

April 17, 2006

6907 Tarpon Lane  
Bradenton, FL

Trailer Estates Park and Recreation District Board of Trustees

Dear Trustees:

The purpose of this communication is to **obtain clarification of the statutory authority of the Board of Trustees to interfere with the use of common areas of the park by charging "rents" which are exploitive of one segment of the population, with the stated (see minutes 3/20/06 and proposed 2006-2007 budget) purpose of providing funds for the operation of the district.**

I received a bill last month for use of a parking space. The yearly rate had tripled. I received no explanation of the reason for the increase and was not notified before the increase took effect. **The original amount I paid was not authorized in the charter, although I paid it.** The increase in the fee is totally unacceptable. My mother lives in a nearby park and residents are invited to park any trailer or RV for \$5.00/mo.

I referred to Florida Statutes 189.429, 418.2, the Trailer Estates Amended Deed Restrictions and Charter (2002-361) for the information used in preparation of this document.

**Pursuant to the 2002-361 Trailer Estates Park and Recreation District Charter (which recognizes the Deed Restrictions):**

Section 1 - Pursuant to section 189.429, Florida Statutes, this act constitutes the codification of all special acts relating to the Trailer Estates Park and Recreation District. **It is the intent of the Legislature in enacting this law to provide a single, comprehensive, special act charter for the district, including all current legislative authority granted to the district by its several enactments, and any additional authority granted by this act.** (The only authority the trustees have is what is in the Charter. If it is not in the Charter, it cannot be legally done)

Section 3 - The Trailer Estates Park and Recreation District is re-created and the charter is re-created and re-enacted to read: Section 1. Upon this act becoming a law, all lands described in Section 2 lying in Manatee County, hereinafter described, shall become and be incorporated and as a park and recreation district, which shall be an independent special taxing district, **having the powers and duties herein set forth**, under the name of "Trailer Estates Park and Recreation District" (The only powers and duties the board of trustees possess are set forth in the Charter.)

Section 7 - The Board of Trustees shall have the right, power, authority, to levy a special assessment known as a recreation district tax against all taxable real estate within said district **for the purpose of providing funds for the operation of the district... The district tax shall not be an ad valorem tax but rather shall be a unit tax assessed equally against all improved residential parcels.** (Authority is given to assess property to produce operating revenue for the park. The operating costs are to be shared uniformly among property owners.)

EXHIBIT

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**Section 13 - The property of the district shall consist of the recreational center, shuffleboard courts, marina, playgrounds, walks, and other property and improvements now or hereafter erected or purchased by the trustees for the district, as well as any other real or personal property which the trustee of the district, at their discretion, determine necessary or convenient for the district. (Common areas are defined. There is no distinction between the recreational center, marina and the shuffleboard courts)**

**Section 14 - Persons entitled to use the facilities and property of the park shall be limited to property owners within the district... (There is no expressed or implied consent here for "rent" to be charged for use of certain common areas)**

**Section 15 gives the trustees power to:**

**(d) Incur obligations on behalf of the district, including the power to issue bonds, notes and other evidence of indebtedness of the district for the purpose of obtaining funds for the operation of the district... (This is another way to obtain revenue for the operation of the park, which spreads costs evenly among owners)**

**(f) To buy, sell, rent or lease real and personal property in the name of the district. (This gives authority to enter into agreements that benefit all owners uniformly, not authority to discriminate against a segment of the owners for the benefit of others.)**

**(k) Promulgate reasonable rules and regulations governing the use of facilities of the district. (This does not grant authority to "rent" common areas, and is certainly not reasonable. There is no mention of charges for use of facilities.)**

**Section 17 - ...Said trustees may adopt such rules and regulations, not inconsistent with any portion of this act, as they may deem necessary or convenient and about the transaction of business of the board and in carrying out provisions of this act. (The "rent" on the marina and parking spaces is inconsistent with this act)**

**Section 18 - For the general purposes of this act, each parcel of improved residential property in said district, is hereby declared to be uniformly and generally benefited by the provisions hereof. (There is no authority here, to exploit one segment of the property owners in order to keep assessments lower for the rest. The expectation of uniformity is again expressed)**

**Pursuant to Trailer Estates Amended Deed Restrictions:**

**Amended Deed Restrictions (2000) WHEREAS (#4) , the lands encumbered by these restrictions, together with the lands within additional plats with similar restrictions, constitute an area within Manatee County, Florida, known as "Trailer Estates". Said area has been, pursuant to the laws of the State of Florida, designated a Special Taxing District known as Trailer Estates Park and Recreation District. The Trailer Estates Park and Recreation District (the "District") is governed by an elected Board of Trustees. The district is, further the owner of certain lands within the District including a recreation hall, swimming pool, shuffleboard area, storage yards, and other areas held for the use of owners and/or residents of lands in the District, and is the successor of Gulf Development Corporation of its rights, duties, and obligations under the Deed Restrictions. (No authority is given to charge for storage yard or marina. The area is to be held for the use of the owners)**

