



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA PLANNING & ZONING BOARD MEETING SEPTEMBER 12, 2023

**8:30 AM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118**

Notice is hereby given to all interested parties that if any person should decide to appeal any decision made at the aforementioned meeting of the P&Z Board, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the City Clerk, City of Daytona Beach Shores, at least five working days prior to the meeting.

1. OPENING REMARKS

2. OTHER

A. Sunshine Law, Public Records, Voting Conflicts, & Quasi Judicial Hearing Training

3. BOARD COMMENTS

4. ADJOURNMENT



**PLANNING & ZONING BOARD AGENDA MEMORANDUM
SEPTEMBER 12, 2023 AGENDA**

TO: The Members of the Planning & Zoning Board

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Sunshine Law, Public Records, Voting Conflicts, & Quasi Judicial Hearing Training

SYNOPSIS:

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

SUGGESTED MOTION:

ATTACHMENT: 1. Training for Local Government Board Members - 9-12-23 - Paul Waters

Sunshine Law, Public Records, Voting Conflicts, & Quasi-Judicial Hearing Training for Local Government Board Members



Presented by:

**Paul Waters, Esq.
Partner, Vose Law Firm LLP**

September 12, 2023

Presentation Overview



Today, we'll be covering:

- ☐ **Government in the Sunshine (Open Meetings) Law**
- ☐ Public Records Law
- ☐ Voting Conflicts
- ☐ Quasi-Judicial Hearings

Government in the Sunshine (Open Meetings) Law



Scope of the Sunshine Law



- Provides right of access to governmental proceedings
- Applies to both elected and appointed boards
- General Rule – All meetings at which official acts are taken or public business is transacted or discussed shall be open and noticed to the public

Scope of the Sunshine Law



Sunshine Law applies to:

- ☐ Any meeting
- ☐ Between two or more members of the same board
- ☐ When discussing matters that may foreseeably come before that board

“Meeting” includes:

- ☐ City Commission meetings and workshops
- ☐ Telephone calls and text messages
- ☐ Emails and other written correspondence
- ☐ Informal discussions or deliberations

Scope of the Sunshine Law



There are three basic requirements :

- (1) Meetings of public boards or commissions must be open to the public
- (2) Reasonable notice of such meetings must be given
- (3) Minutes of the meetings must be taken, promptly recorded and open to public inspection

Scope of the Sunshine Law



- Advisory boards created pursuant to law or ordinance or otherwise established by public agencies are subject to the Sunshine Law, even though their recommendations are not binding upon the agencies that create them.

Scope of the Sunshine Law



- While a board member is not prohibited from discussing board business with staff or a nonboard member, these individuals cannot be used as a liaison to communicate information between board members.
- For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

Meetings



Meetings must be open to public:

- ☐ Location accessible to the public
- ☐ Adequate size
- ☐ May not discriminate against or restrict access to public

So, meetings subject to the Sunshine Law generally should not be held in private homes, or restaurants where an attendee may feel compelled to order a meal.

Meetings



- While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine Law does not allow boards to ban non-disruptive videotaping, tape recording, or photography at public meetings.

Meetings – Right to Public Comment



New section of Sunshine Law enacted in 2013 - Sec. 286.0114, Fla. Stat.:

- Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission.

Meetings – Right to Public Comment



New section of Sunshine Law enacted in 2013 - Sec. 286.0114, Fla. Stat.:

- The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if:
 - The opportunity occurs at a meeting that is during the decisionmaking process, and
 - is within reasonable proximity in time before the meeting at which the board or commission takes the official action.

Meetings – Right to Public Comment



New section of Sunshine Law enacted in 2013 - Sec. 286.0114, Fla. Stat.:

- This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.

Meetings – Right to Public Comment



Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

- ❑ Provide time limits for individuals to address the board.
- ❑ Prescribe procedures for allowing representatives of groups or factions to address the board, rather than all members of such groups, at meetings in which a large number of individuals wish to be heard.
- ❑ Prescribe procedures or forms for an individual to use to inform the board of a desire to be heard.
- ❑ Designate a specified period of time for public comment.

Penalties



- Any member of a board or commission or of any state agency or authority of a county, municipal corporation, or political subdivision who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree.
- An unintentional violation may be prosecuted as a noncriminal infraction resulting in a civil penalty up to \$500.

Penalties



- The Sunshine Law provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

Penalties



- Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law was void *ab initio*.

Presentation Overview



Today, we'll be covering:

- Government in the Sunshine (Open Meetings) Law
- **Public Records Law**
- Voting Conflicts
- Quasi-Judicial Hearings

Public Records Law



Scope of the Public Records Act



- Florida's Public Records Act provides a right of access to records of state and local governments as well as to private entities acting on their behalf.
- A right of access is also recognized in Article I, section 24 of the Florida Constitution, which applies to virtually all state and governmental entities including the legislative, executive, and judicial branches of government. The only exceptions are those established by law or by the Constitution.

