

IN THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION

CLERK OF CIRCUIT COURT
MANATEE CO., FLORIDA

2009 OCT 19 PM 4:49

FILED FOR RECORD
R.B. SHORE

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

Plaintiffs,

vs.

CASE NO.: 08 CA 11315
Division B

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.

**PLAINTIFFS' ADDENDA TO THIRD AMENDED COMPLAINT IN ACCORDANCE
WITH THE COURT'S ORDER FROM SEPTEMBER 18, 2009, HEARING**

Plaintiffs, SHARON DENSON and MARY LOU SMITH, by and through their undersigned Counsel and pursuant to Rule 1.190, *Florida Rules of Civil Procedure*, and this Court's Order from the September 18, 2009 hearing in this matter, providing for the filing of an Addenda, hereby files this Addenda to the Third Amended Complaint, as follows:

1. Paragraph 37(h) of the Third Amended Complaint is hereby modified as follows "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 the District's legal counsel. On or around May 14, 2007, Board Members, Bruce Smith and Jones met out of

the Sunshine and discussed whether Mr. Smith was allowed to bring a legal question concerning the marina to the District's legal counsel. In January 2007, all the Board members discussed outside of a public meeting matters that were to come before Trailer Estates legal counsel. 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."

2. Paragraph 37 (ddd) of the Third Amended Complaint is hereby modified as follows "In December of 2007, Board members McNulty, Peg Durham, and Margo Cushman held meetings discussing and determining the permitted use of Trailer Estates property by its residents."

3. Paragraph 37 (yyy) of the Third Amended Complaint is hereby modified as follows "On March 19, 2008, Board members Bruce Smith and Joseph Salerno met and discussed the disaster plan outside of a properly noticed Board meeting."

4. Paragraph 37(IIII) of the Third Amended Complaint is hereby modified as follows "During 2007 through 2009, Trailer Estates Seasonal Recreation Committee or Entertainment Committee has met outside the Sunshine. During 2007 through 2009, the Seasonal Recreation Committee or Entertainment Committee's members have included Ellie Miller and Joseph Salerno. The Seasonal Recreation or Entertainment Committee held its meetings in the Activity Building, Small Hall, or at Salerno's home, where committee members discussed strategies for completing upcoming events."

5. Paragraph 37 (rrrr) of the Third Amended Complaint is hereby modified as follows "In 2009, Brauer repeatedly met with other Board members outside the Sunshine regarding matters she characterized in her deposition testimony as administrative, including:

- i. In January through March, 2009, Board members Brauer and Bob Durrin met out of

- the Sunshine and discussed placing Committees on the Board of Trustees meeting agenda
- ii. In 2009, Board members, Brauer and Vandermolen met outside the Sunshine and discussed Trailer Estates policy regarding the handling of public records requests.
 - iii. In April or May, 2009, Board members Brauer and Gail Oppen met outside the Sunshine and discussed and determined who would be performing the Secretary of the Board's duties in Oppen's absence.
 - iv. On January 2, 2009, Board members, Brauer and Harry Fitzpatrick discussed in a telephone call outside of the Sunshine, Fitzpatrick's inability to execute his duties as the Continuing Recreation Trustee and his letter of resignation.
 - v. On January 9, 2009, Board members, Brauer and Harry Fitzpatrick met outside the Sunshine and discussed Fitzpatrick's duties as the Continuing Recreation Trustee including Bingo and the delegation of his duties.
 - vi. In early 2009, Board members, Brauer and Bob Durrin met outside the Sunshine and discussed Fitzpatrick's resignation.
 - vii. In 2009, outside of the previously mentioned January 2, 2009, meeting, Board members Brauer and Harry Fitzpatrick again met outside of the Sunshine and discussed Fitzpatrick's resignation.
 - viii. In or around May 20, 2009, Board members, Pam Cole and Brauer discussed in a telephone call outside of the Sunshine a special Workshop of Board of Trustees to consider the District television contract.
 - ix. During 2009, Martha Brauer met with individual Board members, with the exception of Margo Cushman, regarding District business.

- x. In February or March, 2009, Board members Brauer and Gail Opper met outside the Sunshine and discussed continuing the Public Hearing regarding the Trailer Estates Budget.
- xi. In January, 2009, Board members, Brauer and Salerno met outside the Sunshine and discussed the recreational round table.
- xii. In January, 2009, Board members, Brauer and Gail Opper met outside the Sunshine and discussed the recreational round table.
- xiii. In spring, 2009, Board members, Brauer and Gail Opper met outside the Sunshine and discussed the residents' complaint concerning threats made by Gail Opper.
- xiv. In spring, 2009, Board members, Brauer and Fred Hoch discussed in a telephone call outside of the Sunshine, Hoch's resignation from ARC.
- xv. In early 2009, Board members, Brauer and Vandermolen discussed in a telephone call outside of the Sunshine, the Auditor Committee membership.
- xvi. In 2009, Board members, Brauer discussed with Pam Cole outside of the Sunshine, the content of the Trailer Estates Website.
- xvii. During summer 2009, Board members, Martha Brauer and Vandermolen met outside the Sunshine and discussed the BrightHouse contract and amending Trailer Estates By Laws.
- xviii. In 2009, Board members, Brauer and Harry Fitzpatrick met outside of Sunshine and discussed lawn maintenance and Fitzpatrick's Trustee duties.
- xix. Between July 29, 2009, and August 4, 2009, Board members, Brauer and Fred Hoch met outside the Sunshine and discussed the Board's Workshop agenda.
- xx. In 2009, Board members, Brauer and Vandermolen met outside the Sunshine and

discussed compiling the Board meeting recordings in accordance with Public Records.”

6. Paragraph 37 (tttt) of the Third Amended Complaint is hereby modified as follows “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.”

7. Paragraph 44 of the Third Amended Complaint is hereby modified as follows “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, including:

- i. In or around May 8, 2007, TJ Miller, acting as a liaison, conveyed information between Board members Jones and Peg Durham relating to the appointment of McNulty as second vice chair.
- ii. In November and December 2008, Brauer, acting as a liaison, conveyed information between Board members Jones and Salerno relating to the Budget Questionnaire.
- iii. In April 2008, Brauer, acting as a liaison, conveyed information between Board members McNulty and Vandermolen related to the Disaster Plan.
- iv. In November 2007, Brauer, acting as a liaison, conveyed information between Board members Jones and Vandermolen related to the public records policy.”

8. Paragraph 69 of the Third Amended Complaint is hereby modified as follows “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 members have testified that they routinely destroyed public records:

- i. Fred Hoch testified that he disposes of all of his public records while on ARC and as a Board member.
- ii. McNulty testified that she disposed of public records as a Board member.
- iii. Vandermolen testified that he disposed of public records including emails as a Board member.
- iv. Salerno testified that he disposed of minutes of the Seasonal Recreation or Entertainment Committee.”

9. Paragraph 86 of the Third Amended Complaint is hereby modified as follows “The allegations set forth in paragraphs 1 through 22, 25 through 45, and 54 through 72, above are re-alleged and adopted as if fully set forth herein.”

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 *U.S. MAIL*, this 19th day of October, 2009.



KEVIN S. HENNESSY, ESQUIRE