

Deborah Thomas

From: Lewis, Sally A <Sally.Lewis@brevardfl.gov>
Sent: Friday, March 19, 2021 11:02 AM
To: Advanced Agenda; CGroup; CNTYATY_Staff; CNTYMGR_Staff
Cc: Cheryl Duisberg; Deborah Thomas; Donna Scott; Kimberly Powell; Nicole Summers; Samantha McDaniel
Subject: Revision to final agenda

Good Morning,

There is a revised edition of the final agenda available on the Brevard County Webpage.

The only change that was made was to Agenda Item F.18. The Fiscal Impact was added to the agenda.

Thank you,

Sally

Sally Lewis
County Manager's Office
2725 Judge Fran Jamieson Way
Viera, Fl. 32940

Note: Florida has a very broad public records law. This agency is a public entity and is subject to Chapter 119 of the Florida Statute concerning public records. Email Communications are covered under such laws and may be subject to public disclosure

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

Deborah Thomas

From: Lewis, Sally A <Sally.Lewis@brevardfl.gov>
Sent: Thursday, March 18, 2021 12:35 PM
To: Advanced Agenda; CGroup; CNTYATY_Staff; CNTYMGR_Staff
Cc: Cheryl Duisberg; Deborah Thomas; Donna Scott; Kimberly Powell; Nicole Summers; Samantha McDaniel
Subject: Final Agenda for March 23, 2021

The final agenda is posted on the Brevard County Web Page

There is one add on agenda J.7.

Thank you,
Sally

Sally Lewis
County Manager's Office
2725 Judge Fran Jamieson Way
Viera, Fl. 32940

Note: Florida has a very broad public records law. This agency is a public entity and is subject to Chapter 119 of the Florida Statute concerning public records. Email Communicaitons are covered under such laws and may be subject to public disclosure

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

Deborah Thomas

From: Lewis, Sally A <Sally.Lewis@brevardfl.gov>
Sent: Thursday, March 18, 2021 11:21 AM
To: Advanced Agenda; CGroup; CNTYATY_Staff; CNTYMGR_Staff
Cc: Cheryl Duisberg; Deborah Thomas; Donna Scott; Kimberly Powell; Nicole Summers; Samantha McDaniel
Subject: March 23rd Adv Agenda

Good Morning,

Since the advanced agenda for the March 23rd meeting was posted, there have been some minor changes.

- Agenda Item J.2 – the Ordinance attachment was replaced
- Agenda Item F.14 – Added District
- Agenda Item J.5 - Revised paragraph in Summary
- Agenda Item F.18 – Waiting on Cost from Tax Collectors Office, will be added as soon as I get the info.

The revised agenda and draft agenda package is available on the Beach.

Thank you,
Sally

Sally Lewis
County Manager's Office
2725 Judge Fran Jamieson Way
Viera, Fl. 32940

Note: Florida has a very broad public records law. This agency is a public entity and is subject to Chapter 119 of the Florida Statute concerning public records. Email Communicaitons are covered under such laws and may be subject to public disclosure

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

Deborah Thomas

From: Lober, Bryan <Bryan.Lober@brevardfl.gov>
Sent: Monday, March 22, 2021 3:33 PM
To: Commissioner, D1; Commissioner Rita Pritchett; Commissioner, D2; Commissioner, D3; Commissioner John Tobia; Commissioner, D4; Commissioner Curt Smith; Commissioner, D5; Zonka, Kristine
Cc: Cheryl Duisberg; Deborah Thomas; Donna Scott; Kimberly Powell; Nicole Summers; Samantha McDaniel; Giles Malone; esrogers@floridatoday.com; Lewis, Sally A; Abbate, Frank B; Bentley, Eden; Post, Troy
Subject: Memo for 3/23/2021 BoCC Meeting
Attachments: Memo re Dark Storm Industries.pdf
Importance: High

Dear Fellow Commissioners:

Please see attached memorandum which does not solicit feedback from any Commissioner and Commissioners are specifically asked not to respond to it (or discuss it amongst one another outside of a duly noticed BoCC meeting) as doing so could and likely would constitute a violation of one or more provisions of Chapters 119 and/or 286, Fla. Stat. So that it may be made available to the public, a copy of this memo is being provided to the Clerk to the Board so that it may be included in the minutes for the Tuesday, March 23, 2021 BoCC meeting.

Please do not reply, reply all, or acknowledge receipt.

Thank you.

Kind regards,

Bryan

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."



Bryan A. Lober, Commissioner, District 2
2575 N. Courtenay Pkwy, Suite 200
Merritt Island, FL 32953

Telephone: (321) 454-6601
Fax: (321) 454-6602
www.brevardfl.gov
D2.commissioner@brevardfl.gov

March 22, 2021

Memo Discussing Issue Coming before BoCC on Tuesday, March 23, 2021

This memorandum does not solicit feedback from any Commissioner and Commissioners are specifically asked not to respond to it (or discuss it amongst one another outside of a duly noticed BoCC meeting) as doing so could and likely would constitute a violation of one or more provisions of Chapters 119 and/or 286, Fla. Stat. So that it may be made available to the public, a copy of this memo is being provided to the Clerk to the Board so that it may be included in the minutes for the Tuesday, July 21, 2020 BoCC meeting. Please see the attached County Attorney's Office Inter-Office Memo dated December 12, 2016 which indicates that communications of this variety are authorized under applicable law.

