

**IN THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA**

MARY LOU SMITH
an individual, and
SHARON DENSON,
an individual

Plaintiffs,

vs.

CASE NO.: 2008 CA 11315

TRAILER ESTATES PARK AND
RECREATION DISTRICT,
an independent special taxing district,
JANET JONES, an individual,
JOHN VANDERMOLEN, an individual,
JOSEPH SALERNO, an individual, and
MARY LOU MCNULTY, an individual

Defendants.

_____ /

SECOND AMENDED COMPLAINT

COMES NOW, the Plaintiffs, Mary Lou Smith, (hereinafter "Smith") an individual, and Sharon Denson, (hereinafter "Denson") an individual, by and through their undersigned counsel and sues the Defendants, Trailer Estates Park and Recreation District, an independent special taxing district, (hereinafter "Trailer Estates"), Janet Jones (hereinafter "Jones") an individual, John Vandermolen (hereinafter "Vandermolen") an individual, Joseph Salerno (hereinafter "Salerno") an individual, and Mary Lou McNulty, an individual (hereinafter "McNulty"), and allege:

**VENUE, JURISDICTION AND
NATURE OF THE ACTION**

1. This is a four count Complaint: Count I Declaratory Judgment Requesting the Court Construe the Rights and Obligations of the Parties Set Forth in Section 286.011, Fla. Stat; Count II Declaratory Judgment Requesting the Court Construe the Rights and Obligations of the Parties Set Forth in Section 119.07, Fla. Stat; Count III Mandamus in Accordance with Section 119.07, Fla. Stat.; and Count IV Injunctive Relief.

2. Venue is proper in this Court because the parties are located and the statutory violations all occurred in Manatee County, Florida.

ALLEGATIONS COMMON TO ALL COUNTS

3. Smith is an individual who owns the real property located at 6907 Tarpon Lane in Manatee County, Florida.

4. Denson is an individual who owns the real property located at 1613 Illinois Avenue in Manatee County, Florida.

5. The Plaintiffs' properties are located within an independent special taxing district known as Trailer Estates Park and Recreation District ("Trailer Estates").

6. Trailer Estates is an independent special taxing district located in Manatee County and was created pursuant to Special Act, Chapter 2002-361 of the Laws of Florida ("Charter"). The Charter is incorporated herein and attached hereto as **Exhibit 1**.

7. Trailer Estates acts by and through the actions of an elected six to nine member Board of Trustees ("Board").

8. The business and affairs of Trailer Estates is conducted and administered by its Board. Furthermore, a concurrence of a majority of the Trustees is necessary for any affirmative action taken by the Board.

9. Jones is a resident of Trailer Estates and has served as a Trustee for the Board from 2005 to the present and was the elected Chairman of the Board from January 2007 through December 2008.

10. Vandermolen is a resident of Trailer Estates and served as a Trustee for the Board from April 2007 to the present. Vandermolen served as Second Vice Chair of the Board during 2007 and First Vice Chair of the Board from January 2008 to the present.

11. Salerno is a resident of Trailer Estates and served as a Trustee for the Board from January 2008 to the present.

12. McNulty is a resident of Trailer Estates and served as the elected Chairman of the Board from 2004 through December 2006. McNulty served as a Trustee for the Board from 1999 through December of 2008.

13. Trailer Estates and its Board members are subject to Florida's Government in the Sunshine Laws as defined in Art. I Section 24 of the Florida Constitution and Section 286.011 of the Florida Statutes. ("Sunshine Law").

14. Trailer Estates, its Board members and employees are subject to Florida's Public Records Laws as defined in Art. I Section 24 of the Florida Constitution and Chapter 119 of the Florida Statutes ("Public Records Law").

15. Trailer Estates is an "agency" as defined by Section 119.011(2) of the

Florida Statutes.

16. Members of the Board know that they are subject to Florida's Sunshine Laws and Public Records Laws.

17. In November 2006, the Board was provided a memorandum by its legal counsel entitled an "Overview of Applicable Laws Relating to the Creation and Operation of the District, Government in the Sunshine, Public Records, and Ethics Laws" ("Overview"), wherein the Board was advised that Trailer Estates was subject to these laws and set forth the consequences to the Trailer Estates and its individual board members for violations of these laws.

18. From November 2006 until the present, legal counsel **repeatedly** advised the Board of the Sunshine Law and Public Records Law, the applicability of these laws to Trailer Estates and warned the Board that committee members may not meet in private to discuss committee business.

19. Legal counsel for Trailer Estates recommended on several occasions to the Board that a Workshop be held regarding Sunshine Laws and Public Records Laws to educate the Board about their obligations under those laws.

