

1                   **LELY COMMUNITY DEVELOPMENT DISTRICT**  
2                                   **NAPLES, FLORIDA**  
3                   **Workshop Meeting of the Board of Supervisors**  
4                                   **September 15, 2021**

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6     A workshop of the of Lely Community Development District Board of Supervisors  
7     was held on Wednesday, September 15, 2021, at 1:00 p.m. at the LCDD  
8     Maintenance Building, Naples, Florida.

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10    **SUPERVISORS PRESENT**

- 11    William Lee, Chairman
- 12    Anne Marie Bularzik, Vice-Chair
- 13    Kenneth Drum, Supervisor (via Speakerphone)
- 14    Gerry Campkin, Supervisor
- 15    Frank LoMonte, Supervisor

16    **ALSO PRESENT**

- 17    Neil Dorrill, Manager, Dorrill Management Group
- 18    Kevin Carter, Operations Manager
- 19    Tony Pires, District Counsel
- 20    Lenore T. Brakefield, Assistant District Council
- 21    Freddie Bowers, Director of Community Patrol
- 22    Christopher Dorrill, Field Manager

23    **WORKSHOP - SUNSHINE LAW REFRESHER**

24    Mrs. Brakefield advised those present and asked if they have questions  
25    regarding an issue with the Sunshine Law, to contact their law office and speak  
26    with herself or Mr. Pires.

27    The goal of Government regarding the Sunshine Laws is transparency. While it is  
28    very cumbersome at times, the State of Florida has decided that it is in the best  
29    interest of the public and must be adhered to. The law provides the right of  
30    access to government proceedings of public board and commissions at the state  
31    and local levels, and the CDD fits in that category.

32    The Florida Constitution, Article 1, Section 23B defines what is open to the  
33    public, and essentially sets out the basis for the Sunshine Law. The Florida  
34    Statutes, Section 286.011 also provides the basis, and gets into detail on what it

1 applies to. Basically, it indicates that all meetings need to be open to the public,  
2 and any action taken by the Board that will affect the public needs to take place  
3 in an open meeting. Notice must be given to the public of this meeting, and  
4 minutes must be taken so the public is informed.

5 The rule applies to any meeting, formal or casual, of two or more members of the  
6 same board or commission, to discuss any matter on which foreseeable action  
7 will be taken by the public board or commission. This is an important item for the  
8 CSS Board members to be aware of, and it applies in all circumstances, even if  
9 two board members run into each other on the street, no business can be  
10 discussed that may have foreseeable action taken on it by the Board. Mrs.  
11 Brakefield noted that this is why Mr. Pires advises using an abundance of  
12 caution, and not to discuss anything with each other that relates to Lely CDD  
13 business outside of the public meeting.

14 Mr. Pires added that they are always conservative about the Sunshine Law as  
15 the penalties are so heavy. He noted as well that anything the Board has  
16 discussed will come back, be it a year or the next meeting, which is why they  
17 take this conservative approach.

18 The Sunshine Law applied to elected and appointed boards, including advisory  
19 boards. Additionally, you cannot delegate authority to avoid the Sunshine Law,  
20 and a committee that is appointed to look deeply into an issue is also subject to  
21 it. Outside the scope of this law is a fact-finding committee, and the difference  
22 according to the Florida Law with this committee is that it is a committee that is  
23 not making decisions or recommendations, but only compiling facts to provide to  
24 another group of people who are going to make the recommendations and  
25 decisions. So just gathering facts is outside the scope, but again, this can be a  
26 fine line, and Mrs. Brakefield advised that if there is the slightest questions about  
27 it, counsel should be contacted to advise them.

28 Staff committees are outside the scope; however, board duties cannot be  
29 delegated to staff to avoid the Sunshine Law. Private organizations are outside  
30 the scope, with the caveat that they are not created by a public entity which  
31 delegated the public entity's governmental function or decision-making process  
32 to the private organization. The State judiciary and legislature are outside the  
33 scope of the Sunshine Law.

34 In response to Dr. Bularzik's question, Mrs. Brakefield advised that anyone can  
35 have a discussion with Mr. Carter about CDD issues but cannot use him as an  
36 intermediary to communicate any information.

1 This is an overreaching law, and members elect, and candidates would be  
2 incumbent to follow these restrictions.

3 The Sunshine Law does not apply to officials or members of different entities  
4 unless they have been delegated to act on behalf of his or her entire entity. The  
5 appointed person would then have to notice a meeting where they would bring  
6 information to the entity that they were representing. Again, this is a fine line, and  
7 Mr. Pires added that it would not apply to a liaison with no decision-making  
8 authority who was just an observer.

