

Overview of Florida's Sunshine Law, Quasi- Judicial Procedures, and Florida Land Use Law

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Florida's Sunshine Law

- Florida Constitution Article I, Section 24
 - Ensures public access to public records and public meetings
- Chapter 119 of the Florida Statutes – Florida's "Public Records Act"
 - Provides a duty to produce public records for inspection
- Chapter 286 of the Florida Statutes – Florida's "Government in the Sunshine Law"
 - Requires meetings of government to be open to the public

Florida's Constitution

- Article I, Section 24 – Access to public records and meetings
 - (a) **“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 records exempted** pursuant to this section or specifically made confidential by this Constitution”
 - (b) **“All meetings** of any collegial public 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 . . . except with respect to meetings exempted** pursuant to this section or specifically closed by this Constitution.”

Florida's Public Records Act

- Section 119.07, Florida Statutes
 - (1)(a) “Every person who has custody of a public record **shall permit the record to be inspected and copied by any person** desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”
- Section 119.071, Florida Statutes provides for the general exemptions from inspection or copying of public records.

Statutory Exemptions to Florida's Public Records Act

- 119.071(1), Florida Statutes
 - Agency Administration
- 119.071(2), Florida Statutes
 - Agency Investigations
- 119.071(3), Florida Statutes
 - Security and Firesafety
- 119.071(4), Florida Statutes
 - Agency Personnel Information
- 119.071(5), Florida Statutes
 - Other Personal Information

Florida's Government in the Sunshine Law

- Section 286.011, Florida Statutes
 - (1) “**All meetings of any board or commission** of . . . any county . . . , except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, **at which official acts are to be taken are declared to be public meetings open to the public at all times**, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.”
 - Provides for an exception to this rule for what is called a “shade” meeting. 286.011(8), Fla. Stat.

Florida's Government in the Sunshine Law

- Generally, any “meeting” between at least two public officials must occur in the Sunshine
- *Transparency for Florida v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018)
 - Improper for city attorney to poll city council members about firing city manager
 - However, subsequent full public hearing could cure a previous Sunshine Law violation
 - Also discusses what is reasonable notice for an issue to be heard at a public meeting
- *Everglades Law Cntr., Inc. v. S. Fla. Water Mgmt. Dist.*, 2019 WL 4458737 (Fla. 4th DCA, Sep. 18, 2019)
 - Shade meeting to discuss mediated settlement agreement
 - Water Management District did not disclose transcript of shade meeting asserting that the transcript of that meeting contained confidential mediation communications
 - Appellate court discusses how the shade meeting led to the creation of a public record

Shade Meetings

- Section 286.011(8), Florida Statutes
 - Any agency or authority of any county, municipal corporation, or political subdivision and the chief administrative or executive officer of the governmental entity may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party
 - The entity's attorney must advise that he or she seeks advice
 - The subject matter of the meeting can only be for "settlement negotiations or strategy sessions related to litigation expenditures."
 - The entire session has to be recorded by a court reporter, which would be released as a public record upon the conclusion of the litigation
 - Reasonable notice of the meeting must be given to the public and identify everyone in attendance
 - The session must commence at an open meeting where the shade meeting is announced, and at the conclusion of the shade meeting the meeting will then be reopened.

Penalties

- Any member of a board or commission who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. A second-degree misdemeanor is punishable by a fine of up to \$500.00 and/or a term of imprisonment not to exceed 60 days.
- A public officer who violates the Sunshine Law is also guilty of a noncriminal infraction, punishable by a fine not exceeding \$500.00.
- The Governor may also suspend an elected or appointed public officer who is indicted or informed against for any misdemeanor arising out of official duties. If found guilty, then may be removed from office.
- Includes an award of attorney's fees against the board or commission.
- The action taken by the board or commission in violation of the Sunshine Law is now void *ab initio*, but can be remedied by holding a later, properly noticed public hearing.

Quasi-Judicial Hearings

- A board acting in a quasi-judicial capacity **applies** the existing land development regulations or comprehensive plan provisions to specific facts of a development application.
- Procedure for a quasi-judicial hearing:
 - Identify the applicable regulation
 - Identify the competent substantial evidence in the record that demonstrates compliance or non-compliance with the applicable regulation
 - Discuss how the facts (the evidence in the record of the public hearing) as applied to the applicable law result in compliance or non-compliance with the applicable regulation
 - Clearly state the conclusion: compliance or non-compliance