Scope of the Public Records Act



- Section 119.011(12), Florida Statutes, defines "public records" to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Scope of the Public Records Act



- The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.

Scope of the Public Records Act



- All such materials, **regardless of whether they are in final form**, are open for public inspection **unless the Legislature has exempted them from disclosure.**
- There is no **“This is Really Embarrassing!”** exemption from the Public Records Act.

Electronic Records



- Email messages made or received by public officers or employees in connection with official business are public records and subject to disclosure in the absence of a statutory exemption.
- The Attorney General has advised that materials placed on an agency's Facebook page presumably would be in connection with official business and thus subject to Chapter 119, Florida Statutes.

Providing Public Records



- Section 119.07(1)(a), Florida Statutes, provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of public records or the custodian’s designee.”

Penalties



- A person who has been denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Ch. 119.

Penalties



- In addition to judicial remedies, Section 119.10(1)(b), Florida Statutes, provides that a public officer who knowingly violates the provisions of section 119.07(1), Florida Statutes, is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both.

Presentation Overview



Today, we'll be covering:

- ☐ Government in the Sunshine (Open Meetings) Law
- ☐ Public Records Law
- ☐ **Voting Conflicts**
- ☐ Quasi-Judicial Hearings

Voting Conflicts



Voting Conflicts



- Voting Conflicts Law codified in Section 112.3143

To Whom Does This Apply?



- ❑ “Public Officers,” that is, persons elected or appointed to hold office in an agency, including persons serving on an advisory body
- ❑ If you are a member of a collegial body, it applies to you.

What is a Voting Conflict?



Local elected or appointed officers may not vote on:

- Any measure which would inure to his or her special private gain or loss, or
- Any measure which a public officer *knows* would inure to the special private gain or loss of:
 - A principal by whom he/she is retained
 - A parent organization or subsidiary of a corporate principal by whom the officer is retained
 - A relative
 - A business associate

Who is a “Principal?”



- ☐ An employer
- ☐ A client of a legal, accounting, insurance, or other professional practice
- ☐ A corporation for which officer serves as a compensated director

Who is a “Relative?”



- Father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law
- Note: This definition is different than the similar definitions of “relative” in the anti-nepotism and gift laws

What is a “Business Associate?”



- ❑ A person or entity who is carrying on a business enterprise with the public officer, regardless of the form of the business
- ❑ Key Question #1– Are they engaging in a common commercial or entrepreneurial pursuit?
- ❑ Key Question #2 – Is this a current, ongoing business relationship?

“Special” Private Gain (or Loss)



- ❑ The voting conflicts law does not apply to all situations that might result in gain or loss to the official—the gain or loss must be “special”
- ❑ Requires an *economic* benefit or harm that will inure to the officer, his or her relative, business associate, or principal
- ❑ What should be considered?

Special Private Gain or Loss - Considerations



1. What is the size of the affected class?
2. What is the relative benefit or harm when compared to other members of affected class?
3. Is the gain or loss remote or speculative?
4. Is this merely a preliminary or procedural measure?

Size of the Affected Class

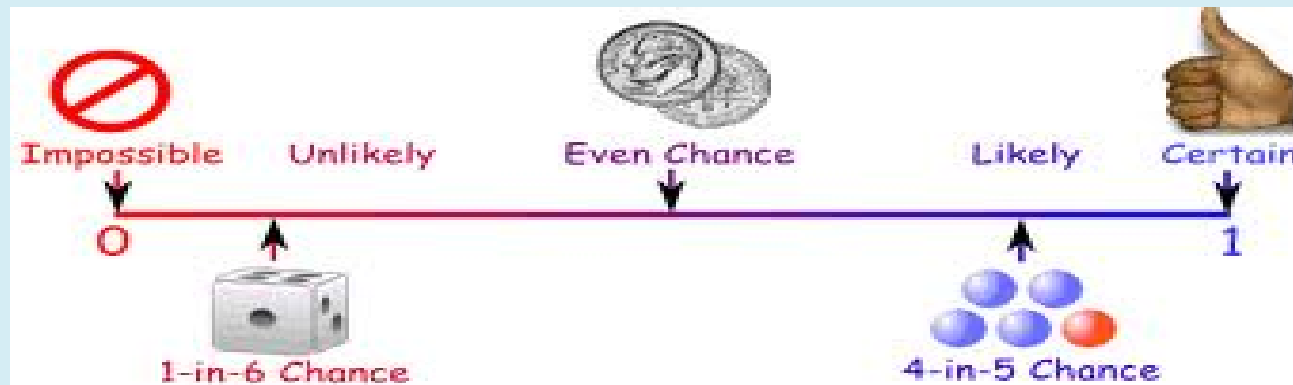
- “Special” gain will depend on size of class of persons who are similarly affected by measure
- ↓ class, ↑ chance of “special gain”
- ↑ class, ↓ chance of “special gain”



Remote or Speculative



- Is gain or loss so remote or speculative that the measure cannot be said to inure to officer's gain or loss?
- Will hinge on the facts of each individual case



Preliminary or Procedural

- Some measures are simply procedural or preliminary (to later actions that would result in actual gain or loss)
- Other measures, while procedural in nature, are substantive in effect and will inure to officer's gain or loss



If You Have a Voting Conflict, What Should You Do?



