

April 21, 2016

To: Bill Cervone, State Attorney

From: Ward Scott

Recently I filed a complaint on behalf of many citizens who were concerned about the legality of the Hawthorne-Campville-Windsor Community Meeting on the Plum Creek-Weyhauser Sector Plan and possible re-zoning of land in Eastern Alachua County. Because you have now issued your findings on this case, I am asking you to clarify the following concerns which arise from your reasoning, as evidenced by the documents you provided which purport to be the entire file of SA Investigation 01-2016-SAI-3130. Your report left me with more questions than answers.

First, your report does not properly state my complaint. Our concerns were that the meeting was a private one, that it was held in a private home, that the meeting was not noticed, nor was it open to the public; furthermore, there was no proper agenda and no minutes of a meeting that two County Commissioners participated in where an issue (Plum Creek) was discussed that they were slated to vote on just a few days later.

In your letter to me, you refer to this meeting as a "party or a social event that was advertised and open to the public." It appears the meeting was only posted on Facebook and advertised by a flier giving the date and address of the meeting in Hawthorne. Because it was stated on the flier that three of the five county commissioners would be there, this meeting does not appear to be properly advertised under s. 286.011 of the Florida Statutes. Your "investigation" failed to address this issue of proper notification. Not only is there no agenda but also there are no minutes; additionally, it can be argued that the meeting place had a chilling effect on the public's and the media's right and ability to attend since it took place at an out of town, small private home, again, without proper notice. None of these issues has been addressed either by your investigation or comments in your report. Furthermore, Commissioner Hutchinson testified that he found the meeting to be

“more political and less social than he expected.” Commissioner Hutchinson’s testimony seems to contradict your conclusion that this meeting was a “party or a social event that was advertised and open to the public.”

Secondly, I am also troubled by Mr. Kramer’s findings that the two commissioners are credible based simply on their testimony. Mr. Kramer states that he finds their testimony “consistent with the other evidence and sworn testimony in the case.” But at the time of Cornell’s sworn testimony, the only “evidence” in the case was my sworn complaint and the documents that I had given Mr. Kramer, which certainly did not support Cornell’s testimony. This fiction was repeated in Mr. Kramer’s report about Hutchinson’s credibility. Is there evidence that was considered in this case that was not made part of the public record?

Thirdly, your report suggests no witnesses other than Cornell and Hutchinson, were interviewed, both of whom were questioned in the presence of their attorney, Michele Leiberman, someone I later learned, inappropriately in my opinion, was apparently charged with the task of collecting evidence in this case. Furthermore, the only witness list that appears in your “investigation” was provided by the defendants’ attorney, albeit there is no documentation that your investigator ever interviewed any of the witnesses on that list, or any other witnesses at all. Kramer stated in his report that other witnesses were not interviewed because you did not have the video tape of the meeting. Why did you not acquire that tape, and more specifically why did you not acquire that tape prior to taking sworn testimony from the two Commissioners?

In your investigator’s report, your office acknowledges that the video is critical evidence. In attempting to acquire this video, you appear to rely solely on the defendants’ attorney, Michele Leiberman, to obtain this critical evidence. A common sense question now arises: why would you depend on the county attorney when it is the duty of the state attorney to gather this evidence and preserve its chain of custody, if for no other reason than to prevent later potential claims of tampering with evidence? It appears that since the video was not produced when I requested any and all documentation of this investigation, and because it was not documented in your report, that your office never did obtain the video. Therefore I am puzzled why, when a mere citizen, with no apparent connection to this matter, (Tamara Robbins), called your office while the investigation was still open and

asked the status of the investigation, you replied in a March 17, 2016 e-mail, written by you and forwarded by Anne McKinley that you were “waiting on some videos of the meeting that are being duplicated for us and that we need to review.”

My question: Did you obtain the video(s) or not?

Finally, I think that the community would and should be outraged to learn that Brian Kramer, in his report to you, stated that because there was “no further response from the County Attorney regarding acquiring this video,” there is “no further investigation that can be done without issuing a subpoena.” Then Brian Kramer excuses his failure to issue this subpoena because “the standard to issue a Chapter 27 investigative subpoena “is that the State of Florida has reasonable grounds to believe that the person to whom the subpoena is directed has relevant information concerning the commission of an offense.”

