IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

LAUREN LINARES, CECILIA LOYOLA,
JAMES STANLEY, SAMUEL UNGER,
JACOB UNGER, and CATHERINE UNGER,

Plaintiffs,

v. CASE NO.: 17-00230-CA

DISTRICT SCHOOL BOARD OF
PASCO COUNTY, FLORIDA,

Defendant.
_____/

FINAL JUDGMENT

This action was tried before the Court on December 4, 2017. All testimony and evidence presented at the preliminary injunction hearing was used as evidence in the trial by stipulation of the parties. The parties also presented additional evidence and testimony on December 4, 2017. There are three distinct issues for this Court to decide:

I. Whether Defendant violated Florida Statute Section 286.011.

II. If there was a violation, whether there was a cure that saved the rezoning action.

III. Whether Defendant violated Florida Statute Section 286.0105.

After considering the evidence presented, the credibility of witnesses and the argument of counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Pasco County is experiencing an increase in population caused by new residential development in the western part of the County. As a result, enrollment in some schools in the western part of Pasco County has exceeded capacity. The Superintendent for the District School

Board of Pasco County ("School Board") decided that school attendance boundaries needed to be redrawn in an effort to balance enrollment throughout certain West Side Schools. The Superintendent directed Chris Williams, the Director of Planning for the School Board, to form a committee that would give a recommendation to the Superintendent for where to redraw school attendance boundaries. The Superintendent would then use this recommendation to make his own recommendation to the School Board, which consisted of five members.

Chris Williams decided to form a Boundary Committee consisting of principals from the five middle schools and five high schools that were being considered for rezoning. The principals were then instructed to pick two parents of students from their respective schools to also sit on the Boundary Committee. Overall, the Boundary Committee consisted of the principals, the parents, and Chris Williams.

The main purpose of the Boundary Committee was to "[d]evelop and recommend to the Superintendent and the School Board proposed new school attendance boundaries that best meet established guidelines." Pl. Ex. 17. There were six guidelines that the Boundary Committee was tasked with balancing: 1) socioeconomic balance; 2) feeder patterns; 3) future growth and capacity; 4) transportation; 5) subdivision integrity: and 6) planning integrity.

The Boundary Committee met a total of four times at public meetings to consider where to redraw school attendance boundary lines. The meetings were held on October 5, October 26, November 7, and November 17 of 2016. Additionally, a parent meeting was also held on November 14, 2016 where parents were allowed to make comments to the Boundary Committee about the rezoning recommendation that the Boundary Committee would make. In addition to considering the guidelines at the meetings, the Boundary Committee also considered other topics,

including grandfathering of students, issues with address verification of students, special learning programs offered at different schools, potential for new schools to be built, and school funding.

The School Board then held noticed meetings that were open to the public on December 20, 2016 and January 17, 2017 to consider the Superintendent's recommendation. At the January 17, 2017 School Board meeting, the School Board approved a rezoning plan that changed school attendance boundaries for the West Side Schools (the "West Side Rezoning"). A notice of these meetings was published in the Tampa Bay Times on November 20, 2016. This notice did not contain language required by Section 286.0105.

Prior to the Boundary Committee's first meeting, the principals made their respective selection of parents to be part of the Boundary Committee. There was a factual dispute as to when certain members of the Boundary Committee became subject to the Sunshine Law. This Court finds that the principals and Chris Williams were subject to the Sunshine Law when they were informed by Chris Williams during a principals' meeting in August about the rezoning process and the Boundary Committee's goals and purpose. Michelle Gesling became subject to the Sunshine Law when she was informed that she was on the Boundary Committee on September 20, 2016. (Pl. Ex. 8, p. 4). Another parent, David Davis, became subject to the Sunshine Law on August 31, 2016. (Vol. II, p. 324; ll. 1-9).

Prior to the first Boundary Committee's meeting on October 5, 2016, several members of the Boundary Committee held numerous discussions about Boundary Committee business outside of a noticed, public meeting. Michelle Gesling and Chris Williams emailed each other numerous times to discuss the rezoning decision. They discussed future growth, school capacity, school choice, grandfathering, transportation and other topics that ultimately came up during Boundary Committee meetings. These same types of conversations were also held between Chris Williams

and David Davis by email, and also between Michelle Gesling and David Davis by private Facebook messages.

