

Memo

To: Richard Reade, Town Manager; Vivian Mendez, Town Clerk
From: Thomas J. Baird, Brett T. Lashley and Krissy A. Hosman, Town Attorneys
Date: December 8, 2025
Subject: Public Records Requests from Lee Feldman re P-3 meetings

Preface

Mr. Lee Feldman of the Euclid Group, one of the entities representing Forest Development P3 LPM, LLC ("Forest") requested that the Town Clerk produce public records associated with the P-3 Project and the subsequent Comprehensive Agreement. Mr. Feldman requested:

It is my understanding ... that one or more meetings of the Town Commission occurred on or after January 8, 2021, and that publicly exempt meetings were conducted in accordance with the then applicable Section 255.065(15)(d)1., Florida Statutes (2021). However, the recording of, and any records generated during those exempt meetings are no longer exempt from s. 119.07(1), Florida Statutes. Therefore, please consider this email as a request for (1) all notices of meetings of the Town Commission which were conducted pursuant to Section 265.055(15), Florida Statutes (2021) on or after January 8, 2021 (the "Meetings"); (2) agendas of the Meetings; (3) minutes of the Meetings; (4) recordings of the Meetings; (5) transcripts of the Meetings; (5) (sic) copies of all staff reports; (b) Town Consultant's reports; (c) presentations made by third parties; and (d) any and all other documents presented to the Town Commission at the Meetings.

The Town Clerk provided Mr. Feldman with those responsive documents the Town had. After receiving the documents from the Town Clerk, Mr. Feldman had this email exchange with the Town Clerk:

E S T .
1 9 2 4

tbaird@
jonesfoster.com
561 650 8232 T
561 650 5300 F

4741 Military Trail
Suite 200
Jupiter
Florida 33458

1. There was a notice for the June 1, 2022, meeting, but no agenda, meeting, recording or transcript. *The Town Clerk confirmed his conclusion.* 2. There are no minutes for the September 22, 2021, meeting. *The Town Clerk responded that there was a notice, but the meeting was not held.* 3 & 4. There are no recordings or transcripts for March 3, 2021; April 15, 2021; January 26, 2022; June 19, 2022; August 24, 2022; and October 25, 2022, meetings. *The Town Clerk confirmed that there were no audio recordings or transcripts of these meetings.* 5. There were no staff or consultant reports for any of the meetings. *The Town Clerk replied that she could not locate any reports that were provided to the Commission during these meetings.*

Given our review of the records produced, there are two potential violations of the Sunshine Law: (1) There were private meetings that were not recorded; and (2) private meetings were held after the exemption in Fla. Stat. §255.065(15) sunset. It is my understanding that Mr. Feldman commented to you that those Commissioners who attended the private meetings after the statutory exemption had sunset violated the Sunshine Law and that those public officials who participated in the meetings may be subjected to civil and/or criminal violations under Sunshine Law¹. Because of the seriousness of his statements to you, and at your request, we have reviewed the public records produced by the Town Clerk to Mr. Feldman to evaluate whether the Town may not have complied with the provisions of Fla. Stat. §255.065(15).

DISCUSSION

Prior to the time the unsolicited proposal was submitted by Forest and thereafter, the Commission was advised in *all respects* regarding its P-3 statutory requirements and responsibilities by Strategic Development Initiatives, Inc. ("SDI"). The Commission selected SDI based upon the representation of its President, Don Delaney that he was an "expert" in P-3 projects and the P-3 process. SDI and the Town signed a contract on October 7, 2020, which authorized Mr. Delaney to lead the Town throughout the P-3 process². ***SDI was required to administer and ensure compliance with the procedures of Fla. Stat. §255.065, provide expert opinions and recommendations to protect the Town's position during the negotiation process with the developer and thereafter with the negotiation of a Comprehensive Agreement. Also §1.6 of the contract with SDI, vested the Town Manager with the "sole responsibility" and authority to determine whether SDI's services were satisfactory and whether SDI fulfilled the terms of its contract to administer the P-3 process.*** The recordings we have listened to confirm that Mr.

¹ **Caveat:**¹ It should be noted that Mr. D'Agostino has retired and of those on the Town Commission during this time, only Mayor Michaud and Commissioners Linden and O'Rourke remain elected officials. We have not undertaken any analysis of whether the Sunshine Law may be applied retroactively to those who may be alleged to have violated the Sunshine Law during this time, or who are not presently serving as elected officials.

² Sometime after the Comprehensive Agreement was executed, the Town Manager recommended the termination of the SDI contract and the Town Commission affirmatively voted to do so.

