



**MEETING WORKSHOP  
SESSION OF THE PLANNING ADVISORY BOARD WORKSHOP  
CITY OF KISSIMMEE  
CITY HALL, COMMISSION CHAMBERS  
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054  
WEDNESDAY, JUNE 04, 2025 AT 6:00 PM**

**MEETING CALLED TO ORDER Members Present:** Board Member Robert Bussiere, Board Member Alex Alemi, Board Member Yolanda Bernard, Board Member Rebeca Marin, Board Member Lynda Roth

**Staff Present:** Brenda Ryan, Planning Manager, Cristian Arias, Senior Planner, Kalanit Oded, Assistant City Attorney

**Members Absent:** Board Member Aaron Sabino, Board Member Diana Marrero-Pinto

**1. MEETING CALLED TO ORDER**

Chairman Robert Bussiere called the meeting to order at 6:03pm.

**2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE**

After a Moment of Silence, Chairman Robert Bussiere led the audience in the Pledge of Allegiance

**3. MINUTES**

**4. OLD BUSINESS**

**5. NEW BUSINESS**

**6. PUBLIC HEARINGS**

**7. DISCUSSION**

7A. Staff Presentation – Kalanit Oded, Deputy City Attorney

Deputy City Attorney Kalanit Oded gave a presentation on the Sunshine Laws and Roberts Rules.

**8. HEAR CHAIRMAN AND BOARD MEMBERS**

**9. ADJOURNMENT**

Board Member Rebeca Marin made a motion to Adjourn. Board Member Alex Alemi seconded the motion.

AYE: Board Member Marin, Board Member Alemi, Board Member Bussiere, Board Member Roth, Board Member Bernard

NAY: None

Motion to Adjourn Passed 5 - 0.

There being no further business to come before the Board, Chairman Robert Bussiere

adjourned the meeting at 7:22pm.

A handwritten signature in dark ink, appearing to read "John P. Bussell", written over a solid black horizontal line.

Board Chairman

ATTEST:

A handwritten signature in dark ink, appearing to read "Kayla Smith", written over a solid black horizontal line.

Board Secretary

In accordance with Florida Statute 286.0105, any person wishing to appeal any decision made by the Planning Advisory Board with respect to any matter considered at such meeting or hearing will need a record of the proceedings, and for such purposes may need to ensure that a verbatim record of the proceeding is made, which includes the testimony and evidence upon which the appeal is made.

In accordance with Florida Statute 286.26, persons needing assistance to participate in any of these proceedings should contact the office of the City Clerk at (407) 518-2309 prior to the meeting.

# **PLANNING ADVISORY BOARD TRAINING**

**Kalanit Oded, Deputy City Attorney  
City Attorney's Office  
City of Kissimmee**

# Overview of Topics

- ▶ **Process (Pre-con meetings, DRC, etc.....)**
- ▶ **Sunshine and Public Records Law**
- ▶ **Quasi-Judicial Proceedings**
- ▶ **Parliamentary Procedures and Voting Conflicts**
- ▶ **Dual Office-Holding**

# **Sunshine Law**

## **Fla. Stat.§ 286**

- ▶ **What is the scope of the Sunshine Law?**
  - ▶ **Sunshine Law provides a right of access to governmental proceedings of public boards at the state and local levels.**
  - ▶ **Sunshine Law applies to advisory boards, as well as decision-making boards.**
    - ▶ **Only City board that may be exempt are purely fact-finding boards.**
  - ▶ **Sunshine Law does not apply to staff unless working on a decision-making committee (e.g., DRC)**

# Sunshine Law

## Fla. Stat. § 286

- ▶ If the communication between two members of the same board involves a matter *that will likely come before the board*, the public has a right of access to the communication.
  - ▶ Tip: Do not hit “reply all” to board emails.
- ▶ Two members of the same board may attend social events together, provided that matters which may come before the board are not discussed.
- ▶ Advisory boards may conduct inspection or fact-finding trips provided that matters which may come before the board are not discussed.