There are three grants envisaged by the arrangement mentioned in Item J5:

- (1) Land acquisition grant (\$363,600);
- (2) Site preparation grant (capped at a maximum value of \$250k); and
- (3) Capital investment reimbursement grant (not provided at the outset of the agreement)

We are in a position in which we can protect Brevard County's limited resources by securing a portion of our interest in a manner which will not harm the grantee and which encourages the grantee to operate in accordance with the contemplated agreement and to succeed in creating high paying jobs and turning a profit.

Provided Commissioner Pritchett wishes to approve the item, I intent to move to approve item J5 contingent upon either (grantee's choice) of the following:

- (a) The County be given third priority as a lienholder over the subject property for an amount equal in value to the land acquisition grant which amounts to \$362,600;
 - a. Our lien priority would be subordinate to the bank loan as first and the Charter Development Corporation ("CDC") loan in second priority;
 - b. At the beginning of year six, if the company is and has been in compliance with their agreement(s) with the County and NBEDZ, we would then record a satisfaction of lien; or
- (b) The \$362,600 land acquisition grant not disbursed until the beginning of year six at which time it would be provided if the company is and has been in compliance with the agreement(s) with the County and NBEDZ.

The above proposal has been conveyed to the grantee by Troy Post (NBEDZ) and the grantee is not immediately opposed to either option but wishes to discuss it with legal counsel. As such, I would like to approve the item contingent upon one of the above options being chosen and implemented.

/s/ Bryan A. Lober

District 2 Includes

Cocoa • Kennedy Space Center • Merritt Island • Port Canaveral • Cape Canaveral • Avon by the Sea • Cocoa Beach • Snug Harbor • Patrick AFB • Rockledge



BOARD OF COUNTY COMMISSIONERS

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

Inter-Office Memo

TO: Scott Knox
FROM: Alex Esseece
SUBJECT: Ability for commissioner to send out a memorandum or position statement to the other commissioners on an issue that will go before the Board
DATE: 12/8/16

Issue: A commissioner wants to prepare and circulate a written memorandum to the other members of the Board of County Commissioners that discusses an issue that will go before the Board. This memorandum will include the commissioner's stance/position on the matter and will likely recommend that a certain course of action be taken by the Board.

Question: Can a commissioner prepare and circulate a memorandum/position statement to other commissioners on an issue that will go before the Board without violating the Government in the Sunshine Law, Chapter 286, Florida Statutes?

Short Answer: Yes, but with caution. No discussions of the information/positions outlined in the memorandum can be discussed outside of a public meeting; the memorandum cannot solicit feedback from the other Board members; there cannot be any responses to the memorandum prior to the public meeting; and, because the memorandum is a public record, a copy must be made available to the public. Furthermore, the memorandum/statement cannot be used as a substitute for action at a public meeting and cannot be used to enable staff to act as an intermediary among the commissioners.¹

Analysis

The Government in the Sunshine Law was adopted, at least in part, to prohibit public business from being conducted in private. Put another way, "[o]ne purpose of the [G]overnment in the [S]unshine [L]aw was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance."² In order to accomplish this goal, Florida law provides that

¹See, Op. Att'y Gen. Fla. 01-21 (2001).

²Palm Beach v. Gradison, 296 So.2d 473, 477 (Fla. 1974).

[a]ll meetings of any board or commission . . . of any agency or authority 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.³

Courts have found that, “[i]n order for there to be a violation of [Fla. Stat. § 286.011], a meeting between two or more public officials *must take place* which is violative of the statute’s spirit, intent, and purpose.”⁴ However, despite this assertion, it has been established that “the physical presence of two or more members is *not necessary* in order to find the Sunshine Law applicable.”⁵ In practice, this means that Fla. Stat. § 286.011 “should be construed so as to frustrate all evasive devices” used to circumvent the statute’s purposes of transparency and openness.⁶

Florida Attorney General Interpretations

The Florida Attorney General has issued a number of opinions on when and how official subject to the Government in the Sunshine Law can use memoranda to discuss their stances and/or suggest certain positions be taken on issues requiring official action before their respective boards. For example, in **AGO 2007-35**, the Florida Attorney General was tasked with determining whether city commissioners could exchange documents on issues that would come before the commission for official action. As mentioned above, “the courts and this office have found that there are instances where the physical presence of two or more members is not necessary in order to find the Sunshine Law applicable.”⁷ The Attorney General found that “a commissioner may send informational material to the other commissioners outside of a public meeting provided that there is no interaction between or response from the other commissioners.”⁸ Importantly,

[w]hile it is not a direct violation of the Sunshine Law for members to circulate their own written position statements to other council members so long as the council members avoid any discussion or debate among themselves on these statements, the members’ discussions and deliberations on matters coming before the commission must occur at a duly noticed [meeting] and . . . must not be used to circumvent the requirements of [Fla. Stat. § 286.011].