20. The Board has consistently and continuously ignored advice from legal counsel regarding the Board's obligations under the Sunshine and Public Records Laws.

21. The Plaintiffs have retained the undersigned counsel to protect their rights and enforce the Sunshine and Public Record laws.

22. All conditions precedent to the bringing of this suit have occurred or have been waived.

**COUNT I - DECLARATORY JUDGEMENT PURSUANT TO CHAPTER 86, BY
CONSTRUING THE RIGHTS AND OBLIGATIONS OF THE PARTIES SET
FORTH IN SECTION 286.011, FLA. STAT.**

(As to all Defendants)

23. The allegations set forth in paragraphs 1 through 22 above are re-alleged and adopted as if fully set forth herein.

24. This is an action for declaratory relief brought against Trailer Estates, Jones, Vandermolen, Salerno, and McNulty pursuant to Chapter 86, Fla. Stat.

25. Art. I Section 24 of the Florida Constitution mandates that meetings of governmental entities where official actions are to be discussed must be noticed and open to the public.

26. Section 286.011 of the Florida Statutes provides that no formal action of a special district board is considered binding unless that action was taken at a meeting open and noticed to the public.

27. Further, Section 286.011 (4) of the Florida Statutes provides that the Court shall assess attorneys' fees against the agency and may assess attorneys' fees against individual board members found to have taken actions in violation of the Sunshine Law.

28. Members of the Board have repeatedly conducted business outside of publically noticed meetings in violation of Article I Section 24 of the Florida Constitution and Section 286.011 of the Florida Statutes.

29. Members of the Board have interpreted the Trailer Estates Bylaws ("Bylaws") as providing authorization to the Board members to meet outside of the Sunshine Law. The Bylaws are incorporated herein and attached hereto as **Exhibit 2**.

30. Specifically, members of the Board have interpreted the Bylaws to authorize an Administrative Committee commonly known as the "Executive Board" or

the “Executive Committee” (hereinafter collectively referred to as “Executive Committee”) to meet outside of the Sunshine Law. The members of the Administrative Committee are the Chairman, and First and Second Vice Chairman of the Board. Trailer Estates Trustees Duties of the Chairman, First Vice Chairman, Second Vice Chairman, as revised November 17, 2008, are incorporated herein and attached hereto as **Composite Exhibit 3.**

31. In 2007, Legal Counsel for Trailer Estates advised the Board that “the Executive Committee be suspended until the By-laws can be rewritten” and that if Trailer estates was to utilize an Administrative or Executive Committee to act on day-to-day operations “such a committee would be **required to operate in accordance with the ‘Government in the Sunshine’ laws . . . this would include public meetings, published notice and minutes being taken. . . .**” Minutes from the July 16, 2007 Board meeting and the July 20, 2007, memorandum from Kirk Pinkerton are incorporated herein and attached hereto as **Composite Exhibit 4.**

32. During 2005 to the present, members of the Executive Committee have included McNulty, Jones, and Vandermolen.

33. In total disregard of legal counsel’s advice, Trailer Estates continued to regularly hold Executive Committee meetings that were not open or noticed to the public.

34. Legal Counsel for Trailer Estates advised the Board that Trailer Estates Committees are subject to the Sunshine Law, and further, “when two Trustees are present (at Committee meetings) discussing matters which may come before the Board, the committee meeting must be noticed as a Board meeting, [o]therwise, a Sunshine violation may occur. The October 22, 2007 and February 28, 2008, memoranda/letter from Kirk

Pinkerton are incorporated herein and attached hereto as **Composite Exhibit 5**.

35. In total disregard of legal counsel's advice, Trailer Estates continued to regularly hold Committee meetings with two or more Board members or Board members-elect where matters that could come before the Board were discussed and the meetings were not properly noticed as Board meetings.

36. From 2005 to the present, the Board and the individual defendants have pursued a consistent pattern and practice of violating the Sunshine Law by holding meetings, including Executive Committee meetings, in private to discuss the public business of Trailer Estates.

37. Specific examples of the Board's pattern and practice of improper meetings being held by Board members and the individual Defendants outside of the Sunshine Law include, the following:

(a) Executive Committee meetings that were neither noticed nor open to the public.

(b) The Executive Committee's selection of individuals to serve on the Board to fill vacant Board positions.

(c) The Executive Committee's granting of authorization to Wayne Hamblen to execute a Manatee County Easement Encroachment Agreement.

(d) The Executive Committee's determination that Fla. Stat. § 849.01 does not affect Trailer Estates.

(e) On or about March 21 2005, members of the Board had a "pre-meeting," immediately preceding the Board meeting, to discuss raising the marina and storage lot fees, and this meeting was not open to the public or properly noticed.

