeowners associations comply with the sunshine law and the boards never do, they have other statutes that apply to them. Sometimes that can pose a problem for people like you who are on a board that is subject to the sunshine law. Suppose you want to go to a meeting of the homeowners association, if there is just one of you on your board there or a member of the Capital board and a member of the Piney-Z board, members of two different boards, it has to be two members of the same board to trigger the sunshine law but suppose there are two of you there, if the homeowners association meeting is reasonably open to the public then the sunshine law would not prohibit members of your board from going to those meetings as long as you don't do two things; you don't talk to each other about board business which sometimes can be easier said than done and the meeting is not used as a vehicle to circumvent the sunshine law. For example how do you think that could happen? In one county in South Florida I remember a group called the "developers forum" wanted to invite the county commission to attend meetings of the developers forum. The developers forum was open to developers who wanted to discuss various projects that they had before the county commission. If the county commission went to that meeting and attended that that would be a violation of the sunshine law. It is kind of a circumvention wouldn't you say, an opportunity for the developers to be heard in front of the county commission that later voted on their projects? With regard to attending meetings of the homeowners association my advice would be to be cautious, whenever possible have just one person go rather than more than one. If two of you

happen to show up and the homeowners association meeting is open to the public then there wouldn't be a problem with you going and answering questions for example that the board might have but you couldn't use it as a vehicle to avoid the sunshine law for talking to each other. It is kind of a common sense thing. I know if I were on a board like this especially some of the horror stories I hear about sunshine law issues I would probably just send one person. I just think that is so much easier as a general rule.

The sunshine law has been in existence for many, many years. It is interesting that when the law was first passed and interpreted in the same broad standard as we talked about today you would think that local governments would say this is the will of the people and we must comply but that did not happen. There was really a belief that I don't think is shared so much by boards like yours or governmental agencies today, at that time boards thought there was no way we can operate under the sunshine law. We simply have to have private discussions to discuss certain issues and even though the courts said there are no exceptions except what the legislature has said they tried to come up with various means to circumvent the law. I can just see in the way that you are prepared you have legal counsel that advises you that you would never think of these things. But because somebody might come to you with these suggestions I will go over a couple of them. Boards 30 years ago and even some today thought they could meet legally and find out how other board members felt about issues if they used a liaison. In other words a school board might ask the superintendent to find out from other school board members how they felt so they could avoid protracted, lengthy debates in public. I can't reiterate enough that a lot of the problems with the sunshine law aren't because people try to circumvent it for a bad motive, almost always they have a good reason. School boards face a tough problem, hours and hours of acrimonious debate in public hearings from angry parents and others concerned about things that sometimes they have no choice to do. It doesn't seem to be that difficult to believe that they wouldn't try to find some way like using these liaisons to avoid the law. In fact there have been stories that here in Tallahassee, I don't know if some of you remember before the Florida Cypress Restaurant it used to be Garcia's and it was kind of dark and they had booths so years ago the Leon County School Board was dealing with that same issue, many hours of public hearings and they thought why can't we just have each of us school board members in one of the Garcia's booths and have the superintendent go over person to person and say here are our options, 1, 2, 3 and what do you think you would want and they would go to the next booth and

say, what do you think and he would say what he thought and she would say what she thought. The court said not in the case involving Leon County but in a similar case involving a board they said no. The school board's argument was we didn't violate the sunshine law because two board members weren't meeting face to face but the court said no, when you use someone as a liaison that is a violation of the law. Other issues have come up since technology has modernized the way you do business. It used to be that people really thought that they didn't violate the sunshine law if they talked about board business over the phone. They thought we are not face to face so we could talk over the phone and that was one of the first cases of someone being removed from office for violating the sunshine law was a school board member who routinely would have telephone conversations with another school board member about board business. I think what the state attorney finally used almost always these cases are over and over repetitions, time after time that the state attorney introduced evidence that the school board member had been doing this for years, calling other school board members on the phone and finding out how they were going to vote. One day someone who worked for the school board member said should you really be calling all these school board members, doesn't this violate the sunshine law? The school board member apparently responded only the little people comply with the sunshine law. If you will remember the lady who owned the hotel, Leona Helmsley, that led to her tax eviction. I made a mental note that if I ever go to criminal defense work never say the defense only the little people violate the law because he was eventually removed from office by the senate.