³Fla. Stat. § 286.011(1).

⁴Hough v. Stembridge, 278 So.2d 288, 289 (Fla. 3rd DCA 1973) (*emphasis added*).

⁵Op. Att’y Gen. Fla. 96-35 (1996) (*emphasis added*).

⁶Gradison, 296 So.2d at 477; Op. Att’y Gen. Fla. 96-35 (1996).

⁷Op. Att’y Gen. Fla. 2007-35 (2007).

⁸*Id.*

Ultimately, the Attorney General found that a commissioner may send documents to other members of the commission on matters going before the commission for official action, “provided that there is no response from, or interaction related to such documents among, the commissioners prior to the public meeting.”⁹

In **AGO 01-21**, the Florida Attorney General was asked whether board members could prepare individual position statements on the same subject and exchange these memoranda to the other board members. In the situation outlined in AGO 01-21, board members “prepare[d] and circulate[d] statements meant to communicate a particular council member’s position on issues coming before the board,” but these statements did not solicit responses from the other members and were made available to the public.¹⁰ The Florida Attorney General’s Office found that “[w]hile [it] would strongly discourage such activity, it would appear that council members . . . may prepare and distribute their own position statements to other council members without violating the Government in the Sunshine Law so long as the council members avoid any discussion or debate among themselves on these statements.”¹¹ More specifically, the Florida Attorney General noted that such a practice would become “problematic” if and when “any such communication [was] a response to another commissioner’s statement” because it opened the door for board members to respond to one another outside of a duly noticed meeting, causing the requirements of Fla. Stat. § 286.011 to be circumvented.¹² Despite reaching such a conclusion, the preparation and distribution of such memoranda/statements amongst the commissioners would not be a “direct violation of the Government in the Sunshine Law.”¹³

The Florida Attorney General issued an opinion (**AGO 96-35**) that addressed the issue of whether a school board member could circulate a memorandum “expressing that member’s position on a matter that [would] come before the school board for action and urging the other board members to give the author’s position very serious consideration.”¹⁴ Importantly, “[t]he memorandum [did] not request other board members to respond prior to the meeting at which the topic will be brought up for action or discussion.”¹⁵ The Attorney General made it a point of identifying circumstances where the use of a memorandum would not be permitted. For example, a memorandum cannot request board members to respond with comments and/or to request the board members to “indicate his or her approval or disapproval” for certain views.¹⁶ Based on such a position, the Attorney General came to the conclusion that

if a school board member writes a memorandum to provide information to make a recommendation to other school board members on a particular subject, there is

⁹*Id.*

¹⁰Op. Att’y Gen. Fla. 01-21 (2001).

¹¹*Id.*

¹²*Id.*

¹³*Id.*

¹⁴Op. Att’y Gen. Fla. 96-35 (1996).

¹⁵*Id.*

¹⁶*See, Id.*

no violation of [Fla. Stat. § 286.011]. However, the use of a memorandum to solicit comment from other members of the board or commission or the circulation of responsive memoranda by other board members would violate the statute. Such action would be equivalent to private meetings discussing the public business through the use of memoranda without allowing an opportunity for public input.¹⁷

Another Florida Attorney General opinion (**AGO 89-23**) found that “[t]he use of a written report by one [city] commissioner to inform other commissioners of a subject which will be discussed at a public meeting does not violate Florida’s Government in the Sunshine Law if prior to the public meeting, there is no interaction related to the report among the commissioners.”¹⁸ Again, in that situation, the other commissioners were not requested to and did not provide any comments on the report prior to the public meeting. The Attorney General determined that the memorandum would be allowed as long as “[t]he circumstances . . . do not . . . involve the use of a report as a substitute for action at a public meeting, inasmuch as there is no interaction among the commissioners prior to the public meeting.” Furthermore, the memorandum cannot be used by other city officials, such as a city manager, “to act as intermediary among the commissioners” to ask “each commissioner to state his or her position on a specific matter which will foreseeably be considered by the commission at a public meeting in order to provide information to the members of the commission.”¹⁹

Conclusion

A County commissioner is permitted to prepare and circulate a memorandum on an issue to go before the Board. However, no discussions of the information/positions outlined in the memorandum can be discussed outside of a public meeting; the memorandum cannot solicit feedback from the other Board members; there cannot be any responses to the memorandum prior to the public meeting; and, because the memorandum is a public record, a copy must be made available to the public. Additionally, the memorandum/statement cannot be used as a substitute for action at a public meeting and cannot be used to enable staff to act as an intermediary among the commissioners.

¹⁷Op. Att’y Gen. Fla. 96-35.

¹⁸Op. Att’y Gen. Fla. 89-23 (1989).

¹⁹*Id.*