



FIRST AMENDMENT FOUNDATION

336 East College Avenue, Suite 101 Tallahassee, FL 32301

www.floridafaf.org

17 July 2012

Mr. William Congdon, General Counsel
St. Johns River Water Management District
P.O. Box 1429
Palatka, FL 32178-1429

Dear Mr. Congdon:

I am writing to express the First Amendment Foundation's serious concerns regarding the manner in which the St. John's River Water Management District (SJRWMD) has been conducting its review of conservation lands.

According to recent news reports, governing board members were individually surveyed by a district director on their priorities for the land review process; the responses of the board members were then summarized, and at a public workshop, board members agreed by consensus on the priorities staff is to use in conducting the review.

Mr. Robert Christianson, the district director who conducted the individual meetings, was quoted as saying the process of surveying the governing board individually is "a very effective means of helping a group in decision-making." And you, Mr. Congdon, are quoted in the same news report as saying that "By 'individually polling' board members, . . . Christianson was able to summarize what was important to each board member." <http://www.news-journalonline.com/news/local/west-volusia/2012/07/11/water-district-board-favors-land-review.html>

It is our position that the individual polling of the governing board and the one-on-one meetings between the district director and the members of the SJRWMD governing board constitute a violation of the Sunshine Law.

Generally, members of a collegial body such as the SJRWMD governing board may consult with staff "for factual information and advice without being subject to the Sunshine Law's requirements." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So.3d 755, 784 (Fla. 2010). However, according to the 2012 *Government-in-the-Sunshine Manual*, staff should refrain from asking individual members of the board to state their positions on a specific matter "which will foreseeably be considered" by the board at a public meeting. 2012 GITS at p. 21 (citing AGOs 89-23 and 75-59).

Additionally, in *Blackford v. Orange County School Board*, 375 So.2d 578 (Fla. 5th DCA 1979), the court held that a series of one-on-one meetings between board members and the school superintendent to discuss a controversial plan for closing a school constituted *de facto* meetings of the board in violation of the Sunshine Law, even though the superintendent "was adamant that he did not act as a go-between . . . and denies that he told any one board member the opinions of any other member. *Id.* at 580.

FAF Letter to William Congdon
17 July 2012/Page 2

In 1992, a Florida circuit court found that a series of one-on-one meetings between the superintendent and members of a school board violated the Sunshine Law despite the fact that there wasn't any evidence that the superintendent relayed the views of individual members of the board from one to another. Rather, "the meetings were intended to refine and define the board's position on matters covered by the Sunshine Law. As such they were an integral part of the decision making process and not properly conducted behind closed doors." *Sentinel Communications Company v. School Board of Osceola County et al*, Case No: City 92-0045 (Fla. 9th Judicial Circuit, April 6, 1992). The court enjoined the board from holding "a series of such meetings which concern a specific agenda." *Id.*

Clearly, that the purpose of the one-on-one meetings between Mr. Christianson and the members of the SJRWMD governing board was to privately devise a summarization of priorities of the individual board members, an agenda item of critical public concern. And although copies of the individual surveys were subsequently provided pursuant to a public record request, at no point during the workshop was there a discussion or airing of the views and positions of the individual members of the governing board. Such discussion is "an integral part of the decision making process" and as such must be conducted in the Sunshine.

Accordingly, we request that the SJRWMD governing board hold such public deliberations as are necessary to cure the violation and that it refrain from conducting such meetings in the future. *See* s. 286.011, F.S. ("no resolution, rule, regulation or formal action shall be considered binding except as taken or made at" an open meeting) *and Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974) (the Sunshine Law should be construed so as to frustrate all evasive devices and any action taken in violation of the law is void *ab initio*).

Sincerely,

Barbara A. Petersen

Barbara A. Petersen, President

Cc: SJRWMD Governing Board
FAF Board of Directors