During the first two boundary committee meetings, "breakout" sessions were held during which members of the Boundary Committee separated into two tables – a high school table and a middle school table. During these breakout sessions, the two groups discussed in detail numerous topics that affected where the boundary lines could potentially be drawn. After the group sessions, a spokesperson from each group would then share with the entire Boundary Committee those things discussed in the individual group sessions. Boundary Committee members testified that they could not hear what was being discussed at the other table. Evidence showed that this procedure prevented the public in attendance from hearing the discussions of both Boundary Committee breakout groups.

During the next two meetings, the Boundary Committee began to formulate proposed options for where boundary lines could potentially be drawn. Ultimately, the Boundary Committee chose the option named as 4A-2. The Superintendent then took this recommendation and made a slight modification to it. Out of a total of 35 areas on the boundary map, the Superintendent only made a modification to four areas.

At the first School Board meeting on December 20, 2016, the School Board considered the recommendation of the Superintendent. The School Board did not consider the various other options discussed by the Boundary Committee. There is scant evidence of what was actually discussed at this School Board meeting.

At the second School Board meeting held on January 17, 2017, the School Board considered a revised recommendation of the Superintendent which delayed the four areas from being rezoned, as originally recommended by the Superintendent, for one school year. The

minutes reflect that the Superintendent's revised recommendation was approved after a vote by the School Board. The minutes do not go into detail as to what discussions were had, they simply state that "After due consideration, deliberation, and discussion by Board members, on vote, the motion carried 4 to 1 . . ."

As a result of the vote, the West Side Rezoning went into effect for the 2017-2018 school year.

CONCLUSIONS OF LAW

I. DEFENDANT VIOLATED FLORIDA STATUTE SECTION 286.011.

Article I, Section 24 of the Florida Constitution provides:

> All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

The Constitution's protections are implemented by Florida Statute Section 286.011, which generally provides that "[a]ll meetings of any . . . municipal corporation . . . 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." § 286.011(1), Fla. Stat. (2016). The purpose of the Sunshine Law is the protection of the public's right to be present and to be heard during all phases of enactments by governmental boards and commissions. *School Bd. of Duval Co. v. Florida Publishing Co.*, 670 So. 2d 99, 101 (Fla. 1st DCA 1996).

The law, being enacted for the public benefit, is interpreted most favorably to the public. *Board of Public Instr. of Broward Co. v. Doran*, 224 So. 2d 693, 699 (Fla. 1969); *Herrin v. City*

of Deltona, 121 So. 3d 1094, FN 3 (5th DCA 2013). It is "broadly construed to effect its remedial and protective purpose," *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983), and all exemptions to the law must be narrowly construed. *Zorc v. City of Vero Beach*, 722 So. 2d 891, 897 (Fla. 4th DCA 1998). There is no such thing as "substantial compliance." *City of Dunnellon v. Aran*, 662 So. 2d 1026, 1027 (Fla. 5th DCA 1995).

For ease of discussion, the alleged violations fall into two broad categories: (A) Communications outside of a noticed, public meeting (emails, conversations, Facebook posts) and (B) Communications during the noticed, public meeting (breakout sessions).

A. Communications Outside of a Noticed, Public Meeting

Plaintiffs claim that Defendant committed violations of the Sunshine Law when members of the Boundary Committee exchanged emails and conversations about committee business outside of a noticed, public meeting. Defendant does not dispute generally that the Boundary Committee was subject to the Sunshine Law. However, Defendant raises multiple arguments for why violations were not committed.

1. Subject Matter

First, Defendant asserts that the subject matter of the communications was not governed by the Sunshine Law because the only thing the Sunshine Law prevented the Boundary Committee members from discussing outside of a public meeting was where boundary lines would potentially be drawn. The Court concludes that this is too narrow of an interpretation of the Sunshine Law. The Florida Supreme Court has stated that the Sunshine Law covers "the collective inquiry and discussion stages . . . as long as such inquiry and discussion . . . relates to any matter on which foreseeable action will be taken." *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *See also, Wolfson v. State*, 344 So. 2d 611, 614 (Fla. 2d DCA 1977) ("[T]he entire *decision-making*

process that the legislature intended to affect by the enactment of the statute.") (emphasis in original).

In the case before this Court, a majority of the Sunshine Law violations resulted from communications between Boundary Committee members Chris Williams, David Davis, Michelle Gesling, and David Goldstein, all of whom were committee members. The evidence shows that beginning in September 2016, prior to the Boundary Committee's first official meeting and continuing on throughout the month of October, Williams, Goldstein, Gesling and Davis engaged in various private electronic communications concerning Boundary Committee business.

