

DATE: February 8, 2011

ITEM#: 6.A.

RE: OPEN MEETINGS TRAINING

PROJECT AREA: All

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BACKGROUND: State law requires annual training on the requirements of the Open and Public Meetings Act. There were only minor changes made to the Act in 2010 related to the acquisition of water rights.

Board members should be prepared to discuss and ask any questions they may have concerning the Utah Open and Public Meetings Act.

ATTACHMENT: Memo outlining requirements of Open and Public Meetings Act.

February 8, 2011

Open Meetings – Training for Redevelopment Agency Board of Directors

Statutory Obligation to Train

The “presiding officer of the public body shall ensure that all members of the public body are provided with annual training on the requirements” of the Open and Public Meetings Act (the “Act”). (Utah Code § 52-4-104)

A. Basic Principle (§ 52-4-201(1))

A “meeting” of a public body must be open to the public, unless an exception is available under the Act allowing the meeting to be closed.

B. Definitions (§ 52-4-103)

1. “Public Body”

The Redevelopment Agency Board of Directors (“the Board”) is a public body for purposes of the Act.

2. “Meeting”

A meeting is the convening of at least a quorum of a public body for the purpose of (a) discussing, (b) receiving comments from the public about, or (c) acting upon a matter over which the body has jurisdiction or advisory power.

Chance and social “meetings” are not subject to the open meeting law. However, they may not be used to circumvent the Act. (52-4-208)

Electronic meetings may be held subject to the Act and as described below.

3. "Convening"

The calling of a meeting of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

[Because a gathering of the Board members is not a “meeting” unless it is “convened,” and “convening” requires a person to “call” a meeting for the express purposes of discussing or acting upon a matter of business, it seems that gatherings such as group photos or ceremonial appearances are not meetings subject to the statute.]

C. Notice of Meetings (§ 52-4-202)

The Board must give not less than 24 hours public notice of each meeting. The notice must include the:

1. agenda;
2. date;
3. time; and
4. place.

The notice must be:

1. posted (a) at the principal office of the RDA and (b) beginning October 1, 2008, on the Utah Public Notice Website created under Utah Code § 63F-1-701; and
2. provided either to a newspaper of general circulation in Salt Lake City or to a local media correspondent. This requirement is deemed satisfied by providing notice to a newspaper or local media correspondent under Utah Code § 63F-1-701(4)(d) [that may be a bad cross-reference].

In addition, the Board must give annual notice of its annual meeting schedule, specifying the date, time, and place of its scheduled meetings.

The Board is encouraged to develop and use additional electronic means of providing notice of its meetings.

The notice requirement does not apply to emergency meetings, as long as the Board gives the best notice practicable of the time and place of the emergency meeting and the topics to be considered at the emergency meeting. However, an emergency meeting may not be held unless the Board attempts to notify all Board members and a majority of the Board members approve holding the meeting.

D. Agendas (§ 52-4-202)

1. Degree of Specificity

A meeting notice that is required to include an agenda must provide reasonable specificity to notify the public as to the topics to be considered at the meeting. Each topic must be listed under an agenda item on the agenda. (§ 52-4-202(6)(a))

2. Consideration of Matters Not On the Agenda

Generally, the Board may not take final action on a topic in an open meeting unless the topic is (a) listed under an agenda item and (b) included in the advance public notice. (Note: This includes emergency meetings. (§ 52-4-202(6)(c))

Except with respect to emergency meetings, and at the discretion of the presiding member of the Board, a topic raised by the public may be discussed during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting, but final action on the topic may not be taken by the Board at that time. (§ 54-2-202(6)(b))

E. Open Meetings (§ 52-4-201)

1. A meeting is open to the public unless closed pursuant to the Act. (Closed meetings are discussed in the next section.)

2. (a) An open meeting includes a workshop or an executive session in which a quorum is present, unless closed in accordance with the Act.

