



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.16.

5/9/2023

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### **Subject:**

Appointment(s) / Reappointment(s)

### **Fiscal Impact:**

N/A

### **Dept/Office:**

County Manager's Office

### **Requested Action:**

It is requested that the Board of County Commissioners approve the District appointment(s) / reappointment (s). The Board's approval of this will acknowledge the District Commissioner appointment(s), and approve at-large appointment(s).

Any of the attached reappointment forms that require a waiver of the term limit require a majority plus one vote.

### **Summary Explanation and Background:**

### **Clerk to the Board Instructions:**



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

May 10, 2023

John C. Davis, Jr.  
1113 Westview Drive  
Cocoa, FL 32922

Dear Mr. Davis:

Re: Appointment to Value Adjustment Board

On the recommendation of Commissioner John Tobia, the Board of County Commissioners, in regular session on May 9, 2023, acknowledged your appointment to the Value Adjustment Board, replacing Bill Geiger. Said term of appointment expires January 1, 2025.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

*Kimberly Powell*  
Kimberly Powell, Clerk to the Board

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cc: Commissioner Tobia  
Value Adjustment Board



**COMMISSIONER JOHN TOBIA, DISTRICT 3**

2539 Palm Bay Road, NE

Suite 4

Palm Bay, FL 32905

John.Tobia@Brevardfl.gov

**BOARD OF COUNTY COMMISSIONERS**

**FROM THE DISTRICT 3 COMMISSION OFFICE**

**ADVISORY COMMITTEE APPOINTMENT CANDIDATE**

Name of Committee: Value Adjustment Board

Name of Appointee: John C. Davis Jr.

Home Address: 1113 Westview Dr., Cocoa, FL. 32922

Cell Number: (513)487-9889

Home Number:

Email Address: jdavis10181@gmail.com

Reappointment: Yes ( ) or No (X)

Replacing: Bill Geiger

Term of Appointment: 05/10/2023 – 01/01/2025

Office Contact: Brian Bond

Date of Request: 04/04/2023

A waiver of the term limit is recommended due to difficulty to fill the appointment? Yes ( ) or No ( X )



May 10, 2023

**MEMORANDUM**

**TO:** Commissioner John Tobia, District 3

**RE:** Item F.16., Appointment to Value Adjustment Board

The Board of County Commissioners, in regular session on May 9, 2023, acknowledged appointment of John C. Davis, Jr. to the Value Adjustment Board, with term expiring January 1, 2025.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS**  
**RACHEL M. SADOFF, CLERK**

*Kimberly Powell*  
Kimberly Powell, Clerk to the Board

/tr

**cc:** Value Adjustment Board




BOARD OF COUNTY COMMISSIONERS

County Attorney's Office  
2725 Judge Fran Jamieson Way  
Building C, Room 308  
Viera, Florida 32940

## Inter-Office

### Memo

**TO :** Advisory Board Members  
**FROM:**  Shannon L. Wilson, Assistant County Attorney  
**DATE:** January 19, 2023  
**SUBJ :** Government in the Sunshine/Florida's Public Meetings Law

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Florida's Government-in-the Sunshine Law provides a right of access to governmental proceedings. The public policy behind the Sunshine Law is to have all deliberations by a public body conducted in public meetings of which the public and the media have received advance notice.

#### 1. What are the requirements of the Sunshine Law?

The Florida Government in the Sunshine Law, Section 286.011, Florida Statutes, contains three basic requirements:

- a. meetings of public boards or commissions must be open to the public;
- b. reasonable notice of such meetings must be given; and
- c. minutes of the meeting must be taken.

#### 2. Who does it apply to?

All boards or commissions of Brevard County are subject to the Sunshine Law. The law is equally applicable to advisory boards such as this Committee.

