

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

MARY LOU SMITH, et al.,

Plaintiffs,

Case No. 2008-CA-11315

v.

Division B

TRAILER ESTATES PARK AND
RECREATION DISTRICT, et al.,

Defendants.

**JANET JONES MOTION FOR PARTIAL SUMMARY JUDGMENT
AND MEMORANDUM OF LAW IN SUPPORT**

Defendant Janet Jones (“Ms. Jones”) moves pursuant to Florida Rule of Civil Procedure 1.510 for partial final summary judgment on select counts raised against her by Plaintiffs Mary Lou Smith and Sharon Denson (collectively, “Plaintiffs”).

Plaintiffs in their Third Amended Complaint together with the Addenda raise four counts, although within count one there are nearly 50 separate allegations against Ms. Jones alleging violations of Florida’s Sunshine Law (section 286.011(1), Florida Statutes). There are no Public Record counts against Ms. Jones. This motion only addresses certain of those allegations against Ms. Jones individually.

Ms. Jones is entitled to partial summary judgment because there is no issue of material fact and, as a matter of law, certain of the allegations against her do not establish any violation, and even if they did, such violations have been cured by subsequent action of the Board of Trustees.

The undisputed facts are:¹

The Board of Trustees of the District

1. The Trailer Estates Park and Recreation District (the “District”) was re-codified by chapter 2002-361, Laws of Florida (the “Charter”). A nine person Board of Trustees governs the business and affairs of the District. (Charter, §3). The Board of Trustees is authorized to adopt rules and regulations. (Charter, §17). The trustees do not receive any compensation for their service. (Charter, §3).

2. Five trustees constitute a quorum. (Bylaws, art II, §B; Jones Aff. ¶7.). For most situations, a majority of the Trustees voting is necessary for an affirmative act. (Charter, §17; but see Charter, §22 for matters requiring 2/3 vote).

3. Ms. Jones has been on the Board of Trustees continuously since 2002. (Jones depo 7: 6-8). She served as Chairman of the Board of Trustees in 2007 and 2008.² (Jones depo 7:25 - 8:1).

Undisputed Facts relating to McNeil Fence Case – Allegation 37(aa)

4. Mr. Vander Molen was the Board of Trustees’ authorized representative in the McNeil fence case lawsuit. Mr. Vander Molen participated at a mediation and signed an agreement that needed to be approved by the Board of Trustees before it was effective. District Attorney Mark Barnebey contacted Mr. Vander Molen on Friday, June 1, 2007, prior to the

¹Citations to deposition page and line number are in the form (x depo y:z), with x as the deponent, y as the page number, and z as the line number(s). The Affidavit is in the form (b Aff. ¶ c), with b as the affiant and c as the paragraph number.

²The Board of Trustees generally uses Chairman instead of Chairwoman; accordingly, that naming convention will be used here.

Trustee meeting on Monday, June 4, and advised Mr. Vander Nolen that the mediated settlement agreement should be provided to the other trustees in preparation for Monday's meeting.

(Vander Molen depo 128:10 - 130:17). Mr. Vander Molen complied, and he and office staff let all trustees know that the mediated settlement agreement was in their box at the District's office.

(Vander Molen depo 132:4 - 134:19).

5. On Monday, June 4, Mr. Vander Molen issued two memos to the Board of Trustees. (Vander Molen depo Ex. 11; Pltfs Ex. 63). In the first memo, Mr. Vander Molen simply explained the facts why the mediated settlement agreement was not provided to the trustees sooner. (Vander Molen depo Ex. 11). In the second memo, Mr. Vander Molen stated his understanding of the terms of the mediated settlement agreement and provided his positive recommendation. (Pltfs. Ex. 63). The express text of those memos demonstrate that Mr. Vander Molen did not engage in dialogue or otherwise respond to a trustee.

6. Ms. Jones did not speak with Mr. Vander Molen on June 4, 2008 concerning the mediated settlement agreement outside a noticed Board of Trustees meeting. (Jones Aff. ¶ 2).