Here it might be helpful to take a look at *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001) in which the Second District Court of Appeal held that such a requirement would “unreasonably impede the state attorney’s ability to conduct investigations into criminal activity.” The court went on to say that the state cannot be required to prove in advance that a crime has occurred since “the entire purpose of the investigative subpoena is to determine whether a crime occurred.” You may find an enlightening article on this very subject in *The Prosecutor As Investigator* by Mark F. Lewis, a Florida Bar Journal Article, available on-line, via a Google search that incidentally took my research team staff fewer than 30 seconds to locate. I offer this information notwithstanding the fact that your office had more than reasonable grounds to believe that the person who was identified to have custody of this video had the best relevant evidence available. If the video truly exonerated the two Commissioners, I am confident it would have been produced. Because it has not been produced, the ONLY reasonable conclusion that can be drawn, in my opinion, is that the video is evidence that these two Commissioners violated the law.

I also would like to address my sworn testimony in this case. Brian Kramer in his comments about my interview states: “Mr. Scott’s interpretation of the (SS) law tends to be stricter than what my review of case law has determined to be accurate.”

I accept that as fair criticism as to the notion that my interpretation is strict. I do, however, take issue with his “suggestion” that my interpretation is not accurate. I see that Brian Kramer’s notes of my complaint consist of only 39 words, taking up less than a third of a letter-sized page, which was not dated nor does this page refer to me or the investigation in any way. I think this brevity coupled with your failure to investigate thoroughly demonstrates my complaint was not taken seriously from the very beginning.

In light of these questions that your own documentation raises, I would be remiss not to pose them on behalf of the citizens who first brought the matter to my attention. Those citizens as well as all of the others affected by the subsequent vote of three commissioners on Plum Creek, arguably the single most important economic development project in Alachua County in recent memory, deserve answers. Why did the important and critical evidence in this case go unexamined?

Respectfully,

Ward Scott

21 April 2016



JEANNE M. SINGER  
CHIEF ASSISTANT STATE ATTORNEY

120 WEST UNIVERSITY AVENUE  
GAINESVILLE, FLORIDA 32601

TELEPHONE (352) 374 - 3670

BRIAN S. KRAMER  
EXECUTIVE DIRECTOR

**WILLIAM P. CERVONE**  
**STATE ATTORNEY**  
EIGHTH JUDICIAL CIRCUIT OF FLORIDA  
SERVING  
ALACHUA, BAKER, BRADFORD, GILCHRIST, LEVY  
AND UNION COUNTIES

PLEASE REPLY TO:

April 7, 2016

Ward Scott  
13712 N.W. 109th Lane  
Alachua, FL 32615

RE: Sunshine Law Complaint

Dear Mr. Scott,

Several weeks ago you presented to my office a complaint alleging that County Commissioners Robert Hutchinson and Kenneth Cornell violated the Sunshine Law by their attendance at a party or social event that was advertised and open to the public. That event involved informational presentations and discussions of several matters that are or could reasonably be expected to come before the County Commission. My office has now concluded its investigation into your complaint and I am writing to advise you as to our conclusions.

In summary, there is no question about both Commissioners Hutchinson and Cornell being in attendance at the event during overlapping times. There is, however, no evidence suggesting much less proving that either spoke to the other about anything, either privately or in some sort of public dialog with others in attendance, other than briefly acknowledging each other's presence. I do not believe that the Sunshine Law prohibits individual commissioners from attending the same event so long as there is no discussion between them about public business. That said, there is no violation in what occurred.

I am therefore closing this matter without action. By copy of this letter to County Attorney Michelle Lieberman I am advising her, and through her Commissioners Hutchinson and Cornell, of our conclusions. If you would like to discuss this in more detail you are welcome to call. Otherwise, I appreciate your interest in good government and lawful process as well as the opportunity to have reviewed and addressed this particular situation.