# Sunshine Law

## Fla. Stat. § 286

- ▶ **Three basic requirements to satisfy Sunshine:**
  - ▶ **Meetings must be open to the public.**
  - ▶ **Reasonable notice of such meetings must be given.**
  - ▶ **Minutes of the meetings must be taken and promptly recorded.**

# **Sunshine Law**

## **Fla. Stat. § 286**

- ▶ **Meetings open to the public:**
  - ▶ **A physical quorum must be present, barring an Executive Order permitting a virtual quorum.**
    - ▶ **Once a physical quorum is present, other board members may participate and vote remotely if their physical absence is due to exigent circumstances.**
  - ▶ **Policies by the City or an individual board may be adopted to limit the amount of time members of public can speak or designating a representative of a group or a special interest to speak.**
  - ▶ **Shade meetings may occur under limited circumstances and are generally not applicable to the PAB.**

# Sunshine Law

## Fla. Stat. § 286

- ▶ **Sunshine Law applies to telephone, electronic or written communications between two or more board members.**
- ▶ **Sunshine kicks in before, during and after scheduled meetings.**
- ▶ **Sunshine applies even if a quorum is not present and official action cannot be taken.**
- ▶ **Rule of Thumb: if two or more board members discuss official City business, Sunshine applies.**
- ▶ **Personal liability may apply for Sunshine Law violations, including criminal penalties, removal from office, fines and attorney's fees.**

# **Public Records Law**

## **Art. 1, Sec.24, FL Const.**

- ▶ **“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”**
- ▶ **Requests do not have to be in writing**
- ▶ **Requests need not be for a special or legitimate interest/purpose.**

# Public Records Act

## Fla. Stat. § 119

- ▶ **Fla. Stat. § 119.011(12) defines public records broadly:**
  - ▶ ***“[A]ll documents, papers, letters, maps, books tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”***

# **Public Records Act**

## **Fla. Stat. § 119**

### **▶ Examples of Public Records:**

- ▶ Records stored on a computer;**
- ▶ Draft documents;**
- ▶ Email messages;**
- ▶ Website blogs and message boards;**
- ▶ Social media posts;**
- ▶ Text messages.**

# Public Records Act

## Fla. Stat. § 119

- ▶ **Examples of items NOT considered public records:**
  - ▶ **Personal notes: when drafted solely for the writer's own use to help remember something.**
    - ▶ **But may become public records if they are intended to communicate, perpetuate or formalize knowledge.**
  - ▶ **Private emails on government computers are not automatically public records: must look at the content of the communication.**

# **Public Records Act**

## **Fla. Stat. § 119**

- ▶ **Communications exempt from public records law:**
  - ▶ **Legislature created limited exemptions which are narrowly construed.**
  - ▶ **If an exemption is applicable, it must be stated in writing and must contain a statutory citation to the exemption. See, Fla. Stat. § 119.071(1)(e).**

# Public Records Act

## Fla. Stat. § 119

- ▶ **Examples of exempt public records:**
  - ▶ **Home addresses, phone numbers and photographs of first responders, as well as the places of employment and schools of their spouses and children.**
  - ▶ **Personal bank account numbers and debit, charge or credit card numbers.**
  - ▶ **Social Security numbers.**
  - ▶ **Work products developed during collective bargaining negotiations.**
  - ▶ **Documents/communications related to pending or threatened litigation.**
  - ▶ **Complaints related to discrimination/discipline/employee performance until a finding of probable cause, complaint is inactive, or complaint is part of an actual court proceeding.**

# Public Records Act

## Fla. Stat. § 119

### ▶ PUBLIC RECORDS APPLY TO YOU!

- ▶ Fla. Stat. § 119.07(1)(a) states that every person “who has custody of public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of public record or the custodian’s designee”
  - ▶ City policy requires five (5) business days for production.
  - ▶ Can charge for copying costs and labor associated with extensive production of records.

# **Public Records Act**

## **Fla. Stat. § 119**

- ▶ **PUBLIC RECORDS APPLY TO YOU!**
  - ▶ **If you receive communication related to official city business – text, emails, social media posts, etc. – transmit the communication to the City Clerk for retention purposes.**
  - ▶ **Ultimately, you are responsible for your public records.**
    - ▶ **The local state attorney has the authority to prosecute alleged criminal violations of public records law. Certain civil penalties are also available.**

# Quasi-Judicial Proceedings

- ▶ **Board decisions generally fit into two categories:**
  - **Legislative:** Set and adopt policies; affect large segments of the community.
  - **Quasi-Judicial:** Implement adopted policy to a particular scenario; affect a limited number of identifiable parties and interests; contingent on findings of fact.