(b) A workshop or an executive session in which a quorum is present that is held on the same day as a regularly scheduled public meeting may only be held at the location where the Board is holding the regularly scheduled public meeting unless:

(i) the workshop or executive session is held at the location where the Board usually holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location;

(ii) any of the meetings held on the same day is a site visit or a traveling tour and proper public notice is given;

(iii) the workshop or executive session is a properly conducted electronic meeting; or

(iv) it is not practicable to conduct the workshop or executive session at the regular location of the Board's open meetings due to an emergency or extraordinary circumstances.

F. Closed Meetings (§ 52-4-204, 205)

(Practice point – please note distinction between “executive session” and “closed session”: The Act uses the term “executive session” to refer to a type of open meeting. See the definition of “meeting” in 52-4-103 and the statement in 52-4-201 that “[a] meeting that is open to the public includes a workshop or an executive session” The latter reference explicitly includes an executive session as a kind of open meeting (without saying what it means by “executive session”). Therefore, we recommend that the Board refer to its closed meetings as “closed sessions” or “closed meetings.”

1. Purposes of Closed Meetings (§ 52-4-205)

- a. Discussion of the character, professional competence, or physical or mental health of an individual;
- b. Strategy sessions to discuss collective bargaining;
- c. Strategy sessions to discuss pending or reasonably imminent litigation;
- d. Strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of water right or water shares, if public discussion of the transaction would:
 - (i) disclose the appraisal or estimated value of the property under consideration;
or
 - (ii) prevent the RDA from completing the transaction on the best possible terms;
- e. Strategy sessions to discuss the sale of real property, including any form of water right or water shares, if:
 - (i) public discussion of the transaction would:
 - (A) disclose the appraisal or estimated value of the property under consideration; or
 - (B) prevent the RDA from completing the transaction on the best possible terms;
 - (ii) the RDA previously gave public notice that the property would be offered for sale; and
 - (iii) the terms of the sale are publicly disclosed before the Board of Directors approves the sale;

- f. Discussion regarding deployment of security personnel, devices, or systems; and
- g. Investigative proceedings regarding allegations of criminal misconduct.

Closed meetings are also authorized for the Board to receive the advice of legal counsel. See Utah Code § 78B-1-137(2) (attorney-client privilege).

2. Procedure for Closing Meetings (§ 52-4-204)

- a. A quorum must be present.
- b. Two-thirds of the Board members present must vote to approve closing the meeting.
- c. The meeting may be closed only to discuss a matter listed in § 52-4-205.
- d. The following information must be publicly announced and entered on the minutes:
 - (i) the reason or reasons for closing the meeting
 - (ii) the location of the closed meeting
 - (iii) the vote, by name, of each Board member, either for or against the motion to close the meeting.

G. Record of Meetings (§ 52-4-203, 206)

1. Open Meetings (§ 52-4-203)

In a change from the past, both written minutes and a recording (i.e., an audio or an audio and video record) must be kept of all open meetings.

However, either written minutes or a recording is adequate if the meeting is a site visit or a traveling tour, if no vote or action is taken. Therefore, unless the Board is keeping both written minutes and a recording during a site visit or traveling tour, it should not take a vote or official action during that site visit or traveling tour.

The recording and minutes must include: (a) the date, time, and place of the meeting; (b) the names of the Board members present and absent; (c) the substance of all matters proposed, discussed, or decided by the Board which may include a summary of comments made by members of the Board; (d) a record, by individual Board member, of each vote taken by the Board; (e) the name of each person who is not a member of the Board and who, upon recognition by the presiding member of the Board, provided testimony or comments to the Board; (f) the substance, in brief, of the testimony or comments provided by the public under (e); and (g) any other

information that any Board member requests be entered in the minutes or recording.

The recording must be a complete and unedited record of all open portions of the entire meeting and be properly labeled or identified with the date, time, and place of the meeting.

