

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

BYRON H. KEESLER and
LEROY BOYD,

Appellants,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D09-1659

COMMUNITY MARITIME
PARK ASSOCIATES, INC.,

Appellee.

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Opinion filed March 10, 2010.

An appeal from the Circuit Court for Escambia County.
Frank Bell, Judge.

Sharon L. Barnett, Pensacola, for Appellant.

Edward P. Fleming and Matthew A. Bush, of McDonald - Fleming - Moorhead, Pensacola, for Appellee.

WETHERELL, J.

Appellants seek review of a final order granting summary judgment in favor of Appellee, Community Maritime Park Associates, Inc. (CMPA). In granting

summary judgment, the trial court found that section 286.011(1), Florida Statutes (the Sunshine Law), gives Appellants the right to be present but not to speak at CMPA meetings. We agree and affirm.

CMPA is a not-for-profit corporation charged by the City of Pensacola with overseeing the development of a parcel of public waterfront property. Appellants are citizens of Escambia County. It is undisputed that CMPA is subject to the requirements of the Sunshine law. The issue before us is not whether CMPA should give citizens an opportunity to speak and provide input at its meetings, but rather whether the Sunshine Law provides citizens the right to speak at public meetings.

The Sunshine Law provides:

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.

§ 286.011(1), Fla. Stat. (emphasis added).

Appellants ask us to construe the phrase “open to the public” to grant the public the right to speak at meetings and rely on Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969), and cases citing that

decision. In Doran, the Florida Supreme Court considered the constitutionality of the Sunshine Law, and in concluding that the law was constitutional, the court stated in dicta:

The right of the public to be present and to be heard during all phases of enactments by boards and commissions is a source of strength in our country. . . . Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.

Id. at 699.

After Doran, however, the Florida Supreme Court again discussed the rights of members of the public to participate in public meetings in Wood v. Marston, 442 So. 2d 934 (Fla. 1983). In Marston, the court reviewed the applicability of the Sunshine Law to a committee delegated by the president of the University of Florida to solicit and screen applicants for the deanship of the college of law. Id. at 936-37. The Marston court determined that the committee's meetings were improperly closed to the public. Id. However, the court also stated, "nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process." Id. at 941.

Relying on the language in Marston, the trial court determined that, although the Sunshine Law requires that meetings be open to the public, the law does not

give the public the right to speak at the meetings. Appellants have failed to point to any case construing the phrase “open to the public” to grant the public the right to speak, and in light of the clear and unambiguous language in Marston (albeit dicta), we are not inclined to broadly construe the phrase as granting such a right here. Rather, we agree with the trial court that the remedy Appellants are seeking in this case is more appropriately left to the legislative process or the local public officials to whom the CMPA board members are accountable.

For these reasons, we affirm the trial court’s entry of summary judgment in favor of CMPA.

AFFIRMED.

KAHN and PADOVANO, JJ., CONCUR.