BOARD OF SUMTER COUNTY COMMISSIONERS
Chairman - Steve Printz - District 5
Vice Chairman - Garry Breeden - District 4
2nd Vice Chairman - Al Butler - District 1
Doug Gilpin - District 2
Don Burgess - District 3

October 6, 2020
5:00 PM

PLEASE TURN OFF ALL CELL PHONES AND ELECTRONIC DEVICES
ANY PERSON WHO MAY FEEL THE NEED TO APPEAL A BOARD DECISION IS HEREBY NOTIFIED THAT IT WILL BE NECESSARY FOR YOU TO PROVIDE YOUR OWN VERBATIM RECORDING OF THE BOARDS MINUTES OR ANY PORTION THEREOF

Any person requiring reasonable accommodation at this meeting because of a disability or physical impairment should contact the County Administrator's Office, 7375 Powell Road, Wildwood, FL 34785 (352) 689-4400 at least two days before the meeting.

Meeting Location: The Villages Sumter County Service Center (7375 Powell Road, Room 102, Wildwood, FL 34785)

SPECIAL MEETING & WORKSHOP AGENDA

MEETING IS CALLED TO ORDER BY THE CHAIRMAN

1. MEETING IS CALLED TO ORDER BY THE CHAIRMAN
2. Public Forum
3. Working With The State Government (For Discussion Only)
   How an Idea Becomes Law - House View

   How an Idea Becomes Law - Senate View

   Documents:

   Sumter County Commission Briefing.pdf
4. Public Records, Open Meetings, Quasi-Judicial Process, And Policy Role Of The Board (For Discussion Only)

   Documents:

   Presentation Oct 6 2020.pdf
5. State Of Emergency Declaration Extension Sumter County Board Of County Commissioners (Staff Recommends Approval).

   Documents:

   State of Emergency Declaration Extension 20201006.pdf
6. ADJOURN

Sumter County Commission Briefing

I. Introduction of Capitol Solutions

A. Patrick Bell Lobbyist

Conduit between County, State and Federal Government and other entities and business interest. Information sharing throughout crisis times, such as hurricanes, COVID 19.

B. Short Summary of Legislative Process

Roughly 3,000 policy bills are filed each session, and about 4,000 budget bills are filed.

Filed bills are assigned to committees in the house and senate. If a bill passes the committees on both sides, it then goes to the floor of the House and Senate. The bill must be brought up and read three times on the floor of the house and senate before it can be voted on. Bills that are passed are then sent to the governor.

Florida's Governor has line item veto authority for the state budget. He can sign a passed bill, or let it become law without signature or veto it.

On average, only 180 to 300 bills pass both the House and Senate each session.

II. Services provided by Capitol Solutions

Scope of Basic Legislative & Governmental Representation:

- Assisting in development and prioritization of a list of key legislative agenda items with regard to which Capitol Solutions will actively represent the County by advocating for or against such items in a particular legislative session, and prepare pre-session reports and materials for dissemination to local legislative delegations;

- Monitoring, reviewing, and reporting on proposed legislation during the legislative session on items of interest to the County, including preparing written reports and/or summaries as requested by the County;

- Lobbying for or against particular bills or amendments as identified in conjunction with the County;

- Securing appropriations items and moving those items through the legislative and executive process;

- Drafting legislation and amendments along with "white papers" explaining such legislation and/or amendments;

- Developing coalitions and working with opposition to mediate workable solutions;

- Working closely with the executive branch and legislative leadership to advance the County's position on legislative matters;

- Provide feedback to the County Administrator on progress of legislative packages and notification of meetings that the Manager or County Commissioners need to attend to show strong support by local elected officials for critical issues that warrant such support;

- Provide any assistance to the County as needed on issues that benefit the County such as funding via state appropriations process;

- Offer assistance with issues relating to the federal government as requested by the County;

- Assist in any other related matters as requested by the County.

Attendance at Meetings & Conferences:

- Attend and participate in any city meetings and any committee or staff meetings of the County as requested,

- Attend and participate in all legislative delegation meetings,

- Attend and participate in any conferences deemed appropriate by County Administrator

III. Examples of Past Sumter County Issues.

Regional Planning Council: Passed language in a bill that would move Sumter out of the Withlacoochee Planning Council into the East Central Planning Council. This language allowed Sumter County to leave a non-productive unorganized planning council and be more appropriately placed in a council with Lake County with which it shares a vast amount of interest.