(f) During 2006 and 2007, Board members regularly held “pre-meetings” in the District office, immediately prior to Board meetings, to discuss matters coming before the Board, and the “pre-meetings” were not open to the public or properly noticed.

(g) In October 2006, Board members, Mike Neal and Wayne Hamblen held a meeting that was not noticed or open to the public regarding enforcement actions for Deed Restriction violations.

(h) In 2006, Board members McNulty, and Joe Bigley held a meeting in the Trailer Estates office that was not noticed or open to the public and where they discussed and approved a permit.

(i) In 2006, McNulty as Chairman issued a policy that any Trustees needing to contact the Trailer Estates attorney must first discuss the issue with a member of the Administrative Committee.

(j) In the spring of 2007 Board members Margo Cushman and Joe Bigley held a meeting that was not noticed or open to the public immediately preceding the Board Budget, wherein they discussed their upcoming votes regarding the Budget.

(k) In 2007, Board members held meetings out of the Sunshine and determined that video of District meetings were not public records and that the Board would not appoint a SAFE Committee.

(l) In 2008 Salerno issued a memo to the Board discussing how he intended to vote on matters coming before the Board.

(m) In March 2008, Trustees held a meeting outside the Sunshine where they discussed their personal information being contained in public records and the redaction of such information, ultimately resulting in Vandermolen’s order that Trustee’s and

Employee's cell phone information be redacted from public records.

(n) During 2008 and 2009 Trailer Estates Committees held meetings where two or more Board members or Board members-elect, including the defendants, were present and the meetings were not properly noticed as Board meetings.

(o) Some Trailer Estates Committees held meetings that were not properly noticed, open to the public, or minutes were not taken, such as the Committee that developed the District's procedure for holding a referendum.

(p) In December 2008, Board members McNulty, Peg Durham and Margo Cushman held meetings discussing and determining the permitted use of Trailer Estates property by its residents.

(q) In December 2008, Board members and Board members-elect, including Jones, Salerno, and Martha Brauer ("Brauer"), held meetings outside the Sunshine where they drafted, revised, and developed a Budget Questionnaire to assist with the upcoming Trailer Estates Budget.

(r) In January and February of 2009, the Website Committee held meetings where the Website Committee, which included Brauer, developed, and determined the operation and content of the Trailer Estates' website on behalf of Trailer Estates and these meetings were not open to the public or properly noticed. Furthermore, during this time, the Website Committee utilized a process for altering the Trailer Estates' website in direct violation of the Board established policy regarding altering the website.

(s) From January through March 2009 there were several meetings in or around the District office, where multiple Board members, including but not limited to Martha Brauer, Harry Fitzpatrick, Bob Durrin, John Vandermolen, Joe Salerno, Gail

Opper, and Fred Hoch, discussed Trailer Estates business, including but not limited to Bingo, the Volunteer Program, the Trailer Estates survey, litigation costs, loan interest rates for Trailer Estates loans, continuance of the Budget Hearing, permitting, website, committee appointments, and these meetings were not properly noticed or open to the public.

(t) Board decisions regarding the dates of the Candidate Nights and the appointment of moderators for the events.

(u) The Board's inclusion and adoption of an additional page 4 of the Trailer Estates Park and Recreation District Public Records Policy and Procedure ("Public Records Policy").

(v) The Board's decisions to deny the publication of articles authored by Denson in the Tribune, the newsletter/newspaper published by Trailer Estates.

(w) The repeated issuance of memoranda from Defendant Jones to other Board members discussing District business or matters that would have foreseeably come before the Board for action.

(x) Board members attendance at a "Disaster Committee meeting" that was neither noticed nor open to the public.

(y) Board members developed Disaster plans at meetings that were not noticed, open to the public, or minutes taken.

(z) In April 2008, Board members Vandermolen and Salerno, met outside of the Sunshine and determined the timing and of distribution of the District's year-end financial report and the proposed budget to the District's residents.

(aa) In April 2008, Board members Jones and Vandermolen, met outside of the

Sunshine and determined that free internet service should not be offered to the residents of Trailer Estates.

(bb) During 2006 to the present, there have been repeated meetings of the Trustees that were not open to the public, properly noticed, or minutes taken regarding matters that were to come before the Board such as the McNeil case, appoints of officers, budget items, and residents complaints.

(cc) Board members have repeatedly met outside of the Sunshine regarding the content of information published on the District's media sources, including its website, television station, and newspaper.

(dd) Clubs, acting as an arm of the Board, have repeatedly met outside of the Sunshine.

(ee) Board members met outside of the Sunshine to determine the content of information published in the District's minutes.

(ff) Trustees have repeatedly held meetings that were not open to the public, properly noticed, or minutes taken where they discussed allegedly administrative matters.