Delaney and former Town Manager D'Agostino were responsible for and led all aspects of the P-3 process, including specifically the October 13, 2021, private meeting wherein Forest's unsolicited proposal was selected.

Sunshine Law Exemption

During the 2015 session of the Florida Legislature Section 255.065(15) was enacted to provide for an exemption to the Sunshine Law and Public Records Act pertaining to P-3 qualifying projects. Section 255.065(15)(d)1, provided that any portion of a meeting of a responsible public entity during which an unsolicited proposal that is discussed is **exempt from Fla. Stat. Section 286.011³ and s. 24(b), Art. I of the State Constitution**. An unsolicited proposal received by a responsible public entity is **exempt from s.119.07(1)⁴ and s. 24(a), Art. I of the State Constitution** until such time as the responsible public entity provides notice of an intended decision for a qualifying project. According to the statute, this statutory exemption extends until the public entity provides notice of its intended decision to select a developer for a P-3 project. The Commission selected Forest following private and public meetings held on October 13, 2021.

We examined the February 16, 2016, Bill Analysis of SB 124 which created the exemption from public record and meeting requirements for unsolicited proposals codified in §255.065(15). The bill analysis states that the exemption was created in furtherance of the statutory intent to encourage developers to submit proposals and prevent competitors from gaining an unfair advantage. The Bill Analysis also notes that "*The Open Government Sunset Review Act*" mandates any newly created or expanded public records or open meeting exemption be automatically repealed on October 2 of the fifth year after the enactment. Accordingly, the exemption created in 2016 for unsolicited proposals in Fla. Stat. §255.065(15) sunset on October 2, 2021. Our further research revealed that a bill (SPB 7050) to extend the exemption, was filed during the Florida Legislature's 2021 legislative session. This bill would have taken effect on October 1, 2021, and extended the exemption, but it was not enacted. Thus, Fla. Stat. §255.065(15) sunset on October 2, 2021.

Email Exchanges Between Feldman and the Town Clerk

Mr. Feldman also questioned the Town Clerk regarding whether there were notices⁵, agendas, minutes or audio recordings of the private meetings. The exemption does not require notices, an agenda, or minutes for private meetings; rather all that is required is that the meetings be recorded. In her response to Mr. Feldman, *the Town Clerk, advised Mr. Feldman that she was only able to locate three recordings of the eight private meetings*. The meetings were held in the Mirror Ballroom, not the Commission Chambers. *The Town Clerk explained that she set up the*

³ This is the Sunshine Law statute and constitutional provision.

⁴ This is the Public Records statute and constitutional provision.

⁵ The statute did not require the Town to provide notice to the public that such a meeting will take place.

ability to record those meetings using an iPad. She understood that all the meetings were recorded because she had set up the iPad for all private meetings, but that since she was not invited to attend these meetings, it was up to “staff” (the Town Manager) to start the recordings on the iPad.

Potential Sunshine Law Violations

Pursuant to the exemption contained in Fla. Stat. §255.065(15)(d)2 a., all private meetings wherein the unsolicited proposals were discussed must be recorded. The recordings become public records after the Commission provided its notice of the selection of an unsolicited proposal. Based upon the Town Clerk’s production of the recordings, the statutory requirement to record all private meetings was not met. Only three of the eight private meetings were recorded. The three recorded **private meetings** to discuss the unsolicited proposals were held on July 28, 2021, October 5, 2021, and October 13, 2021.

The exemption sunset on October 2, 2021. The Commission held private meetings on October 5 and 13, 2021, after the exemption sunset. At the October 5 private meeting, Forest and Creative Choice made presentations of their respective unsolicited proposals in the Mirror Ballroom. There was no public presentation of the two unsolicited proposals following this private meeting. On October 13, 2021, a private meeting of the Commission was held in the Mirror Ballroom, followed by a public meeting in the Commission Chambers.

October 13, 2021 Private Commission Meeting

The recording of this meeting reveals the Commission evaluated the unsolicited proposals of Forest and Creative Choice for purposes of selecting one of the two unsolicited proposals. Those commissioners present were then Mayor O’Rourke, Vice Mayor Glas-Castro, Commissioners Linden and Michaud. Town Manager D’Agostino and P-3 Consultant Don Delaney were also present. Commissioner Flaherty and Town Attorney Baird were not present.

During the meeting, a detailed discussion ensued comparing both developers. Creative Choice was recognized for focusing on a wellness center but lacked detailed development plans. Forest’s proposal contemplated a hotel, a boat storage building and the expansion of the marina. Some members expressed concern that Forest might market the marina as its own project, emphasizing the importance of preserving public access and the marina’s community identity. Forest’s proposal referred to supporting local businesses, parking needs, and it proposed underwriting launch slip costs and creating access opportunities for Lake Park residents. The Commission consensus was to select Forest, with direction to include the Creative Choice wellness component as part of the P-3. The Commission support for Forest was contingent on community access being preserved and the marina remaining available to the public. The Commission acknowledged that in public meeting, which was to immediately follow this private meeting, a formal selection and vote to select Forest would occur.