Marijuana Implementation: Sumter County was one of the very first to comply with the constitutional mandate.

Safe Haven Bill: A bill filed by resale websites (such as Craigslist) that would have mandated municipalities, to provide safe locations for exchange of goods. Location providers would have become liable for any safety issues that may have occurred during the exchange.

Small Cell Bill: Bill would have allowed wireless providers to attached small towers to existing infrastructure without following any local ordinances. Sen. Baxley amended this bill to include a carve out for the Villages, which have all underground utilities.

IV. Local Bills

Passed -

City of Webster Outdated Charter

Alcohol Sales off Premises

Local bills - Potential

Discuss new bill that expands alcohol sales at outdoor events and the need to expand geographic area in law. Must be heard at Delegation Meeting, must be Advertised in Local Paper 30 days prior to Legislative Session. House must have a certified original proof publication.

V. Appropriations Issues.

Lake Panasoffkee Restoration

Numerous Water Projects

Agriculture Complex Funding at Fairgrounds

Road Funding

VI. Assist Business

Assisted County Manager in effort to persuade Great Southern Pine to expand operation in Sumter County by assisting them with State Grants.

SUNSHINE LAW, PUBLIC RECORDS LAW, QUASI JUDICIAL PROCEEDINGS, & ROLE and DUTIES of the BOARD

Sumter County Board of County Commissioners

October 6, 2020

Presented by

The Hogan Law Firm, LLC

Agenda

- Sunshine Law
- Public Records
- Quasi Judicial Proceedings
- Role and Duties of the Board

Florida Sunshine Law

Open meetings requirements.

The Laws

- Article I Section 24 Constitution of the State of Florida
- Florida Statutes Ch. 286 – Open Meetings Law

Art. I, Sec. 24 of the Florida Constitution

- All meetings of any:
  - collegial body of the executive branch of state government; or
  - of any collegial public body of a county, municipality, school district or special district,
- at which official acts are to be taken, or
- at which public business of such body is to be transacted or discussed,
- shall be open and noticed to the public.

Fla. Stat. Ch. 286

- "Open Meetings Law" often referred to as the "Sunshine Law."
- Protects the public from "closed door" decision making and provides a right of access to governmental meetings.

Sunshine Law

- Applies to <u>all</u> meetings of:
  - Any board or commission of any state agency or authority; or of
  - any agency or authority of any county, municipal corporation, or political subdivision,
  - except as otherwise provided by law.
- At which official acts are to be taken.

Sunshine Law

- It requires that:
  - All meetings of the elected body be “open meetings.”
  - Reasonable notice of meetings be given.
  - Minutes of meetings be kept; and that
  - Meetings must be accessible.

Meetings

- Must be open to the public; and members of the public shall be given a reasonable opportunity to be heard on a matter before a board or commission.
- Private discussions between board members concerning such matters are prohibited.
- Members of the elected body may meet individually with individual members of other boards, but only in a “one on one” manner.

Meetings

- Staff meetings are not normally subject to the Sunshine Law.
- However, staff committees may be subject to the Sunshine Law if they are deemed to be part of the "decision making process" as opposed to traditional staff functions like fact finding or information gathering.
- Only the Legislature may create an exemption from the Sunshine Law (by a two-thirds vote).
- An exemption from the Public Records Law does not allow a board to close a meeting. Instead, a specific exemption from the Sunshine Law is required.

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.
- Effective October 1, 2013, Section 286.0114, F.S., provides, subject to listed exceptions, that boards must allow an opportunity for the public to be heard before the board takes official action on a proposition. The statute does not prohibit boards from "maintaining orderly conduct or proper decorum in a public meeting."

Notice Requirements

- Notice should contain the time and place of the meeting, and
- be posted at least 24 hours in advance of any public meeting, even in emergencies, and such meetings should be noticed in a newspaper of general circulation.

Reasonable Notice

- Reasonable notice is ample notice given to the public and press which reasonably and timely conveys all information necessary to enable them to choose to attend.
- "Reasonable" depends upon the circumstances of the matter.
- Meeting held at a facility or location inaccessible to the public or which discriminates due to presence of physical barriers are prohibited.

Minutes

- Minutes must be recorded and open to public inspection.
- Minutes are not verbatim--but a brief summary of the meeting's events. However, verbatim transcripts and/or verbatim audio recordings are encouraged. Audio recordings must be retained.