# Quasi-Judicial Proceedings

- ▶ **A quasi-judicial proceeding is a public hearing structured as an informal trial.**
- ▶ **The governing board acts as a panel of judges and makes a decision based on facts and evidence presented to the board.**
- ▶ **The board's final decision is an application of an adopted policy to a particular situation.**

# What is Required for a Quasi-Judicial Proceeding?

- ▶ **Affording Due Process**
- ▶ **Observing of the Essential Requirements of Law/Following the Correct Law**
- ▶ **Making Decisions Supported by Competent Substantial Record Evidence**

# Affording Due Process

- ▶ **Rooted in the United States and Florida Constitutions intended to protect private rights and interests.**
- ▶ **Means following the established rules created to provide fundamental fairness and to protect the relevant rights and interests of the parties in balance with the City's interests.**
- ▶ **Occurs both prior to and during a quasi-judicial proceeding.**

# Due Process Prior to a Quasi-Judicial Proceeding

- ▶ Interested parties are given reasonable notice of a pending quasi-judicial proceeding. Type and nature of notice is often set forth by statute or Code provisions.
- ▶ Reasonable pre-hearing notice must have been provided before the Board makes a final decision in a quasi-judicial proceeding.

# Due Process During a Quasi-Judicial Proceeding

## ▶ Hearing by an Impartial Board

- ▶ “Fundamental due process requires that a person appearing before a public body is entitled to have the issues determined by an impartial panel.” Florida Institute of Technology, Inc. v. City of Melbourne (Fla. 18<sup>th</sup> Jud. Cir. Jul. 2002)
- ▶ Board should limit its consideration of the issue before it to the facts presented at the hearing.
- ▶ If a Board member believes voting would provide a special private gain or loss – declare a voting conflict of interest.
- ▶ If a Board member believes some other form of conflict or bias exists – declare a disqualification and abstain from the proceedings.

# Due Process During a Quasi-Judicial Proceeding

- ▶ **Providing a Meaningful Opportunity to be Heard**
  - ▶ The operative test is for fundamental fairness in the proceedings.
  - ▶ An interested party's meaningful opportunity to be heard includes the ability to present evidence, cross-examine witnesses, and be informed of all of the facts upon which the Board makes its decision.
  - ▶ Time limits for presentations created by administrative policy are a guide, not a rule. The Board should always provide a meaningful opportunity to be heard.
  - ▶ City Attorney's Office and City staff are available for consultations on questions regarding who qualifies as an "interested party", who is entitled to cross-examine witness, how long a person has to speak, and other related matters.

# Due Process During a Quasi-Judicial Proceeding

- ▶ **Disclosure of *Ex Parte* Communications and Site Visits**
  - ▶ ***Ex parte* communications are:**
    - ▶ All forms of communication (verbal, written, electronic) regarding the subject of the quasi-judicial action made by or to a Board member outside of the hearing and off the record; and
    - ▶ Site visits by Board members to property subject to quasi-judicial action.
  - ▶ ***Ex parte* communications and site visits are presumptively prejudicial.**
  - ▶ If a board member engages in an *ex parte* communication or site visit, the board member must disclose the nature of the conversation or visit at the beginning of the public hearing.

# Decisions Supported by Competent Substantial Evidence

- ▶ **The Board's final decision must be supported by competent substantial evidence found in the record of the quasi-judicial proceeding.**
- ▶ **What is competent substantial evidence?**
  - ▶ **Competent evidence is evidence that:**
    - ▶ **Is presented by a person qualified to provide evidence on the subject about which the person is testifying;**
    - ▶ **Is reliable or credible; and**
    - ▶ **Is sufficiently relevant and material to the ultimate determination and that a reasonable mind would accept as adequate to support the conclusion reached.**

# Competent Substantial Evidence

- ▶ **Examples of Competent Evidence**
  - ▶ **City Staff Report and opinions of professional staff when supported by factual foundations.**
  - ▶ **Other professional opinions (engineers, licensed contractors, certified property appraisers, etc.) when supported by factual foundations.**
  - ▶ **Fact-based testimony from interested parties and other lay witnesses, when applicable.**
  - ▶ **Other competent, substantial fact-based evidence the Board finds reliable and credible.**