October 13, 2021 Public Commission Meeting

The minutes⁶ suggest there was little discussion by the Commission at the October 13, 2021, public meeting regarding the selection of Forest. The minutes confirm that the same commissioners along with Town Manager D'Agostino and P-3 Consultant Don Delaney attended the public meeting and that Commissioner Flaherty and Town Attorney Baird were not present. The minutes state that Mayor O'Rourke noted the difficulty the Commission faced in reaching a decision and explained that the consensus was that both presentations were impressive. Commissioner Linden made the motion to select Forest. The motion was seconded by Commissioner Michaud. The only discussion on the motion reflected in the minutes were comments from the commissioners of the high quality of the presentations regarding the two unsolicited proposals. After this discussion, the Commissioners voted 4-0 to select Forest.

Curing Sunshine Law Violations

If there were violations of the Sunshine Law, the caselaw we have examined indicates that it is possible to "cure" the violation. It should be noted, however, that there could not be a "cure" of the Sunshine Law violations for the Town Manager's failure to record five of the private meetings. We have presented below two examples of a "cure" for the violation of the Sunshine Law.

Florida law permits a "cure" for Sunshine Law violations if an independent final action occurs in the sunshine. However, only *a full, open meeting can cure a violation*. *Florida Citizens All., Inc. v. Sch. Bd. of Collier Cnty.*, 328 So. 3d 22, 29 (Fla. 2d DCA 2021). If challenged, the evidence before the court to sustain a cure of the violation must demonstrate that the Commission held a public meeting to discuss Forest's proposal and that there was a public meeting was a "*full, open meeting*" wherein the commission would presumably **fully discuss** its reasons for selecting Forest and there was an opportunity for the public to comment on the Commission's intended decision to select Forest. A court would likely consider the recording of the October 13 private and the discussions of the subsequent public meeting and compare the information regarding the two unsolicited proposals that was discussed at the private meeting and that which was presented at the public meeting to determine if there was a "full" discussion.

An example of a court's analysis occurred in *Sarasota Citizens for Responsible Gov't v. City of Sarasota*. In this case, the Florida Supreme Court determined that any violations of the Sunshine Law committed through private email exchanges were cured when "multiple proposals were discussed and rejected before one was finally approved" by a board after *four* public board meetings were held. 48 So. 3d 755, 762 (Fla. 2010). Contrast that with the actions in *Florida Citizens*, where a court held that a school board failed to cure a violation of a special textbook committee even after two subsequent open meetings occurred. 328 So. 3d at 29. In *Florida Citizens*, at the first meeting, the school board did not discuss the substance of the textbooks, and the school board's discussion

⁶ The Town Clerk has advised us that there is no longer a recording of the October 13, 2021 public meeting of the Commission.

lasted under thirty minutes when it approved all thirty-six recommended books. *Id.* At the second meeting, the school board considered objections filed as to six of the thirty-six textbooks that the school board previously approved and ended up rescinding only one of the approved books. *Id.* The court found that the two subsequent meetings failed to cure the Sunshine Law violations because a full and open hearing was not held on the approved books. *Id.*

Assuming the October 13, 2021, private meeting was not exempt from the Sunshine Law, the Commission's discussion of the two unsolicited proposals at the public meeting would have to have been sufficiently detailed to cure the violation. There is certainly a difference both in time and substance when comparing the Commission's discussion at the private meeting with its discussion at the public meeting. If challenged, a court would ultimately determine whether the discussion at the public meeting was a full and open discussion as compared to that which took place at the private meeting, and if so, if the violations were "cured."

Legal Challenges to Sunshine Violations

A violation of the Sunshine Law may be initiated by *any person*⁷ in the state of Florida. See Fla. Stat. §286.011(2). Accordingly, any person can challenge the Commission's decision to select Forest's unsolicited proposal. To prove the violation, that person would have to provide evidence that the Commission's decision to select Forest did not occur at **a full and open public meeting which included a discussion regarding the Commission's** reasons for selecting Forest to be the preferred P-3 developer. Because there is no longer a recording of the Commission's public meeting on October 13, 2021. The only memorialization of its public discussion is contained in the minutes of that meeting.

