

MINUTES OF SUNSHINE LAW WORKSHOP MEETING  
CAPITAL REGION COMMUNITY DEVELOPMENT DISTRICT

The Sunshine Law workshop meeting of the Board of Supervisors of the Capital Region Community Development District was held Thursday, August 13, 2009 at 6:30 p.m. at the Good Samaritan United Methodist Church, 3720 Capital Circle SE, Tallahassee, Florida 32311.

Present were:

Alan Hanstein  
Mary Lee Kiracofe  
Gil Ziffer  
Barry Brooks  
James Perry  
Joe Brown  
Alexis Lambert  
Norm Robertson  
Abe Prado  
Robert Berlin  
Residents

Ms. Lambert stated I have printed out the basic outline of the rules and regulations for doing business and I brought a bunch of copies in case you want to hand them out. The document that is being passed out to everyone is actually the transcript of a training video we have on our website, so you don't have to watch me on Youtube. The Sunshine Law is it often long and often people are afraid of. The thing about the Sunshine Law is that it is nothing to be afraid of unless you aren't following it. As CDD's you have opted into living in areas that have certain advantages as a community development district but with power comes great responsibility, so when you are acting as a board for these CDD's you are in essence acting like a government board or commission, which requires you to adhere to the standards of Chapter 286, Florida Statutes. Also, in your documents and your emails and your communication that you are making and receiving in connection with your business as a CDD board are public record, which requires you to do a number of things not the least of which is make these documents, emails, recordings, photographs, etc. available to the public for inspection and copying. First, be careful what you put in your emails in connection with official business because anyone can look at them. If you would not be comfortable having the contents of that email published in the

newspaper or pdf and posted on someone's blog perhaps you might care to rephrase it. Your business related email is public record, whether it is in your government account or whether it is in your aol account. You can't launder your email by discussing business on hotmail. You can't control what people say to you but you can control how you respond to it. Sending it to your personal account doesn't make it not public record anymore. When you get an aol account or in your hotmail account that has to do with business the thing to do is to reply and carbon copy your government account, so that you can archive it and have it ready for releasing it to the public at anytime. The big thing with public records is that it kills the conspiracy theory. If you have some person who is just convinced that there is this massive conspiracy to encroach upon his right to grow some plant on his front lawn and he demands your public records request of your email and you hand over 150 emails and 30 of them are from your private account it doesn't look like you are hiding anything because you already have all of your emails archived and ready to roll on a moments notice. It also carries into the Sunshine Law. Your meetings of your community development district have to be properly noticed and open to the public and minutes must be taken. You do not have to record the meetings. You do not have to do a verbatim transcript of the meetings but you do have to someone there who is taking an outline of what you all are discussing at that meeting. You need to pay attention to those minutes and make sure they are accurate and have them available to the public. Every town, whether it is a big town or small town, everyone has a gag line. There was a man in Hines County who lives and breaths for public records request in communities in that county. In many cases he is a professional litigate and suing various county boards and commissions for all sorts of things that offend him and sometimes he wins and sometimes he loses. The best way to deal with these things are to keep your proceedings and your documents open, properly noticed and ready to be accessed by anyone no matter who crazy they are. If you documents and your proceedings are open and transparent then you are covered. You have your bylaws, which were well crafted by trained professionals and I would advise that you follow those. Please do not ignore your attorneys. You all have hired a competent law firm and are paying that law firm good money to represent you, so abiding by the advice of counsel is always a good idea. If you are really suspicious of what they are saying then you can call us. We can only give you advice about the public records law and the open meetings law but we can help you on Sunshine issues. I'll tell you though that nine times out of 10 I'm going to agree with what Mr. Brown says because his instincts are good.

The Sunshine Law has a basic right of access to your meetings of your CDD board. They don't necessarily have to be residents. They don't have to be people that we like but they are allowed to attend your meeting because you are operating as a board in Florida. We have had the public records law on the book since 1909. We are actually going to celebrate its birthday in a couple of months. Our constituents take it very seriously. Disclosure and openness in Florida is a constitutional standard. All of our documents and all of our meetings are open, unless the Florida legislature creates a law that specifically closes them. Every exemption from the public records law and every exemption from the public meetings law is very narrow and designed for a very specific purpose. Say you have two members of your CDD board, your friends and your neighbors and you guys go to the fireworks show together then that is okay. It doesn't mean you can't socialize with your friends. It doesn't mean you can't go places and do things together. It means that you cannot discuss matters pending before the board. You can't talk shop outside of a publicly noticed meeting where minutes are taken and open to the public. You can talk about your children, etc. but do not talk about pending ordinances, don't talk about budget issues. When you are in your meetings with your laptop going your constituents get really annoyed when they can see instant messenger boxes reflecting off of your eyeglass lens. It makes them feel like you are not listening to them and it also makes them think that you are having side conversations with other board members. You're Sunshine Law and your Public Records Law is not just a statute that you can call somebody and get something taken off the books tomorrow if it annoys you. It is built into the Florida Constitution. The voters of Florida overwhelmingly approved it. You want to make sure you don't have these meetings at places that are restrictive. You need to not have it at a country club that requires people to be members. You should really not have meetings in restaurants because you don't want people to feel like they have to buy something in order to come to your meeting. You can't make people show identification. Private homes are not good for meetings to be held at. Your discussions are public. Your emails are public. You need to make sure that you are keeping your business in your business account and you're social in your social account. You need to be really careful on how you use staff. When you use your staff or third party as a liaison to skirt the Sunshine Law then you are all in trouble. The Sunshine Law still applies to you if you leave the state. Sometimes one person on the board does have the authority to speak or make decisions on behalf of the board and you need to be careful with that. My next point is penalties for breaking the Sunshine Law. Not only can

