

IN THE CIRCUIT COURT FOR MANATEE COUNTY, FLORIDA

MARY LOU SMITH,
AN INDIVIDUAL, AND
SHARON DENSON,
AN INDIVIDUAL

Plaintiffs,

v.

CASE NO.: 2008 CA 11315

TRAILER ESTATES PARK
AND RECREATION DISTRICT,
AN INDEPENDENT SPECIAL
TAXING DISTRICT, and others,

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS' THIRD AMENDED COMPLAINT

Defendant, JOHN VANDER MOLEN, by and through his undersigned counsel, hereby files his answer to the Plaintiffs' Third Amended Complaint filed herein as follows:

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

1. Admitted that the Third Amended Complaint contains these counts.

2. Admitted for venue purposes only.

ALLEGATIONS COMMON TO ALL COUNTS

3. Unknown and therefore denied.

4. Unknown and therefore denied.

5. Unknown and therefore denied.

6. Unknown and therefore denied.

7. Unknown and therefore denied.

8. Unknown and therefore denied.

9. Unknown and therefore denied.

10. Admit that Vander Molen is a resident of Trailer Estates and that he has served on the Board of Trustees from April 16, 2007 to the present but denies the remainder of the paragraph.

11. Unknown and therefore denied.

12. Unknown and therefore denied.

13. Admit that the Board members are subject to Florida's Sunshine Law and the legal requirements set forth in law.

14. Admit that the Board members are subject to Florida's Public Records Law and the legal requirements set forth in law.

15. Denied.

16. Unknown and therefore denied.

17. Unknown and therefore denied.

18. Unknown and therefore denied.

19. Unknown and therefore denied.

20. Denied.

21. Unknown and therefore denied.

22. Denied.

COUNT I - DECLARATORY JUDGMENT 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. Admitted and Denied as set forth above.

24. Admitted that this Count seeks a declaratory judgment.

25. Denied.

26. Denied.

27. Denied.
28. Denied.
29. Denied.
30. Denied.
31. Denied.
32. Denied.
33. Denied.
34. Denied.
35. Denied.
36. Denied.
37. Denied 37. and 37.(a) through 37.(ssss).
38. Denied.
39. Unknown and therefore denied.
40. Unknown and therefore denied.
41. Unknown and therefore denied.
42. Unknown and therefore denied.
43. Unknown and therefore denied.
44. Unknown and therefore denied.
45. Denied.
46. Denied.
47. Denied.
48. Unknown and therefore denied.
49. Denied.
50. Unknown and therefore denied.
51. Denied.

**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. Admitted and Denied as set forth above.
53. Admitted that the Count seeks declaratory judgment.
54. Denied.
55. Denied.
56. Denied.
57. Denied.
58. Denied.
59. Denied.
60. Denied.
61. Denied.
62. Denied 62. and 62.(a) through 62.(k).
63. Denied.
64. Denied 64. and 64.(a) through 64.(i).
65. Denied.
66. Denied.
67. Denied 67. and 67.(a) through 67.(c).
68. Denied.
69. Denied.
70. Unknown and therefore denied.
71. Denied.
72. Denied.
73. Denied.
74. Denied.

- 75. Denied.
- 76. Denied.
- 77. Denied.

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

- 78. Admitted and Denied as set forth above.
- 79. Admitted that this Count seeks Mandamus.
- 80. Denied.
- 81. Denied.
- 82. Unknown and therefore denied.
- 83. Denied.
- 84. Denied.
- 85. Denied.

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

- 86. Admitted and Denied as set forth above.
- 87. Denied.
- 88. Denied.
- 89. Denied.
- 90. Denied.
- 91. Denied.
- 92. Denied.
- 93. Denied.
- 94. Denied.
- 95. Denied.

AFFIRMATIVE DEFENSES

96. As his first affirmative defense, Vander Molen, alleges that plaintiffs' action is barred by unclean hands and failure to act in good faith and is unnecessary by passage of time.

97. As his second affirmative defense, Vander Molen, alleges that plaintiffs' have failed to send that statutory notice required by F.S. Section 768.26 (6) prior to filing this action.

98. As his third affirmative defense, Vander Molen, alleges that plaintiffs' complaint fails to state a cause of action for declaratory relief because it fails to allege an actual and present need for such relief and that plaintiffs are in doubt as to their rights or responsibilities under the statutes cited.

99. As his fourth affirmative defense, Vander Molen, alleges that plaintiffs' complaint fails to state a cause of action for mandamus because it fails to allege all elements required for such relief.

100. As his fifth affirmative defense, Vander Molen, alleges that plaintiffs' complaint fails to state a cause of action for declaratory relief, mandamus or injunction because any meetings or discussions between two or more trustees regarding the District, if any, were administrative or operational and did not constitute final action nor an agreement to act or vote in a particular way.

101. As his sixth affirmative defense, VANDER MOLEN, alleges that any violation of the Sunshine Law were cured by subsequent actions of the Board of Trustees.

ATTORNEY FEES

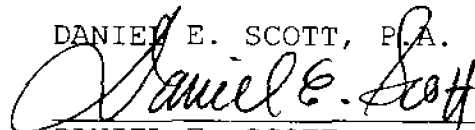
102. Defendant VANDER MOLEN, has retained the undersigned attorney and will seek an award of attorney fees from Plaintiffs pursuant to Florida Statutes Section 286.011(4).

JURY TRIAL

103. Defendant, Vander Molen demands trial by jury of all issues so triable.

I hereby certify that a true copy of the foregoing has been furnished to all counsel on the attached service list, by facsimile and mail, on September 10, 2009.

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