#### 3. What is a "meeting" which is subject to the Sunshine Law?

Florida courts have repeatedly stated that it is the entire decision-making process to which the Sunshine Law applies and not merely to a formal assemblage of a public body at which voting to ratify an official decision is carried out. Thus, the statute extends to "discussions and deliberations" as well as to formal action taken by a public body. Therefore, the law is generally applicable to any gathering where two or more members of a public board or commission discuss some matter on which foreseeable action will be taken by the board, commission or committee. The term "meeting" has been found to include briefing sessions,

workshop meetings, informal discussion and other meetings of the public body where no formal vote is taken.

#### **4. Public Meetings**

##### **a. Notice and Recording:**

Procedurally, the Sunshine Law requires the giving of notice to members of the public as to the time and place of the proposed meeting of a public entity, such as yours, and the subject matter to be discussed. The notice should include, among other things, the time, place, and if available, an agenda of the subject matter. Section 286.011(2), Florida Statutes, states that all public meetings must be "recorded" and the record made available for public inspection. The recording need not be a tape or verbatim transcript, but must be minutes accurately reflecting actions taken at the meeting.

##### **b. Quorum:**

The general rule is that a majority of members of a public board must be physically present in order to have a quorum.<sup>1</sup> If a majority of board members are physically present at the public meeting, "the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;]...[w]hether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgment of the board." AGO 03-41

##### **c. Voting:**

The use of secret ballot at public meetings is not acceptable. If a vote is required by the council members then a vote must be made by each member unless there is a bona fide conflict of interest.

##### **d. Voting Conflicts of Interest:**

As an appointed member of this Committee, the State's conflict of interest laws apply to you. All members must keep in mind the possibility of a voting conflict of interest arising as to any items that might come before the Board based not only on their employment relationship, but upon other situations.

Section 112.3143(3), Florida Statutes, provides that:

No...local public officer shall vote in his official capacity upon

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<sup>1</sup> In some circumstances the Governor may waive this requirement (for example during the earlier stages of the pandemic), however, the executive order issued by the Governor in 2020 on this subject expired and the general physical quorum requirement is currently in effect.

any measure which would inure to his special private gain; which he knows would inure to the special private gain of any principal by whom he is retained or to the parent organization or subsidiary of a corporate principal by which he is retained, other than an agency as defined in s. 112.312(2); or which he knows would inure to the special private gain of a relative or business associate of the public officer.

For a voting conflict to arise, "special private gain" must inure to the council member, a principal or parent organization or subsidiary of a corporate principal by whom he/she is retained, a relative, or a business associate. The test formulated by the Commission on Ethics is based in part on the size of the class of persons who stand to benefit from the measure and also based upon the remote and speculative test. Where the class of persons is large, a special gain will result only if there are circumstances unique to the member to gain more than the other members of the class. Where the class of person benefitting from the measure is extremely small, the possibility of special gain is much more likely. Additionally, if the gain is of a questionable nature or magnitude, or is too remote or speculative, then there may not be "special private gain."

In addition to abstaining from the vote, if the member intends to "participate" in the decision prior to the meeting, the appointed board member should file a memo stating the conflict prior to the meeting, Section 112.3143(4), Florida Statutes. "Participate" means "any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction." The memo shall be incorporated into the minutes of the meeting and read publicly at the meeting. If the member is only participating in the discussion at the meeting, then the conflict should be disclosed orally at the meeting before participating, and a memo should be filed within fifteen (15) days after the vote. No member may participate (attempt to influence the vote) without making this disclosure prior to the discussion on the issue.

e. Public Participation:

This committee is required to allow for public comment to assist in the decision-making process in accordance with Section 2-214, Brevard County Code of Ordinances. This body shall establish procedures for taking public comment at all committee meetings. Two kinds of public comment shall be taken:

1. Relevant comment when the committee discusses a particular issue or takes a final vote on any given issue; and
2. Comment which brings new business or issues before the committee.

Each speaker shall be given at least three minutes to speak, with provision for an extension of time by the chairman or majority vote of the committee. Speakers may be required to give their names and addresses for the record, however, social security numbers shall not be required.