(6) No Boat, boat trailer, travel trailer, motor home, or similar property shall be stored on or about any lot, block or parcel unless in an enclosed structure or completely underneath a carport structure, **SAVE AND EXCEPT upon a parcel designated for storage of such property by the Board of Trustees of the District.** (No authority is given here to charge for the use of the space. It is required by the charter)

**Pursuant to Florida Statute:**

**Trailer Estates Park and Recreation district is given the statutory authority to function per Florida Statute 418.20**

**418.20 Creation of recreation districts authorized.**--Each municipality and county in the state is authorized to create one or more recreation districts comprising the whole of or any part of the territory of said municipality and by counties only in the unincorporated areas of each county. Each such district shall be established by ordinance approved by a vote of the electors in the district in accordance with s. 165.041. **Such ordinance, as it may from time to time be amended by the governing body of said municipality or county and approved by a vote of electors in the district, shall constitute the charter of the recreation district.** The electors residing in a proposed district may petition the governing body of the city or county to create a recreation district. If a majority of electors has signed the petition, no referendum shall be required to create the district.

**Florida Statute 418.22 Powers of recreation districts.**-- **The charter** of a recreation district may grant to the recreation district the powers and all further or additional as the governing body...The powers which by **may** be granted by such charter include the following: (6) To establish, charge, and collect fees for admission to or use of recreational facilities and to apply such fees to the operation, maintenance, improvement, enlargement, or acquisition of recreational facilities or to the payment of bonds or revenue bonds of the district. **(This language is not contained in the Trailer Estates charter, and the fee/tax/rent is not authorized)**

**In summary, the common theme in the charter is "uniformity" in the methods of providing operational revenue for the park. The "rents" for the parking spaces and marina use are not authorized in the Trailer Estates Charter, Amended Deed Restrictions, or Florida Statute. They are being illegally levied on a segment of the owners for the purpose of raising revenue for operation of the park. There is no statutory authority to do this. It is my informed opinion that you are acting beyond the scope of your authority in collecting these "rents". I have spoken to my attorney, as I indicated I would in the March meeting. He advised me to seek an answer to my question from the attorney whom I pay for in my assessment. I am formally requesting this letter be forwarded to the park attorney for an answer to my question in a timely manner. This is an extremely serious situation, which I intend to pursue until it is resolved.**

Although our methods are different, I hope you will reflect on the fact that our goals for the park are the same. We all want a peaceful place in which to live and enjoy our retirement and we all want to be treated fairly.

Please mail your response to my home address in Michigan: 6309 Porter Avenue, East Lansing, Michigan, 48823. You have my consent to give this address out to anyone who wishes to have it. My phone number and e-mail are: 517-351-9483  
MSmith0603@aol.com

What follows, is a list of documents I need to continue my research. Please forward them within the next 30 days.

Sincerely,

Mary Lou Smith

#### **Documents Requested**

1. Proposed budgets from 1993 forward.
2. Year end financial statements from 1993 forward.
- 3 A copy of the lease with Manatee County for the land containing the parking dumpsters, re-cycling building, boat hoist, etc.,
4. Name, address, and phone number of legal counsel for Trailer Estates.
5. A job description and salary rate for the Dock Master.
6. A copy of the Board "By-Laws" I have been into the office twice for this document, and was told it does not exist. I have been assured by other owners that it does exist.

Please forward documents to:

Mary Lou Smith  
6309 Porter Ave.  
East Lansing, Michigan 48823

May 23, 2006

Mary Lou Smith  
6907 Tarpon Lane  
Bradenton, FL

Trailer Estates Park and Recreation District  
Post Office Box 6298  
Trailer Estates  
Bradenton, FL 34281-6298

Dear Mrs. McNulty:

Thank you for your response to my letter of April 17<sup>th</sup>. Your response was interesting. I understand fully, that you think you are acting within your authority. As I stated in my last communication, I disagree. I am attempting to keep this issue "in house". If you, as a board, are acting outside your authority, as I contend, you are each fully liable as individuals for your actions and are neither protected, nor financially covered for liability, by the park. The park is also financially liable for expenses of a lawsuit. This hurts everyone in the park. It is extremely serious. Florida statute is very clear about the authority granted to governmental bodies. *I am asking again for my April 17<sup>th</sup> letter to be forwarded to the park attorney for an opinion on this matter.* The question remains, **Does the board of trustees have the statutory authority to interfere with the use of common areas by charging "rents" which are exploitive of one segment of the population with the stated (minutes 3/20/2006, proposed 2006-2007 budget) purpose of providing funds for the operation of the district?** My approach to the issue is simple and will be the least costly for the park property owners. Your approach could be very costly for the park, and yourselves as board members. I am trying to understand why you are not as interested as I am, in an answer to the question.