9 The overriding theme of this section is that delegation does not avoid the  
10 Sunshine Law.

11

12 Mrs. Brakefield listed the types of meetings that the exception covers,  
13 including meetings of a Board in which two members of the governmental entity  
14 board are present, as long as they don't sit together or talk to each other to avoid  
15 the impression of impropriety.

16

17 Mr. Lee asked if a CDD Board member could ask questions in an HOA meeting if  
18 other CDD Board members are present. Mr. Pires reiterated that the important  
19 thing was that there was no interaction between the CDD Board members.

20

21 Community forums are excepted, unless there are two or more Board members  
22 discussing issues that may come before the Board. If it is an issue that has  
23 nothing to do with the CDD, that would be allowable.

24 In response to a question from Mr. Lee, Mr. Pires advised that he does at times  
25 advertise the fact that members of a certain advisory committee may be present  
26 at the CDD Board's meeting.

27 Mr. Pires then reminded the Board members that any time there is discussion  
28 with two or more regarding an issue reasonably expected to come before the  
29 CDD Board, it must be advertised, the public must be made aware of it and  
30 allowed entrance, and minutes must be taken.

31

32 As it relates to emails, for instance, if Mr. Pires sends an email to the entire  
33 Board, he notes Do Not Respond in bold letters, as any response is now a  
34 communication between Board members that should have been noticed, had in  
35 an open meeting, where minutes are taken.

36 Text messages work the same way, and group texts cannot be responded to.  
37 Fact finding trips cannot be done, as a discussion between Board members  
38 could easily be had, which is in violation of the Sunshine law.

39

1 The only exception to investigative meetings is when an attorney/client session is  
2 held, which can be done in the shade, as it is referred to. There are several  
3 requirements associated with this type of meeting, which can be held in only two  
4 cases, one being if there is pending litigation, to have settlement discussions or  
5 to discuss strategy.

6 These closed-door sessions are held in a specific meeting, during an open  
7 meeting. An announcement is made indicating that a closed-door session is  
8 required and why, and then it is set for the following regularly scheduled meeting.  
9 During the next meeting, an announcement will be made that they are now going  
10 to take a break and go into a closed-door session, and everyone with the  
11 exception of the Board is asked to step out for its duration. A court reporter will  
12 be present taking verbatim minutes, from which a transcript will be made. When  
13 the litigation is settled, those notes are then open to the public. The attendees  
14 are limited to the Board members, the attorney, and the Court Reporter. When  
15 the closed-door session is done, the regular meeting is reopened. Mr. Pires  
16 added that this session only applies to litigation that is pending.

17  
18 The Statute requires that reasonable notice must be given of the meeting, with a  
19 posted agenda that indicates what will be discussed at that meeting. There are  
20 times when an agenda will change, but the public cannot be misled as to what is  
21 going to be discussed.

22  
23 The facility where a meeting is held must be large enough to handle the expected  
24 attendees; it must be reasonably located for those who wish to attend and there  
25 must be access for wheelchairs.

26  
27 With the advent of COVID, the issue of those people who cannot physically  
28 attend but wished to be able to hear what takes place was looked at closely, and  
29 there is an exception that Mr. Pires located that allows participation telephonically  
30 by Board members if there are extraordinary circumstances, such as a death in  
31 the family. Normally a quorum must be established physically, but during COVID  
32 the Governor suspended that requirement, which can be done only in very limited  
33 circumstances.

34  
35 The minutes of the meeting must be transcribed promptly and open for public  
36 inspection.

37  
38 Failure to comply with the Sunshine Law can result in criminal penalties, removal  
39 from office, non-criminal infractions, and attorney's fees. If a member of the  
40 public wishes to, civil actions can be filed for injunctive or declaratory relief.

1 Unfortunately, there are people looking for mistakes in order to file these actions,  
2 and then collect attorney's fees for them.

3

4 Mrs. Brakefield noted that most of the time these things are not done with the  
5 intention of violating the law, but by mistake. But everyone should be aware of  
6 the penalties they will face. If any improper action is taken where a decision is  
7 made, a public meeting, properly noticed and minutes taken, must be held to  
8 correct that improper action.

9

10 Mrs. Brakefield noted that she is happy to provide links to any Board member  
11 who is interested in looking into this issue more fully. She added once more that  
12 the biggest thing to be aware of is that District business must be discussed at an  
13 open meeting, or with Mr. Pires, herself, or Mr. Carter, and not with each other.

14

15 In response to a question from Dr. Bularzik, Mrs. Brakefield advised that if a  
16 resident asks a question about LCDD business, any Board member can talk to  
17 that resident. If, however, a resident comes to a Board member and advises that  
18 they heard from another Board member some information, then that Board  
19 member must advise that they cannot be told or discuss what another member  
20 said as it violates the Sunshine Law.

21

22 The Workshop was then closed at 1:27 p.m. and a five-minute break was taken.