38. There are no minutes from any publically noticed Board meetings that indicate that the Board authorized any of the actions or decisions set forth in paragraph 37.

39. Because the Executive Board failed to hold public meetings regarding the actions or decisions set forth in paragraph 37, any actions or decision taken by the Executive Board are not binding and void ab initio.

40. Because Trailer Estates Committees failed to hold properly noticed public meetings regarding the actions or decisions set forth in paragraph 37, any actions or

decision taken by the Committees are not binding and void ab initio.

41. Because the Board members failed to hold properly noticed public meetings regarding the actions or decisions set forth in paragraph 37, any actions or decision taken by the those Board members are not binding and void ab initio.

42. Further, because the Board improperly appointed members Mike Neal and Tom Featheringill to fill vacant Board positions, any actions taken by the improperly appointed Board members are not binding and are also void.

43. The Board members repeatedly communicate outside of public meetings about District business or matters that would foreseeably come before the Board for action.

44. In violation of the Sunshine Law, Board members have also used residents to act as liaisons for communications between Board members to circulate information and thoughts relating to District business, such as the disaster plans, budget, Public Records/Privacy Act, and Policy and Procedures.

45. The Plaintiffs have been harmed and continue to be harmed by Trailer Estates', Jones', Vandermolen's, Salerno's, and McNulty's failure to comply with the Sunshine Law.

46. A bona fide, actual, and present practical need exists for this Court to consider and declare the Plaintiffs' rights under the Sunshine Law and declare the Defendants in violation under that law.

47. The Plaintiffs are in need of declaratory judgment construing their rights and the Defendants obligations under the Sunshine Law.

48. The Plaintiffs seek a declaratory judgment affirmatively declaring Trailer

Estates is subject to the Sunshine Law.

49. The Plaintiffs seek a declaratory judgment affirmatively declaring that Jones, Vandermolen, and Salerno, as Board members and Committee members, are subject to the Sunshine Law.

50. The Plaintiffs seek a declaratory judgment affirmatively declaring that McNulty, during the time period she served as a Board member and Committee member, was and is subject to the Sunshine Law.

51. The Plaintiffs seek a declaratory judgment affirmatively declaring Trailer Estates, Jones, Vandermolen, Salerno, and McNulty have acted in violation of the Sunshine Law and all of their actions in violation of the Sunshine Law are not binding and void ab initio.

WHEREFORE, Plaintiffs requests that this Court issue a declaratory judgment:

- A. Declaring that Trailer Estates is subject to the Sunshine Law;
- B. Declaring that Jones, Vandermolen, and Salerno, as Board members and Committee members, are subject to the Sunshine Law;
- C. Declaring that McNulty, during the time period she served as a Board member and Committee member, was subject to the Sunshine Law;
- D. Declaring that Trailer Estates repeatedly violated the Sunshine Law, and all of its actions and decisions in violation of the Sunshine Law are not binding and void ab initio;
- E. Declaring that the actions and decisions by the Board, its members, and Trailer Estates Committees in paragraph 37 are not binding and void ab initio;
- F. Declaring that Defendant Jones repeatedly violated the Sunshine Law, and all

of her actions in violation of the Sunshine Law are not binding and void ab initio;

G. Declaring that Vandermolen violated the Sunshine Law, and all of his actions in violation of the Sunshine Law are not binding and void ab initio;

H. Declaring that Salerno violated the Sunshine Law, and all of his actions in violation of the Sunshine Law are not binding and void ab initio;

I. Declaring that McNulty violated the Sunshine Law, and all of her actions in violation of the Sunshine Law are not binding and void ab initio

J. Declaring the appointments of Mike Neal and Tom Featheringill to the Board were made in violation of the Sunshine Law and void ab initio;

K. Declaring that any actions taken by Mike Neal and Tom Featheringill as Board members of Trailer Estates are void ab initio;

L. Declaring that the Board's use of residents to act as liaisons to communicate between Board members is a violation of the Sunshine and any action taken in reliance of those communications is void ab initio;

M. Declaring that all Executive Committee meetings from November 2004 to the present were held in violation of the Sunshine Law, and therefore, all official actions taken at those Executive Committee meetings are void ab initio;

N. Enter a judgment against Trailer Estates, Jones, Vandermolen, Salerno, and McNulty for violations of the Sunshine Laws;

O. Enter a judgment against the Defendants and award to the Plaintiffs' the reasonable Plaintiffs attorneys fees and costs pursuant to Florida Statute §§ 286.011(4) and 86.081, associated with the Plaintiffs' enforcement of the Sunshine Law and the bringing of these claims;