Undisputed Facts relating to Manatee County Easement Encroachment Agreement – Allegation 37(rr)

7. On or about October 12, 2006, then trustee Wayne Hamblin on behalf of the District purportedly executed a Manatee County Easement Encroachment Agreement with Manatee County. (Pltfs Ex. 185). Ms. Jones took no part in any out-of-the-Sunshine meeting – either Executive Committee or Board of Trustees – in which the Manatee County Easement Encroachment Agreement was discussed or authorization given to Mr. Hamblin. (Jones Aff. ¶ 3; Jones depo 32:13-25, 156:14-21).

Undisputed Facts Associated with potential SAFE Committee – Allegation 37(aaa)

8. Trustee Bruce Smith testified that sometime in 2007 or 2008, he was organizing a group of residents relating to safety within the District. (Bruce Smith depo 24:10-21). This event occurred within the District’s office. (Bruce Smith depo 12:8-11). Besides himself, there was no other trustee present. (Bruce Smith depo 24:22-24). Mr. Smith did not announce his intent to the Board of Trustees to have such a group formed. (Bruce Smith depo 24:25 – 25:4).

9. Trustee Bruce Smith testified that Ms. Jones called him into her office during this organizational type of meeting told Mr. Smith that she was not going to appoint a SAFE Committee. (Bruce Smith depo 6:16 - 7:5). Mr. Smith explained that this was a 30-60 second, one-way conversation in which Ms. Jones, then the Chairman, told him she was not going to appoint a SAFE Committee and Mr. Smith did not respond. (Bruce Smith depo 25:5–17). Appointment of a SAFE Committee was not raised before the Board of Trustees. (Bruce Smith depo 23:23–24:1).

10. The District’s bylaws grant the Chairman unfettered discretion to create and appoint all committees (other than standing committees). Specifically, article VI, section A provide that the Chairman “shall appoint committees when necessary.” Article V, Trustee Committee section provides that “the Chairman of the Board of Trustees may appoint a committee of District residents to advise, inform and assist said Trustee in the performance of his or her duties.” (Jones Aff. ¶ 7).

Undisputed Facts relating to Salerno’s May 2008 Memo – Allegation 37(bbb)

11. In May 2008, Trustee Joe Salerno provided a memorandum on his thoughts relating to a document management system. (Joe Salerno depo 85:12–87:20; Pltfs Ex. 93). Ms.

Jones did not discuss Mr. Salerno's thoughts with Mr. Salerno or any other trustee outside a noticed Board of Trustees meeting. (Jones Aff. ¶ 4).

Undisputed Facts relating to PP41, PP40, PP13 and Pool Rules – Allegation 37(bbbb)

12. In 2007, Martha Brauer was not on the Board of Trustees; however, she volunteered to compile the policies the Board of Trustees previously adopted. (Brauer 5/20/09 depo 12:9–14:17). Subsequently, Ms. Jones as Chairman of the Board formed a Practices and Committee that met in 2007 and 2008. (Brauer 5/20/09 depo 109:3-20). Included in the membership of the Practices and Procedure Committee included Ms. Jones and Ms. Brauer: besides Ms. Jones, however, there were no other trustees who were members of this committee. (Brauer 5/20/09 depo 109:3-20).

13. On or about November 14, 2008, Ms. Jones posted a notice on the District's notice board a notice that the Policy and Procedures Committee would meet on December 5, 2008. (Jones Aff. ¶ 5). Thereafter, on or about November 17, 2008, Ms. Jones stated during a Board of Trustees meeting that was broadcast throughout the District on access channel 95 that the Policy and Procedures Committee would meet on December 5, 2008. (Jones Aff. ¶ 5).

14. Ms. Brauer ran for the office of Trustee. (Jones Aff. ¶ 6). The election occurred on December 2, 2008, and Ms. Brauer was elected. (Jones Aff. ¶ 6). Ms. Brauer assumed office on January 2, 2009. (Jones Aff. ¶ 6). Prior to her election, Ms. Brauer had never served on the Board of Trustees. (Jones Aff. ¶ 6).

**Undisputed Facts relating to purported denial of “free internet service” to residents
Allegation 37(nnnn)**

15. In and before April 2008, the District office had three computers that were hard

wired to the server ethernet cable. (Vander Molen depo 146:9–147:15). Trustee Bruce Smith, without any authorization, had a wireless router installed within the District office. (Vander Molen depo 146:25–148:6). There was no need to have wireless within the office, as each of the District’s computers were hard wired into the server. (Vander Molen depo 147:9-15). In fact, it would only cause problems to the District’s existing computers. (Vander Molen depo 147:19-20).