Sometimes, particularly with boards like this one it can be difficult because you know under the sunshine law you can't communicate back and forth via email. Obviously if it is wrong to call someone on the phone and talk to them about board business and sometimes I think it is particularly hard with all the sunshine law restrictions with a board like this because I sense the vast majority of people are not that interested in what you do. It is a lot different if you are in for instance the city council in Miami there is press and people watching everything that you do all the time and here there is not but the same rules apply. No email communication back and forth but what about if you are on a board like this and I have already established from Joe that you don't have a staff so you don't have people who periodically send you things that you can review of things like that other than what they do, which is a lot I'm sure, so the question is suppose you see something of interest that you think other board members might want to see, has

that ever happened to you? Would you ever like to send something to another board member or has that issue never come up? Then don't ever do that. Because there are some circumstances and there are opinions that say that a board member can send a one-way communication to another board member. For example you read this article about these city commissioners being prosecuted for violating the sunshine law and you want to send that to everybody. There is an attorney general's opinion that says that doesn't violate the sunshine law if you comply with two things; it is kept as a public record and there is no response. If there is a response then everyone violates the sunshine law. You can imagine how this could be that is less collegial than you are. Say you have two acrimonious board members in an acrimonious situation and one of them sends an email, I think what you did at the last meeting was just ridiculous and I'm sure the rest of the board feels the same way. Technically that one-way communication does not violate the sunshine law but if the other board member receiving it gets it and you know how it is with email maybe you have never done this but sometimes I find myself when I get an email and before I know it I have typed out a response and I have to hold back before I hit the "send" button but if another commissioner writes back then both of you have violated the sunshine law. That is why I recommend and it is just a recommendation because it is legal to send them as long as they stay one-way but you can see how just one mistake and you are in trouble. Sometimes what I have seen with local officials is I have seen one board member send something that is fairly flame throwing to all the commissioners and then one of them responds back, I think your comment about my being ridiculous is ridiculous and then the other ones start writing back and commenting, does this violate the sunshine law, should we really be doing this and before long you have hours of time wasted and a problem that really didn't need to occur. If people would just wait until a meeting like this to send things out or sometimes people ask their staff, I don't know how they feel about this if there is something they think the other board members should know about, do you ask board members to send it to you, would you sometimes distribute it? Then you have a neutral third party who is able to distribute all of the information and you don't have that chance of getting into a sunshine law issue. I can just tell that that seems like such a remote possibility with your groups but because I have seen it happen all it takes is one person sometimes that disrupts the mix and then you are in this trouble. Now when you get somebody new who comes in and wants to paper everyone with communiqués everyone will know that they really should go to your board attorney.

Do you ever have to vote on anything? Do you ever use written ballots? Never, okay. Written ballots are okay, actually the governor and cabinet sometimes cast votes by written ballots and the sunshine law does not prohibit the use of written ballots as long as the name of the person that voted is on the ballot and the ballots are kept a public record. Sometimes when ballots are cast for example a county commission will be hiring a new county manager and I have seen two situations occur that violate the sunshine law. First, everybody dutifully writes out their choice on a ballot if you can't tell who voted for whom that is a secret ballot, just because all the ballots say, and I understand why people want to do that sometimes they are just trying to protect the feelings of the person that did not get enough votes but the sunshine law requires that ballots be open. The second thing that boards sometimes do they may write the names of the board member and who they voted for on the ballot but then if someone takes all the ballots away after they have been counted that can really be a problem not just with the public records law but I remember one case a board did this and they had all the ballots, they made a vote and said so and so is hired. Then it turned out that someone had added wrong so there was confusion over what the board's action really was and by then the ballots had mysteriously disappeared. I'm not sure what it is with us in Florida but we have to be extra careful with all of our ballots in making sure that they are kept as public records.

The other thing that sometimes comes up it is not all boards use written ballots, there is no requirement under the sunshine law that you do a roll call vote, it is fine to do something like, all those in favor, aye, all those opposed same sign, you don't have to go through and poll everyone, one after the other. Votes can be made in two ways; open, as I said all those in favor say, aye, all those opposed same sign, the ayes have it, that is fine, or it could be a written ballot and that is fine as long as it has the name of the person and what they voted for.

This is an issue that sometimes occurs, have you ever had someone who wants to videotape or tape record the meetings? A lot of times this happens at the local level.

Mr. Brooks stated we tape record our own meetings.