Sincerely,

William P. Cervone  
State Attorney  
wpc/

cc: Michelle Lieberman, Alachua County Attorney



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AND UNION COUNTIES

PLEASE REPLY TO:

To: William P. Cervone, State Attorney  
From: Brian S. Kramer, Executive Director / Assistant State Attorney **BK**  
CC: SA Investigation 01-2016-SAI-3130  
Date: April 6, 2016  
Re: Alleged "Sunshine Law" violation by Commission Robert Hutchinson and/or  
Commissioner Kenneth Cornell

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On February 15, 2015, you assigned the above matter to me to conduct an investigation of an allegation by Ward Scott that Alachua County Commissioners Robert Hutchinson and Kenneth Cornell violated Florida Statute 286.011(3)(b). This memorandum will document that investigation, describe the available testimony and evidence that proves, disproves, or fails to prove or disprove, that such violation did or did not occur.

Along with this assignment, you provided several documents. These documents are recorded and stored within the document imaging system. Included therein are complaint intake notes taken by ASA Lepianka of her interview with Ward Scott, documents that appear to have been provided by Mr. Scott, and an email response that purports to be from Commissioner Hutchinson. I have reviewed all of the documents that you provided with the complaint.

On February 16, I prepared letters requesting that the complainant, Commissioner Hutchinson, and Commissioner Cornell appear for testimony in this matter. Copies of the letters are submitted to document imaging.

Between February 17 and March 1, I communicated by phone and by email with Michele Lieberman, County Attorney regarding setting up interviews with both Commissioner Cornell and Commissioner Hutchinson. The emails are saved to the file.

On Thursday, March 2, 2016, I met with and took sworn testimony from Ward Scott, complainant. Mr. Scott provided additional documentation that indicated that all, or some portion, of the events in question may have been video recorded. Mr. Scott did not have information that would have led me to believe that there is an eyewitness to the alleged "Sunshine Law" violation that he is aware of beyond the persons at the event that I knew of. He did not provide the name of any person that could attest to having witnessed a violation. He certainly contends that the conduct of the commissioners as I currently understand it is a violation of the Sunshine Law. Mr. Scott and I discussed at some length what actions by commissioners are permissible and what actions are a violation of the Sunshine Law. Mr.

Scott's interpretation of the law tends to be stricter than what my review of case law has determined to be accurate.

Mr. Scott's concerns struck me as genuine. He was honest and forthcoming in all matters. While he did not directly witness any of the events in question with regard to the matters that he did testify to, I find him credible. While Mr. Scott was clear that he is politically opposed to the positions of both Commissioners Cornell and Hutchison in a variety of matters, I did not find that this was his motivation for bringing forth this complaint. He is genuinely concerned that events such as this one degrade the public's faith in the commission and the political process. He took my comments on what conduct actually does violate the Sunshine Law under advisement. Mr. Scott's testimony was not recorded, as is my normal practice.

I received additional emails from Ward Scott on March 7<sup>th</sup>, 2016 and March 10<sup>th</sup>, 2016. Both emails, along with my reply are saved to the file.

On March 10, 2016 at approximately 8:45 a.m., I took sworn testimony of Commissioner Ken Cornell. County Attorney Michelle Lieberman was present during the testimony. My notes of the testimony are saved to the file. Testimony was given voluntarily and without a subpoena. No immunity was given or requested. I found Commissioner Cornell to be forthcoming and honest in his answers. He offered relevant information without prompting. His testimony was consistent with the other evidence and testimony in the case. I conclude his testimony was credible. Commissioner Cornell's testimony was not recorded, as is my normal practice. I do not normally record any sworn investigative statement unless there is a legal reason to do so.

In summary, Commissioner Cornell testified that he became aware of this event from an invitation from Katy Davis. He did not recall if it was email, text, in person, or some combination. He recalled that he had heard about this event more than once. He had a dinner appointment later that day, and his wife was accompanying him. He recalled that he arrived after the event had started, and that he had to depart the event at 4:15 p.m. to make it to dinner. He stated that as he arrived, he saw that Commissioner Hutchinson was already present. A presentation / question and answer session was already underway when he arrived. He did not speak to Commissioner Hutchinson at all during the event. He stated that he believed that Commissioner Hutchinson saw him and may have acknowledged his presence. He stood on the opposite side of the room from Commissioner Hutchinson. He spoke to other people at the event; however, Ken Davis was giving a presentation, and it was not appropriate to have extensive conversation at this time. He recalls at some point Commissioner Hutchinson was asked to speak. He left shortly after Commissioner Hutchinson began to speak. He did not make any public statements during the event. He made it to his dinner appointment on time. Commissioner Cornell believes that someone at this event was videotaping the event, and requested that the S.A.O. make every reasonable effort to obtain the video of the event. He offered any assistance that he could give to determine if such a video exists. He believes that the video, if it exists, will support his testimony.