P. Award the Plaintiffs' prejudgment interest associated with the Plaintiffs' enforcement of the Sunshine Law and the bringing of these claims; and

Q. Ordering such other relief as this Court deems just and proper.

**COUNT II - DECLARATORY JUDGMENT PURSUANT TO CHAPTER 86, BY
CONSTRUING THE RIGHTS AND OBLIGATIONS OF THE PARTIES SET
FORTH IN SECTION 119.07, FLA. STAT.
(As to Trailer Estates, Vandermolen, and McNulty)**

52. The allegations set forth in paragraphs 1 through 22 above are re-alleged and adopted as if fully set forth herein.

53. This is an action for declaratory relief brought against Trailer Estates pursuant to Chapter 86, Fla. Stat.

54. Specifically, Art. I Section 24 of the Constitution of the State of Florida states that **"Every person has the right to inspect or copy any public record."**

55. Trailer Estates is an "agency" as defined by the Public Records Law, Florida Statutes § 119.011(2).

56. As an agency, Trailer Estates is mandated by Section 119.07(1)(a) of the Florida Statutes to permit public records to be inspected and copied by any person at a reasonable time and under reasonable conditions.

57. A public record includes all documents, papers, letters, tapes, films, sound recordings, data processing software, or other material made or received in connection with the transaction of official business by any agency.

58. Trailer Estates' records custodian must acknowledge a public records request and **promptly respond in good faith, including identifying all or part of the record the custodian contends is exempt and specifically citing the statutory**

authority for the exemption.

59. Trailer Estates is only permitted to charge a special service charge, in addition to the actual cost of duplication if the nature or volume of public records requested to be inspected or copied is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance.

60. Trailer Estates has a pattern and practice of violating the Public Records law by failing to produce documents; failing to assert an exemption for the non-production; unreasonably delaying production; and charging unreasonable fees associated with the production of public records.

61. From 2005 to the present, Trailer Estates has repeatedly withheld public records within its possession without claiming any exemption, discouraged records requests, failed to inform the requester whether or not the documents sought exist, improperly claimed information is private/privileged and/or unavailable to the public, and redacted non-exempt information from public records.

62. Specific examples of Trailer Estates' failure to produce public records or claim any exemption include, the following:

(a) In October 2005 and August 2006, Smith requested a copy of a citation for purported violations of the Deed Restrictions that was issued to property located at 6603 Arizona ("Citation") and McNulty stated that the Citation was unavailable and failed to produce the public record. Smith's August 27, 2006, public records request, McNulty's response dated August 22, 2006, and Kirk Pinkerton's response dated March 25, 2009, are incorporated herein and attached hereto as **Composite Exhibit 6**.

(b) On August 27, 2006, Smith requested Trailer Estates produced the 2006

Budget Hearing Video, to date Trailer Estates has failed to produce the video. Smith's August 27, 2006, letter and the Memorandum from Kirk Pinkerton dated December 5, 2007, are incorporated herein and attached hereto as **Composite Exhibit 7**

(c) In April 2008, Denson and other members of the Trailer Estates' Future Planning Committee ("FPC") submitted public records requests for a copy of the Trailer Estates' database for use in the preparation of the Board of Trustee direct survey, Vandermolen denied this request, and Trailer Estates has never produced a complete copy of these public records. The April 11, 2008, letter from Denson; and the April 17, 2008, letter from John White and Denson are incorporated herein and attached hereto as **Composite Exhibit 8**.

(d) In December 12, 2008, Smith requested the emails between the Trustees and Trustee-elects from January 1, 2006, to December 12, 2008 and Trailer Estates has not produced all of the emails responsive to this request. Smith's December 12, 2008 request is incorporated herein and attached hereto as **Exhibit 9**.

63. When Trailer Estates has provided public records in response to public records requests it has failed to do so in a reasonable timeframe under the Public Records law.

64. Examples of Trailer Estates' pattern and practice of unreasonable delay include the following:

(a) In January of 2009, **two months after** Denson submitted a public records request for items "Number 73 and 76" of the Trailer Estates Public Records Log regarding a disruption that occurred at a February board meeting, Trailer Estates allegedly provided the documents for inspection. Denson's November 24, 2008, letter is

incorporated herein and attached hereto as **Exhibit 10**.

(b) In March 2009, following a hearing on Plaintiff's Motion for Temporary Injunction and more than **three years after Smith's initial request**, Trailer Estates informed Smith that it no longer had the Citation in its possession, **despite its filing with the Department of State that reflects that Trailer Estates has not disposed of any records from 2005 through 2008**. Smith's August 27, 2006, public records request, McNulty's response dated August 22, 2006, Kirk Pinkerton's response dated March 25, 2009, are incorporated herein and attached hereto as **Composite Exhibit 6**.