A review of some of the exhibits reveals that Boundary Committee business was in fact discussed outside of a noticed public meeting.

- Pl. Ex. 9F – emails between Chris Williams and David Davis concerning future growth, school capacity, school choice, impact fees, address verification, and even discussions on where rezoning would and would not occur.
- Pl. Ex. 11M – emails between Chris Williams and Michelle Gesling concerning future growth, new development, transportation, and even arguments for or against a certain rezoning decision.
- Pl. Ex. 11T – emails between Chris Williams and Michelle Gesling concerning socioeconomic status, grandfathering, transportation, and even how certain neighborhoods would not be rezoned.
- Def. Ex. 27 – emails between Chris Williams and David Goldstein concerning school capacity, socioeconomic balance, and even discussing agreements between middle and high school breakout tables of where boundary lines would be drawn.

- Pl. Ex. 8 – Private Facebook messages between Michelle Gesling and David Davis concerning future growth (pg. 7, 19), areas being looked at for a rezone (pg. 9), address verification (pg. 4), and even other committee member's positions on rezoning (pg. 20).

This Court finds that these emails and private Facebook messages directly relate to the boundary matter on which foreseeable action would be taken.

2. Non-voting Member

Second, Defendant has urged this Court to interpret the Sunshine Law so as not to apply to Mr. Williams because he was a non-voting member of the Boundary Committee whose role was solely to advise the voting committee members. Non-voting members of a board who are part of the decision making process are subject to the Sunshine Law. *See e.g. Mem'l Hosp.-W. Volusia, Inc. v. News-Journal Corp.*, 729 So. 2d 373, 379 (Fla. 1999) (applying Sunshine Law to committee which included two non-voting members); *Wood*, 442 So. 2d at 935 (same); *see also* AGO 05-18; *Government-in-the-Sunshine Manual*, vol. 39 (2017), p. 5.

Furthermore, the Supreme Court of Florida expressly rejected the notion that a staff member appointed to an advisory committee could somehow be exempted from the strictures of the Sunshine Law because the staff member's role was to provide advice.

> [W]hen a member of the staff ceases to function in his capacity as a member of the staff and is appointed to a committee which is delegated authority normally within the governing body, he loses his identity as staff while operating on that committee and is accordingly included within the Sunshine Law.

Wood v. Marston, 442 So. 2d 934, 941 (Fla. 1983). In fact, Mr. Williams believed himself to be subject to the Sunshine Law and told other Boundary Committee members as much. (Vol. I, p. 59; ll. 10-12); (Vol. I, p. 56; ll. 25 – p. 67, l. 6). Thus, the Sunshine Law applied equally to all members of the Boundary Committee, including Chris Williams.

Regardless, there were other violations not involving Chris Williams that are sufficient to support a finding that Defendant violated the Sunshine Law.[1]

3. Timing of Violations

It is undisputed that the Sunshine Law applies to "meetings with or attended by any person elected to such board or commission, but who has not yet taken office." § 286.011(1), Fla. Stat. Thus, members-elect are subject to the Sunshine Law in the same manner as board members who are currently in office. *See Hough*, 278 So. 2d at 289 (individual, upon election to public office, loses his or her status as a private individual and acquires a position more akin to that of a public trustee and therefore is subject to the Sunshine Law). Defendant contends that this rule should not be applied to the Boundary Committee in this case because the members were not "elected" and they did not know what was going to be discussed until their first meeting on October 5, 2016.

It is well established that the Sunshine Law applies to appointed and elected individuals alike. *See Monroe County*, 647 So. 2d at 869 (stating that "the Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials"); *See also* Fla. AGO 73-223 (stating that "[a]ppointed bodies as well as elective, fall under the purview of the Sunshine Law.") Further, because the Sunshine Law is remedial in nature it must be broadly construed to achieve its purpose and effect to protecting the public interest. *Sarasota Citizens For Responsible Gov't*, 48 So. 3d at 762. The notion that appointed committee members should somehow be treated differently is contrary to this principle of broad construction. Equal application of the Sunshine Law to appointed and elected members furthers the law's intended purpose by ensuring that appointed advisory committee members will not try to evade Sunshine Law requirements by having closed door discussions or meetings prior to their first public meeting.

[1] For example, Plaintiff's Exhibit 8 and the "breakout" sessions discussed below.