16. Mr. Vander Molen then made the unilateral decision to remove the unapproved router from the District office and to bring the matter before the Board. (Vander Molen depo 147:21–148:16). Mr. Vander Molen testified that he notified Ms. Jones that he was taking the action but that she was not involved in his decision. (149:15–150:22). Ms. Jones testified that she did not participate (Jones depo 16:12–14).

17. The minutes from the April 21, 2008 Board of Trustees make clear that the location of this router had nothing to do with whether the Board of Trustees would provide free internet access within the park. (pages 4-5). Those minutes reflect that an administrative task of removing an unapproved installing of the router within the District office was necessary rooted in functionality, security, and cost concerns. (pages 4-5). Those minutes also reflect that the Board should engage in a separate discussion whether to offer free internet service within the District, which would also require the involvement of BrightHouse, the contracted cable provider to the District. (pages 4-5).

18. Mr. Vander Molen worked through the summer of 2008 on the matter of whether free internet access could be offered through BrightHouse. (Vander Molen depo 153:5–154:11). Ultimately, the Board of Trustees workshopped this matter on September 8, 2008. (Minutes, 9-

8-2008). Amendments were made as a result of the workshop, and the amended contract with BrightHouse to provide for free wireless internet within an area of the District was approved during the September 15, 2008 meeting. (Minutes, 9-15-2008). Free wireless internet is now provided in an area of the District; however, it is not provided in the District office. (Vander Molen depo 153:6-7, 153:22–154:9; Minutes, 9-15-2008).

Undisputed Facts relating to cure
Allegations 37(s), 37(x), 37(aa), 37(bbb), 37(eee), 37(sss),
37(yyy), 37(bbbb), 37(jjjj), 37(nnnn), 37(qqqq), 44i, 44ii, and 44i

19. Minutes from the following Board of Trustees, for which judicial notice is requested, demonstrate that the subject matter of these alleged Sunshine Law violations have been re-addressed by the Board of Trustees:

Allegation 37(s) concerning hiring of legal counsel in October 2006

*each and every subsequent vote to pay legal counsel's bill

Allegation 37(x) concerning Feb. 12, 2007 memo on length of residents' comments

*February 19, 2007 meeting discussed and ultimately adopted policy

Allegation 37(aa) concerning McNeil mediated settlement agreement

*June 4, 2007 meeting discussed and approved mediated settlement agreement

Allegation 37(bbb) concerning May 2008 memo on document management

*May 12, 2008 discussed document management proposal

*May 19, 2008 discussed document management proposal

*June 9, 2008 discussed amending budget to include document management

*June 16, 2008 amended budget and approved document management proposal

Allegation 37(eee)/Addendum 44ii concerning December Budget Questionnaire to assist with budget

*December 8, 2008 discussed a budget questionnaire

*December 15, 2008 discussed and approved a budget questionnaire

*February 23, 2009 discussed the budget

*March 9, 2009 discussed the budget

*March 16, 2009 discussed and approved the budget

Allegation 37(sss) concerning April 16, 2007 disaster plan discussion

- *March 24, 2008 discussed the adoption of a disaster plan
- *April 7, 2008 discussed and adopted a disaster plan

Allegation 37(yyy)/addenda ¶6 concerning December 3, 2008 budget questionnaire

- *December 8, 2008 discussed a budget questionnaire
- *December 15, 2008 discussed and approved a budget questionnaire
- *February 23, 2009 discussed the budget
- *March 9, 2009 discussed the budget
- *March 16, 2009 discussed and approved the budget

Allegation 37(bbbb) concerning Dec. 5, 2008 PP41, PP40, PP13 and Swimming Rules discussion

- *December 8, 2008 discussed swimming rules and PP41
- *December 15, 2008 discussed and approved pool rules and PP41
- *January 12, 2009 discussed PP13 and PP40
- *January 19, 2009 discussed and approved PP13 and PP40

Allegation 37(jjjj)/Addenda 44i concerning May 8, 2007 discussion on appointing Ms. McNulty as Second Vice Chair