Ms. Gleason stated I'm talking about a member of the public coming in. They are authorized to do that. If you ever get that situation and I imagine it is rare with a CDD but it could occur, someone is worried about something you are doing and they want to keep a record of it and under the sunshine law they are authorized to do that. You can require that things be done in accordance with reasonable policies. For example somebody who is filming can't go

around like they are an investigative journalist but you can have someone standing where I am and maybe put the camera on a tripod so you can have reasonable rules and regulations and tape recording by the public is fine. It is funny that some board members are very disturbed if members of the board will want to tape record it, if you didn't tape record, and I remember one city commissioner in the middle of the state the state attorney told me he was so upset, it is always a concerned citizen or a board member has a bad situation and the concerned citizen in this community plugged her tape recorder right in there and the city commissioner came off the dais and pulled it out of the socket then a complaint to the state attorney's office ensued because this person is entitled to tape record the meetings. It gets confusing because as you know in Florida we have a law that prohibits a private individual from recording someone without their consent. In some states that is legal but in Florida it is not. That only applies in situations where you have a reasonable expectation of privacy and doesn't apply to open board meetings. Anyone can tape record, they can be surreptitious about it, and that is something to keep in mind. Hopefully, you will never have that kind of situation arise.

Board meetings of public boards have to be held in public places like this one, not for example in private homes and sometimes that has been a hardship for little rural communities that we have in many areas of the state. There was one town that wrote that their town hall was being refurbished and they wondered whether or not it would be possible to meet somewhere else but as long as there is a public place within the community then you have to meet there. If there are no public buildings that are available for your meetings then you can meet in a private home but otherwise it has to be in a place that is open to the public.

Mr. Brown asked that private home has to be open as well, right?

Ms. Gleason stated I can't imagine any sense where you can meet in a private home. There would have to be no place open to the public. The way it would work is, I should have said a private building. A government building is where you want to be. If there are any government buildings available that is where you want to be. A community center like this is fine. If there are not those available then you go to places that are open to the public like a restaurant, a church. Churches are often used for public buildings as long as the church is making it open to the public while you are having your meeting. That is if you don't have any public facilities available then you would use that. The only time you would use a private home frankly is when none of those places are available. I can't imagine where in Florida that would

happen. There are some communities that wanted to have their meetings in private homes and you can imagine how much rancor and dismay that causes for members of the public who feel that they might not be welcome in that home. That is the same reason why boards should not hold meetings in places that are restricted to the public, that is prohibited under the sunshine law, like a country club that limits who can participate and who can go, you have to be a member of the country club or a guest, that is the type of place that people should not have meetings if they are a governmental agency because they are not open to everyone. Everyone should feel comfortable about coming into the public meeting.

Luncheon meetings and things like that is the same thing at a restaurant, not a good idea because people might feel that they have to buy a meal. This is perfect right here, open, a community center, what could be better.

Penalties we have gone over. There is no need to go into any more detail except I will mention the biggest sanction with the sunshine law is not the possibility of criminal prosecutions because that rarely occurs. It is the ----- that is in the outline that the courts say an action is taken in violation of the sunshine law is void *admitio* that means that if a board approves a contract at a meeting that is held outside the sunshine law the contract is void. Under that ruling when someone has sued to invalidate actions for violation of the sunshine laws, contracts have been set aside, purchases of real property have been set aside, hiring has been set aside, firings have been set aside, the list is endless because almost always in the cases that I have mentioned there is someone who doesn't like what the board did and that person if that action was taken in violation of the sunshine law they take the board to court and get it undone. The one thing the board can do if it ever finds out that it accidentally violated the sunshine law and this happens more often than you might think. For example somebody might forget to notice the meeting, this happens sometimes and the board doesn't know that the meeting hasn't been noticed in the public and some may meet anyway and when that mistake is discovered a board can go back and have a curative meeting and take action in the sunshine and resolve whatever dispute occurred so that is an option that people have.

One more issue I would like to discuss before we go is public records because it happens so often. The attorney general has looked at the issue and city commissioners tend to do this with facebook pages and this is a real problem under the sunshine law. Because if board members respond to any of the statements that a board member makes on his facebook page then

they are in violation of the sunshine law. The other problem that facebook has created is and the same is true with twitter using mechanisms like this is that all the communications relating to the board has to be saved as public records so that makes it extremely difficult because the only way most people know how do that and that is what Governor Scott did with all those tweets that he sent he used screenshots so that is extremely difficult and cumbersome and to me makes it very problematic to use those technologies until we have the technologies available to easily store and keep the communications relating to public business. I think that is such an unfortunate result as a matter of public policy because there is no question that these new technologies can help people to learn about things that are important to them far better than the usual ways of communicating through newsletters or whatever that might not reach people but it really is important to remember that these cities and counties that use these technologies that the messages all have to be saved as public records and that is hard. Sometimes a city attorney will call me about that and we will say and I'm sure most people I don't read all that stuff but I say you never know at a city level someone may say something about an employee for example if that employee files a lawsuit against the city that particular communication is going to be sought in the lawsuit because it is related to city business the city is going to be asked where is it. It is really problematic and for that reason I think it is something to be concerned about. Probably the best way it may be that the homeowners association can do a better job if you are interested in that area, people who are on a homeowners board probably can handle a facebook issue because they are not subject to the public records law as the CDD boards are. I know that is frustrating if any of you have thought of getting into that area for the use that I just mentioned but unless people are willing to do those screenshots and keep all those public records the same as you do with your emails then I don't know any other way to comply with the restrictions of these laws.

