

**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.

THIRD 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. Janet Jones served as First Vice Chair of the Board from the summer of 2006 through December 2006.

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) In or around November 2005, the Executive Committee met outside of the Sunshine and discussed the DeSears fence issue.

(b) In or around May 24, 2006, the Executive Committee met outside the Sunshine and discussed the lease at Bay Drive property.

(c) In or around June 16, 2006, the Executive Committee met outside of the Sunshine and interviewed candidates for the Board vacancy created by Bob Poor.

(d) In or around June 19, 2006, Pam Cole and Joe Bigley, both Trustees, met with Smith and Denson outside of the Sunshine and discussed the storage lot rates.

(e) In or around July 27, 2006, the Executive Committee met outside of the Sunshine and discussed 6626 New Jersey fence issues and Smith's letters and concerns.

(f) On September 5, 2006, the Executive Committee and Pam Cole, a Trustee filling in for Jones, met and interviewed candidates outside of the Sunshine for the Board vacancy created by Joe Fulmer.

(g) Between September and December of 2006, members of the Executive Committee met with Jones outside of the Sunshine to discuss the reasons for appointing Tom Featheringill to the Board.

(h) From January 2006 to August 2007, the Executive Committee and its individual members met with Trustees outside the Sunshine to determine whether issues would be presented to Trailer Estates' legal counsel.

(i) From November 2005 through August 2007, Vandermolen and other members of the ARC acted as a committee of one outside the Sunshine, by approving permits.

(j) In January or February 2007, Board members Tom Featheringill and Wayne Hamblen met outside the Sunshine and discussed dredging the Trailer Estates marina.

(k) In January or February 2008, Board members Tom Featheringill and Vandermolen met outside the Sunshine and discussed dredging the Trailer Estates marina.

(l) From November 2005, through August 2007, ARC committee failed to take minutes from its meetings.

(m) In or around May 17, 2007, Vandermolen and members of the ARC discussed outside the Sunshine the ARC's procedure for interviewing candidates to fill vacancies on ARC.

(n) On or about April 11, 2008, Fred Hoch and Ken Ilg, both members of ARC Committee met outside of the Sunshine and discussed ARC matters concerning the 6620 Marina property.

(o) In January 23, 2009, Board members Fred Hoch and Vandermolen met outside of a properly noticed board meeting and discussed the denial of permits for the 6620 Nebraska and 6732 Marina Dr. properties.

(p) On February 13, 2009, Board members Fred Hoch and Vandermolen met outside of a properly noticed board meeting and discussed the denial of permits for the 6620 Nebraska St. and 1804 Illinois Avenue properties.

(q) During November 2005 through 2009, Board members attended ARC meetings wherein they discussed the denial of permits and these meetings were not advertised as board meetings.

(r) In February 25, 2009, Board members Martha Brauer and Vandermolen discussed the auditor selection, outside of properly noticed board meeting.

(s) In October of 2006, the Board held meetings wherein they interviewed and hired legal counsel which was not properly noticed.

(t) In November of 2007, Martha Brauer and Jones, both members of the Policy and Procedure Committee, discussed policy and procedure committee matters outside of a public meeting.

(u) In January 2007, all the Trustees discussed outside of a public meeting, matters to come before legal counsel.

(v) In late March of 2007, Board members Jones and Bruce Smith discussed outside of the Sunshine Trailer Estates policies.

(w) In January 22, 2007, the Board held a workshop meeting regarding the Sunshine Law and failed to take appropriate minutes.

(x) On February 12, 2007, Jones, acting as a committee of one outside of the Sunshine, decided that all public comments at public meetings should be restricted to 3 minutes.

(y) In or around December 7, 2007, Board members Bruce Smith, Jones, and Vandermolen discussed and determined outside the Sunshine the application of OSHA to Trailer Estates.

(z) In and around August 17, 2007, Board members Jones and Joe Bigley handled an ARC permit outside of the sunshine.

(aa) In June 4, 2007, Vandermolen and other Board members discussed outside the Sunshine, the McNeil mediated settlement agreement.

(bb) In or about February 11, 2008, Salerno discussed outside of the Sunshine with Jones and Pam Cole, a Board member, District procedures regarding donations from clubs and funding to the clubs.