- *May 21, 2007 discussed and approved Ms. McNulty as Second Vice Chairman

Allegation 37(nnnn) concerning April 2008 discussion about free internet service

- *April 7, 2008 discussed the router issue
- *April 21, 2008 discussed the router issue
- *September 8, 2008 discussed providing wireless internet access
- *September 15, 2008 discussed and approved contract amendment to permit wireless internet access

Allegation 37(qqqq) concerning content of minutes in October 2006

- *each meeting at since that approved previous minutes

Allegation 44iv concerning November 2007 public record policy

- *November 12, 2007 discussed public records policy
- *December 17, 2007 discussed public records policy
- *January 7, 2008 discussed and adopted public records policy
- *February 16, 2009 discussed public records policy
- *February 23, 2009 discussed public records policy
- *March 16, 2009 discussed and revised public records policy

MEMORANDUM OF LAW

Plaintiffs alleged multiple instances of purported Sunshine Law violations against Ms. Jones in Count 1. Plaintiffs continue to maintain that these are separate violations even though they have lumped approximately 100 separate distinct allegations into Count 1. Thus, each separate violation can be individually attacked. Ms. Jones' memorandum addresses those specific allegations.

Section 286.011(1), Florida Statutes, commonly known as Florida's "Sunshine Law," provides in pertinent part:

- (1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

The scope of the Sunshine Law is "to cover any gathering of some of the members of a public board where those members discuss some matters on which **foreseeable** official action will be taken by the board." Canney v. Board of Public Instruction of Alachua County, 278 So. 2d 260, 263 (Fla. 1973) (emphasis added). The purpose of the Sunshine law "is to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance." News-Press Pub. Co. v. Carlson, 410 So. 2d 546, 548 (Fla. 2d DCA 1982) (citing Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974)). By its express terms, however, the Sunshine Law does not preclude all contact between members of the same council outside a formal meeting. For instance, discussion of previous actions or those actions not reasonably foreseeable to come before the council are not proscribed by the Sunshine Law.

At trial, Plaintiffs will have to demonstrate the existence of several elements in order to show a Sunshine Law violation: that the Sunshine law applies to board and its members; that there was an improper communication between council members; outside a properly noticed meeting open to the public; that discusses a matter that was then reasonably foreseeable to come before that entity; and there was a formal action on that matter. See § 286.011(1), Fla. Stat. As the Court is well aware, summary judgment is appropriate where a defendant demonstrates that plaintiff will be unable to prove one essential element of plaintiff's cause of action. See Shaw v. Tampa Electric, Co., 949 So. 2d 1066, 1069 (Fla. 2d DCA 2007); Della-Donna v. Nova University, Inc., 512 So. 2d 1051, 1055 (Fla. 5th DCA 1987).

Discussions concerning legal effect cannot be a Sunshine Law Violation
Allegations 37(y); 37 (ss); and 37(zz)

Plaintiffs allege in paragraphs 37(y), (ss), and (zz) that Ms. Jones had discussions outside a noticed meeting to determine whether certain laws applied to the District. The Sunshine Law applies to “meetings . . . at which official acts are to be taken,” and it further provides that “no resolution, rule, or formal action” is binding where the decision is made outside a noticed, public meeting. See § 286.011(1), Fla. Stat. The statute precludes policy decisions from being made outside a notice, public meeting. Thus, a conversation outside a noticed, public meeting involving a matter where there is no discretion – and hence, no policy prerogative of the board – does not violate either the express text of the statute or its intent.

Plaintiffs, in several allegations, allege that Ms. Jones' violated the Sunshine Law by having a discussion outside a noticed, public meeting to come to various legal determinations. Specifically:

- 37(y) allegation that Ms. Jones and Trustees Bruce Smith and Mr. Vander Molen secretly determined whether OSHA laws applied (see Pltfs. Ex. 80);
- 37(ss) allegation that Ms. Jones and Trustee Tom Featheringill determined whether section 849.01, Florida Statutes (a gambling statute), applied; and
- 37(zz) allegation that Ms. Jones and Mr. Vander Molen secretly determined whether certain videos were public records.

Each of those matters, however, involved no discretion on the part of the board. There is *nothing* the Board could do to affect whether those items applied. Either OSHA laws apply or they do not. Either the gambling statute applies or it does not. Either the video is a public record or it is not.