Voting Requirements

- Votes must be publicly taken
- No secret ballots
- Roll call vote not required
- All members <u>must</u> vote (unless they have a conflict of interest) and the minutes must so reflect by recording of the vote *or* counting a vote for each member

Sunshine Law Requirements

- General Interpretation Standard
  - Sunshine Law is broadly construed – exemptions narrowly construed

- No use of evasive devices
  - Circulation of written reports or emails
  - Single board member reporting *to each member* what the other members think regarding: an issue, including information relayed to administrative staff

Private Entities

- Private entities are generally not subject to the Sunshine law simply because they do business with public agencies.
- The Sunshine Law <u>can</u> apply <u>if</u>:
  - a public entity has delegated "the performance of its public purpose" to a private entity.
  - A private not-for-profit entity was created by statute or other legislative act.

Social Media and the Sunshine Law

- Facebook
- Twitter
- Linked-In
- Instant Messaging
- Text Messaging

Advisory Boards

- The Sunshine Law applies to:
  - Advisory Boards created pursuant to law or ordinances; or otherwise established by public agencies or a single public official
  - even though their recommendations are not binding upon the elected body.
- Examples: community issue advisory boards, employee or personnel advisory boards, planning advisory boards, etc.
- A limited exception has been recognized for fact-finding committees.

Penalties for Noncompliance

- It is a second degree misdemeanor to knowingly violate Sunshine Law
- Removal from position, permanent record of offense.
- Fine of $500 or less
- Reasonable attorneys' fees
- Declaratory and injunctive relief
- Action taken at illegal meeting invalid

Question: Under what circumstances may a county commission close a meeting to the public?

- A. When discussing matters involving individuals who have a right to privacy.
- B. On any disputed matter so long as the meeting is videotaped and recorded.
- C. Only if the Legislature has passed a law which exempts the meeting from the Sunshine Law.
- D. When discussing the approval of a negotiated union contract.

Florida Statutes 119

Public Records Requirements.

The Laws

- Article I Section 24 Constitution of the State of Florida
- Florida Statutes Ch. 119 – Public Records Law

Art. I, Sec. 24 of the Florida Constitution

- every person has the right to inspect or copy
- any public record
  - made or received
  - in connection with the official business
  - of any public body, officer, or employee of the state or persons acting on their behalf,
  - except with respect to certain exempted records.

Fla. Stat. Ch. 119

- More commonly known as the "Public Records Law."
- Creates a right of access to records made or received in connection with official business of a public body.

Public Records Law

Florida Statutes Chapter 119 defines Public Records as:

- All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material
- *Regardless of physical form or means of transmission*
- Made or received pursuant to law in connection with transaction of official business by the agency
- Not applicable to truly personal records

Public Records Law Application

- Public records law applies to entity records with the exception of documents associated with open audits.
- Applies to all types of records including letters, notes and e-mails, and text messages
- The law is broadly construed, and exemptions are narrowly construed

Public Records Exemptions

- Records which are exempt from public disclosure include:
  - Social Security numbers
  - Medical information
  - Personnel information prior to 7/1/95 and disciplinary records while discipline is in process
  - Certain information for designated public employees, law enforcement, firefighters, attorneys, human resource professionals, etc.

Public Records Generally

- Requests can be:
  - Verbal or written
  - Made by any person
- Entity has a "reasonable" time to respond
  - The Public Records Act does not contain a specific time limit.
  - The Florida Supreme Court has stated that the only delay in producing records permitted under the statute is the reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt.
- Entity can charge the cost of retrieving records to the requestor if the amount requested is voluminous; and an established policy exists

Public Records Generally

- Chapter 119 authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 81/2 inches or less. An additional 5 cents may be charged for two-sided copies.
- In addition, an agency may impose a reasonable special service charge for the actual cost of extensive labor and information technology required due to the large volume of a request.
- All public records must be retained in accordance with retention schedules approved by the Department of State, event if they are exempt from disclosure.

