

1 **LELY COMMUNITY DEVELOPMENT DISTRICT**
2 **NAPLES, FLORIDA**
3 **MINUTES OF THE WORKSHOP MEETING OF THE BOARD OF DIRECTORS**
4 **August 19, 2020**
5

6 A workshop for the Board of the Lely CDD was held on Wednesday, August 19,
7 2020, at 1:00 p.m. at the LCDD maintenance building, Naples, Florida.

8
9 **SUPERVISORS PRESENT:** Gerry Campkin, Chairman
10 William Lee, Vice-Chairman
11 Harold Ousley, Treasurer
12 Kenneth Drum, Secretary
13 Anne Marie Bularzik, Assistant Secretary

14 **ALSO PRESENT:** Neil Dorrill, Dorrill Management Group
15 Kevin Carter, Operations Manager
16 Tony Pires, District Counsel
17 Lenore Brakefield, Assistant District Counsel
18 Freddy Bowers, Director, Community Patrol
19 Christopher Dorrill, Field Manager

20
21 Florida Sunshine Laws
22

23 Mrs. Brakefield advised the Board that a few things have been updated from the
24 previous year in this presentation to reflect some law changes as well as those
25 due to COVID. The most important thing to remember is to call counsel if there is
26 any question on Sunshine issues. The Florida League of Cities also has free
27 consultations for attorneys, and Board counsel can consult with them if
28 necessary.

29 The overriding theme of the presentation is the necessity of all communication
30 being in the Sunshine. The basic rule provides for the right of access to
31 governmental proceedings of public boards and commissions at the state and

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5 local level. Everything must be done in the open so that there is no perception of
6 corruption related to the business of the District being discussed or
7 correspondence received. Notice must be given to the public of open meetings,
8 which is the only place issues related to the District can be discussed. The statute
9 related to the Sunshine Law is Chapter 286, Section 286.011.

10

11 Dr. Bularzik noted that she is able to discuss HOA issues with her other HOA Board
12 members on a one to one basis, and wondered why the law was different for
13 CDDs. Mrs. Brakefield advised that an HOA is not a governmental entity, or body,
14 and along with condo associations, they have a different set of rules.

15

16 Mr. Campkin asked about the overlap when two CDD Board members may belong
17 to the same HOA. Mr. Pires noted that the Sunshine Law states that you cannot
18 have a meeting with members of the same Board related to items that were
19 reasonably foreseeable to come before the CDD Board. That would preclude Mr.
20 Drum from having a conversation with Mr. Ousley about District business. If it is
21 purely HOA business, then there is not a problem. If the HOA business bleeds over
22 into the CDD, then that is a violation.

23

24 Dr. Bularzik noted that Mr. Campkin and Mr. Drum are not on her Presidents
25 Council meeting email list as items related to the CDD could possibly be discussed
26 at one of the Council's meeting. Mr. Pires suggested that if there was ever a
27 question of the HOA and CDD matters coming together at one of these Council
28 meetings, then that information should be sent to the manager of the CDD as a
29 public record, and the manager will then send it to the Board members. Mr.
30 Dorrill is the custodian of all the public records.

31 As has happened in certain districts, if a husband and wife are both on the same
32 CDD Board, they are subject to the Sunshine Law.

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5 Mrs. Brakefield advised of the three basic requirements under the Sunshine Law.
6 It states that meetings must be open to the public, reasonable notice of meetings
7 must be given, and minutes of the meeting must be taken and promptly recorded.

8

9 Again, it was noted that if two or more members from the same board convene to
10 discuss some matter that will foreseeably come before the board for action, then
11 the Sunshine Law applies. Difficult situations can arise, for instance, if two or
12 more are outside of a meeting and someone asks about what the CDD is doing,
13 any discussion would be in violation of the Sunshine Law.

14

15 Mr. Drum asked about the annual meeting of the HOA Associations, if a CDD
16 Board member is present and a question arises directed to them about what the
17 CDD is doing about a particular item, if that question can be answered.

18 Mr. Pires advised that anything about the CDD can be addressed at those board
19 meetings, as long as there is no interaction between any other CDD Board
20 member who happens to be present. The same thing would apply at meetings
21 with the Master Association. If these meetings are noticed, and there is someone
22 taking minutes, and if it was noticed that CDD members may be present and may
23 participate, then that is permissible.

24

25 The catchall rule where the Sunshine Rule applies is to any board or commission
26 of any state agency or authority, or of any agency or authority of any county,
27 municipal corporation or political subdivision. It applies to elected or appointed
28 boards, even if it is an advisory board.

29 Outside the scope are fact finding committees, and the First Amendment
30 Foundation says that fact finding is not making a recommendation, but just
31 presenting facts. Staff committees are also outside the scope, as long as there is
32 no delegation of the District's duties.

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5 Members elect and incumbent candidates are included, but non incumbent are
6 outside the scope as they don't have access to information.

7

8 The Sunshine Law does not apply to the Boards of different entities, unless one of
9 the officials has been delegated power to act on behalf of his or her entire entity.