(c) In March of 2009, following a hearing on Plaintiff's Motion for Temporary Injunction and **more than a year after** Denson and other members of the Trailer Estates' Future Planning Committee ("FPC") submitted public records requests for a copy of the Trailer Estates' database for use in the preparation of the Board of Trustee direct survey, Trailer Estates produced an incomplete and inaccurate copy of these public records. The April 11, 2008, letter from Denson; and the April 17, 2008, letter from John White and Denson are incorporated herein and attached hereto as **Composite Exhibit 8**.

(d) In May 2009, **more than 5 months after** Denson submitted a public records request regarding the Board's policy on Trailer Estates keeping files on individual residents, Trailer Estates' records custodian finally responded to the request. Denson's November 26, 2008, letter is incorporated herein and attached hereto as **Exhibit 11**.

(e) In May 2009, **more than three months after** Smith requested all letters Kirk Pinkerton provided to Trailer Estates during January – March of 2009 and all

documents from anyone at Ruden, McClosky, Robert Turffs, Dye Deitrick, Petruff, St. Paul, and Matthews, Eastmoore, Hardy, Crauwels, & Garcia, Trailer Estates provided responsive documents. Smith's March 12, 2009 request is incorporated herein and attached hereto as **Exhibit 12**

(f) On June 4, 2009, two months after a hearing on Plaintiff's Motion for Temporary Injunction and almost **three years after Smith's initial request**, Trailer Estates produced an audio recording of the 2006 Budget Hearing and stated that it did not possess the video that Smith had requested in August of 2006. Smith's August 27, 2006, letter and the Memorandum from Kirk Pinkerton dated December 5, 2007, are incorporated herein and attached hereto as **Composite Exhibit 7**.

(g) More than one month after Smith's December 12, 2008, public records request, Trailer Estates produced 187 pages of records responsive to the request and then **three months later**, following a hearing on Plaintiff's Motion for Temporary Injunction, it produced **approximately 800 additional pages** of documents responsive to the request.

(h) Trailer Estates produced a May 18, 2006, opinion letter from legal counsel in response to several public records requests from Smith **more than a year** after Smith's requests. Smith's April 17, 2006, May 23, 2006, June 22, 2006 requests and the May 18, 2006, letter and memorandum by Louis Ursini is incorporated herein and attached hereto as **Composite Exhibit 13**.

(i) In August of 2009, an employee of Lewis, Longman, and Walker verbally requested to inspect Ms. Brauer's emotional support pet application, and Trailer Estates withheld the record without stating a proper exemption for approximately 5 days.

65. Trailer Estates continues to withhold documents under an improperly asserted exemption to Smith's January 8, 2009, public records request, wherein Smith requested documents provided to the District by its legal counsel during the Executive Session, the agendas and minutes from the Executive Session, and the transcript from the Executive Session held on January 5, 2009. Smith's January 8, 2009 and February 4, 2009 requests are incorporated herein and attached hereto as **Exhibit 14**.

66. Trailer Estates has repeatedly and inconsistently charged unreasonable fees associated with the Plaintiffs public records requests.

67. Specific examples of the unreasonable and inconsistent fees charged by Trailer Estates include the following:

(a) Trailer Estates assessment to Smith in July and August 2006 of costs associated with the production of documents. The hourly fees assessed by Trailer Estates ranged from \$18.55 per hour to \$24.92 per hour. The July 3, 2006, and August 22, 2006, letters from Mary Lou McNulty are incorporated herein and attached hereto as **Composite Exhibit 15**.

(b) Trailer Estates failed to claim that Smith's July and August 2006 public records requests were of the nature or volume to require a special service charge, yet Trailer Estates subsequently imposed such a charge.

(c) Trailer Estates' legal counsel's August 2007 charge of \$25.00 per hour in administrative costs to produce public records in excess of the actual hourly rate of the records custodian. The August 17, 2007, letter from Smith's legal counsel is incorporated and attached as **Exhibit 16**.

68. In March of 2008, Vandermolen issued a memo demanding the removal

of public records from their customary location and ordering the redaction of parts of the records in violation of the Public Records Law.

69. Trailer Estates Board members have destroyed public records and failed to comply with an adopted record retention policy.

70. Trailer Estates' legal counsel has repeatedly advised the Board of the obligation to provide access to documents and cautioned the Board about the severe penalties for violations of the Florida Public Records Act.

71. Nevertheless, Trailer Estates, McNulty, and Vandermolen continued to violate the Public Records Law and ignore the advice of counsel.

72. The Plaintiffs have been harmed and continue to be harmed by Trailer Estates', McNulty's and Vandermolen's failure to comply with the Public Records Law.