The officer must:

- ☐ (1) abstain from voting;
 - ☐ (2) disclose conflict orally prior to the vote; and
 - ☐ (3) file a memorandum (Form 8B) within 15 days.
-
- ☐ In addition, appointed local officers must publicly disclose the conflict before participating in discussion of the matter.

Exceptions



- ☐ If the “principal by whom you are retained” is a public agency, you may vote.
- ☐ If you are a commissioner of a community redevelopment agency or a one-acre, one-vote officer, you may vote.
- ☐ If measure affects your expenses and compensation *as provided by law*, you may vote.

Related Issues – Voting Requirement



- Section 286.012 requires members of a collegial body to vote when present at a meeting and prohibits abstaining, except when “there is, or appears to be, a possible conflict of interest . . .”
- “If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.”

Presentation Overview



Today, we'll be covering:

- ☐ Government in the Sunshine (Open Meetings) Law
- ☐ Public Records Law
- ☐ Voting Conflicts
- ☐ **Quasi-Judicial Hearings**

Quasi-Judicial Hearings



Quasi-Judicial Hearings



- Under Florida law, there are times when a board acts in a quasi-judicial manner. That is, the board acts similarly to how a judge might act when hearing a case.
- All matters that come before a board are either considered “legislative” or “quasi-judicial”. The County Attorney or County staff will typically mention that a particular matter is “quasi-judicial” since different rules apply as to those matters.

Quasi-Judicial vs. Legislative Matters



- Decisions that **set** general policy rather than implement or apply policy are **legislative**.
- Decisions that **apply** an adopted policy are **quasi-judicial**.

Examples of Quasi-Judicial Matters



- ☐ Variances
- ☐ Rezoning
- ☐ Site Plan approvals
- ☐ Special Exceptions
- ☐ Conditional Uses
- ☐ Development Approvals

Examples of Legislative Matters



- ☐ Amendments to the Comprehensive Plan
- ☐ Amendments to the Code of Ordinances
- ☐ Amendments to the Land Development Code
- ☐ Budget matters
- ☐ Many resolutions
- ☐ Purchasing decisions
- ☐ Vacation of rights of way
- ☐ Donations

Ex Parte Disclosures



- It is a best practice for board members to disclose ex parte communications at quasi-judicial hearings. At the beginning of a hearing, all board members should disclose any contacts or information the member has received prior to the hearing – including emails received, conversations had and site visits, or anything else which might have provided information outside of the meeting on the subject.
- Board members may NOT use information not disclosed at the hearing to be a basis for, or to effect, their vote at the hearing.

Overview of Quasi-Judicial Hearings



- ❑ Quasi-judicial proceedings are less formal than proceedings before a circuit court but are more formal than some other types of meetings and must follow basic standards of notice and due process.
- ❑ Decisions must be made based on **competent substantial evidence**.
- ❑ Only competent, substantial, fact-based testimony or evidence can be considered by the Board in its deliberation and voting on these items.
- ❑ You must apply the applicable law (comprehensive plan, LDRs) to the facts and evidence presented in the hearing.

What Can Be Considered in a Quasi-Judicial Hearing

- ❑ Pure speculation or mere opinion, not based on competent facts, cannot legally be considered by the board members in weighing their decision.
- ❑ Lay testimony with fact-based support may be considered competent and substantial evidence.
- ❑ **IMPORTANT** – A quasi-judicial hearing cannot be a “popularity contest”.
- ❑ The decision cannot be based on the number of people who are at the meeting (or who sent emails) who are either for or against a proposal.

If Contemplating Denial, State Reason on Record



- If the Board is contemplating a denial of a quasi-judicial matter, the maker of the motion, and others in support of denial, should state their reasons for denial on the record:
 - Competent substantial evidence presented in the hearing supporting denial.
 - Relevant law (comprehensive plan/LDR provisions) supporting denial.

Sunshine Law, Public Records, Voting Conflicts, & Quasi-Judicial Hearing Training for Local Government Board Members



Presented by:

**Paul Waters, Esq.
Partner, Vose Law Firm LLP**

May 17, 2023