



SUNSHINE LAW, PUBLIC
RECORDS:
DIGITAL COMMUNICATIONS
& SOCIAL MEDIA

Agenda

- Sunshine Law
- Public Records
- Quasi-Judicial Hearings

Sunshine Law – Open Meetings

- All meetings of any of any collegial public body of a county
 - at which official acts are to be taken, or
 - at which public business is to be transacted or discussed,
 - shall be open and noticed to the public.
- This includes any discussion or deliberation, formal or casual, between two or more elected members about a matter on which the elected body might foreseeably take action.
- This includes workshops, telephone conversations, e-mail communications, seeing each other in places or gatherings around town.

May Not Use Evasive Devices

- May not use any of the following to circumvent discussion or dialogue at a meeting:
 - Using a third party non-board member to serve as a conduit or to facilitate conveying information
 - Circulation of written reports from one Commissioner to others;
 - Circulation of emails by and between Commissioners;
 - Single board member reporting *to each member* what the other members think regarding an issue;
 - Single board member reporting to any other member information relayed to administrative staff.

Public Records Law

- Every person has the right to inspect or copy:
 - any public record
 - regardless of form
 - which is used to perpetuate, communicate, or formalize knowledge
 - 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 exempt or confidential records.

Public Records Requests - Generally

- Requests may be:
 - verbal or written
 - made by any person
 - Anonymous as a requestor is not required to identify themselves
 - For any purpose – a requestor need not disclose why they are making the request, and they are not required to show a “legitimate” or “noncommercial interest” as a condition of access;

Public Records Requests - Generally

- Public records cannot be withheld at the request of the agency.
- A request cannot be denied because it is “overbroad” – although the agency County may discuss clarifications to a request;
- An agency may not deny a request on the basis that the record is in the possession of another, e.g. contractor or a Commissioner’s own social media account or email account.

Public Records Requests - Generally

- An agency is not required to comply with a “standing” request for records that may be created in the future.
- An agency is not required to answer questions about the public records (other than information on how to obtain them, like the cost)
- Agency is not required to provide a verbal explanation
- An agency is not required to create a new record or the provision of records in the format requested

Public Records Requests - Generally

- Does not require turning records over on-the-spot to a requestor
- Entity has a “reasonable” time to respond –
 - 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.

Public Records Requests - Generally

- Entity can charge the cost of retrieving records to the requestor if the amount requested is voluminous; and an established policy exists;
- 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.

Public Record Retention

- All public records must be retained in accordance with retention schedules approved by the Department of State, even exempt or confidential records.
- Record retention requirements also apply to:
 - Voicemails
 - Text messages
 - Email communications
 - Social media content

Digital Communications & Social Media

- Sunshine Law and Public Record Implications for:
 - Facebook
 - Posts, Comments, Friends/Blocks, Messages
 - Twitter
 - Tweets, Re-tweets
 - Instant Messaging/Chats
 - Communications
 - Text Messaging

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



LAND USE HEARINGS
PUBLIC HEARINGS v. QUASI
JUDICIAL PROCEEDINGS

Nature of the Hearing

- It is the character of the hearing that determines whether or not board action is legislative or quasi-judicial.

Legislative Proceedings

- A legislative decision is one in which a law is made.
 - Adopting or amending an ordinance
 - Adopting or amending comprehensive plan – policy guidance that governs land development planning.
 - Setting and establishing public policy from which the County operates.
- The Board has broad decision-making latitude in legislative matters
 - Legitimate public purpose
 - Rational basis.
- Public hearings are held to allow for public input.
- Comprehensive Plan amendments are always legislative actions, but they must meet minimum state statutory requirements set forth in Chapter 163, Florida Statutes.

Quasi Judicial Proceedings

- A quasi-judicial proceeding is similar to a court hearing.
- The Governing Body sits as a decision-maker.
 - It considers an application for action via a petition.
 - It accepts sworn testimony.
 - It is presented with documentary evidence.
 - It may hear from experts
 - It takes public input
- The action sought by the applicant must comply with duly-adopted legislative requirements.
- The Governing Body then compares the facts of the petition as presented at the hearing with the contents of the Comprehensive Plan and Land Development Code requirements, and renders a decision as to the petition.

Quasi Judicial Proceedings

- Rezoning actions which have an impact on:
 - a limited number of persons or property owners,
 - 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 an application of adopted policy.

Quasi Judicial Hearings

- There must be notice
 - General Legal Notice
 - Specific Notice to Potential Intervening Parties (500 ft.)
- Affected parties are given a fair opportunity to be heard in accord with due process;
- The parties, and intervenors, have a right to present evidence and to cross-examine adverse witnesses;
- The judgment of the board is based upon the evidence presented at the hearing.
- Ex Parte Communications are of concern.

Quasi Judicial Hearings

A court's scope of review upon a petition for writ of certiorari with respect to Rezoning matters is limited to determining:

1. Whether the Board's actions accorded procedural due process;
2. Whether the Board observed the essential requirements of law;
and
3. Whether the Board's actions were supported by substantial competent evidence.

Competent Substantial Fact Based Evidence

- 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”
- 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.

Ex-Parte Communications

- 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.
 - Pursuant to 286.0115(1)(a), a county 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.
 - See Ord. 2015-14 codified at Sec.2-2 of the Sumter County Code.

Ex Parte Communications

- Disclosure requires:
 - subject of the communication
 - identity of the person, group, or entity with whom the communication took place
 - That it be made part of the record prior to final action on the matter
 - If it is a written record, the writing is disclosed and made part of the record before final action on the matter.

Actions of the Board in Quasi Judicial Hearings

- Approval
 - The applicant has complied with the requirements of the law (Code);
 - There is competent, substantial fact-based evidence to support the requested action; and,
 - The Board may require conditions of approval provided such conditions are rationally related to meeting the requirements of the law.
- Denial.
 - The applicant has not complied with the requirements of the law;
 - There is insufficient evidence to support the request action;
- Motions for Consideration
 - Special Master Recommendations provide findings of facts, and conclusions of law, so a motion to adopt the recommendation from the Special Master has built in findings on which the Board may rely.
 - If the Board takes action contrary to staff or the Special Master's recommendation, then the Board must clearly articulate the factual basis for the action of the Board.