

St. Johns County Office of the County Attorney



**Workshop for Homeowners Associations
Sunshine Law and
LDC Section 5.03.02H
December 16, 2009 (REVISED)**

Introduction

- **These materials are provided for discussion purposes about the important issues pertaining to LDC Section 5.03.02H and does not constitute legal advice. Each HOA and individual property owner may consult with their own counsel about related legal issues.**



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Current LDC Language

ARTICLE V

DEVELOPMENT OPTIONS PART 5.00.00 GENERALLY

This Article sets forth the Development options established by St. Johns County. Depending on the circumstances of particular Development scenarios, Development options provided herein may be used singly or jointly. Where necessary the provisions relating to the different Development options contain design standards that supplement or replace particular standards in Article VI, and procedures which supplement or replace particular procedures in Article X.

Sec. 5.03.02 General Standards

H. Homeowner's Associations or Committees

Any PUD that requires homeowner's association or committee review and/or approval of an application for a Building Permit prior to issuance of a County Building Permit shall include or be presumed to include the following requirements, limitations and Appeal provisions in regard to that process:

1. An application for Building Permit approval by a homeowner's association or committee may be denied only upon a finding supported by competent substantial evidence that Construction of such Building would result in a violation of a valid covenant or restriction recorded in the public records of St. Johns County applicable to the land to which the Building Permit applies; and



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Current Law – Part 1

H. Homeowner's Associations or Committees

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1. An application for Building Permit approval by a homeowner's association or committee may be denied only upon a finding supported by **competent substantial evidence** that Construction of such Building would result in a violation of a valid covenant or restriction recorded in the public records of St. Johns County applicable to the land to which the Building Permit applies; and



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Which communities?

Unofficial List for discussion purposes.
Check SJC Zoning for official status of individual subdivisions.
Some approvals are just for specific items (e.g., fences).

- 1. ARBOR AT MARSHLANDING**
- 2. AZALEA POINT UNIT 1, 2A, 2B, 2C, 2D, 3**
- 3. BARRIATARIA ISLAND**
- 4. BARTRAM TRAIL**
- 5. CAMACHEE ISLAND PHASE 4 AKA HOMESITES**
- 6. CAMACHEE ISLAND – PHASE 3**
- 7. CIMMARRONE UNIT 1**
- 8. CIMMARRONE PATIO HOMES**
- 9. CLEARLAKE AT MARSHLANDING**
- 10. CLUB COVE (COUNTRY CLUB) 1, 2**
- 11. COMMANCHEE TRIAL AT CIMMARONE**
- 12. COMMODATES CLUB (AKA ISLAND LAKES)**
- 13. COMMODORES CLUB PHASE 2A, 2B, 3A, 3B**
- 14. COUNTRY CLUB UNIT 1 (MARSH CREEK COUNTRY CLUB)**
- 15. COUNTRY CLUB UNIT 2-11**



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Which communities? (continued)

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- 16. CROSSROADS, PHASE 1,2,4,5**
- 17. CYPRESS LAKES (AKA GLOBAL SHELTER PHASE I)**
- 18. CYPRESS LAKES PHASE 1 (OLD PHASE 1)**
- 19. CYPRESS LAKES (ALL PHASES)**
- 20. DOUBLE BRIDGES**
- 21. EAGLE CREEK (ISLAND LANDING)**
- 22. FAIRFIELD (COURT HOME 1,2)**
- 23. PLAYERS CLUB UNIT 7 (CYPRESS BRIDGE)**
- 24. FIDDLERS HAMMOCK**
- 25. GOVERNOR'S PLANTATION**
- 26. HAMMOCK COVE (PLAYERS CLUB)**
- 27. HARBOUR AT MARSH LANDING UNIT I (AKA HARBOUR ISLAND ESTATES)**
- 28. HARBOUR AT MARSHLANDING UNIT 3-5**
- 29. HAWKCREST WOODS**
- 30. HONEY BRANCH ESTATES**



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Which communities? (continued)