At bottom, there is no “official act” or “resolution, rule, or formal action” that Plaintiffs complain of that could be voided. Nor could there be. Ms. Jones has conclusively demonstrated that Plaintiffs will not be able to demonstrate all elements of a Sunshine Law violation with respect to allegations 37(y), (ss), and (zz). Summary judgment is appropriate.

**Matters Unilaterally Taken by Ms. Jones
Allegation 37(x)**

Plaintiffs allege in paragraph 37(x) that certain actions Ms. Jones took on her own constitute Sunshine Law violations. The genesis of this allegation is Ms. Jones’ unilateral memo to Trustees and Residents that limited resident’s comments during the meeting to three minutes each. (Pltfs Ex. 57).

The Sunshine Law applies to meetings of two or more members of the same board, not to an individual meeting with a private citizen. See City of Miami Beach v. Berns, 245 So. 2d 38, 40 (Fla. 1971); see also Op. Att’y Gen. Fla. 81-42, 1981 WL 140321 (May 29, 1981) (citing Berns, explaining that “[t]he Sunshine Law applies only when two or more members of a public

board deal with some matter on which foreseeable official action will be taken”). For that reason, Plaintiffs’ allegation in 37(x), that Ms. Jones **acted on her own** in determining that public comments as meeting will be 3 minutes, cannot be a violation for that very reason that she acted on her own.

Previously, Plaintiffs contended that Attorney General Opinions 84-51 and 74-294 provided that a single person acting as a committee of one could violate that Sunshine Law. In those situations, the respective Boards had authorized a single member of the commission to negotiate a lease on behalf of the board; accordingly, that single member could not do so in secret because that single member was acting as the board. Here, Ms. Jones simply announced a limitation on public comment – she was not negotiating a lease on behalf of the Board of Trustees.

Moreover, Ms. Jones’ memo is nothing more than her position on the subject of the length of residents’ comments during meetings. That memo demonstrates that she did not discuss it with any other trustee, and that memo did not invite any response. Accordingly, Ms. Jones had every right without violating the Sunshine Law to circulate her position in memo format to all Trustees. See Op. Att’y Gen. Fla. 2007-35, 2007 WL 2461925 (Aug. 28, 2007) (“a city commissioner may, outside a public meeting, send documents that the commissioner wishes other members of the commission to consider on matters coming before the commission for official action, provided that there is no response from, or interaction related to such documents among, the commissioners prior to the public meeting”); Op. Att’y Gen. Fla. 2001-20, 2001 WL 276605 (Mar. 21, 2001) (emails with factual background information from one council member to another not resulting in discussion of subject requiring council action does not violate the

Sunshine Law); Op. Att’y Gen. Fla. 96-35, 1996 WL 267353 (May 17, 1996) (school board member may provide memo with information or make a recommendation to other school board members); Op. Att’y Gen. Fla. 89-23, 1989 WL 431616 (Apr. 18, 1989) (“the use of a memorandum by a city commissioner to provide information to the commission on a particular subject, with no response from or interaction among the commissioners allowed prior to a public meeting on this subject, would not violate s. 286.011, F.S.”).

At bottom, even taking all inferences in the light most favorable to Plaintiffs, there is no set of circumstances in which allegation 37(x) constitutes a Sunshine Law violation.

McNeil Mediated Settlement Agreement
Allegation 37(aa)

In paragraph 37(aa), the Plaintiffs allege that on June 4, 2007, Mr. Vander Molen spoke with other trustees concerning the McNeil mediated settlement agreement. The basis for this allegation is two memos authored by Mr. Vander Molen on June 4.

The first memo is nothing more than an explanation why the mediated settlement agreement in that case was not available until June 1. The second memo is nothing more than Mr. Vander Molen’s position on the McNeil mediated settlement agreement. Florida law permits trustees to provide position papers so long as there is no back-and-forth or response. See Op. Att’y Gen. Fla. 2007-35, 2007 WL 2461925 (Aug. 28, 2007); Op. Att’y Gen. Fla. 2001-20, 2001 WL 276605 (Mar. 21, 2001); Op. Att’y Gen. Fla. 96-35, 1996 WL 267353 (May 17, 1996); Op. Att’y Gen. Fla. 89-23, 1989 WL 431616 (Apr. 18, 1989). Here, there is no such discussion. In fact, Ms. Jones did not speak with Mr. Vander Molen concerning the McNeil mediated settlement agreement outside of a noticed meeting.