If you insist that I go outside the park, I am prepared. I caution you to be careful what you ask for.

As to the document request, I must not have made myself crystal clear. I have no intention of coming to the office to view the documents. **This letter is an official Freedom of Information Act (Florida Sunshine Law) request for copies of documents.**

In order to help determine my status for purposes of determining the applicability of any fees, you should know that I am a property owner in the park, and am requesting the documents to for personal, not commercial use. I am trying to understand the budgeting process. Some of the requested documents have not been provided, as required in the charter (year end financial statements). Some have been requested at the office and not provided.

I may be reached at 517-351-9483 or e-mail MSmith0603@aol.com, should you need to discuss any aspect of this request.

I want the information mailed to my home at 6309 Porter Avenue, East Lansing, MI 48823.

**Information requested:**

Proposed budgets from 1993 forward

Copies of year end financial statements from 1993 forward. These are required by the charter to be mailed to all owners within 30 days of preparation. I have never received one.

Documentation of any and all amendments to proposed budgets from 1993 forward

Copy of lease with Manatee County for the land containing the dumpsters, and parking area

Name, address and phone number of legal counsel for Trailer Estates

Name, address, and phone number of accounting firm used by Trailer Estates

Name, address and phone number of auditing firm used by Trailer Estates

A copy of the board "By-Laws", used to conduct meetings. I have been to the office twice for this document and have been told it does not exist. Others in the park insist it does exist.

Thank you for your prompt attention to this request.

Sincerely,

Mary Lou Smith

June 22, 2006

6907 Tarpon Lane  
Bradenton, FL.

Mary Lou McNulty, Chairman  
Board of Trustees  
Trailer Estates Park and Recreation District  
P.O. Box 6298  
Trailer Estates, Bradenton, FL 34281-6298

Chairman McNulty:

I find it necessary to clarify some information reported the June 19, 2006 minutes and ask further questions.

The only communication I have received from Trailer Estates or anyone affiliated with Trailer Estates (including attorneys) is the letter I received from you, dated May 19, 2006, which I will quote here, the paragraph pertaining to my request for an attorney opinion about the source of authority for interfering with the use of common areas by charging fees.

**Dear Ms. Smith:**

**We have received your letter of April 17, 2006 and believe that Trailer Estates is acting within its powers and authority in assessing fees for the use of the facilities mentioned in your correspondence. Should you have any legal questions, we would suggest you speak with your attorney regarding these matters.**

This response should not have generated any attorney expense. According to the minutes of June 5 and June 19, 2006, I should have received another letter from you and at least one from some attorney. If you have spent \$1600.00 in attorney fees for this matter, what were the services rendered? I still do not have an opinion from an attorney re: my question. A competent attorney who specializes in Special District Law (the park should settle for no less), should be able to quote a source of authority in 15 minutes, if one exists. Due to the lack of any documentation of the authority, lack of direct communication, and the increasing legal fees, I must assume the authority doesn't exist. If this is true, what is the attorney being paid to do? Has the attorney been given a copy of my April 17, 2006 letter? I do not want the assertion made that I am costing the park attorney fee money with my request. What I originally requested should have cost about \$50.00. I must ask myself, why you would go to such great expense, and not answer a legitimate question. I now must request an itemization of the attorney time on this matter and all communications with the attorney concerning my request. This is an official Florida Sunshine Law request.

In answer to what will it take to solve this "impasse", I'm concerned that you are not seeing the "big picture". In response to your idea of calling me, I will speak to the park attorney on the phone, but must insist all further communication with the board be in writing. I attempted to talk to you. I spoke at a board meeting in March and asked my question. I wrote you on April 17 and received the response quoted above. You have not been receptive to my legitimate question. What is to be gained by a phone call? This is not a simple dispute, blown out of proportion. It is a basic question about the legality of the actions of the Board of Trustees. It will take an answer by an attorney, to my original question in my letter dated April 17, 2006, "to obtain clarification of the statutory authority of the Board of Trustees to interfere with the use of common areas of the park by charging "rents" which are exploitive of one segment of the population, with the stated (see minutes 3/20/2006 and proposed 2006-2007 budget) purpose of providing funds for the operation of the district.", to solve the "impasse". If you are acting beyond your authority, as I have asserted and documented, I expect you to cease and desist the actions immediately. If you have statutory authority, as you state, I expect you to produce documentation of it, and my communications and questions on this issue will stop. I do not expect the property owners to be charged attorney fees to protect the board if you are acting beyond the scope of your authority. You are personally and individually responsible for any legal costs related to acting beyond your statutory authority.