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- 31. INLET BEACH PHASE 1-8**
- 32. ISLAND COVE (FAIRFIELD PONTE VEDRA)**
- 33. ISLAND AT SWIFT CREEK (AKA THREE ISLAND COURT)**
- 34. JULINGTON CREEK ALL REPLATS**
- 35. THE PARKES AT JULINGTON (ALL)**
- 36. JULINGTON CREEK (ALL)**
- 37. KINGSTONE DUNES**
- 38. LANTERN WICK ISLAND AT MARSH LANDING**
- 39. LOST BEACH**
- 40. MALLARD LANDING 1,2,3,4**
- 41. MARSH CREEK (ALL)**
- 42. MARSH LANDING (ALL)**
- 43. MARSHALL CREEK**
- 44. MARSHSIDE/MARSHSIDE NORTH**
- 45. MOULTRIE TRAILS**



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Which communities? (continued)

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- 46. NORTH COVE-PLAYERS CLUB AT SAWGRASS**
- 47. NORTHGATE 1,2**
- 48. OCEAN PALMS**
- 49. ODOMS MILLS UNIT 1 AND UNIT 2 PHASE 1,2,3**
- 50. OLD PALM VALLEY**
- 51. OLD PONTE VEDRA MARSHSIDE/MARSHSIDE NORTH**
- 52. PALENCIA NORTH**
- 53. PALM VALLEY HARBOUR**
- 54. PINEHURST POINTE AT SAINT JOHNS**
- 55. PLANTATION OAKS (FORMERLY PLANTATION ANNEX)**
- 56. PLANTATION AT PONTE VEDRA UNITS 1-12**
- 57. PLAYERS CLUB UNIT 1**
- 58. PLAYERS CLUB PHASE 1-7**
- 59. THE POINTE AT PONTE VEDRA**
- 60. PONTE VERA BY THE SEA**



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Which communities? (continued)

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Some approvals are just for specific items (e.g., fences).**

- 61. RIVERS EDGE PLANTATION**
- 62. RIVER OAKS PLANTATION**
- 63. RIVER OAKS PLANTATION PHASE 1-3**
- 64. ROLLING HILLS PLACE 1,2**
- 65. ST. JOHNS GOLF & COUNTRY CLUB**
- 66. THE LEGENTS AT SAINT JOHNS**
- 67. SAINT JOHNS PLANTATION SAINT JOHNS SIX MILE CREEK**
- 68. SALT CREEK ISLAND**
- 69. SALT CREEK ISLAND PHASE 1-3**
- 70. SALT CREEK POINT**
- 71. SAWGRASS UNIT 1**
- 72. SAWGRASS GARDEN HOME 1-3**
- 73. SAWGRASS GARDEN HOME UNIT 2**
- 74. SAWGRASS VILLAGE WALK**
- 75. SAWMILL LAKE UNIT 1-7 (ALL)**



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Which communities? (continued)

Unofficial List for discussion purposes.

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Some approvals are just for specific items (e.g., fences).

- 76. SOUTH LAKE**
- 77. SOUTHERN GROVE**
- 78. THE COURTS AT PONE VEDRA**
- 79. TURNBERRY AT SAINT JOHNS**
- 80. VILLAGES OF VILANO- PHASE 1B, 3A, 3B**
- 81. WALDEN CHASE PHASE 1 (AKA CR210 PUD)**
- 82. WALKERS RIDGE**
- 83. WATER OAK**
- 84. WATERS EDGE (PLAYERS CLUB)**
- 85. WOODLANDS AT PONTE VEDRA PHASE 1,2**



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Current Law – Part 2

2. The homeowner's association or committee shall comply with valid and applicable State laws and County ordinances that pertain to hearings, public and private notices and public records and public meetings.
3. When a homeowner's association or committee fails to or refuses to approve or deny a Building Permit application within thirty (30) days after receipt, that application shall be deemed to be so approved, if the Applicant certifies under oath that the subject completed application has been pending before such association or committee for more than thirty (30) days without final action of approval or refusal to approve.
4. Any Applicant for such approval by a homeowner's association may Appeal refusal or failure of such association to give such approval within thirty (30) days after the application is submitted to the association for approval. Any homeowner's association may Appeal an approval under paragraph 3 above. Such Appeals may be made to the Board of County Commissioners, pursuant to Part 9.07.00 of this Code. In considering such Appeals, the Board of County Commissioners shall waive a requirement for homeowner's association approval of a Building Permit application if it finds that (a) there is no violation of a valid and applicable covenant and restriction, (b) that such waiver is in the public interest, or (c) the homeowner's association review time allowed under paragraph 3 was exceeded. Alternatively, if there has been no homeowner's association action and there is no finding of (a), (b), or (c), then the application shall be remanded to the homeowner's association for appropriate action. If a homeowner's association or committee has properly refused to approve the application, the Board of County Commissioners may deny the Building Permit.