Public Records – What is not Required

- Does not require the creation of records or provision of records in the format requested
- Does not require turning records over on-the-spot to a requestor
- An agency is not required to comply with a "standing" request for records that may be created in the future.
- Does not require verbal explanation. An agency is not required to answer questions about the public records (other than information on how to obtain them, like the cost)

Public Records – What Not To Do

- Public records cannot be withheld at the request of the sender
- County may not require a requester to show a "legitimate" or "noncommercial interest" as a condition of access
- A request cannot be denied because it is "overbroad"
- Unless authorized by another statute, an county may not require that public records requests be in writing or require the requestor to identify himself or herself

Question: A construction industry licensing board member sends an email from his or her personal email account to a staff member with questions on the materials contained in the agenda. Which is correct?

- A. The email is not a public record because it was sent from the board member's personal computer.
- B. The email is a public record but the county administrator should not respond because the response would violate the Sunshine Law.
- C. The email is a public record.

Penalties for Noncompliance

- Criminal Penalties
- Civil Penalties
- Attorney's fees

Quasi Judicial Proceedings

What is a quasi-judicial proceeding?

- A proceeding conducted by an administrative or executive official that is similar to a court proceeding, e.g. a hearing. A court may review a decision arising from a quasi-judicial proceeding.

Legislative v. Quasi Judicial

- It is the character of the hearing that determines whether or not board action is legislative or quasi-judicial.
- Legislative actions may include adoption of non-land use ordinances, setting policies, approving the budget.
- Quasi-judicial actions are those in which the commission sits as a decider of facts and then applies the law based on the findings of fact. Typically, quasi judicial proceedings involve land use matters.

Legislative v. Quasi Judicial

- Rezoning actions which have an impact on:
  - On a limited number of persons or property owners,
  - On identifiable parties and interests,
  - where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and
  - where the decision can be functionally viewed as application of policy, rather than policy setting, are in the nature of quasi-judicial action.
- The process requires:
  - **Due Process**
  - **Essential Requirements of the Law**
  - **Competent Substantial Evidence**

Quasi Judicial Hearings

- There must be notice
- At which the affected parties are given a fair opportunity to be heard in accord due process
- The right to present evidence and to cross-examine adverse witnesses
- The judgment of the agency or board should be based upon the evidence presented at the hearing.

Quasi Judicial Hearings

- In the event of an appeal of an action resulting from a quasi-judicial hearing, a court's scope of review upon a petition for writ of certiorari is limited to determining:
  - Whether the board's actions accorded procedural due process;
  - observed the essential requirements of law; and
  - were supported by substantial competent evidence.

Quasi Judicial Hearings

- Quasi-judicial hearings are attended by more than just the parties, as more than just the parties may be affected.
  - Applicant, Intervening Parties, Experts and the Public.
- They are open to the public and subject to public input.
- In the case of rezoning hearings, neighboring landowners may attend and want to be heard on a proposed zoning change to a nearby property.
- A participant in a quasi-judicial proceeding is clearly entitled to some measure of due process.

Quasi Judicial Hearings - Ex-Parte Communication

- Ex-Parte Communications are communications with a board or commission member that occur outside of a public hearing with regard to any matter which may come before the board or commission for consideration.
- Generally speaking, Ex-Parte Communications are considered to be prejudicial.
- Section 286.0115, Florida Statutes, provides a safe haven to public officials who have been exposed to ex parte communications. This section requires that public officials disclose ex-parte communications in order to assure that an adverse party has the opportunity to confront, respond, and rebut any such disclosures so as to prevent any appearance of impropriety.

Quasi-Judicial Hearings – Ex Parte Communications

- Therefore, any person not otherwise prohibited by statute, charter provision, or ordinance may have any ex parte communication with any local public official, on the merits of any matter on which action may be taken by any board or commission, on which the local public official is a member, and that the presumption of prejudice is removed ***as long as the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record prior to final action on the matter.*** Further, this includes a written ex parte communication as long as the writing is made part of the record before final action on the matter. Section 286.0115(1)(c)2, Florida Statutes (2019).

Quasi Judicial Hearings – Ex Parte Communications

- Pursuant to 286.0115(1)(a), a county or municipality may adopt an ordinance, charter provision or resolution that removes the presumption of prejudice from ex parte communications with public officials by establishing a ***process*** to disclose the communication.
- Sumter County has adopted such an ordinance.

Quasi Judicial Hearings – Evidentiary Standard

- Competent substantial, fact based evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred.
- "We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion".

Quasi Judicial Hearings – Evidentiary Standards

- Competent, substantial fact-based evidence.
- Generally speaking, hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support the burden of establishing competent substantial evidence, unless it would be admissible over objection in civil actions.
- Mere opinion testimony, not supported by facts, is generally not sufficient to be considered competent substantial evidence.