# Competent Substantial Evidence

- ▶ **When is Expert Testimony Required in Land Use Decisions for Competent Substantial Evidence?**
  - ▶ **Traffic Issues**
  - ▶ **Light and Noise Pollution**
  - ▶ **Property Valuation Analysis**

# Competent Substantial Evidence

- ▶ **Who Can Be Considered an Expert?**
  - ▶ **Local Government Professional Staff**
    - ▶ including Planners, Engineers, Director of Public Works, Chief of Police
  - ▶ **Registered Professional Engineers**
  - ▶ **Architects**
  - ▶ **General Contractors**
  - ▶ **Environmental Consultants**
  - ▶ **Certified Property Appraisers**
  - ▶ **Other professionals having technical training, education or expertise on an issue related to the development decision**

# Competent Substantial Evidence

## ► Lay Witness Testimony as Competent Substantial Evidence

**“Lay witnesses may offer their views in land use cases about matters not requiring expert testimony. For example, lay witnesses may testify about the natural beauty of an area because this is not an issue requiring expertise. Lay witnesses’ speculation about potential ‘traffic problems, light and noise pollution,’ and general unfavorable impacts of a proposed land use are not, however, considered competent, substantial evidence. Similarly, lay witnesses’ opinions that a proposed land use will devalue homes in the area are insufficient to support a finding that such devaluation will occur. There must be evidence other than the lay witnesses’ opinions to support such claims.” Katherine’s Bay, LLC v. Fagan, 52 So. 3d 19, 30 (Fla. 1<sup>st</sup> DCA 2010) (internal citations omitted)**

# Competent Substantial Evidence

- ▶ **Examples Where Lay Witness Testimony Found to be Competent Substantial Evidence**
  - ▶ **Fact-based testimony regarding densities of nearby developments from which commission could draw its own conclusions regarding compatibility**
  - ▶ **Fact-based testimony regarding commercial use of residential property as evidence of incompatibility with neighborhood**
  - ▶ **Fact-based testimony regarding the size of proposed apartments, vacancy rates of existing apartments, and compatibility of small apartments with surrounding buildings.**

# Competent Substantial Evidence

- ▶ **Examples of Incompetent Evidence**
  - ▶ **Generalized, conclusory statements of opposition or support without a factual foundation.**
  - ▶ **Bare allegations or objections without a factual foundation.**
  - ▶ **Hypothetical, speculative, vague, or uncertain statements.**
  - ▶ **Other evidence the Board finds unreliable or not credible.**

# Competent Substantial Evidence

- ▶ **Examples Where Lay Witness Testimony Found to be Incompetent Evidence**
  - ▶ **A city commission improperly denied a conditional use for an airport by relying on lay witness testimony regarding future construction costs, noise, environmental and effects.**
  - ▶ **Conditional use for an adult congregate living facility denied based on the opinions of neighbors that the use would cause traffic problems, light and noise pollution, and would have an unfavorable impact on the area.**
  - ▶ **Conditional use for a gas station/convenience store denied based on objections by local residents of fears of increased traffic.**
  - ▶ **Development plan for an apartment complex denied based on speculative testimony from neighbors regarding increased traffic and crime**
  - ▶ **Conditional use for a guest house based on a “popularity poll” of the neighborhood**

# Competent Substantial Evidence

## ▶ Rendition of Board Findings

- ▶ City staff strongly recommends that the Board state its findings when rendering decisions in quasi-judicial proceedings.
  - ▶ The Board may choose to adopt the findings and recommendations of City staff; or
  - ▶ If the Board chooses to make different findings, it should state such findings of fact in its motions
- ▶ Board orders with stated findings are more authoritative and tend to be upheld more often in subsequent legal challenges, so long as they are supported by competent substantial record evidence.
- ▶ Staff can assist with proposed motions and findings for quasi-judicial decisions.

