

1                                   **LELY COMMUNITY DEVELOPMENT DISTRICT**  
2                                   **NAPLES, FLORIDA**  
3                                   **Board of Supervisors Workshop**  
4                                   **January 16, 2019**  
5

6 A workshop of the Supervisors of Lely Community Development District was held on  
7 Wednesday, January 16, 2018 at 1:00 p.m. at the LCDD Maintenance Building.  
8

- 9 **SUPERVISORS PRESENT:**     Gerry Campkin, Chairman  
10                                   William Lee, Vice Chairman  
11                                   Kenneth Drum, Secretary  
12                                   Harold Ousley, Treasurer  
13                                   Anne Marie Bularzik, Supervisor, Assistant Secretary  
14 **ALSO PRESENT:**           Neil Dorrill, Manager, Dorrill Management Group  
15                                   Kevin Carter, Operations Manager  
16                                   Tony Pires, District Counsel  
17                                   Lenore Brakefield, Assistant District Counsel  
18                                   Freddie Bowers, Director of Community Patrol  
19  
20

21 **WORKSHOP: SUNSHINE LAW**  
22

23 In response to Dr. Bularzik’s request, Mrs. Brakefield gave a brief synopsis of her background in  
24 the area of representation of governmental entities as well as public records and Sunshine Law.  
25

26 Mrs. Brakefield began, noting that government in the sunshine is something that every  
27 governmental entity in the State of Florida is subject to. There is an entire, separate  
28 presentation on public records, and this workshop will focus on the Sunshine Law.

29 If there is ever a question regarding an action related to government in the sunshine, Mrs.  
30 Brakefield suggested that the best course of action would be to contact Mr. Pires, who would  
31 call the State Attorney for an opinion if necessary.  
32

33 The idea behind government in the sunshine is that all actions taken by governmental entities  
34 should be open to the public to prevent any kind of wrongdoing or any appearance of it.  
35 Florida has taken a broad interpretation of open government, and everything is supposed to be  
36 transparent, for everyone to see.  
37

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5 The origins of the Sunshine Law are from the Florida Constitution, which deals with notice to  
6 the public and open meetings. The Florida Statutes, Chapter 286, then get into considerable  
7 detail of what is required for those two items.

8 Minutes of the meetings must be kept and promptly recorded, and are then open to public  
9 inspection. Open meetings, notice and the availability of the meeting minutes are then the  
10 three basic requirements of the Sunshine Law.

11

12 Dr. Bularzik asked about the Presidents’ Council, consisting of the various HOAs in the  
13 community, and there are several members of the CDD Board that sit on this council. It is not a  
14 public meeting, so there is no notice given to the public. LCDD business is generally not  
15 discussed, although at times there are updates given. Dr. Bularzik asked if there were any  
16 issues with these meetings. Mrs. Brakefield noted that Mr. Pires would address these sorts of  
17 cloudy issues shortly.

18 However, the scope of “sunshine” is where two or more members of the same board convene  
19 to discuss some matter which will conceivably come before the board for action. Any time that  
20 happens, no matter what the context is, the Sunshine Law applies. This relates to any board or  
21 commission of any state agency or authority of any agency, county, municipal corporation or  
22 political subdivision. As elected members, these rules would apply to the Presidents’ Council  
23 and any appointed committee as well.

24

25 Fact finding, or research committees making no decisions are outside of the scope of the  
26 Sunshine Law, and staff committees, whose members are hired, are also outside the scope.  
27 Any time an entity is delegating to another group what they are supposed to do, the  
28 requirements of the Sunshine Law will transfer with that delegation. The State Judiciary and  
29 Legislature are outside the scope. Non-incumbent candidates are also outside the scope.

30

31 Sunshine laws do not apply if the officials are members of different entities, unless one of the  
32 officials has been designated with power to act on behalf of his or her entity. An example  
33 would be if a LCDD Board member attended a County Commission meeting and talked to a  
34 commissioner, that would not be subject to the Sunshine Law, as they are not on the same  
35 board. If a Board member did address the commission on behalf of the whole Board, then that  
36 would be an exception, and the Sunshine Law would apply.