Additionally, effective October 1, 2013, the State Legislature implemented legislation that provides for the public to be heard at public meetings which are not specifically exempted by the statute. This law requires that members of the public be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to comment does not have to occur at the same meeting at which official action is taken if the opportunity:

1. Occurs at a meeting that is during the decision-making process; and
2. Is within reasonable proximity in time before the meeting at which the board or commission takes official action.

Per the Florida statute, the opportunity to be heard is subject to limited rules or policies adopted by the board/commission. The rules/procedures are limited, per the statute, to the following: guidelines regarding the amount of time an individual has to address the board or commission; procedures for allowing representatives of groups or factions on a proposition to address the board or commission (rather than all members of such groups or factions) at meetings in which a large number of individuals wish to be heard; procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard to indicate his or her support, opposition, or neutrality on a proposition and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or designate a specified period of time for public comment. Failure to comply with this state statute is subject to injunctive relief and assessment of attorney's fees. Section 286.0114, Florida Statutes.

Given the County Code requires the opportunity for comment at all committee meetings, you should provide for public comment at all your meetings.

**5. Does this mean we can't have lunch?**

The Attorney General's Office urges public boards or commissions to avoid the use of "luncheon meetings" to discuss board or commission business. These meetings may have a "chilling" effect upon the public's willingness or desire to attend. People who would otherwise attend such a meeting may be unwilling or reluctant to enter a public dining room without purchasing a meal and may be financially or personally unwilling to do so. Discussions at such meetings by members of the board or commission which are audible only to those seated at the table may violate the "openness" requirement of the law. Public boards or commissions are, therefore, advised to avoid meetings at which the public and the press are effectively excluded.



Members of a public board or commission are not, however, prohibited under the Sunshine Law from meeting together socially provided that matters which may come before the board or commission are not discussed at such gatherings.

Members of a public board or commission are also not prohibited under the Sunshine Law from conducting inspection trips. However, if discussions relating to the business of the board will occur between board members, advance notice must be given; the public must be afforded a reasonable opportunity to attend, and minutes must be promptly recorded and made available for inspection. In some cases, it may not be possible to invite the general public to attend such trips. In these instances, inspection trips made by members of a public board, together with staff and officials of other organizations and members of the press, are not secret meetings in violation of section 286.011 even though the general public is not invited to participate. However, members of the public board should avoid discussions with fellow board members regarding public business while on such trips.

#### **6. Beware of the Consequences!**

Section 286.011(3), Florida Statutes, provides that any person knowingly violating the Sunshine Law by attending a meeting not held in accordance with the meetings requirements may be guilty of a misdemeanor of the second degree, punishable by up to sixty (60) days in jail and/or a \$500 fine. All other violations are subject to a \$500 fine. In addition, attorneys' fees may be assessed against a party found in violation if a civil action is brought to enforce the law.

#### **7. Conclusion.**

In summary, Board members should not discuss with each other, directly or indirectly, items that will or could foreseeably be discussed and acted on at the board's/committee's public meeting. This is only a brief summary of the Sunshine Law. It is not inclusive of the areas when the law applies. If you have questions concerning specific application, please seek guidance from the County Attorney's Office. If you know of a particular factual situation that may constitute a conflict of interest and some doubt exists whether the conflict exists, an advisory opinion from the Commission on Ethics can be obtained.

**Reference:** A valuable source in this area is the Government in the Sunshine Manual – new editions issued annually.

## The 2022 Florida Statutes (including Special Session A)

[Title XIX](#)

[Chapter 286](#)

[View Entire Chapter](#)

PUBLIC BUSINESS

PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

**286.011 Public meetings and records; public inspection; criminal and civil penalties.—**

- (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, 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.
- (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.
- (3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.
- (b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#).
- (c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#).
- (4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.
- (5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(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.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or 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 before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

**History.**—s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353; s. 2, ch. 2012-25.