Further, I do not understand the statement in the minutes that I will receive (or should have already received) a letter from an attorney about how to obtain the documents I have requested. I do not need an attorney to tell me how to obtain documents. Florida Law is very clear on this. I have done what I need to do to obtain the documents. You are now in violation of the Florida Sunshine Law, for not producing the documents. If you are paying an attorney to tell me this, you have chosen to spend unnecessary money, and will be incurring penalties from the State for not complying with the law. It is your responsibility, and a legal requirement, to produce the documents I have requested, in a timely manner.

I fully understand that you current board members did not create this situation. It was handed to you, and as Mr. Poor stated to me at the March board meeting, "It has always been done this way". My actions are for the good of the park. They are in no way intended to be a personal affront to the board. Being on the board is a thankless job. What I do expect, is now that the issue has been brought forward by myself, that you acknowledge the error, if there has been one, and take appropriate action to right the situation. I do not know what that will take, and if the money to the attorney is being spent to this end, I feel it is money well spent.

In closing, I would like to summarize. What I originally asked for, and you chose not to grant (an attorney to answer to my question), has caused initiation of further scrutiny by me, and apparently, increasing legal fees for the board. You are now authorizing payment of fees to an attorney to do something other than to answer my legitimate question as to the statutory authority to charge illegal and arbitrary fees for the boat slips

and parking spaces. The only solution to the "dispute", from my perspective, is to provide the attorney opinion I have requested, or acknowledge that I am correct, and there is no statutory authority to charge the fees.

Sincerely,

Mary Lou Smith



1515 RINGLING BOULEVARD  
SUITE 700  
SARASOTA, FLORIDA 34236

POST OFFICE BOX 48017  
SARASOTA, FLORIDA 34230-8017

(841) 316-7600  
FAX: (841) 316-7814  
LOUIS.URSINI@RUDEN.COM

May 18, 2006

Mary Lou McNulty  
Trailer Estates Park & Recreation District  
Post Office Box 6298  
Bradenton, Florida 34281-6298

*Re: Mary Lou Smith*

Dear Mary Lou:

Per our discussion today, please find enclosed a copy of the memorandum prepared regarding the issue as to whether or not the Board may charge a fee for the use of various common areas within Trailer Estates. As we also discussed, I have enclosed a draft response letter to Ms. Smith for the Board's use.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "LU", written over a large, stylized circular flourish.

Louis M. Ursini, III

MU/hb  
enclosure

173667:1

# INTEROFFICE MEMORANDUM

**To:** FILE – Client File/Matter No. 23474-0056  
**Office:** Sarasota  
**From:** Jason T. Gaskill  
**Date:** May 10, 2006  
**Re:** Trailer Estates - Challenge to Charter Letter By Mary Lou Smith  
**cc:** Lou Ursini, Esq.

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## BACKGROUND

Resident Mary Lou Smith ("Ms. Smith") of Trailer Estates Park and Recreation District ("Trailer Estates") submitted a letter dated April 17, 2006 to the Board of Trustees of Trailer Estates (the "Board"), challenging the authority of the Board to charge rent on the parking spaces at Trailer Estates as well as for certain uses of the marina (the "Challenge Letter"). The Challenge Letter is approximately 4 pages wherein Ms. Smith identifies various provisions from the Trailer Estates Charter regarding its authority and also cites to provisions of Florida Statutes regarding the creation of recreational districts and codification of charters.

The Challenge Letter ultimately concludes that the Board has no authority to charge rent for the use of facilities at Trailer Estates. The Challenge Letter requests a response to be mailed to Ms. Smith's home address and specifically requests that the Challenge Letter be reviewed by Trailer Estates' attorney for an answer in a timely manner. The Challenge Letter further requests various documents and information to be forwarded to her within thirty (30) days of the Challenge Letter.

## ISSUE

Does Trailer Estates have authority to charge rent for use of a parking space and/or use of the marina?