Quasi-Legislative Hearings

- A board acting in a quasi-legislative capacity is not applying facts to existing law, rather it is **creating new law** by changing what the Comprehensive Plan says
- Changing the future land use map or changing the text of the Comprehensive Plan creates a new general rule of policy that all future development will have to comply
- Amendments to comprehensive plans are legislative decisions even if there is a companion rezoning application and even if it really only affects a single piece of property
- Not appealed like quasi-judicial actions

Review of Quasi-Judicial Hearings

- After making a decision at a quasi-judicial hearing, that decision is reviewable by a Florida Court
- Generally, the review will be by filing a Petition for Writ of Certiorari in the Circuit Court
- In reviewing a Petition for Writ of Certiorari, the Court will analyze the following:
 - (1) whether the local government provided the parties with procedural due process in the quasi-judicial hearing;
 - (2) whether the local government observed the essential requirements of law; and
 - (3) whether the decision made by the local government was supported with competent substantial evidence

Procedural Due Process

- Generally, procedural due process requires notice and the opportunity to be heard at the hearing
- Other components of procedural due process, depending on the factual situation could be the following:
 - The right to be informed of all of the facts upon which the decision is based
 - The right to an impartial decision maker
 - The right to present evidence and in some instances the right to cross-examine witnesses
- Section 286.011 of the Florida Statutes
 - “The board or commission must provide **reasonable** notice of all such meetings.”
 - No express standard *See Rhea v. City of Gainesville*, 574 So. 2d 221, 222 (Fla. 1st DCA 1991)

Essential Requirements of Law

- Generally means that the quasi-judicial decision maker followed the correct law.
- *Haines City Comm. Dev. v. Heggs*, 658 So. 2d 523 (Fla. 1995)

Competent Substantial Evidence

- Expert testimony
 - Testimony by lay persons is generally not competent substantial evidence on matters which are technical in nature (i.e., home values, traffic impacts, environmental impacts, flooding, etc.)
 - Can be written or oral testimony
 - Testimony by lay persons may be competent substantial evidence if the testimony concerns first-hand knowledge of facts or matters over which the lay person has particular or specialized knowledge
 - Lay person testimony about the character of an area is competent substantial evidence.
- Irrelevant evidence
 - Evidence that has no bearing on the question of compliance or non-compliance with the applicable regulations

Ex Parte Communications

- A hearing can only be fair if the evidence is known to all of the parties
- Ex parte or “off the record” contacts are the receipt of information by the quasi-judicial decision maker outside of the formal hearing process
- Florida law considers ex parte contacts to be **presumptively prejudicial** and will likely violate the due process rights of the applicant or other interested third parties. *Jennings v. Dade Cnty.*, 589 So. 2d 1337 (Fla. 3d DCA 1991).

Florida Land Use Law

- Federal Law – 5th Amendment to the United States Constitution (made applicable to the States through the 14th Amendment to the United States Constitution)
 - Takings claims
 - Due process claims
- Florida Law
 - Article X, Section 6 of the Florida Constitution
 - Chapter 70, Florida Statutes, (The Bert Harris Act)
 - Chapter 163, Part II, Florida Statutes (The Growth Management Act)
- Local Government Law
 - County Comprehensive Plan
 - County Land Development Regulations
 - Court review

Federal Law

- 5th Amendment, United States Constitution
 - “No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”
- Takings
 - Physical takings
 - Total regulatory taking
 - A taking involving a local government denial of all “investment backed expectations”
 - An unconstitutional land use exaction
- Due Process
 - Regulation must “substantially advance legitimate state interest”

Florida Law

- Article X, Section 6, Florida Constitution
 - (a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner
 - (b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another
 - (c) Private property taken by eminent domain pursuant to a petition to initiate condemnation proceedings filed on or after January 2, 2007, may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature
- Chapter 70, Florida Statutes (The Bert Harris Act)
 - Local regulations may not “inordinately burden” real property
- Chapter 163, Part II, Florida Statutes (Growth Management Act)
 - Must have comprehensive plan

Local Government Law

- Comprehensive Plan
 - Long-range planning document outlining where certain kinds of land uses will be located
 - Florida Law requires the creation of a comprehensive plan
 - Florida Law only allows a comprehensive plan to be amended twice a year (with a few limited exceptions)
 - Amendments must be internally consistent with the rest of the comprehensive plan
 - Amendments are “legislative” decisions, NOT quasi-judicial, which results in great deference from the courts
 - Florida Law requires that the comprehensive plan be reviewed and evaluated every 7 years

Local Government Law (cont.)

- Land Development Regulations
 - Carry out the specific requirements for use of land
 - Setbacks
 - Buffering
 - Lot sizes
 - Uses by right, conditional uses, uses allowed by special exception

Questions?