Accordingly, Plaintiffs are unable to demonstrate each element of a Sunshine Law violation against Ms. Jones with respect to their allegation 37(x). Summary judgment is proper in Ms. Jones' favor on this issue.

**Vander Molen ARC Resignation
Allegation 37(ee)**

Plaintiffs allege in paragraph 37(ee) that Ms. Jones and Mr. Vander Molen discussed the potential withdrawal of Mr. Vander Molen's resignation from the ARC committee. Even assuming there was such a discussion, there is no Sunshine Law violation here because the Board of Trustees is not required to act on this matter.

Whether a resignation is effective upon its submission or whether some authority needs to accept it is a matter controlled by Florida's Constitution. Article X, section 3, Florida Constitution provides in pertinent part that "[v]acancy in office shall occur upon . . . resignation of the incumbent" The Florida Supreme Court has held that this provision means that resignation is complete upon the tender of the resignation; no acceptance by any authority is necessary. See Smith v. Brantley, 400 So. 2d 443, 448-49 (Fla. 1981) (resignation effective immediately and governor acceptance not required, adopting "American view"). Moreover, nothing in the Charter imposes a legal duty on the Board of Trustees to accept or reject a committee member's resignation letter. Section 11 of that special law only states on this matter that "vacancies occurring in the Board of Trustees for any cause shall be filled for the unexpired term by the remaining trustees"

There is no occasion for the Board of Trustees to vote on whether to accept an ARC Committee member's resignation, or the putative rescinding of such resignation letter. Assuming

that there was such a discussion between Ms. Jones and Mr. Vander Molen, the Board of Trustees is not required to act on effectuate the rescinding of such resignation letter. Thus, there is no Sunshine Law violation. See Op. Att’y Gen. Fla. 93-41, 1993 WL 361729 (June 7, 1993) (public officials on same board may discuss matters outside of the sunshine for which no action by the board is required without violating the Sunshine Law).

**Manatee County Easement Encroachment Agreement
Allegation 37(rr)**

Plaintiffs alternatively allege in paragraph 37(rr) that the Board of Trustees or its Executive Committee met outside of the Sunshine and granted then trustee Wayne Hamblen authorization to sign the Manatee County Easement Encroachment Agreement on behalf of the District. Ms. Jones specifically denies attending any out-of-Sunshine meeting of either the Executive Committee of the Board of Trustees at which that matter was discussed. Moreover, Plaintiffs have not produced any evidence suggesting that Ms. Jones did participate in such meeting. Accordingly, Plaintiffs will be unable to demonstrate at trial that Ms. Jones did participate in such a meeting. Ms. Jones is entitled to summary judgment on that matter.

**SAFE Committee
Allegation 37(aaa)**

Plaintiffs allege in allegation 37(aaa) Ms. Jones and then trustee Bruce Smith met outside the sunshine to discuss the appointment of a SAFE Committee. Under the District’s bylaws, the Chairman has the unilateral discretion to appoint all committees (other than standing committees). Accordingly, the Board of Trustees does not have a role in determining what committees Ms. Jones – as Chairman – decided or did not decide to form. Accordingly, the Sunshine Law does not prohibit conversations between the Chairman and another Trustee

concerning the Chairman's exercise of her unique power to appoint committees. See City of Sunrise v. News and Sun-Sentinel Co., 542 So. 2d 1354 (Fla. 4th DCA 1989) (where mayor under city rules has authority to operate singularly, such actions by mayor not governed by Sunshine Law); Op. Att'y Gen. Fla. 83-70, 1983 WL 163720 (Sept. 30, 1983) (Sunshine Law does not apply to discussion between mayor and city council member concerning the mayor's performance of his administrative functions). Accordingly, Ms. Jones is entitled to summary judgment on this allegation.