See Gradison, 296 So. 2d at 477 ("Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices.").

Defendant also argues that the Sunshine Law should not apply until the first official meeting of the Boundary Committee because the members did not know what they would be working on until then. The evidence shows that the Boundary Committee members knew that they were being appointed to a committee that would be responsible for recommending boundary changes. The Boundary Committee members knew that transportation, grandfathering, feeder patterns, etc. were elements of the decision making process for boundaries. While the parents who volunteered their time to be on the Boundary Committee may not have known that their actions violated the Sunshine Law, Sunshine Law violations do not depend on a person's intent to violate the Sunshine Law. *Zorc*, 722 So. 2d at 902; *Port Everglades Authority*, 652 So. 2d at 1171 (ruling that a Sunshine Law violation "does not depend upon a finding of intent to violate the law"); *Gradison*, 296 So. 2d at 477-478 ("[a]lthough a criminal prosecution requires proof of scienter, an unintended violation of the government in the sunshine law will negate any action taken by the Town Council."); *Canney v. Bd. Of Pub. Instruction of Alachua Cnty.*, 278 So. 2d 260, 264 (Fla. 1973)("[e]ven though their intentions may be sincere, such boards and agencies should not be allowed to circumvent the plain provisions of the statute."). It should be noted that this Court does not find ill intent on the part of anyone involved in this action. However, the Sunshine Law must be strictly applied to protect the public interest of openness of government.

This Court finds that the Boundary Committee members were subject to the Sunshine Law from the moment each member was selected to be on the Boundary Committee. Regardless, there

were other violations that occurred after October 5, 2016 that are sufficient to support a finding that Defendant violated the Sunshine Law.[2]

B. Communications During a Noticed, Public Meeting

Plaintiffs also claim that the Boundary Committee committed violations of the Sunshine Law when, during its first two meetings, it conducted breakout sessions between the middle and high school groups. Defendant does not deny that the breakout sessions occurred, but argues that the practice should not be deemed to violate the Sunshine Law because breakout sessions are common in educational settings. While a breakout session may be a useful tool for educators, this Court finds that such a practice violates the openness requirement of the Sunshine Law when used during the government's decision making process. The evidence showed that the Boundary Committee members at one table could not hear what the members at the other table were discussing. In addition, members of the public who attended the meeting could not hear what was being discussed at the breakout sessions. Courts and attorney generals in other states with open meeting laws similar to Florida's have also found inaudible discussions to be a violation of open meeting requirements. *See, e.g., Goetschius v. Bd. of Educ. of the Greenburgh Eleven Union Free Sch. Dist.*, 281 A.D. 2d 416, 417 (N.Y. App. Div. 2001); *Manogg v. Stickle*, No. 97 CA 104, 1998 WL 516311, at *2 (Ohio Ct. App. Apr. 8, 1998) (finding a violation of Ohio's open meeting law where public officials were "whispering and passing documents among themselves"); Op. Att'y Gen. Ky. 08-OMD-164 (2008) (citing Op. Att'y Gen. Ky. 01-OMD-110 (2001)) ("When a quorum of the members are present, and public business is being discussed, the meeting is required to be 'open to the public at all times,' and not interrupted by whispered discussions to which the public is effectively denied access.").

[2] For example, Plaintiffs' exhibits 9E, 9F, 11Q, 11S, 11T, 11Z and the "breakout" sessions discussed below.

In conclusion, this Court finds that Defendant violated Section 286.011.

II. DEFENDANT DID NOT CURE THE VIOLATIONS OF FLORIDA STATUTE SECTION 286.011

It is possible to cure Sunshine Law violations. The burden of presenting sufficient proof on the cure affirmative defense is on the public agency. Defendant has presented two main arguments to show that it cured any previous violations: (A) Defendant has argued that the School Board conducted sufficiently open public meetings to cure any violations of the Boundary Committee and (B) Defendant has argued that any violations were cured when the Superintendent modified the Boundary Committee's recommendation.

A. Open Public Meetings

Only a full, open and independent public hearing of the disputed issues can remedy an earlier violation. *Spillis Candela & Partners, Inc.*, 535 So. 2d at 695. A violation can only be cured when all matters previously considered by the advisory committee are brought by independent action into the sunshine. *See Port Everglades*, 652 So. 2d at 1171 (finding an advisory committee's violation of the Sunshine Law to not be cured when the Port only considered the advisory committee's first ranked bidder, and did not discuss the competing bidders).