(cc) Between January and May 14, 2007, Board members Bruce Smith and Jones discussed outside of the Sunshine, matters for legal counsel concerning boats.

(dd) Between November 5, 2007 and December 12, 2007, all Board members were involved, outside of the Sunshine, in determining that a legal opinion should not be provided regarding Complaint 216.

(ee) In or about May 7, 2007, Jones and Vandermolen had discussions outside the Sunshine regarding withdrawal of Vandermolen's resignation from ARC.

(ff) In or about November 12, 2007, Board members Vandermolen and Bruce

Smith met outside the Sunshine to discuss the combination of boats slips.

(gg) In or about November 12, 2007, Board members Vandermolen and Bruce Smith met outside the Sunshine to discuss the document management system.

(hh) On or about August 13, 2007, Board members Pam Cole and Vandermolen met outside the Sunshine to discuss purchasing a computer.

(ii) In or around November 21, 2005, the Executive Committee met outside the Sunshine and determined the Referendum Committee membership.

(jj) At or around, January 7, 2008, Jones and Vandermolen met outside the Sunshine and discussed security needs for Trailer Estates.

(kk) On or about May 27, 2008, Board members McNulty and Peg Durham met outside the Sunshine and discussed upgrading the sound system.

(ll) In or around October 6, 2008, Jones and Vandermolen met outside the Sunshine and discussed the handling of a deed restriction violation.

(mm) From March to September 2008, Board members Pam Cole and Vandermolen met outside the Sunshine and discussed the hiring of office personnel.

(nn) In or around May 27, 2009, Board members Martha Brauer and Gail Opper discussed outside of the Sunshine the declaration of an emergency situation allowing Opper to participate in a board meeting via telephone.

(oo) On January 10, 2008, Board members Salerno and Bruce Smith met and discussed deed restrictions amendments outside of a properly noticed board meeting.

(pp) On December 13 and 27, 2007, Salerno as a trustee elect and Vandermolen, met and discussed deed restriction amendments outside of a properly noticed board meeting.

(qq) On October 11, 2007, Board members Tom Featheringill and Vandermolen, met and discussed deed restriction amendments outside of a properly noticed board meeting.

(rr) In or around October 12, 2006, Wayne Hamblen, a Board member, violated the Sunshine executed a Manatee County Easement Encroachment Agreement without Board authorization granted at a public meeting; alternatively, the Board or its Executive Committee met outside of the Sunshine and granted Wayne Hamblen authorization to execute a Manatee County Easement Encroachment Agreement.

(ss) On February 26, 2007, Board members Jones and Tom Featheringill met outside of the Sunshine and determined that Fla. Stat. § 849.01 does not affect Trailer Estates.

(tt) 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.

(uu) During 2006 and 2007, Board members regularly held “pre-meetings” in the District office outside the Sunshine, immediately prior to Board meetings, to discuss matters coming before the Board.

(vv) Kay Hislop, a Trailer Estates resident, testified that she witnessed in 2007 and 2008 Board members, McNulty, Vandermolen, Jones, Salerno, discussing board business outside of the Sunshine as a regular practice.

(ww) Ken Meierjurgan, a Trailer Estates resident, testified that he witnessed throughout 2007 and 2008 Board members, McNulty and Peg Durham, regularly discussing board business outside of the Sunshine.

(xx) 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.

(yy) 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.

(zz) At the end of 2007, Board members Vandermolen and Jones held meetings out of the Sunshine and determined that video of District meetings were not public records.

(aaa) In 2007 or 2008, Board members Jones and Bruce Smith met outside the Sunshine and discussed the appointment of a SAFE Committee.

(bbb) In or around May of 2008, Salerno communicated outside the Sunshine to the entire Board how he intended to vote on document management matters scheduled to come before the Board.

(ccc) In March 2008, Board members met outside the Sunshine and 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.

(ddd) 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.

(eee) 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.

(fff) 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.

(ggg) On January 7, 2009, Board members Brauer and Harry Fitzpatrick met outside the Sunshine to discuss Bingo and Trailer Estates' volunteer program.

(hhh) On January 22, 2009, Board members Fred Hoch and Bob Durrin met outside the Sunshine and discussed Trailer Estates' website and the appointment of committees.

(iii) On January 27, 2009, Board members Fred Hoch and Brauer met outside of the Sunshine and discussed the upcoming meeting agenda and bulletin boards.