Consequences For Sunshine Law Violations

If a violation of the Sunshine Law occurred, and the violation was not cured, there could be consequences for the actions taken by the Commission and for those public officials who participated in the meeting where the Sunshine Law was violated, as discussed below:

First, the official actions taken by the Commission may be declared *void ab initio*⁸ or invalid. *Port Everglades Auth. v. Int'l Longshoremen's Ass'n, Local 1922-1*, 652 So. 2d 1169, 1170 (Fla. 4th DCA 1995); *Town of Palm Beach v. Gradison*, 296 So.2d 473, 477 (Fla.1974) ("[m]ere showing that the government in the sunshine law has been violated constitutes an irreparable public injury so that the ordinance is void *ab initio*."); *Spillis Candela & Partners, Inc. v. Centrust Savs. Bank*, 535 So.2d 694 (Fla. 3d DCA 1988) (upholding trial court determination that Dade County Board of Rules and Appeals violated Sunshine Law and invalidating the Board's resulting recommendation);

⁷ We note that this could include Mr. Feldman, but this seems unlikely.

⁸ This means from the beginning, such that the action was never valid.

Blackford v. School Bd. of Orange County, 375 So.2d 578 (Fla. 5th DCA 1979) (overturning school board decision to close school when its decision was made outside of public eye).

Here, a private meeting was held wherein the unsolicited proposal from Forest was discussed and compared with another unsolicited proposal after the Sunshine Law exemption sunset. We have not researched whether the Town could have justifiably relied on the exemption continuing because it started the P-3 process and scheduled the October 13, 2021, meeting **before** the statute sunset, but this seems like a tenuous argument. If a court were to find that the Commission's private decision was not cured by its discussion of the proposal at the subsequent public meeting, the Commission's decision to select Forest could be held to be void *ab initio*, or invalid. It could also be that the actions subsequently taken based upon the selection of Forest, such as entering into the Comprehensive Agreement and Ground Leases, would also be void or invalid.

Second, any public officer who violates the Sunshine Law can be convicted of a non-criminal infraction punishable by fine not exceeding \$500. See Flat Stat. §286.011(3)(a). *Third*, any Commissioner who *knowingly* violated §286.011 may be found guilty of a misdemeanor of the second degree, punishable by six months in jail, or a fine of \$500. *Id.* at (3)(b). We have not evaluated whether the commissioners who participated in the private meetings in 2021 after the exemption sunset could be found in violation of a noncriminal or convicted of a criminal violation of the Sunshine Law. We note that although Commissioner O'Rourke served as the Mayor in October of 2021. Sometime thereafter, he resigned from his office of mayor, but in 2025 he was elected as a commissioner. Similarly, Commissioner Linden was a commissioner during a portion of the relevant timeframe, subsequently resigned and was re-elected in 2025 as a commissioner. Mayor Michaud was a commissioner in October of 2021 and was subsequently elected as Mayor. Vice Mayor Gals Castro was not re-elected in 2025. Town Manager D'Agostino retired in September of 2024. We have not evaluated whether the public officials who may have violated the Sunshine Law could be sanctioned if they are no longer in office, or if they were subsequently elected to another office different from the office they held in 2021.

Finally, in the event a person files a lawsuit alleging a Sunshine Law violation, and is successful, that person may be entitled to recover his or her attorneys' fees and costs from the Town. See Fla. Stat. §286.011(4).

Conclusions

Florida Statute §255.065 (15) enacted an exemption from the Sunshine Law and Public Records Act pertaining to P-3 unsolicited proposals. This exemption from Sunshine Law *requires* that all private meetings be recorded. The Town does not have recordings of all the private meetings the Commission held wherein it discussed the unsolicited proposal made by Forest.

The exemption sunset on October 2, 2021. The statute did not contain any language that would indicate that the exemption ended October 2, 2021; rather this occurred because of another

legislative act⁹ mandating its sunset. It might be argued that having begun the statutorily exempt process before the exemption sunset, the Town was entitled to continue to rely on this exemption even after it sunset. It might also be argued that the Commission's subsequent discussion of the Forest unsolicited proposal at the October 13, 2021, public meeting "cured" the violation. Ultimately, however, a court would have to find such arguments persuasive based upon the evidence produced. Should a court determine that a Sunshine Law violation was proven, it is unlikely that there would be any criminal adjudication because there does not seem to be any evidence of anyone's intent to (1) not record the meetings, or (2) conduct a meeting that was known to be impermissible because the exemption had sunset. If proven, however, a court could find a non-criminal violation of the Sunshine Law and could hold the Commission's vote to select Forest on October 13, 2021, void *ab initio*.

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⁹ The Open Government Sunset Review Act requires the Legislature to review each public meeting exemption five years after enactment. The exemption contained in Fla. Stat. §255.065(15) (2016) was repealed effective October 2, 2021.