73. A bona fide, actual, and present practical need exists for this Court to consider and declare the Plaintiffs' rights under the Public Records Law.

74. The Plaintiffs are in need of declaratory judgment construing their rights and Trailer Estates', McNulty's and Vandermolen's obligations under the Public Records Law.

75. The Plaintiffs seek a declaratory judgment affirmatively declaring Trailer Estates is subject to the Public Records Law.

76. The Plaintiffs seek a declaratory judgment affirmatively declaring that McNulty and Vandermolen, during their tenure as a Board member and so long as they have custody of public records, are subject to the Public Records Law.

77. The Plaintiffs seek a declaratory judgment affirmatively declaring Trailer Estates, McNulty, and Vandermolen have acted in violation of the Public Records Law

and must immediately turn over the public records requested by the Plaintiffs.

WHEREFORE, Plaintiffs requests that this Court issue a declaratory judgment:

A. Declaring that Trailer Estates is subject to the Public Records Law;

B. Declaring that McNulty and Vandermolen, during their tenure as Board members and so long as they have custody of public records, are subject to the Public Records Law.

C. Declaring that Trailer Estates, McNulty, and Vandermolen violated the Public Records Law by failing to produce the public records set forth in paragraphs 62 and 65 of the Complaint for inspection and copying;

D. Declaring that Trailer Estates, McNulty and Vandermolen failed to produce public records identified in paragraph 64 for inspection and copying within a reasonable time;

E. Declaring that Trailer Estates charged an unreasonable and unauthorized fee for production and duplication of public records identified in paragraph 67;

F. Enter a judgment against Trailer Estates, McNulty, and Vandermolen of the Plaintiffs' reasonable attorneys fees and costs pursuant to Florida Statute §§ 119.12 and 86.081;

G. Award the Plaintiffs' interest associated with the Plaintiffs' enforcement of the Public Records Law and the bringing of these claims; and

H. Ordering such other relief as this Court deems just and proper.

**COUNT III – MANDAMUS IN ACCORDANCE WITH
SECTIONS 119.07 and 286.011, FLA. STAT.
(As to Trailer Estates, Jones, Vandermolen, and Salerno)**

78. The allegations set forth in paragraphs 1 through 22, 62, 64 and 65, above are re-alleged and adopted as if fully set forth herein.

79. This is an action for mandamus brought against Trailer Estates, Jones, Vandermolen, and Salerno.

80. Trailer Estates, Jones, Vandermolen, and Salerno, continue to violate the Sunshine Law by continuing to hold meeting and discussions of Board business in private and make decisions, rules, and policies that affect residents outside of the Sunshine.

81. Trailer Estates, and its Board members, Vandermolen and McNulty violated the Public Records Law by failing to produce the public records identified in paragraphs 62 and 65 for inspection and copying.

82. Trailer Estates and its Board members have the nondiscretionary duty to provide public records to any person requesting to inspect or copy their public records.

83. The Plaintiffs need a Writ of Mandamus ordering Trailer Estates, Jones, Vandermolen, and Salerno, to hold meetings concerning public business in publically noticed and open meetings.

84. The Plaintiffs need a Writ of Mandamus ordering Trailer Estates and its Board members, including Vandermolen to perform their nondiscretionary duty in accordance with Section 119.07 of the Florida Statutes and provide the Plaintiffs with the records Trailer Estates and its Board members have failed to produce.

85. The Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs requests that this Court issue a writ of mandamus:

A. Ordering Trailer Estates to perform its nondiscretionary duty in accordance with Section 119.07 of the Florida Statutes and provide Plaintiffs with the public records identified in paragraphs 62 and 65 for inspection and copying;

B. Mandate that the Board, including but not limited to Jones, Vandermolen, and Salerno, attend a public records and Government in the Sunshine workshop to teach Board members their obligations under these laws;

C. Mandate that Trailer Estates Board, its Committees, and its Board members, including, but not limited to Jones, Vandermolen, and Salerno, conduct Trailer Estates business in the Sunshine and in accordance with Section 286.011 of the Florida Statutes;

D. Order Trailer Estates, Jones, Vandermolen, and Salerno to pay Plaintiffs' attorneys' fees and costs and prejudgment interest pursuant to Florida Statutes § 286.011 that are associated with the Plaintiffs' enforcement of the Sunshine law;

E. Order Trailer Estates and Vandermolen to pay Plaintiffs' attorneys' fees and costs and prejudgment interest pursuant to Florida Statutes § 119.12 that are associated with the Plaintiffs' enforcement of the Public Records law; and

F. Order such other relief as this Court deems just and proper.

COUNT IV – TEMPORARY AND PERMANENT INJUNCTIVE RELIEF
(As to all Defendants)

86. The allegations set forth in paragraphs 1 through 22 above are re-alleged and adopted as if fully set forth herein.

87. This is an action for injunctive relief brought against the Trailer Estates to stop the Executive Committee from meeting outside the Sunshine; to stop Jones from issuing memoranda setting forth rules for Trailer Estates that have never been publically

discussed or adopted; to stop Board members including but not limited to Jones, Vandermolen, and Salerno from conducting business outside of public meetings; and to stop Trailer Estates, Vandermolen, and McNulty from violating the public records laws by withholding public records except in those cases where they are entitled to rely upon a legal exemption and properly declare that exemption.