you be sued civilly but you face criminal charges. For certain kinds of public records violations you can spend up to a year in the slammer. There are fines and there is also just the general embarrassment of having screwed up big time and it always ends up in the newspaper. There were a handful of city council members who thought they were being really smooth by emailing back and forth and they were using code names for each other. There was a huge lawsuit because of it. When plaintiffs file against a public board of commission and they win you have to pay their attorney's fees, as well as your own. We have forms on our website and we have myflsunshine.com that has training videos and a sunshine manual.

Mr. Hanstein asked I am on the CDD here in Southwood and I attended a Homeowners Association meeting and a fellow supervisor attended the same meeting and during that meeting an issue came up concerning CDD responsibilities, so are you saying that we should feel restricted from being able to stand and say something at the Homeowner Association?

Ms. Lambert responded that would be an explanation of the duties of your board of commission. That is not you saying we are voting on the budget next week and talking to your fellow board member about it. Homeowners Association meetings are not subject to the Sunshine Law because they are not a government, board or commission but your CDD is.

Mr. Brooks asked one of the things I would like to do a week after our monthly meetings is highlight points of what was covered in our meeting and I blast email that out to people that are in Southwood and that does include some of our supervisors, so is that okay?

Ms. Lambert responded a unilateral is okay but be very careful with that. It is okay to email your other board members back and forth about scheduling a meeting because it is housekeeping stuff.

Mr. Brooks asked what if you get a request from a constituent on something and another supervisor is the lead supervisor in that area? Is it appropriate to then forward that email to the other supervisor or just have the other person contact the supervisor directly?

Ms. Lambert responded what I would do is forward it to your secretary and say this request would be appropriate for commissioner "x."

Mr. Hanstein asked can you talk more about pending?

Ms. Lambert responded it is about foreseeable business before the board. The Department of State has a really good fact sheet about what is and is not kosher in terms of

political activity on your government clock. You have to worry about perceivable pending business is what you have to worry about.

A resident stated I'm not on the CDD board but I have noticed that everything you are talking about seems to have an amazing chilling effect on conversation and that even routine stuff becomes very difficult to even think about let alone discuss.

Ms. Lambert stated that is the cost of doing business. When you hold an elector, an appointed position on one of these boards, your first amendment privilege in reference to conducting that business is a qualified privilege. The way the Sunshine Laws are set up it is a time, place and manner restriction. Your friends and neighbors who don't serve on public boards and commissions can talk whoever they want about whatever they want because that is there privileges. You want to error on the side of caution because if you are found to have an improper meeting then all of the action that you took at that improper meeting is considered void and you have to have that meeting all over again.

Mr. Hanstein stated we are looking at noticing as a possible way to save money.

Ms. Lambert stated there has been a lot of discussion that has come up in the last year or so about switching to internet only based notice but for statewide commissions and even county commissions. Every time that discussion comes up we have groups that go ballistic. We tend to forget nationwide statistics like 60% of baby boomers don't use the internet, less than half the African American community uses the internet, less than half the Hispanic community uses the internet. So internet based noticing is probably not going to happen.

Mr. Hanstein asked is posting a notice in a central location in a development a valid meeting notice?

Ms. Lambert responded yes. If you have a clubhouse or a corkboard those are fantastic places to put up your postings.

Mr. Ziffer asked how much detail should be on agendas?

Ms. Lambert responded it doesn't have to be incredible detailed. I think it needs to be a loose outline of what you are getting ready to discuss. If you are going to be discussing that is very controversial make sure you put that on the agenda, so you're not throwing something on them spur of the moment.

Ms. Kiracofe asked we have an agenda item for tonight called supervisors request and that is where we bring up other topics, so is that okay?

Ms. Lambert responded that is okay. You just don't want to take final action on something. If the supervisors request is to triple everyone's CDD's fees then you can't do that. When it comes to meetings the biggest complaint I get is that people don't feel like they have enough opportunity to be heard. I know when it is a really controversial issue that all 26 of those people will want to tell you the same thing but sometimes it is just better to take a deep breath and let them speak and be heard.