Fact-based Evidence v. Opinion or Speculation

- In an application for special use permit for an engine repair shop, neighbors voice their concerns about noise, or environmental concerns. How would you decide what is opinion versus what is fact based on evidence? What "evidence" might you want the applicant or the intervening party to present?

Role, Duties and Authority of the Board

Role, Duties and Authority of the Board

- The power and duties of a county commissioner are set forth in Fla. Stat. Chapter 125
  - The legislative and governing body of a county shall have the power to carry on county government.
  - Specific delineated duties are outlined in the statute.
- Each action of the board of county commissioners ***shall be taken by resolution, ordinance or legally binding document*** as appropriate under local, state or federal law, approved as to form by the county attorney, except that ***approval of administrative matters may be by motion adopted and recorded in the minutes.*** Section 2-33, Sumter County Code.

Rules of Order and Procedure of the Board

- The rules of order and procedure applicable to the commission are set forth in the Sections 2-23 to 2-38 of the Sumter County Code of Ordinances.
- 2-23 - Regular meetings / 2-24 – Special Meetings
- 2-25 - Agenda
- 2-26 – Presiding Officer
- 2-28 - Quorum
- 2-29 – Rules of Debate
- 2-31 – Addressing the Board
- 2-37 - Procedure for handling allegations, accusations and complaints against county employees.

County Administrator

- The position of county administrator is established pursuant to the provisions of the County Administration Law of 1974 [F.S. § 125.70 et seq.], which law is adopted by the county. Section 2-51, Sumter County Code.
- Each county to which this part applies shall appoint a county administrator, who shall be the ***administrative head of the county and shall be responsible for the administration of all departments*** of the county government which the board of county commissioners has authority to control pursuant to this act, the general laws of Florida, or other applicable legislation. Fla. Stat. 125.73

County Administrator

- Is responsible for the administration of all departments responsible to the board of county commissioners and for the proper administration of all affairs under the jurisdiction of the board.
- To that end, the administrator may, by way of enumeration and not by way of limitation, have the following specific powers and duties as set forth in Fla. Stat. 125.74.
  - Administer and carry out the ***directives and policies of the board*** of county commissioners, and
  - enforce all ***orders, resolutions, ordinances, and regulations of the board*** to assure that they are faithfully executed.

Questions?

If you have questions about the content of this presentation,

please feel free to contact me:

Sumter County Attorney

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P. 352-799-8423

STATE OF EMERGENCY DECLARATION EXTENSION
SUMTER COUNTY BOARD OF COUNTY COMMISSIONERS

WHEREAS, the Coronavirus Disease 2019 (COVID-19) continues to pose an imminent health risk to the residents in Sumter County; and

WHEREAS, Florida State Statutes, Chapter 252 authorizes the Chairman of the Board of County Commissioners to declare that a Local State of Emergency exists; and

WHEREAS, the Chairman of the Board of County Commissioner declared a Local State of Emergency on March 17, 2020, and extension every seven days since then; and

WHEREAS, Florida State Statutes, Chapter 252 limits each Declaration to seven (7) days; and

WHEREAS, the Sumter County Board of County Commissioners supports the Executive Orders of Governor DeSantis that are more restrictive than prior orders of Sumter County and finds that the anticipated conditions created by COVID-19 pose a threat to the health, safety, and welfare of the people of Sumter County.

THEREFORE, BY CONSIDERATION AND INCORPORATION OF THE ABOVE RECITALS, IT IS HEREBY ORDERED:

1. That the Comprehensive Emergency Management Plan remain activated through the duration of the State of Florida Declaration of a State of Emergency.

2. All public officials and employees of Sumter County are hereby directed to continue to exercise the utmost diligence in the discharge of duties required of them for the duration of this Local State of Emergency and in the execution of State and Local emergency orders, regulations, and directives.

3. The Emergency Management Director shall continue functioning as the County Coordinating Officer and shall provide overall coordination for the response to this emergency in Sumter County.

4. This Declaration shall remain in effect for seven days unless extended or dissolved.

Signed: _____ Date: October 6, 2020
Steve Printz, Chairman
Board of County Commissioners

Attest:

By: _____ Date: October 6, 2020
Caroline AlRestimawi
Clerk to the Board, Deputy Clerk