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Current Law – Part 2

2. The homeowner's association or committee shall comply with valid and applicable State laws and County ordinances that pertain to hearings, public and private notices and public records and public meetings.

(Some examples of requirements)

286.0105 Notices of meetings and hearings must advise that a record is required to appeal.--Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

286.012 Voting requirement at meetings of governmental bodies.--No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.



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LDC PART 9.06.00 HEARINGS

(Some examples of requirements)

Sec. 9.06.03 Quasi-Judicial Hearings

Rights of Parties

All parties to a quasi-judicial proceeding shall have the following rights:

- 1. Present their case or defense by oral and documentary evidence. This shall not include a right to compel testimony or production of non-public or confidential documents.**
- 2. Submit rebuttal evidence, and conduct such cross-examination as may be required for a full and true disclosure of the facts.**
- 3. Submit proposed findings and conclusions and supporting reasons therefor.**
- 4. Make offers of compromise or proposals of adjustment. This shall not empower the County to accept any compromise or endorsement, otherwise not authorized by law.**
- 5. Be accompanied, represented and advised by counsel or represent themselves. This shall not be interpreted to require the County to provide counsel to any party.**
- 6. Be promptly notified of any action taken on the matter.**



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LDC PART 9.06.00 HEARINGS

(Some examples of requirements)

Evidence

Evidence may be submitted that would be admissible in civil proceedings in the courts of this State, but in receiving evidence due regard shall be given to the technical and highly complicated subject matter which must be handled. The exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect, however; parties must be given an opportunity to cross-examine witnesses. Otherwise, however, effect shall be given to rules of evidence recognized by the law of Florida.



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Requirement for Ex parte Disclosures

- Jennings v. Dade County
- F.S. 286.0115 → Ex parte Disclosures



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Current Law – Part 2

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4. Any Applicant for such approval by a homeowner's association may Appeal refusal or failure of such association to give such approval within thirty (30) days after the application is submitted to the association for approval. Any homeowner's association may Appeal an approval under paragraph 3 above. Such Appeals may be made to the Board of County Commissioners, pursuant to Part 9.07.00 of this Code. In considering such Appeals, the Board of County Commissioners shall waive a requirement for homeowner's association approval of a Building Permit application if it finds that (a) there is no violation of a valid and applicable covenant and restriction, (b) that such waiver is in the public interest, or (c) the homeowner's association review time allowed under paragraph 3 was exceeded. Alternatively, if there has been no homeowner's association action and there is no finding of (a), (b), or (c), then the application shall be remanded to the homeowner's association for appropriate action. If a homeowner's association or committee has properly refused to approve the application, the Board of County Commissioners may deny the Building Permit.



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Attorney General Opinion

Florida Attorney General
Advisory Legal Opinion

Number: AGO 99-53
Date: September 1, 1999
Subject: Sunshine Law, architectural review committee

Mr. Daniel J. Bosanko
St. Johns Assistant County Attorney
Post Office Box 1533
St. Augustine, Florida 32085-1533

RE: GOVERNMENT IN THE SUNSHINE LAW--PUBLIC RECORDS--COUNTIES--BUILDING PERMITS--
-HOMEOWNERS' ASSOCIATIONS--architectural review committees of homeowners' association whose
approval is required by county ordinance prior to obtaining county building permit subject to Sunshine and
Public Records Laws; notice and access must be given to public at large. s. 286.011 and Ch. 119, Fla. Stat.

Dear Mr. Bosanko:

On behalf of the Board of County Commissioners of St. Johns County, you ask substantially the following questions:

1. Is an architectural review committee of a homeowners' association subject to the Government in the Sunshine Law and the Public Records Law where that committee, pursuant to county ordinance, must review and approve applications for county building permits?
2. If so, may the meetings of such architectural committee be noticed and open only to members of the homeowners' association?

In sum:

1. An architectural review committee of a home owners' association is subject to the Government in the Sunshine Law and the Public Records Law where that committee, pursuant to county ordinance, must review and approve applications for county building permits.
2. Meetings of such architectural committee to consider such applications must be noticed and open to the public at large and not merely to members of the homeowners' association.