The written minutes (not the recording) are the official record of action taken at the meeting. The Board must establish and implement procedures for the approval of the written minutes of each meeting. The written minutes or the recording that are required to be retained permanently must be maintained in or converted to a format that meets long-term records storage requirements.*

*According to the municipal retention schedule, the written minutes must be retained permanently, and the recording must be retained for at least one year.

(Practice point: Under GRAMA, written minutes that have been prepared but not yet approved by the Board are public records but must be marked as “unapproved” or “awaiting approval” or something similar. Written minutes should be made available to the public within a reasonable time following the meeting. The recording must be available for listening within three business days after the meeting.)

2. Closed Meetings (§ 52-4-206)

Except when a meeting is closed to discuss (a) the character, professional competence, or physical or mental health of an individual or (b) the deployment of security personnel, devices, or systems, the Board must keep a recording of the closed meeting and may keep detailed written minutes that disclose the content of the closed meeting.

The recording and any minutes must include: (a) the date, time, and place of the meeting; (b) the names of the Board members present and absent; and (c) the names of all others present unless disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

The recording and the written minutes are protected records under GRAMA.

No recording or written minutes are required for a closed meeting to discuss (a) the character, professional competence, or physical or mental health of an individual or (b) the deployment of security personnel, devices, or systems. The person presiding

at such a meeting must sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss those matters.

According to the municipal retention schedule, the written minutes must be retained permanently, and the recording must be retained for at least one year.

H. Electronic Meetings (§ 52-4-207)

1. Resolution, Rule, or Ordinance

The Board may not hold an electronic meeting unless it has adopted a resolution, rule, or ordinance governing the use of electronic meetings. *RDA Resolution No. 659.05 satisfies this requirement.*

The resolution, rule, or ordinance may:

- a. prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;
- b. require a quorum of the Board to: (i) be present at a single anchor location for the meeting; and (ii) vote to approve establishment of an electronic meeting in order to include other Board members through an electronic connection;
- c. require a request for an electronic meeting to be made by a Board member up to three days before the meeting to allow for arrangements to be made for the electronic meeting;
- d. restrict the number of separate connections for Board members that are allowed for an electronic meeting based on available equipment capability; or
- e. establish other procedures, limitations, or conditions governing electronic meetings not in conflict with § 52-4-207.

2. Notice

The Board must:

- a. give public notice of the meeting in the usual way; and
- b. post written notice at the anchor location;
- c. in addition to giving such public notice, provide:
 - (i) notice of the electronic meeting to the Board members at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and
 - (ii) a description of how the Board members will be connected to the electronic

meeting.

3. Anchor Locations

The Board must establish one or more anchor locations for the meeting, at least one of which is in the City & County Building.

The Board must provide space and facilities at the anchor locations so that interested persons and the public may attend and monitor the open portions of the meeting.

If comments from the public will be accepted during the meeting, the Board must provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

I. Disruption of Meetings (§ 52-4-301)

The Act does not prohibit the removal of any person from a meeting if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

J. Consequences of Violating Open Meeting Law (§§ 52-4-302 to 52-4-305)

Any final action taken in violation of the Act is voidable by a court. The suit must be commenced within 90 days after the date of the action (or 30 days in the case of the issuance of bonds, notes, or other evidence of indebtedness). A court may not void final action for failure to post notice on the Utah Public Notice Website if the failure was the result of unforeseen Internet hosting or communication technology failure and the Board otherwise complied with the public notice requirements.

The Attorney General and county attorneys shall enforce the Act. At least annually, the Attorney General's Office must give notice to the ARC of any material changes to the requirements for the conduct of meetings.

A person denied a right under the Act may sue to compel compliance with or to enjoin violation of the Act, or to determine the Act's applicability to discussions or decisions of the Board.

A Board member who knowingly and intentionally violates or who knowingly or intentionally abets or advises a violation of the closed meeting provisions of the Act is guilty of a class B misdemeanor.

K. 2010 Changes

The purposes for which closed meetings can be held now include water rights or water shares as a kind of real property.

Several changes were made to the closed meeting provisions that apply only to the State Legislature.