Commissioner Cornell testified to his understanding of the Sunshine Law. His understanding is consistent with statutory and case law. Commissioner Cornell testified that he

has received counsel and training from the County Attorney's office. He stated that he is aware of the law and follows it scrupulously. Additionally, Commissioner Cornell testified that he and many of the other commissioners are very active in attending political, social, and community events throughout Alachua County. He stated that being at events with other commissioners is very common, and there has never been an issue raised that he, or to his knowledge, any other commissioner has violated the Sunshine law at any other event.

On March 10, 2016 at approximately 11:00 a.m., I took sworn testimony of Commissioner Robert Hutchinson. County Attorney Michelle Lieberman was present during the testimony. My notes of the testimony are saved to the file. Testimony was given voluntarily and without a subpoena. No immunity was given or requested. I found Commissioner Hutchinson to be forthcoming and honest in his answers. He offered relevant information without prompting. His testimony was consistent with the other evidence and testimony in the case. I conclude his testimony was credible. Commissioner Hutchinson's testimony was not recorded, as is my normal practice.

Commissioner Hutchinson recalled that he may have received a text or email regarding this event, but he was certain that he had been invited in person to the event by Katy Davis. He indicated that he did not think that he would be speaking at this event. He expected that the constituents at this event would be "hostile" to him due to the positions he has taken previously regarding other related matters. Commissioner Hutchinson stated that he tries to attend events such as this even when he feels the crowd may not be with him because he feels it is duty to hear all sides of an issue. His initial impression was that this would be a somewhat social event; however, when he arrived, it was more political and less social than he expected. Commissioner Hutchinson was certain that there was a video camera in the room when people were speaking. He provided additional information regarding acquiring that video.

After Commissioner Hutchinson was at the event for some period of time, he recalls seeing Commissioner Cornell at the event. He did not speak to him. He recalls that Commissioner Cornell was on the opposite side of the room and out of his hearing. He also recalls that Commissioner Cornell arrived as Ken Davis was addressing the eminent domain issues related to the expansion of I-75. Later, Commissioner Hutchinson was asked to address the "sector plan" for the audience. He recalls that he spoke about this for about 45 minutes. At this point, he said that he was told that Commissioner Cornell was no longer at the residence. He finished speaking, said his good-bye's and left for a dinner engagement. Commissioner Hutchinson testified that he did not ever speak to Commissioner Cornell at this event, nor did he hear Commissioner Cornell speaking to anyone.

Commissioner Hutchinson stated that he has been involved in politics for many years and has been very much aware of the requirements of the Sunshine law. He stated that he has received counselling and training in this law. He was able to give complex examples of the use of the law, how meetings must be noticed, and cross-noticed, and was able to accurately state the requirements and restrictions that the law poses on the commissioners in multiple practical circumstances. I strongly suspect that his practical knowledge of this law well exceeds my own. With regard to the event in question, Commissioner Hutchinson was acutely aware of the application of the law to this situation. He pointed to several facts that he considered when this



event was brought to his attention. This was a private residence. Other commissioners were known to have been invited and their names appeared on publicly posted invitations to the event. The event was sponsored by a group that had a particular interest in a matter that was soon to come before the commission. He listed other factors that raise concern as well including that he was widely considered a "swing vote" on the "Plum Creek" issue, and that a Sunshine Law violation could invalidate the commission's action. Against this backdrop, he states that he was very careful not to violate the Sunshine Law at this event. He also reiterated that he does not believe he has ever, nor would he ever, violate the Sunshine Law intentionally or otherwise, at this event or any other, past or future. Commission Hutchinson expressed that his is a proponent of the Sunshine Law and of the Public Records laws. I found his testimony to genuine and compelling.

