

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
June 5, 2017

DATE ISSUED
May 3, 2017

CASE TITLE – Tom Borden v. the Planning Commission and the Recreation and Park Commission (File No. 16118)

FACTS OF THE CASE

On December 24, 2016, the following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 16118: Complaint filed by Tom Borden against the Planning Commission and the Recreation and Parks Commission, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.7(g), 67.15 and 67.16, by failing to ensure that notices and agenda for regular and special meetings include Sunshine Information, failing to provide separate public comment opportunity for each item listed on the agenda, and failing to list member of the public who spoke on each matter and whether such speaker supported or opposed the matter and a brief summary of each person's statement in the meeting minutes.

HEARING ON THE COMPLAINT

On March 13, 2017, the Compliance and Amendments Committee (Committee) acting in its capacity to hear petitions/complaints heard the matter and referred it to the Task Force for hearing.

Tom Borden (Complainant); provided a summary of his complaint and requested the Task Force to find violations. Christine Silva, Planning Department (Respondent); provided a summary of the departments position. Ms. Silva stated that the required Sunshine language on agenda's was printed onto the pdf version of the agenda and available as a website link on the online version. Ms. Silva stated that it is common practice to call and hearing multiply agenda items covering the same subject matter to be heard together and provided one public comment period for the grouped agenda items.

The Committee opined that the link to the required Sunshine Ordinance Language required by Administrative Code 67.7(g) was not easily recognizable and obvious and suggested that the Sunshine Ordinance Language instead be listed in its entirety in the online agenda.

The Committee requested that complaint be expanded to include the Recreation and Park Commission. Mr. Borden agreed to the inclusion of Recreation and Park Commission in the complaint.

Member Maass, seconded by Member Hyland, moved to refer the matter to the May 3, 2017, Sunshine Ordinance Task Force with the recommendation to find jurisdiction and find that John Rahaim and the Planning Department violated Administrative Code (Sunshine Ordinance), Section, 67.7(g), 67.15, and 67.16, by failing to ensure that notices and agenda for regular and special meetings include Sunshine Information, failing to provide separate public comment opportunity for each item listed on the agenda, and failing to list member of the public who spoke on each matter and whether such speaker support or opposed the matter and a brief summary of each person's statement in the meeting minutes.

In addition, Member Mass, seconded by Member Hyland, moved to refer the matter to the Sunshine Ordinance Task Force to add the Recreation and Park Commission as a Respondent without recommendation for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.7(g), 67.15 and 67.16 for failing to ensure that notices and agenda for regular and special meetings include Sunshine Information, failing to provide separate public comment opportunity for each item listed on the agenda, and failing to list member of the public who spoke on each matter and whether such speaker support or opposed the matter and a brief summary of each person's statement in the meeting minutes.

On May 3, 2017, the SOTF held a hearing to review the recommendation from Committee and to review the merits of the petition/complaint.

Tom Borden (Petitioner) provided an overview of the complaint and requested that the Task Force find violations. Mr. Borden stated that there were two separate issue being discussed and separate public comment should have been allowed on each issue. Luis Dillon spoke in support of the Petitioner. Jonis Ionin, Planning Department (Respondent), provided a summary of the department's position. Mr. Ionin stated that due to staffing issue a person unfamiliar with the agenda posted a link to Sunshine information on the online version of the agenda but the pdf version of the agenda listed the required Sunshine information in its entirety. Mr. Ionin stated that the minutes for the joint meeting have been revised based upon the advice of the Committee and additional details have been added. Mr. Ionin stated that the joint meeting was noticed for the purpose of discussion two issues/motions in which both were part of a single project and that one public comment period was provided for the entire project. Mr. Ionin stated that Planning had also previously provided opportunities for public comment on the Environmental Impact portion of the project. Eric Pawlowsky, Recreation and Parks (Respondent) provided a

summary of the department's position. Mr. Pawlowsky stated that Recreation and Parks Commission provided verbatim minutes. Mr. Pawlowsky stated that the two issues/motions are part of one project that were heard together. There were no speakers in support of the Respondents. A question and answer period followed. In response to questions Mr. Ionin stated that it has been past practice of the Planning Commission to conduct joint meetings with other departments. The Respondent and Petitioner were provided the opportunity for rebuttals.

The Task Force opined that neither the Planning Commission or the Recreation and Parks Commission provided a brief summary of public comment. The Planning Commission only indicated support or opposition with a plus or negative symbol and the Recreation and Parks Commission provided verbatim public comment. In addition, the Task Force opined that conducting a joint meeting to discuss a project is acceptable but public comment should have been provided for each Commission's motion individually.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented the SOTF found that the Planning Commission violated Administrative Code (Sunshine Ordinance), Sections 67.7(g), 67.15 and 67.16.

Based on the testimony and evidence presented the SOTF found that the Recreation and Parks Commission violated Administrative Code (Sunshine Ordinance), Sections 67.15, and 67.16.

ORDER OF DETERMINATION

Member Tesfai, seconded by Member Hinze, moved to find that the Planning Commission violated Administrative Code (Sunshine Ordinance), Section 67.7(g) by not listing required Sunshine language on the online agenda and moved to find the Planning Commission and the Recreation and Parks Commission violated Administrative Code (Sunshine Ordinance), Section 67.15(a), by failing to allow separate public comment on each motion by each commission.

Member Maass, seconded by Member J. Wolf, moved to amend the motion to include a violation of the entirety of Administrative Code (Sunshine Ordinance), Section 67.15 instead of limiting the violations to 67.15(a) and added a violation of 67.16 against the Planning Commission and the Recreation and Parks Commission for failure to provide a brief written summary of each person's public comment in the minutes.

The motion to amend the motion passed by the following vote:

Ayes: 8 – Eldon, J. Wolf, Tesfai, Maass, Fischer, Hinze, Hyland, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, Cannata

The amended motion to find a violation of Administrative Code (Sunshine Ordinance), Sections 67.7(g), 67.15, and 37.16 PASSED by the following vote:

Ayes: 8 – Eldon, J. Wolf, Tesfai, Maass, Fischer, Hinze, Hyland, B. Wolfe

Noes: 0 – None

Absent: 2 – Chopra, Cannata

A handwritten signature in blue ink, appearing to read 'BW', enclosed within a hand-drawn oval.

Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- c. Tom Borden (Petitioner/Complainant)
Christine Silva, Planning Department (Respondent)
Jonas Ionin, Planning Department (Respondent)
Eric Pawlowsky, Recreation and Parks (Respondent)