10 ***Mr. Pires' comments inaudible.

11 If one person is talking to a staff member, for example, that is allowed, but two
12 people doing the same is not.

13 The Sunshine Law cannot be avoided by delegating.

14 Meetings of other boards where a CDD board member is a visitor are not a
15 problem, but if a conversation with another official ensues, that is a violation.

16

17 Dr. Bularzik asked about a situation where more than one CDD Board member is
18 present at an HOA meeting, and the question is asked about a particular action of
19 the Board which has already occurred. In that case, it is permissible for one CDD
20 member to advise those present of the CDD Board's actions on a particular issue,
21 with no conversation or comment from the other CDD Board members.

22 Mrs. Brakefield added that any CDD Board members attending these sorts of
23 meetings should not sit together, in order to avoid any appearance of an
24 improper act.

25 Mrs. Brakefield noted that is comes down to two or more officials discussing
26 issues that could reasonably come before the Board is a violation. Mr. Pires
27 advised that a conservative approach be taken with any matter that has come
28 before the Board and been decided, as it could reasonably be brought up again,
29 and should not be discussed outside of the Sunshine.

30

31 Mrs. Brakefield then defined the meaning of the word Meeting in this context. An
32 email sent to multiple people would be considered a meeting, because it is a
33 communication. Texts and any other sort of written communication between two

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5 Board members would be a violation. Social media interaction is a violation; fact
6 finding trips where two or more Board members were involved would be a
7 violation. Investigative meetings would be a violation as well.

8 The only meetings allowed are what are called shade meetings, which involve
9 counsel meeting with the Board on active litigation, with settlement discussions
10 and/or strategy. The public must be advised at a meeting that counsel needs to
11 discuss settlement or strategy with the Board related to litigation that they will do
12 in a closed meeting. The entire meeting is recorded by a court reporter and a
13 transcript is prepared which is made a public record at the conclusion of the
14 litigation. A date and time must be given beforehand to the public that this
15 meeting will take place, and it can only be called by an attorney. Participation in a
16 closed meeting is limited to counsel, the Board, the CEO and the court reporter.
17 The transcript will be considered public record immediately if anyone other than
18 these individuals is allowed to be present.

19

20 Mr. Pires added that certain types of services, such as security services, where
21 bids are being reviewed, could be closed, but they would have to be recorded and
22 a transcript made of the minutes. In these cases, at some point in time the public
23 will be able to see these transcripts.

24 As it relates to items brought before the County Commission for their decision on
25 an issue that will affect the CDD, that would be permissible as there are two
26 different boards.

27

28 Reasonable notice requirements were discussed, and the agenda of a meeting is
29 required to be posted on the website. Reasonable notice can depend upon the
30 situation, and a meeting held in the event of an emergency, such as a hurricane
31 coming quickly, can be noticed in less time than would be normal.

32 A new ruling is that the agenda can be amended without violation as long as the
33 amendment is not used to cloud consideration of a matter. Also, the backup

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5 material for the agenda no longer needs to be posted on the website seven days
6 before the meeting.

7 Additionally, in the event of an emergency, the HOAs and the media are notified
8 that this meeting is being called to address an urgent situation, and the actions of
9 the Board at that meeting are then ratified at the next public meeting.

10

11 Facilities must be appropriate for a meeting. If there is a topic that has drawn a
12 great deal of public interest and there may be a large crowd in attendance, the
13 CDD must hold the meeting at a venue that can accommodate it. Otherwise, this
14 could be considered a violation as access would be restricted. Meetings must also
15 be held locally where interested citizens can easily attend.

16

17 There are extraordinary circumstances where someone can attend a meeting
18 telephonically, and there is an opinion on what constitutes that circumstance.
19 Physical presence at a meeting can be suspended the by Governor by executive
20 order in certain emergency situations, which was seen recently with the COVID
21 pandemic.

22 These orders are usually for one month, and Mr. Pires noted that the recent
23 executive order related to virtual participation at a meeting due to COVID has
24 been extended to October first.

25

26 The minutes of a meeting must be promptly recorded, either verbatim or by
27 summary, and should be available within a reasonable period of time after the
28 meeting.

29 Failure to comply with these rules depends on whether it was a mistake or a
30 flagrant violation, and could result in a lawsuit. Criminal charges have been
31 brought after flagrant violations of the laws regarding public meetings, and if a
32 mistake is made it should be addressed as soon as possible.

33 Failure to comply with the law and actions taken which could be determined to be

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5 invalid are things that may be tricky in certain circumstances, and if a Board
6 member feels that they may have made a mistake, they should contact Mr. Pires
7 or Mrs. Brakefield, and it will have to be addressed at the next meeting in the
8 Sunshine. If any action was taken because of any invalid communications, they
9 will have to be undone and new votes taken.

10 If the Sunshine Law is violated, the item has to be presented again at the next
11 open meeting, with all the presentations, analysis and public comment before it is
12 voted upon.

13

14 There were no further questions, and Mrs. Brakefield and Mr. Pires were thanked
15 for the presentation.