I informed both Commissioner Hutchinson and Cornell that I would like to determine if I can view this video before proceeding further with testimony of other individuals who were in attendance at this event. This matter will show as pending my effort to obtain the video.

As of April 5, 2016, there has been no further response from the County Attorney regarding acquiring this video. At this point, there is no other investigation that can be done without our issuing a subpoena. The standard to issue a Chapter 27 investigative subpoena is that the State of Florida has reasonable grounds to believe that the person to whom the subpoena is directed has relevant information concerning the commission of an offense. Therefore, before I can issue a subpoena to the persons who were present at this event, I must have some reasonable grounds to believe that there has been a crime committed. Here, I cannot find any reasonable ground to believe that a crime has been committed.

First, there is nothing about this event that differentiates it from the many events that the various commissioners attend. This type of event is commonplace. There is often more than one commissioner present at such events. There is nothing about the nature of this event that leads me to conclude that criminal activity was, in any way, more likely to occur than at any other such event.

Second, while I believed Mr. Scott and found him genuine in his concern, he did not witness a violation of the Sunshine Law, nor could he identify any person that could testify to a violation. The documentary information that he provided does not establish a crime. Therefore, while very informative, his testimony does not rise to the level of reasonable grounds to believe that a crime has been committed.

Third, most criminal acts are done in secret. This is even true with the Sunshine Law. In fact, it is my experience that normally when this law is violated, it is the secretive nature of the act that causes the violation. This circumstance belies this norm. Here, this is an open party; this party has been publicly advertised. There is no reason for any person in attendance to believe that there is a confidence between the attendees of the party. To the contrary, anyone at this event would reasonably assume that his or her conduct is being observed by both friend and foe. And, while I have not seen it, there is very likely a video of this event in existence. The likelihood that commissioner would be caught violating the Sunshine Law would be very high if

a violation were to have occurred in this setting. Therefore, this setting is a highly unlikely choice for a well-informed commissioner to choose to violate the Sunshine Law.

Finally, I can find no motive for either Commissioner to violate the sunshine laws. Both made it very clear that they are well aware of the law and make every effort to abide it. Generally, when any person intentionally violates the law, he or she does so for some type of gain: personal, financial, or emotional. In this instance, I can find no gain for either commissioner by intentionally violating the Sunshine Law in this case. I can certainly discern significant adverse consequences for such a violation.

Based upon my investigation to this point, I have determined that the facts of this matter do not constitute a criminal offense, and that my investigation has determined that the Commissioners did not commit the crime as alleged by the complaint. Further, it is my opinion that the Office of the State Attorney cannot issue a legally valid subpoena in this matter without some proof that a crime has occurred. I recommend that you close this matter, No Information, Code 3B and 1D<sup>1</sup>.

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<sup>1</sup> 1d: facts do not constitute a criminal offense. 3b: state attorney review determined this individual did not commit the crime(s) as alleged.

~~Commission Mtg held~~ Private meeting  
(held in private home)

No notice

No minutes

some commissioners attended, but not all <sup>B/c</sup> no notice  
(2)

no notice through the county website or  
any papers or anything

topics being voted on were discussed

**From:** Anne McKinley  
**Sent:** Thursday, March 17, 2016 10:43 AM  
**To:** 'tamararobbinsjm@cox.net'  
**Subject:** FW: Tamara Robbins

Per your request.

Have a good day,  
Anne

**From:** William Cervone  
**Sent:** Wednesday, March 16, 2016 2:15 PM  
**To:** Anne McKinley  
**Subject:** RE: Tamara Robbins

No, we are not finished yet because we are waiting on some videos of the meeting that are being duplicated for us and that we need to review. I hope to have it concluded by the end of the month but cannot guarantee that.

**From:** Anne McKinley  
**Sent:** Wednesday, March 16, 2016 1:30 PM  
**To:** William Cervone  
**Subject:** Tamara Robbins

Ms. Robbins called to see if you had made a decision regarding the Sunshine Law Violation Complaint made by Ward Scott recently...

352-339-5386