Are there any questions on the sunshine law? It seems like you are completely up to date.

Mr. Bridges asked what if I decide to have a website, my own, and maybe I started out and wasn't a board member and then become a board member of the CDD and I have this website and I cover an array of things maybe what happened at the last CDD board meeting, issues that might come up and maybe not intending that they would be issues for the next CDD board meeting but they are issues that concern the community, can I do that?

Ms. Gleason stated I think establishing a website could be done if it was a so called static website, in other words if you put things up there that are a static piece of information that you already have in another public record form I don't think that is a problem.

Mr. Bridges stated I'm not talking about as a CDD website, just as a member of the board.

Ms. Gleason stated that is a very good point. Board members cannot switch hats and go over to the public side, to your private side. This is such a problem I think particularly for people who are on a board because they are respected and known for their work within the community. It is a problem because once you are member of the CDD any issue that reasonably comes before the CDD is something that affects you in terms of the sunshine law and if it relates to what you are as a CDD member that is your official business, it is a public record. It is the subject of the communication that dictates whether or not it is a communication that you can't discuss with another board member or more importantly under the public record law, the subject of the communication is what dictates whether or not it needs to be kept as a public record. In your example if you do a newsletter that talks about what the CDD is up to and you put that on a website then that information is a public record because it relates to what you do as a CDD member even though it is also a concern to you as a homeowner. It is an interesting dichotomy but that is why I think the answer to your question I think people could have a website as long as it is static in the sense that it is not used for a chat.

Ms. White asked in other words if it were just commentary that a person was posting that would arguably fall under the one-way communication that you were talking about, however, if that person had a comment page then that could potentially be a problem if a board member responds.

Ms. Gleason stated right because I'm thinking the biggest issue in these situations is usually keeping those communications as a public record because almost always that is the problem, you put something on there and if you have a chat feature then people are going to say, what about this, what do you think about this, is the CDD going to look at this or what are we going to do about this problem, look at all the balls on the tennis court does anybody pick them up, those kinds of things. People just are going to do that I think what a board member is doing when they put together a web page like that is showing people in the community that they care, that is why I think it is so attractive to people so when they look at that they think this board

member isn't just on the CDD because it is some sort of governmental function unrelated to me and my concerns, they care and they want to do something to address my concerns. Of course the members of the community will ask questions and expect input but the problem is all those questions they may not realize that what they are saying is first of all a public record, they may think this is something confidential between them and the board member and then there is that problem. I'm really focusing more on the public records aspect of it. I think as far as the sunshine law what you have said is exactly right, the temptation is there just like we talked about with email for board members to respond back and that could be a problem. A static website where somebody posts news and a board member said if you are a member of the community and you have any questions, call me these are my office hours and I am accessible to you at any time. If you do that then there is no violation.

Mr. Brooks asked is there any other questions concerning the sunshine law portion of the presentation? If not we can move on to the public records portion section.

Mr. Bridges stated I want to make note for the record that Michael Lee who is one of our board members has been at the meeting.

Ms. Gleason stated public records, the same broad definition, all records made or received in the course of official business used to perpetuate, communicate or formalize knowledge that means if you wrote notes for your own use, everything else subject to disclosure unless the legislature has created an exception. A person does not have to make a request in writing in order to get a public record, they don't have to have a special interest, they can make a public record request as broad as they want but I doubt that we get very many public records requests. I think that for boards like this one the toughest role is because you don't have a staff per se you are responsible for keeping your public records so I think that your counsel has already told you that your emails which I'm sure you get keep in a separate folder so that if anybody ever wants them and you alert people in some fashion that what they write to you is not confidential if it is related to your role as a CDD member it is a public record. You may even want to have a disclaimer of that sort. As long as you do that and keep all the records if you have any questions about what is public or what is not going to your board counsel is the way to go. They can answer any questions you may have. Thank you so much.

Mr. Brooks stated thank you for taking your time and coming in.

Ms. Gleason stated I appreciate it, I am happy to do it.