88. Trailer Estates, Vandermolen, and McNulty have repeatedly refused to produce public records for inspection.

89. Plaintiffs, as members of the public, have been irreparably harmed by Trailer Estates', Vandermolen's, and McNulty's violation of the Sunshine Law and Public Records law.

90. Plaintiffs will succeed on the merits because Trailer Estates conducted business through its Executive Committee meetings, other Board members at meetings held outside of the Sunshine, issued directives and made determinations without prior Board approval at a public meeting, and Trailer Estates failed to produce public records for inspection.

91. The Plaintiffs have a clear legal right to request injunctive relief as they are residents of Trailer Estates and members of the public.

92. For more than three years and in spite of legal counsel's advice, Jones Vandermolen, Salerno, and McNulty, as well as other Trustees have refused to comply with the Sunshine Laws.

93. For more than three years and in spite of legal counsel's advice, Trailer Estates and its Board members, Vandermolen, and McNulty, have failed to comply with the Public Records Law.

94. The Plaintiffs have no adequate remedy at law.

95. Protecting the Plaintiffs' rights to have government conducted in the Sunshine and comply with Public Records Law serves the public interest by protecting the public's right to government in the Sunshine and access to public records.

WHEREFORE, Plaintiffs requests that this Court issue an injunction:

A. Enjoining the Trailer Estates from conducting business through its Executive Committee or other meetings outside the meetings that are not open and noticed to the public;

B. Enjoining the Board of Trailer Estates, including but not limited to Jones, Vandermolen, and Salerno from having any meeting with any other Trustee(s) outside of publically noticed meetings to discuss Trailer Estates business or matters which will foreseeably come before the Board for action;

C. Enjoining Janet Jones from preparing memoranda to other Board members that purport to conduct District business;

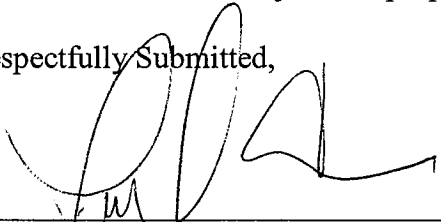
D. Enjoining Trailer Estates from withholding public records without specifying an exemption;

E. Enjoining Vandermolen and McNulty from withholding public records and order they turn over all public records in their possession to Trailer Estates;

F. Ordering Trailer Estates Jones, Vandermolen, Salerno, and McNulty to pay the Plaintiffs' reasonable attorneys fees, costs and prejudgment interest associated with the bringing of these claims pursuant to Florida Statutes §§ 286.011(4) and 119.12; and

G. Ordering such other relief as this Court deems just and proper.

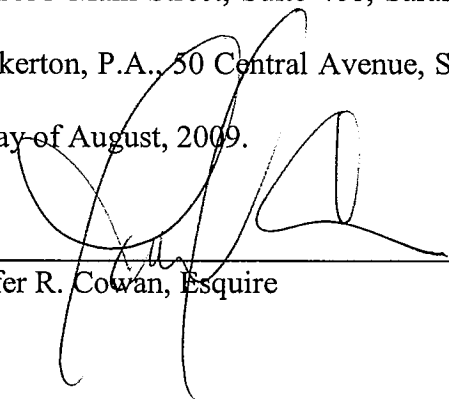
Respectfully Submitted,



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to **Hunter Carroll, Esquire**, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, **James D. Dye, Esquire**, Dye, Deitrich, Petruff, & St. Paul, 1111 Third Ave. West, Suite 300, Bradenton, FL 34205, **Robert E. Turffs, Esquire**, 1444 First Street, Suite B, Sarasota, FL 34236, **Daniel E. Scott, Esquire**, Daniel E. Scott, P.A., 2033 Main Street, Suite 408, Sarasota, FL 34237, **Thomas D. Shults, Esquire**, Kirk Pinkerton, P.A., 50 Central Avenue, Suite 700, Sarasota, FL 34236, by *Facsimile*, this 24th day of August, 2009.



Jennifer R. Cowan, Esquire