# Parliamentary Procedures

- ▶ **Rules of procedure contained in some charters, ordinances and City policies supersede rules contained in the parliamentary authority when there is a conflict.**

# Purpose

- ▶ **Efficiency**
- ▶ **Fairness**
- ▶ **Order**
- ▶ **Dignity**
- ▶ **Clarity**

# **The Fundamentals**

- ▶ **Quorum is required to conduct business**
- ▶ **One subject, one speaker at a time**
- ▶ **Each idea is entitled to debate**
- ▶ **Personalities are NOT appropriate matters for discussion**
- ▶ **Courtesy to other participants**
- ▶ **Silence = Consent**
- ▶ **Record of Proceedings**
- ▶ **Notice of Meetings**
- ▶ **Fixed agenda prior to meeting**
- ▶ **Majority rule but protection of minority rights**

# Motions

- ▶ **Make a motion**
- ▶ **“Second”**
- ▶ **Chair states motion (“It has been moved that...”)**
- ▶ **Discussion**
- ▶ **Voting on motion**
- ▶ **Announce results**

# Amendments to Motions

- ▶ **Anytime after a motion is seconded but prior to vote, a board member may move to amend the original motion.**
- ▶ **An amendment must go through the same steps as the original motion.**
- ▶ **An amendment must be voted on before the original motion is voted on.**
- ▶ **An amendment may insert words, strike words or substitute words in the original motion.**
- ▶ **An amendment may also be amended prior to a vote on the amendment.**

# Postponement

- ▶ **If a board member wants to postpone discussion or voting, she may “move” to postpone an item to a certain time or indefinitely.**
- ▶ **That postponement motion must be seconded.**
- ▶ **Discussion is limited to the reason for the postponement.**
- ▶ **A majority vote is required to postpone an item.**

# Dual Office Holding Prohibition

- ▶ ***"No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers."***
- ▶ **Article II, section 5(a), Florida Constitution**

# Dual Office Holding Prohibition

- ▶ ***"The term 'office' implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office, while an 'employment' does not comprehend a delegation of any part of the sovereign authority. The term 'office' embraces the idea of tenure, duration and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract. An employment does not authorize the exercise in one's own right of any sovereign power or any prescribed independent authority of a governmental nature; and this constitutes perhaps the most decisive difference between an employment and an office. . ."*** State ex rel. Holloway v. Sheats, 83 So. 508, 509 (Fla. 1919).

# Dual Office Holding Prohibition

- ▶ **The Planning Advisory Board (PAB) is, despite its name, not purely advisory.**
- ▶ **PAB is the final decision-making body for the City of Kissimmee on applications including Conditional Use Permits with Site Plans and True Works of Art.**
- ▶ **You can only be a board member on one governmental board, excluding ex-officio appointments.**
  - ▶ **YAY: THIS IS YOUR BOARD!!**
  - ▶ **You can always serve on non-profit, HOA, COA, and corporate boards.**

# Voting Conflicts

## Fla. Stat. § 112.3143

- ▶ Defines “public officer” as a person “elected or appointed” to hold office in any city, “including any person serving on an advisory body.”
- ▶ You are a public officer under Fla. Stat. § 112.3143.

# **Voting Conflicts**

## **Fla. Stat. § 112.3143**

- ▶ **PAB members MAY NOT “vote on any matter that the officer knows would inure to his or her special private gain or loss.”**
- ▶ **The special private gain or loss applies to the individual board member, his/her relatives, employer or business associates.**

# **Voting Conflicts**

## **Fla. Stat. § 112.3143**

- ▶ **Special Private Gain or Loss:**
  - ▶ **The size of the class;**
  - ▶ **The nature of the interests involved;**
  - ▶ **The degree of which the interests of all members of the class are affected by the vote;**
  - ▶ **The degree of which the officer, his or her relatives, business associate, or principal received a greater benefit/harm when compared to other members of the class.**

# **Voting Conflicts**

## **Fla. Stat. § 112.3143**

- ▶ **How to Abstain:**
  - ▶ **Prior to taking a vote, member must publicly state the nature of the interest in the matter AND**
  - ▶ **Within 15 days after the vote, disclose in a written memo, the nature of the interest.**
  - ▶ **Disclosure memo is then incorporated into the meeting minutes AND is a public record.**

# Final Thoughts

- ▶ **Public Records, Sunshine and Ethics are fact-intensive laws.**
- ▶ **Always err on the side of public disclosure.**
- ▶ **Always consider the impression of impropriety that your actions may invoke regardless of whether conduct is actually violating any state or local laws.**
- ▶ **The City Attorney's Office is a great resource 😊! If you have any questions, especially as they pertain to specific agenda items, feel free to contact me at [kalanit.oded@kissimmee.gov](mailto:kalanit.oded@kissimmee.gov) or at (407) 518-2310.**