

CITY OF ST. AUGUSTINE, FLORIDA

Historic Architectural Review Board Workshop Meeting  
August 16, 2007

The Historic Architectural Review Board met in formal session at 1:00 P.M., Thursday, August 16, 2007, in the Alcazar Room at City Hall, St. Augustine, Florida. The meeting was called to order by Paul Weaver, III, Chairperson, and the following were present:

**1. ROLL CALL:** Paul Weaver, III, Chairperson  
Antoinette Wallace  
Frederick Halback  
Dana Ste. Claire  
Karen Harvey

City Staff: Mark Knight, Director, Planning and Building Department  
Tom Scofield, Historic Preservation Planner  
David Birchim, Planning Manager  
Ron Brown, City Attorney  
Maria Carlin, Recording Secretary

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**2. WORKSHOP ON THE LEGAL ASPECTS OF QUASI-JUDICIAL REVIEW AND GOVERNMENT IN THE SUNSHINE**

Mr. Ron Brown, City Attorney, said that the Florida Attorney General's Office viewed the Public Records Act and the Florida Government in the Sunshine Act seriously. He said that public records were being reviewed for easier access and stated that email was a common method of contact among Government workers. He advised that the contents of emails, unless specifically exempt from public records review, would be open to public review. He said that it was not always necessary to send an e-mail, and whenever possible engaging in direct conversation would be preferable. He explained that Chapter 119 of Florida Statutes was the Florida Public Records Law, which allowed for any record created by a public agency or individual in a public agency to be available for public inspection and copying. He said this would include the following:

- ◆ Paper and electronic records
- ◆ Taped records

- ◆ Cell phone records
- ◆ Salaries of personnel
- ◆ Perks associated with the job
- ◆ Documents presented to the board

Mr. Brown explained that notes taken during meetings were public records. He said that first, second and third drafts were also for public consumption, but notes for personal reference of what occurred at a meeting could escape the definition of a public record.

Mr. Weaver questioned whether the points and questions for applicants that he wrote down would be considered public record.

Mr. Brown replied that it depended on the contents of the notes. He said that if the notes were regarding events in the meeting, it may not be a public record, but a draft of language for a motion would be. He cautioned the board on what they wrote down in any format especially regarding matters of the board. He explained that law enforcement officers, Code enforcement officers and State's Attorneys could have their personal information exempted from public records. He said that the names,

address and phone numbers of staff were considered public records.

Mr. Weaver enquired whether communication with staff would be public record.

Mr. Brown replied that committee business would be considered public record. He recommended that they exercise good judgment and not say anything that they did not want repeated. He advised that public records requests could not be made in any format or style that was not kept by the City e.g. staff did not have to collate or create a report that was not existent nor staff have to answer any questions. He said that the City would eventually have to provide computer terminals to the public to view records.

Mr. Weaver said he did not favor e-mail as a means of correspondence because of the record keeping responsibility. He said that he had received phone calls regarding applications and he had been advised in the past to take notes. He requested guidance on reporting the information and taking notes.

Mr. Brown replied that there would be two issues to address:

- ◆ The creation of a record
- ◆ Whether the communication was allowable

Mr. Brown explained that if the board member deliberated about the matter and the information would be presented or considered at a meeting, it would be defined as a public record. He said that the board members should not put themselves in a position where there would be improper conversation. He explained that there needed to be proof that a board member had communication with an applicant or an act violated a Law. He summarized that the board members should be aware of their e-mails and written Documentation and Notes.

Mr. Halback enquired what should be done with correspondence.

Mr. Brown said it should be given to the Clerk of Court. He said that as long as the board members turned over the records to the City, they would no longer be responsible for record keeping. He advised the board of the following:

- ◆ Laws were created before advanced technology
- ◆ The board was prohibited from discussion regarding HARB business unless attending a noticed meeting
- ◆ Discussions with staff were allowed
- ◆ Intermediaries could not be used to obtain board consensus
- ◆ The law applied to any public body that made quasi-judicial decisions
- ◆ The actions of the board impacted the property rights of residents
- ◆ It would be appropriate to send a report to staff

Mr. Weaver asked whether it would be appropriate to notify the co-chair if he could not be present for a meeting.

Mr. Brown recommended that the Chair could inquire from staff whether there would be a quorum at the meeting or notify them that he could not attend. He further recommended as follows:

- ◆ Discussions with one another should be audible
- ◆ Whispering was prohibited during a meeting
- ◆ Writing notes to each other should be avoided

Mr. Brown advised the board regarding quasi-judicial and ethics practices and said the following:

- ◆ Courts and juries head the evidence
- ◆ Evidence was evaluated in terms of credibility
- ◆ Evidence was applied to the law

- ◆ Applicants must be given due process of law
- ◆ The board must follow the essential requirements of law
- ◆ Decisions must be based on substantial and competent evidence
- ◆ Applicants must be sworn in
- ◆ Cross-examination was allowed

Mr. Brown recommended that the board review Chapter 112 of the Florida Statute relating to public officials as it applied to the following:

- ◆ Conflicts of interest
- ◆ Employment
- ◆ Accepting gifts

Mr. Brown also recommended that the board use caution regarding the following:

- ◆ Conflicts pertaining to contracts with the City
- ◆ Financial conflicts
- ◆ Board members that recused themselves from voting needed to complete the necessary form

Mr. Brown referred to Page 2, Section 1 of Resolution 1995 regarding ex-parte communication and stated the following:

- ◆ An applicant could discuss a pending case with board members
- ◆ If any board member received written communication from an applicant regarding their application, it must be submitted to the clerk before voting

Ms. Wallace enquired whether driving by the property would be acceptable.

Mr. Brown replied that Code allowed board members to drive by the property.

Mr. Halback said it was not the board's place to investigate, but to listen and make a decision.

Mr. Brown said the better course of action would be to make a decision on what occurred during a meeting.

Ms. Harvey questioned whether they needed to disclose if they spoke to the property owners while visiting the site.

Mr. Brown replied that the information should be disclosed. He advised the board that he and the Assistant Attorney would be pleased to answer any other questions.