Question One

The Florida Government in the Sunshine Law, section 286.011(1), Florida Statutes, provides:

(See Florida Attorney General Website for full opinion.)

1. An architectural review committee of a homeowners' association is subject to the Government in the Sunshine Law and the Public Records Law where that committee, pursuant to county ordinance, must review and approve applications for county building permits.
2. Meetings of such architectural committee to consider such applications must be noticed and open to the public at large and not merely to members of the homeowners' association.

Sincerely,
Robert A. Butterworth
Attorney General



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Sunshine Laws

(See Florida Statutes for full law)

- **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, 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.**



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Sunshine Law Concerns

- **Criminal and Civil Liability**
- **Associations May Lack the Resources for Training and To Assure Compliance**
- **Prohibits the Informal Discussions which may be Appropriate for HOA ARB Operation**
- **Requires Notice and Meeting Facilities for Public at Large Not Just Homeowners in Affected Community**
- **Ch. 720 Florida Statutes has its own rules for openness**



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Public Records Act

(See Florida Statutes for full law)

- **119.07 Inspection and copying of records; photographing public records; fees; exemptions.–**
- **(1)(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.**
- **(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.**
- **(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed....**



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Public Records Act Concerns

- **Criminal and Civil Liability**
- **Records Retention and Destruction Requirements**
- **Ch. 720 has its own records requirements**



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Chapter 112, Public Officers and Employees (Does this apply?)

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

- **(1) DEFINITION.--As used in this section, unless the context otherwise requires, the term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.**
- **(2) SOLICITATION OR ACCEPTANCE OF GIFTS.--No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.**
- **Etc.... (See Florida Statutes for full law)**



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Chapter 112 Concerns

- **Applicability to HOA's under LDC delegation of authority?**
- **Criminal and Civil Liability**
- **Gift Reporting**
- **Financial Disclosures**
- **Voting Conflict Procedures**
- **Etc.**



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Proposed Ordinance Concepts

- **Requires:**
 - **Permit Applicant to Submit ARB Approval OR**

 - **Affidavit of Homeowners Stating that 30 days Prior to Application the Association was Notified of the Proposed Construction and of the Homeowner's Intent to Proceed without ARB Approval AND**
 - **County Staff Notifies Registered Association of Permit Issuance**

- **Make Available to a Wider Spectrum of Associations?**
 - **Minimum Size?**
 - **Covenants Require ARB Review**
 - **Association Registers with County**

- **Covers:**
 - **Expand Scope of permit types?**
 - **Development Permits other than Building Permits?**
 - **Excludes certain items? (Political Signs, Interior Improvements, Horizontal Subdivision Improvements, and Work in Common Areas)**



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Summary

• **Current**

- Association and ARB governed by Ch. 720 Fla. Stat. & Florida Sunshine Laws and public records laws may be covered by Chapter 112 Code of Ethics
- Applicable only in communities where specified in the zoning documents.
- All permits may not be covered.
- Prohibits Issuance of permits without ARB approval or failure of ARB to timely turn down an application.
- N/A

• **Proposed**

- Recognize Association and ARB governed by Ch. 720 Fla. Stat.
- Open to HOA communities by registration.
- Potential to cover greater scope of permits.
- Require either ARB approval (Sunshine Rules), or prior notice to ARB
- Other options



Options

Pro's

Con's

As-is	<ul style="list-style-type: none"> • Maximum control by selected HOA's 	<ul style="list-style-type: none"> • Sunshine Law requirement with non-uniform adherence and criminal penalties • Applicable HOA's uncertain • No benefit to non-selected HOA's
Repeal	<ul style="list-style-type: none"> • No Sunshine Law Requirement 	<ul style="list-style-type: none"> • Least Control by all HOA's
Notice Requirement (Revision)	<ul style="list-style-type: none"> • No Sunshine Law Requirement • Can benefit all HOA's 	<ul style="list-style-type: none"> • Less than maximum control by selected HOA's
Hybrid	<ul style="list-style-type: none"> • As-is Pro's <hr/> <ul style="list-style-type: none"> • Revision Pro's 	<ul style="list-style-type: none"> • As-is Con's <hr/> <ul style="list-style-type: none"> • Revision Con's