## DISCUSSION<sup>1</sup>

It is not clear whether or not Trailer Estates may properly charge rent for use of a parking space and/or the marina. There are various provisions in the Trailer Estates Charter suggesting that the Board does have somewhat broad authority with respect to Trailer Estates' property.

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<sup>1</sup> I did not locate any authority directly addressing the issue.

Many of these provisions, however, were addressed in Challenge Letter whereby Ms. Smith dismissed them as insufficient to provide such authority. The following provisions are relevant:

**Section 8:** The district may acquire and hold property, sue or be sued, enter into contracts and perform other functions necessary or desirable to the carrying out of the provisions and intent of this Act....

**Section 13:** The 'Property' of the district shall consist of the recreational hall, shuffle board courts, marina, playgrounds, walks, and other property and improvements now or hereinafter erected or purchased by the Trustees for the district as well as any other real or personal property which the Trustees or the district may, in their discretion, determine to be necessary or convenient for the purposes of the district; in addition thereto, for the comfort and convenience of taxpayers within the district, the Trustees may, in their discretion, assume the cost of installing and maintaining entrance parkways and street lighting within the district and may acquire and dispose of any other facilities for the general purpose of the district.

**Section 15(f):** [The Board shall have the power] To buy, sell, rent, or lease real and personal property in the name of the district.

**Section 15(g):** To promulgate reasonable rules and regulations governing the use of the facilities of the district.

A recreational district, as a statutory entity, possesses only those powers expressly given to the district or necessarily implied because the powers are essential to carrying out the powers expressly granted. *A.G.O. 85-65 (citing, Forbes Pioneer Boat Line v. Board of Com'rs of Everglades Drainage District, 82 So. 346 (Fla. 1919))*. Except as provided in the enabling legislation, a district's authority is limited to the acquisition of facilities for the general purpose of the district. *Id.* Therefore, Trailer Estates and the Board have only those powers provided in the Charter, those powers necessarily implied for the carrying out of the express powers, and those powers consistent with the general purpose of Trailer Estates.

Ms. Smith argues that the provisions of the Charter do not permit Trailer Estates or the board to charge individual residents for use of the property of Trailer Estates. With regard to section 15(f), Ms. Smith argues that the provision only provides the Board authority to enter agreements for the benefit of all owners uniformly and not authority to discriminate against a segment of owners. Her position is that any charges for use of facilities such as the parking lot and/or the marina should be spread evenly amongst all of the residents of Trailer Estates. It appears that she is reading of the language "in the name of the district" to mean for the benefit of every resident of the district. However, that reading is not necessarily consistent with the language of the section. A fair reading of the provision is that Trailer Estates and the Board may acquire and dispose of property owned by Trailer Estates only in the name of the Trailer Estates. The fact that

Trailer Estates rents to a resident does not otherwise remove the fact that it is renting in the name of the Trailer Estates. Nor does the rental to a resident necessarily imply that the rental is inconsistent with a benefit to the entire district.

Notwithstanding the argument above, there is a relevant deviation between the Charter and the powers which may be granted pursuant to statute. Florida Statutes, Section 418.304 provides that the ordinance creating or amending a charter for a mobile home park may grant the district certain enumerated powers, including the power:

To establish, charge, and collect reasonable fees for admission to or use of recreational facilities, provided the use of the facilities is extended to residents and non-resident owners within the District, their family members and guests, and other such persons and groups as the Board may authorize from time-to-time; and to apply such fees to the operation, maintenance, improvement, enlargement, or acquisition of recreational facilities or to the payment of bonds, notes, or revenue certificates of the district.

While the Trailer Estates Charter appears to have adopted a majority of the provisions from Section 418.304 verbatim, this particular provision was omitted from the Charter. Moreover, although citing to a different statute, the Challenge Letter notes that this particular power was not granted in the Charter.

Based on the omission of the above stated provision from the Charter, it could be argued that Trailer Estates does not have the authority to charge rent or fees for the use recreational facilities. Moreover, because Trailer Estates is a recreational district, it only has the authority to acquire and hold property which constitutes a recreational facility. *See A.G.O. 73-309.* However, to the extent that the rent charged to the residents is for the exclusive use of a particular parcel, such as a parking space, then, arguably, charging rent is not the same as charging fees for the use of recreational facilities. Insofar as the property is owned by Trailer Estates and Trailer Estates is charging for the exclusive use by a particular resident, it is also arguable that failure to charge rent constitutes an individual benefit to those particular residents to the detriment of Trailer Estates as a whole. Still, to the extent that the fees and/or rent being charged are for use of facilities which are generally open to the residents and owners of Trailer Estates, that could be construed as beyond the authority provided under the Charter.