37

38 Mr. Campkin noted that there was a group of people looking into the turnover from Stock, and

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5 he attends these meetings on behalf of the LCDD Board. He added that this is not a public  
6 meeting, but a private one, and wondered if he was breaking the Sunshine Law. Mr. Pires  
7 indicated that it was his understanding that Mr. Campkin was a liaison between the Board and  
8 the Turnover Committee, and that he was not taking any action but merely listening to what  
9 the members had to say then reporting back to the CDD Board.

10 Mrs. Brakefield added that if what he does is report to the Board in the Sunshine during a  
11 regular meeting, and discussion is held at that time, then that would be all right.

12 Mr. Ousley added that in attending the Master Association meetings he has heard many  
13 incorrect statements, and it is a tricky area, as he wished to correct them, but he did not.

14 Mr. Pires suggested that it would be appropriate to say that attending a meeting of this kind as  
15 a liaison precludes any action or discussion by that person other than advising the Board in an  
16 open meeting of what transpired.

17 Dr. Bularzik briefly mentioned the Traffic Committee which may have Board members attending  
18 and discussing traffic needs and concerns. Mr. Pires again noted that the Traffic Committee is  
19 not Board appointed, and the issue is to the extent that the items that come before that  
20 committee could reasonably and foreseeably come before the Lely Board for action, then if  
21 there are two or more members of the Board in attendance, the meeting would then need to  
22 be noticed and minutes taken that will be available to the public.

23

24 Mr. Pires discussed an issue that had been brought up earlier about First Amendment rights,  
25 noting that there are court cases that say that you can have a certain amount of regulation on  
26 those rights, depending upon whether a legitimate public interest is being served. Mr. Pires did  
27 not find any cases where an elected official challenged it on the basis of the First Amendment,  
28 but he did find two newspaper articles where an individual who was not a board member was  
29 being criminally prosecuted for acting as a conduit. In those two cases the individuals who  
30 raised their First Amendment rights prevailed.

31 Mr. Pires stated, as he has done in the past, that he is not advising any of the Board members  
32 to be the test case to be criminally prosecuted and raise the First Amendment. It is in the  
33 Florida Constitution that it is in the interest of transparency to make sure that the public sees  
34 everything that is going on, with no deal making outside of the Sunshine. The overlying legal  
35 principle is you presume that a statute is constitutional, and you must work under that  
36 presumption.

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38 Mr. Drum spoke to the idea of being a conduit, mentioning his own experiences with people

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5 acting in this regard, and the limitations on this issue. Mr. Pires noted that occasionally what  
6 happens with the Sunshine Law is that you have a statute, and a Constitutional provision that  
7 may be six lines long. Then you have the Courts that construe and interpret it, the Attorney  
8 General who provides opinions, and so you get a body of case law that either expands or  
9 contracts what the statute means.

10 Under the Sunshine Law, a meeting can consist of any form of communication, such as texts,  
11 Twitter, exchanges on Facebook, Snapchat, or Instagram, or any form of communication  
12 between members of the same committee or board. A conduit is when, for instance, a person  
13 acting in that regard goes to Commission A, who indicates what they would like to see, and  
14 then the conduit goes to Commission B, who expresses their interest, and the conduit then  
15 indicates how Commissioner A feels about it, which is also called a daisy chain.

16

17 Dr. Bularzik asked for clarification on the Traffic Committee attendance, whether it would be  
18 more appropriate if members of this Board rotate back and forth as to who will attend. Mr.  
19 Pires indicated that this would be the cleanest way to do that. Dr. Bularzik then noted that a  
20 summary of the meeting goes out to the whole group, and Mr. Pires noted that these minutes  
21 in document form going out to everyone is fine.