(jjj) On January 27, 2009, Board members Vandermolen and Salerno met outside the Sunshine and discussed Trailer Estates' survey.

(kkk) On January 27, 2009, Vandermolen and Fred Hoch, both Board members and ARC Committee members, met outside the Sunshine and discussed ARC permits.

(lll) On or around February 23, 2009, Board members Gail Opper and Brauer met outside the Sunshine and discussed Trailer Estates' litigation expenses.

(mmm) On or around February 27, 2008, Board members Salerno and Vandermolen met outside of the Sunshine and discussed Trailer Estates loans and interest

rates.

(nnn) In July 2007, Board members Vandermolen and Jones met outside the Sunshine and discussed Marina improvements and bids.

(ooo) On July 21, 2009, Board members Pam Cole and Vandermolen met outside the Sunshine and discussed copier and telephone service contracts.

(ppp) On October 24, 2006, the Board of Trustees held a meeting to interview Mark Barnebey and failed to take minutes.

(qqq) In or around March of 2008, Vandermolen violated the Sunshine and instituted page 4 of the Trailer Estates Park and Recreation District Public Records Policy and Procedure ("Public Records Policy"); alternatively, the Board met outside the Sunshine and adopted page 4 of the Public Records Policy.

(rrr) In July 2008, the Board met outside the Sunshine and decided to deny the publication of articles authored by Denson in the Tribune, the newsletter/newspaper published by Trailer Estates.

(sss) On April 16, 2007, Board members McNulty, Jones, Pam Cole and Margo Cushman met and discussed the disaster plan outside of a properly noticed board meeting.

(ttt) On April 16, 2007, the Disaster Committee met outside the sunshine and discussed the disaster plan. .

(uuu) In or around April 8 and 14, 2008, McNulty, Vandermolen, and Brauer met outside the sunshine to develop and edit the Disaster Preparedness Plan for Trustees.

(vvv) In or around November 4, 2005, Jones and McNulty discussed the future planning survey outside of the Sunshine.

(www) On February 20, 2008, Board members Joe Bigley and McNulty met and discussed the disaster plan outside of a properly noticed board meeting.

(xxx) On March 5, 2008, Board members McNulty, Salerno, Joes Bigley and Bruce Smith met and discussed sunshine issues and the disaster plan outside of a properly noticed board meeting.

(yyy) On March 19, 2008, Board members Bruce Smith and Salerno met and discussed the disaster plan outside of a properly noticed board meeting. On December 3, 2008, Bruce Smith, Peg Durham, Fred Hoch, and Bob Durrin, all trustees or trustees-elect met outside of a properly noticed board meeting and discussed the upcoming board workshop of December 8, 2008 regarding the Budget Questionnaire.

(zzz) On February 12, 2009, Pam Cole, Fred Hoch, and Bob Durrin, all trustees, met and discussed Brighthouse, laundry space, and waste management leases outside of a properly noticed board meeting.

(aaa) On or about April 3, 2006, the Marina Committee met outside the Sunshine and interviewed and ultimately recommended Bruce Smith for the position of dockmaster.

(bbb) On December 5, 2008, Jones and trustee-elect Brauer met and discussed PP41, PP40, PP13, and Swimming Rules outside of a properly noticed board meeting.

(ccc) From January 2006 to January of 2007, the Referendum Procedure Committee, consisting of Pam Cole, Vandermolen, Tom Featheringill, Bob Baugh, and Harry Splett, met outside the sunshine and developed the procedure for placing a referendum on the ballot.

(ddd) Between March 28 to April 5, 2006, members of the Future Planning

Committee discussed lot calculations outside of the sunshine.

(eeee) On February 24, 2009, Board members Pam Cole and Fred Hoch met and discussed the budget outside of a properly noticed board meeting.

(ffff) On December 6, 2007, Board members Pam Cole and Bruce Smith met and discussed Trailer Estates' website and its budget/expenses outside of a properly noticed board meeting.

(gggg) On March 6, 2008, Board members Bruce Smith and Joe Bigley met and discussed content of the Trailer Estates website outside of a properly noticed board meeting.

(hhhh) On April 27, 2009, Board members Vandermolen and Brauer discussed Trailer Estates' website out of the Sunshine.