**Mr. Salerno's May 2008 Memo
Allegation 37(bbb)**

Plaintiffs allege in allegation 37(bbb) that Trustee Joe Salerno described to the other trustees how he intended on voting on the document management system proposals. Certainly, Florida law permits Mr. Salerno to provide other trustees with this memorandum. See Op. Att'y Gen. Fla. 2007-35, 2007 WL 2461925 (Aug. 28, 2007); Op. Att'y Gen. Fla. 2001-20, 2001 WL 276605 (Mar. 21, 2001); Op. Att'y Gen. Fla. 96-35, 1996 WL 267353 (May 17, 1996); Op. Att'y Gen. Fla. 89-23, 1989 WL 431616 (Apr. 18, 1989). The undisputed evidence demonstrates that Ms. Jones did not respond to Mr. Salerno's memo outside a noticed meeting of the Board of Trustees. Plaintiffs will be unable to demonstrate at trial that there was a discussion/response. Accordingly, Plaintiffs cannot prevail on this allegation against Ms. Jones.

**Purported denial of "free internet service" to residents
Allegation 37(nnnn)**

Plaintiffs allege in allegation 37(nnnn) that Ms. Jones and Mr. Vander Molen met outside of the Sunshine and determined that free internet service should not be offered to the residents. The undisputed facts demonstrate, however, that the April 2008 issue involved the removal of a

wireless router from the District office that a person without authorization had installed without permission. While Ms. Jones and Mr. Vander Molen dispute that they discussed removing the router, one reading of the minutes from the April 21, 2008 meeting imply that they did.

Accordingly, this motion assumes that there was a conversation between the two of them, as that inference must be drawn in Plaintiffs' favor.

However, the undisputed evidence makes clear that the decision to remove the unapproved router was made for administrative reasons: (1) that the District's computers were hard wired into the sever; (2) that the router would cause problems to those computers; (3) there might be a cost issue because of a need for a dedicated phone line; and (4) there was a security concern. The undisputed evidence also makes clear that nothing in the April communication between Ms. Jones and Mr. Vander Molen involved the issue of whether free wireless internet service should be provided within the District. In fact, following the removal-of-the-unauthorized-router issue, Mr. Vander Molen investigated whether the cable contract with BrightHouse could be modified to permit free wireless access within the District. After several months of investigation, the Board workshopped and then approved a change to the BrightHouse contract to permit free wireless internet access. Both Ms. Jones and Mr. Vander Molen voted in favor of offering this amenity. Thus, it can hardly be said that in April these two agreed that free wireless internet access should not be granted.

Ms. Jones is entitled to summary judgment on this allegation because taking the evidence in the light most favorable to Plaintiffs, Plaintiffs cannot establish that the alleged April 2008 communication between Ms. Jones and Mr. Vander Molen involved a discussion or agreement to *not* provide free internet access within the District. Thus, there is no Sunshine Law violation.

Cure
Allegations 37(s), 37(x), 37(aa), 37(bbb), 37(eee), 37(sss),
37(yyy), 37(bbbb), 37(jjjj), 37(nnnn), 37(qqqq), 44i, 44ii, and 44iv

The Florida Supreme Court holds that an alleged Sunshine Law violation may be cured where there is an examination of the issue that is not a “ceremonial acceptance” or “perfunctory ratification.” See Tolar v. School Bd. of Liberty County, 398 So. 2d 427, 429 (Fla. 1981); see also Bruckner v. City of Dania Beach, 823 So. 2d 167, 171 (Fla. 4th DCA 2002) (affirming summary judgment where commission re-examined matter and re-adopted virtually identical outcome); Monroe County v. Pigeon Key Historical Park, Inc., 647 So. 2d 857, 860-61 (Fla. 3d DCA 1994) (reversing trial court’s determination of Sunshine Law violation where re-examination occurred).

Here, even assuming there is a violation (which Ms. Jones disputes), there was subsequent action that cured any conceivable Sunshine Law violation. Because there was a cure, there is no Sunshine Law violation. Accordingly, Ms. Jones is entitled to summary judgment as to each of these matters.

CONCLUSION

Defendant Janet Jones is entitled to partial final summary judgment on each of the allegations identified above. This Court should grant summary judgment in Ms. Jones’ favor on each of those allegations.

Respectfully submitted,

MATTHEWS, EASTMOORE, HARDY,
CRAUWELS & GARCIA, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail and First Class U.S. Mail this 5th day of November, 2009, to:

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