

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

MARY LOU SMITH, et al.,

Plaintiffs,

v.

Case No. 2008-CA-11315

TRAILER ESTATES PARK AND
RECREATION DISTRICT, et al.,

Defendants.

**DEFENDANT JANET JONES'
ANSWER AND AFFIRMATIVE DEFENSES TO THIRD AMENDED COMPLAINT
AND ADDENDA AND MOTION TO STRIKE**

Janet Jones responds to the Third Amended Complaint and the Addenda to Third
Amended Complaint as follows:

VENUE, JURISDICTION AND NATURE OF THE ACTION

1. Without knowledge; therefore denied.
2. Admit only that venue is proper with this Court; deny the remaining allegations
within paragraph 2.

ALLEGATIONS COMMON TO ALL COUNTS

3. Without knowledge; therefore denied.
4. Without knowledge; therefore denied.
5. Without knowledge; therefore denied.
6. Admit that Chapter 2002-361 re-codified prior special laws creating the Trailer
Estates Park and Recreation District. Otherwise, denied.

7. Admit Board of Trustees is the governing body of Trailer Estates Park and Recreation District; deny the remainder of the allegation.
8. Denied as phrased.
9. Admit Jones is a resident of Trailer Estates; admit she has served on the Board of Trustees since prior to 2005; and admit she was Chairman of the Board of Trustees from January 2007 through December 2008; otherwise denied.
10. Without knowledge; therefore denied.
11. Without knowledge; therefore denied.
12. Without knowledge; therefore denied.
13. Admit only that the Board members and Trailer Estates are subject to Florida's Sunshine Law and the legal requirements set forth in law; other wise denied.
14. Admit only that the Board members and Trailer Estates are subject to Florida's Public Records Law and the legal requirements set forth in law; otherwise denied.
15. This is a legal conclusion; otherwise denied.
16. Admit that Ms. Jones knows she is subject to the Sunshine Law and Public Records Law; without knowledge and therefore denied as to other Board members' knowledge.
17. Without knowledge; therefore denied.
18. Admit there have been presentations concerning the Sunshine Law and Public Records Law; however, deny the balance of paragraph 18.
19. Admit that there have been presentations concerning the Sunshine Law and Public Records Law; however, deny the balance of paragraph 19.
20. Denied.

21. Without knowledge; therefore denied.

22. Denied.

COUNT I
DECLARATORY JUDGMENT
(as to all Defendants)

23. Ms. Jones re-alleges her responses in paragraphs 1 through 22 as if fully set forth here.

24. Admit only Plaintiffs purport to bring the declaratory judgement complaint; otherwise denied.

25. Article I, section 24 of the Florida Constitution speaks for itself; otherwise denied.

26. Section 286.011, Florida Statutes, speaks for itself; otherwise denied.

27. Section 286.011(4), Florida Statutes, speaks for itself; otherwise denied.

28. Denied.

29. Denied.

30. Without knowledge; therefore denied.

31. Exhibit 4 speaks for itself; otherwise denied.

32. Denied.

33. Denied.

34. Exhibit 5 speaks for itself; otherwise denied.

35. Denied.

36. Denied.

37. (a) - (g) These allegations are not directed at Ms. Jones as confirmed by the Court; thus no responses are required.

(h) Denied.

(i) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(j) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(k) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(l) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(m) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(n) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(o) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(p) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(q) This allegation is not directed at Ms. Jones as confirmed by the Court; thus no response is required.

(r) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(s) Without knowledge; therefore denied.

- (t) Denied.
- (u) Without knowledge; therefore denied.
- (v) Denied.
- (w) Without knowledge; therefore denied.
- (x) Denied.
- (y) Denied.
- (z) Denied.
- (aa) Denied.
- (bb) Denied.
- (cc) Denied.
- (dd) Without knowledge; therefore denied.
- (ee) Denied.
- (ff) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

- (gg) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

- (hh) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

- (ii) This allegation is not directed at Ms. Jones as confirmed by the

Court; thus no response is required.

- (jj) Denied.

- (kk) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(ll) