



AGENDA

CITY COUNCIL/PLANNING COMMISSION WORKSHOP @ 6:00 PM Apopka Community Center 519 S. Central Avenue – Apopka, Florida 32703 April 08, 2015

INVOCATION

PLEDGE OF ALLEGIANCE

If you wish to appear before the City Council, please submit a Notice of Intent to Speak card to the City Clerk.

PRESENTATIONS

1. Presentation on Public Meetings Law, Chapter 286 F.S., by Attorney Clifford B. Shepard and Quasi-Judicial Hearings, by Attorney Andrew Hand.

ADJOURNMENT

All interested parties may appear and be heard with respect to this agenda. Please be advised that, under state law, if you decide to appeal any decision made by the City Council with respect to any matter considered at this meeting or hearing, you will need a record of the proceedings, and that, for such purpose, you may need to ensure that a verbatim record of the proceedings is made, which record includes a testimony and evidence upon which the appeal is to be based. The City of Apopka does not provide a verbatim record.

In accordance with the American with Disabilities Act (ADA), persons with disabilities needing a special accommodation to participate in any of these proceedings should contact the City Clerk's Office at 120 East Main Street, Apopka, FL 32703, telephone (407) 703-1704, no less than 48 hours prior to the proceeding.

“LET THE SUNSHINE IN”

Public Meetings Law

Chapter 286 F.S.

Clifford B. Shepard, Esq.

Materials by John
G. Hubbard, Esq.



Florida Constitution Article I, section 24 (b)

(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 and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Florida Statute 286.011

- (1) All **meetings** of any board or commission of any state agency or authority or of any **agency or authority** of any county, **municipal** corporation, or political subdivision, except as otherwise provided in the Constitution, 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.

Florida Statute 286.011

- 2) The **minutes** of a meeting of any such board or commission of any such state agency or authority shall be **promptly recorded**, and such records shall be **open to public inspection**. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

Notice

Reasonable

Location

restaurant
private club
identification required
in city limits
no “CHILLING” effect

Minutes

summary v. verbatim
draft is a public record
must be approved timely



Florida Statute 286.011 = MEETING LOCATION

- (6) All **persons** subject to subsection (1) are **prohibited from holding** meetings at any facility or **location** which **discriminates on the basis of sex, age, race, creed, color, origin, or economic status** or which **operates** in such a manner as to **unreasonably restrict public access** to such a facility.
- **Public meetings must be accessible to the physically handicapped Chapter 286.26 FS**

Florida Statute 286.011

- **Knowingly attending a meeting in violation of the statute is a misdemeanor of the second degree**
- **Conduct outside the State is a misdemeanor of the second degree**
- **A court may assess an attorney's fee against you for enforcement of this statute unless you have sought and followed the advice of the city's attorney**

What is a public meeting?

Florida Constitution

Meeting of a collegial public body at which official acts taken or business discussed

Florida Statutes

Meeting at which official acts taken

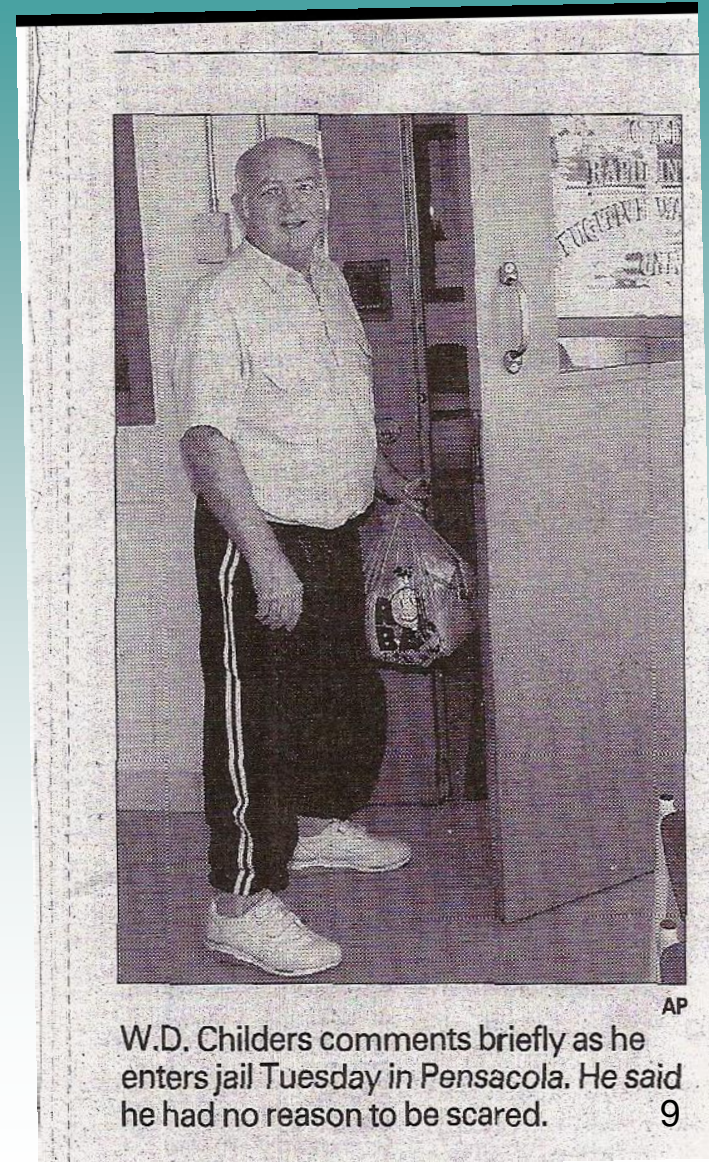
Case Law

All meetings where there are discussions of matters which may foreseeably come before a board or commission

W.D. Childers goes to jail

Ex-Senate president goes to jail

■ W.D. Childers starts a 60-day sentence for Sunshine Law violations — even as his lawyer asks a judge to set him free.



AP

W.D. Childers comments briefly as he enters jail Tuesday in Pensacola. He said he had no reason to be scared. 9

Florida Statute 286.011

- The statute is “broadly construed to effect it’s remedial and protective purposes.”
- Applicable to elected and appointed bodies
- Part of decision process...make recommendations

Leach-Wells case

- Substantial delegation affecting a decision...single individual

Recommendations; limit choices; part of decision process

- Page 11 finding only **IS AN EXCEPTION: EXCEPT FOR ELECTED BODIES!**

Major Exceptions – ALL STATUTORY

- Pending litigation...settlement negotiations or strategy sessions related to litigations expenditures...limited attendees
- Labor negotiations-bargaining team – exemption as to public meetings and public records Chap 447 F.S.
- Risk management committee
- Security system meeting
- Negotiation with a vendor

Exchange of written memorandums

- First bite at the apple
- No response



Outside Contact

- You can socialize with other board members
- You can attend the same meeting....**BUT...**



You Can Cure a Violation

- No rubber stamp meeting
- Ultimate decision safeguarded
- Multiple cases describing proper procedure

Cure...

Don't Ignore



Notice

Location

Minutes

New Challenges

E-mail...twitter...texting...Facebook...websites

Times editorials

Digital age Sunshine

Florida has a proud history of strong open-government laws. But they haven't always kept pace with progress. Consider, for example, the city council members who text or e-mail each other during meetings to skirt open communication. That's not in the public interest.

Now a 178-page report produced by a special governor's commission provides the road map for Gov. Charlie Crist and the Legislature to bring Florida's strong reputation for Sunshine into the 21st century.

Government is at the core of a free democracy. Florida's Sunshine laws are the means to ensure

Reform, after holding four public hearings across the state, unanimously approved its final report for the governor. Among its recommendations:

- Make all government contracts above a certain dollar amount accessible through the Internet, giving Floridians the tools needed to be public watchdogs.

of these public records.

- Ban government officials from using electronic communications during public meetings.

- Prohibit state agencies from charging a special fee for redacting the contents of a public record that is exempt from public view (such as the Social Security numbers of employees or a law enforcement officer's home address).

The commission was composed of a cross-section of public officials and open government advocates, including the past president of the Florida Society of Newspaper Editors, Jeanne Grinstead, a St. Petersburg Times editor. The group developed

Thank You

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Materials by John G. Hubbard, Esq.



QUASI-JUDICIAL HEARINGS

The background of the slide features a large, semi-transparent seal of the State of Florida on the left side. The seal is circular and contains a landscape with a palm tree, a sun, and water. It is surrounded by a red ribbon-like border. The text "LEGISLATIVE" is visible at the top of the seal.

Legislative . . .

- An action by a governing body is “legislative” if:
 - Adopting a policy that will have general applicability to similarly situated properties or persons.
 - The policy will be applied later based upon facts about particular situations.

The background of the slide features a large, semi-transparent seal of the State of Florida on the left side. The seal is circular with a gold border and contains a landscape scene with palm trees, a blue sky, and a body of water. The words "STATE OF FLORIDA" are visible around the perimeter of the seal. The rest of the background is a white and blue gradient with a subtle pattern.

Quasi-judicial if . . .

- Limited number of people or property affected.
- Identifiable parties and interests.
- Decision is contingent on facts.
- General policy has previously been set.
- Decision can be viewed as policy application rather than policy setting.

The Florida State Seal is located in the top-left corner of the slide. It features a circular emblem with a landscape scene, including a palm tree, a sun, and water, surrounded by the words "FLORIDA" and "1845". The seal is set against a background of a red ribbon and a white star on a blue field.

As Quasi-judicial . . .

- *Ex parte* communications are restricted
 - Witnesses must be sworn.
 - “Parties” to the hearing must be able to present evidence, cross-examine witnesses, and be informed of all facts upon which the commission acts.
 - Hearing “Participants” are entitled to “some measure of due process” – *may* be allowed to cross-examine, but do not have the same rights as “Parties.”
 - Board members are confined to the facts on the record in making their decisions.

The image features a graphic on the left side consisting of the Texas state seal and a portion of the Texas state flag. The seal is circular with a gold border and depicts a landscape with a ship, a plow, and a sheaf of wheat. The flag has a white field with a blue vertical stripe and a red horizontal stripe. The text "QUASI-JUDICIAL HEARING PROCEDURE" is overlaid on the top right of the graphic.

Quasi-judicial Hearing Procedure

Please see handout

The Florida State Seal is located in the top-left corner of the slide. It features a circular emblem with a landscape scene, including a palm tree, a sun, and water, surrounded by the words "FLORIDA" and "1845". The seal is set against a red ribbon that curves across the top and left sides of the slide. The background of the slide is a light blue sky with white clouds.

Burden of Proof:

- A landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance.
- At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose.

The seal of the State of Florida is visible in the top left corner, featuring a palm tree, a sun, and a landscape within a circular border, surrounded by a red ribbon.

Competent Substantial Evidence

- In order to sustain a board's action,
- upon review by certiorari in the circuit court,
- it must be shown that there was **competent substantial evidence** presented to the board to support its ruling.

Competent Substantial Evidence

- is legally sound (sufficient and admissible under the rules of evidence, although it doesn't have to comply with courtroom formality);
- is real (non-speculative, non-hypothetical) and based on facts (more than conjecture, unsupported generalized statements, surmise, mere probabilities, guesses, whims, or caprices);
- is reliable (credible, believable);

The background of the slide features a large, semi-transparent seal of the State of Florida on the left side. The seal is circular with a gold border and contains a landscape scene with a palm tree, a sun, and water. It is set against a background of a blue sky with white clouds and a red diagonal stripe.

Competent Substantial Evidence

- is material (pertinent, relevant);
- tends to prove the points (facts, elements, standards) that must be proven (not just create a suspicion or could equally support another result);
- establishes a reasonable, substantial justification (basis of fact) for the point argued; and
- a reasonable mind would accept it as enough (adequate) to support the argued for conclusion.

The background of the slide features a large, semi-transparent image of the Texas state seal on the left side. The seal is circular and depicts a landscape with a ship on the water, a windmill, and a figure on horseback. The words "THE STATE OF TEXAS" are visible around the perimeter of the seal. The seal is set against a background of the Texas state flag, which has a white star on a blue field and red and white horizontal stripes.

Competent Substantial Evidence

- Summarizing it further:

Competent substantial evidence is real, fact based, material, reliable evidence that tends to prove the points that must be proven and a reasonable mind would accept it as enough to support the argued for conclusion.

The image features a vertical strip on the left side containing the Texas state seal and a portion of the Texas state flag. The seal is circular and depicts a landscape with a river, a windmill, and a ship. The flag is red, white, and blue with a white star.