22

23 Mr. Pires also advised the Board that the guiding principle of the Sunshine Law is to avoid all  
24 evasiveness, and the Sunshine Law should be strictly construed to avoid having meetings  
25 outside of the Sunshine. Mr. Pires takes a very conservative approach to this, as the penalties  
26 are harsh, and can include criminal prosecution, fines, and actual voiding of action by the  
27 Board. Mrs. Brakefield added that staff meetings are not within this scope, unless a liaison is  
28 being used as a conduit between Board members, and a staff member is being used to avoid  
29 the Sunshine Law.

30

31 Mrs. Brakefield talked about what types of meetings are covered, indicating that visiting  
32 another Board meeting is not covered under the Sunshine Law, unless there are two or more  
33 members of your board present. Meeting with your alternate, and community forums, are not  
34 covered unless there are two or more officials discussing issues to come before the Board.  
35 Mr. Pires noted that if there is any doubt in a Board member's mind on this issue, to call him for  
36 clarification.

37

38 Mrs. Brakefield reiterated that all written communications are covered under the Sunshine

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5 Law, which would include replying to all Board members to an email from Mr. Pires, as that  
6 would be a communication out of the Sunshine. Fact finding information is also covered under  
7 this Law, and an example was given of two Board members who were found guilty of violating  
8 the Law when they went together to look at a building that related to Board issues, as the  
9 appearance of corruption must be avoided.

10 Workshops and investigative meetings come under this Law, while closed door attorney/client  
11 sessions do not. HOAs are not governmental entities, and do not come under this Law. Mr.  
12 Pires noted that it was important in these cases to make sure that another CDD Board member  
13 is not included in an email,, so that Board member does not reply accidentally, which has been  
14 known to happen.

15

16 Shade meetings are closed door meetings and privileged communication between the Board  
17 and their attorney and they are not covered under the Sunshine Law. They are held for two  
18 very limited purposes in pending litigation, to have a settlement discussion or litigation strategy  
19 and litigation budget discussion. The Conditions for the shade meeting were briefly discussed,  
20 to include a request from counsel for the meeting made at a regular meeting, and the date,  
21 time and place would be noticed. Discussions would have to be strictly confined to the above  
22 noted items. The entire session would have to be reported by a certified court reporter, and  
23 the transcribed notes are available for public inspection once the litigation has been completed.  
24 Usually these meetings start with an open session and then the closed door session is  
25 announced, and those who can attend are strictly delineated.

26

27 The next part of the Sunshine Law is Notice and Agenda, and reasonable notice is required,  
28 while an agenda is not required but is encouraged.

29 Mr. Pires noted that there is a secondary Statutory scheme outside of the Sunshine Law that  
30 outlines the notice requirements that apply to special districts. As it relates to the location, it  
31 cannot discriminate or unreasonably restrict access.

32 As it relates to participating in a meeting telephonically, there is an Attorney General opinion  
33 that states you can participate this way, if there are extraordinary circumstances. Mr. Pires  
34 normally has the Board vote on whether or not they approve of a particular Board member  
35 participating in that way, and if the Board does approve, then that approval would allow it.

36

37 In response to Mr. Drum's question, Mr. Pires indicated that a violation of the Sunshine Law is a  
38 misdemeanor for the first offense. There is also a non criminal prosecution where a civil

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5 penalty can be handed out, as well as removal from office.

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7 The last part of the Sunshine Law is that minutes must be taken at all times, and can either be  
8 verbatim or a summary of discussions and actions taken at the meeting. Those minutes are a  
9 public record and are open for inspection by anyone who wishes to read them.

10

11 As noted above, failure to comply with the Sunshine Law in any of these areas can result in  
12 criminal penalties and removal from office, non criminal penalties, attorneys’ fees and civil  
13 actions for injunctive or declaratory relief. Mrs. Brakefield indicated that she would be happy  
14 to email examples of these penalties to any interested Board member.

15

16 Mr. Pires added that a resource for information is a group called the First Amendment  
17 Foundation which is funded by a number of media groups. They work closely with the Florida  
18 Attorney General, and they publish a Sunshine manual.

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20 Both legal counsel were thanked for their presentation, and a five minute break was taken.

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