(iiii) On February 17, 2009, Brauer, Cole, Jones, Hoch, and Salerno discussed and voted on the Trailer Estates' website content outside of the Sunshine.

(jjjj) In or around May 8, 2007, Board members Jones and Peg Durham met outside the Sunshine and discussed the appointment of McNulty as second vice chair; alternatively, TJ Miller, acting as a conduit, conveyed discussions with Jones to Peg Durham regarding the same.

(kkkk) On October 3, 2007, Board members McNulty, Tom Featheringill and Bruce Smith met outside the Sunshine and discussed member of Future Planning Committee and the Board's rejection of a nominee.

(llll) During 2007 through 2009, Trailer Estates Seasonal Recreation Committee or Entertainment Committee has met outside the Sunshine.

(mmmm) 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.

(nnnn) 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.

(oooo) From November 2005 to the present, the Board through its individual Board members, including Vandermolen, Martha Brauer, Gail Opper, McNulty, and Peg Durham, have repeatedly acted outside of the Sunshine in determining the content of information published on Trailer Estates' media sources, including its website, television station, and newspaper.

(pppp) From November 2005 to the present, the Video Computer Club, acting as an arm of the Board, has repeatedly met outside of the Sunshine.

(qqqq) In or around October 2006, Board members met outside of the Sunshine to determine the content of information published in the District's minutes.

(rrrr) In 2009, Brauer repeatedly met with other Board members outside the Sunshine regarding matter she characterized in her deposition testimony as administrative.

(ssss) Prior to October 30, 2006, the Board held workshop meetings where no minutes were taken.

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, limited access to public records thus discouraging 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) On August 27, 2006, Smith requested Trailer Estates produce the June 19, 2006 Board meeting video, to date Trailer Estates has failed to produce the video. See Composite Exhibit 7.

(d) 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 Trustees 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**.

(e) In October 2008, Ken Meierjurgan requested the doctor's authorization relating to a resident's emotional support pet application, Trailer Estates refused to provide the document claim it was privileged, in violation of the Public Records Law, and to date Trailer Estates has not provided Mr. Meierjurgan with the public record.

(f) In December 12, 2008, counsel for the Plaintiffs 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**.

(g) In August 2009, counsel for the Plaintiffs requested documents related to the articles published in the Tribune, and Trailer Estates has not produced these public records.

(h) In August 2009, counsel for the Plaintiffs requested Bill Secraw's letter to the Board received in March of 2006, and Trailer Estates has not produced this public record.

(i) In August 2009, counsel for the Plaintiffs requested all minutes from the Trailer Estates Seasonal Recreation Committee, and Trailer Estates has not produced these public records.

(j) In August 2009, counsel for the Plaintiffs requested minutes of the October 23, 2006 Board meeting and Trailer Estates has not produced this public records.

(k) In August 2009, counsel for the Plaintiffs requested all Trailer Estates Board meeting recordings from January 2005 through August 2009, Trailer Estates has not produced all of these public records.

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 and/or records custodians have destroyed public records and failed to comply with an adopted record retention policy. Specifically, the Records Compliance Statements that Trailer Estates files with the State reflect that no records have been destroyed, yet the above referenced records that have not been produced. Further, Board member Fred Hoch testified that he disposes of all of this public records while on ARC and as a Board member.

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,

A handwritten signature in black ink, appearing to read 'KSH', is written over a horizontal line.

KEVIN S. HENNESSY, ESQUIRE

Florida Bar No. 0602558

MAGGIE MOONEY-PORTALE, ESQUIRE

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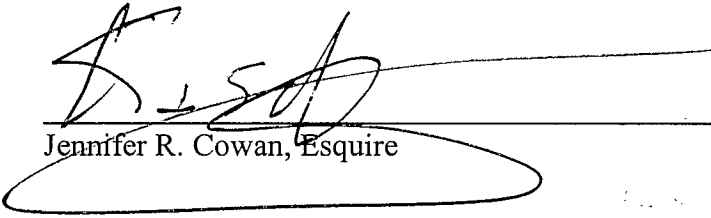
Telephone (941) 708-4040

Facsimile (941) 708-4024

Counsel for Plaintiffs

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 and hand delivery*, this 8th day of September, 2009.



Jennifer R. Cowan, Esquire