Competent Substantial Evidence

- Conversely, hypothetical, speculative, fear or emotion based generalized statements that do not address the relevant issues and, although perhaps politically persuasive, cannot be reasonably said to support the action advocated, are not competent substantial evidence.

The image features a vertical strip on the left side showing the Texas state seal and flag. The seal is circular with a gold border and depicts a landscape with a star, a ship, and a plow. The flag is red, white, and blue with a white star.

Consideration of the Evidence

- In Board deliberations, Board members should consider only the testimony of witnesses and the exhibits admitted in the record as evidence.

The Florida State Seal is located in the top-left corner of the slide. It features a circular emblem with a landscape scene, including a palm tree, a sun, and a body of water, surrounded by the text "FLORIDA STATE SEAL". The seal is set against a background of a red ribbon and a white star on a blue field.

Consideration of the Evidence

- The Board is not bound by strict rules of evidence, or limited to consideration of evidence which would be admissible in a court of law, but as you consider the evidence, both direct and circumstantial, you may make deductions and reach conclusions which reason and common sense lead you to make. The Board shall weigh all the competent, material and/or relevant evidence presented, giving each piece of evidence the weight he or she sees fit.

The seal of the State Bar of Texas is located in the top left corner. It features a circular emblem with a landscape scene, including a palm tree and a body of water, surrounded by the text "STATE BAR OF TEXAS".

Consideration of the Evidence

- The Board may exclude evidence or testimony which is not relevant, material or competent, or testimony which is unduly repetitious.
- The Board will determine the relevancy of evidence, and the Board may ask the attorney for opinions on the relevancy of evidence.
- Anything the attorneys say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls.

The seal of the State of Florida is visible in the top left corner, featuring a palm tree, a sun, and a ship, surrounded by the words "STATE OF FLORIDA".

Consideration of the Evidence

- The public may provide input to the Board. The Board must not act merely because there is public sentiment for or against the petition. The Board must base its decision on the facts and the competent evidence at this hearing.

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Credibility of Witness

- You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision, you may believe or disbelieve any witnesses; in whole or in part. Also the number of witnesses testifying concerning any particular dispute is not controlling. You may decide that the testimony of a smaller number of witnesses concerning any fact in dispute is more believable than the testimony of a larger number of witnesses to the contrary.

The seal of the State of Florida is visible in the top left corner, featuring a palm tree, a sun, and a ship, surrounded by the words "STATE OF FLORIDA".

Credibility of Witness

- You should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony he or she gave before you during the hearing.

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Expert Witness

- When knowledge of a technical subject matter might be helpful, a person having special training or experience in that technical field, one who is called an expert witness, is permitted to state his or her opinion concerning those technical matters.
- Merely because an expert witness has expressed an opinion, however, does not mean that you must accept that opinion. The same as with any other witness, it is up to you to decide whether to rely upon it.

Formal Quasi-Judicial Hearings

- 1.) Introductions. The Chairman shall read the case style and nature of the issue.
- 2.) Affected Party determination.
- 3.) Ex parte. The Board Members shall disclose any ex parte communications that may have occurred. (The petitioner and any affected party may ask questions about these communications directed through the Chairman.)
- 4.) Swearing In. The Petitioner, staff and all witnesses shall be collectively sworn.
- 5.) Staff Presentation. City staff shall present any staff, board, or other report on the matter. These reports and any other documentary evidence shall become a part of the record. Evidence will be presented through oral testimony of witnesses and documentary evidence.
- 6.) Petitioner Presents Its Case. The Petitioner may include a description of the nature of the Petition if there is additional information that has not been previously provided by the County staff. The Petitioner may introduce any documentary evidence and elicit testimony through witnesses.
- 7.) Affected Party for the Petition Any affected person will present its case clearly indicating whether they are in support of the Petition.
- 8.) Affected party against the Petition. Any affected person will present its case clearly indicating whether they are opposed to the Petition.
- 9.) Any rebuttal(s) by staff or Petitioner.
- 11.) Close of presentation by petitioner, staff, and affected parties.
- 12.) Public Hearing.
- 13.) Close of Public Hearing and Deliberation and Vote of the Board.