Defendant cites *Finch v. Seminole County School Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008). However, in the *Finch* case, the School Board actually discussed all various plans – not just the plan submitted to it by the Superintendent. *Id.* at 1073. In fact, the case even went on to describe the vigorous debate that occurred between the Board members. Id. ("the various plans, including the one recommended by the superintendent, were vigorously debated by the members of the board.").

In our case, Defendant introduced the meeting minutes of the December 20, 2016 and January 17, 2017 School Board meetings. The only thing these minutes reveal is that the School Board only considered the recommendation of the Superintendent instead of the various options being considered by the Boundary Committee. Further, the minutes of the meetings do not go into enough depth to carry Defendant's burden of proving a cure. For example, the minutes of the very last meeting on January 17, 2017, simply state that "After due consideration, deliberation, and discussion by Board members, on vote, the motion carried 4 to 1 . . ." (Def. Ex. P. 457). The evidence presented is insufficient to show that all matters previously considered were brought back into the sunshine. Defendant failed to present sufficient evidence that all discussions and options were brought into the sunshine by the School Board.

B. Modification

Defendant's argument that the Superintendent's minor modification to the Boundary Committee's recommendation constituted a cure is similarly unavailing. "To allow a review procedure to insulate the decision itself from public scrutiny invites circumvention of the Sunshine Law." *Wood*, 442 So. 2d at 939-40. Defendant's argument is just an extension of the argument made and rejected by the Florida Supreme Court in *Wood*. This Court finds that Defendant has failed to present sufficient evidence to prove that it cured the Sunshine Law violations.

III. DEFENDANT VIOLATED FLORIDA STATUTE SECTION 286.0105.

The School Board's notice of meetings published in a newspaper on November 20, 2016 was required to comply with the notice provisions of Florida Statute Section 286.0105. Section 286.0105 requires notices of public meetings to contain certain language generally advising the public that it will need a record of the meeting if the person wishes to appeal. Specifically, Section 286.0105 reads as follows:

> 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).
> (emphasis added).

Defendant's meetings were required to be advertised in accordance with Florida Statute Section 120.81(1)(d), which states that notice "shall be made" as follows:

1. By publication in a newspaper of general circulation in the affected area;

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

Thus, there are three different notices that Defendant was required to post. The notice at issue in this case is required to be published in a newspaper of general circulation. There is no dispute that the published notice required by Section 120.81(1)(d)(1) did not contain the language concerning appeal rights stated in Section 286.0105.

Defendant argues that it complied with the notice requirements because the language required by Section 286.0105 was contained in other notices, not published in a newspaper of general circulation. This argument fails because there is nothing in Section 286.0105 which states that its requirements are met if only one, or some, of the notices required to be published contain the necessary language. The only limiting factor contained within Section 286.0105 is the language

"if notice of the hearing or meeting is required." Thus, the notice requirement of Section 286.0105 "is imposed at each occasion where notice of a meeting or hearing is required and is to be included in the notice given to the public of such meeting" Fla. AGO 89-32. Thus, because the newspaper notice is required by Section 120.81(1)(d), the Defendant violated Section 286.0105.

Plaintiffs are not seeking any relief for the violation of Section 286.0105 other than a declaration that the statute was violated. To the extent any ruling is necessary in light of the ruling on Section 286.011, this Court declares that Defendant violated Section 286.0105.

Based on these findings of fact and conclusions of law, it is;

ORDERED AND ADJUDGED that:

1. Members of the Boundary Committee violated Section 286.011 when its members held discussions on Boundary Committee business outside of a noticed, public hearing, and when it held breakout sessions of the middle school and high school groups.

2. The School Board did not cure the violation of Section 286.011 and thus the West Side Rezoning is declared void.

3. The School Board violated Section 286.0105 by failing to publish notice according to the statute.

4. The claim of a violation of Section 286.0114 was withdrawn by Plaintiffs.

5. This Court reserves jurisdiction to award attorneys' fees and costs, if appropriate, and for such other relief as this Court deems appropriate.

DONE AND ORDERED in chambers in New Port Richey, Pasco County, Florida, this 10th day of January, 2018.

KIMBERLY SHARPE BYRD
CIRCUIT COURT JUDGE

CC: Paul Crochet, Esq. and Joseph Kenny, Esq.
Dennis J. Alfonso, Esq. and Knute Nathe, Esq.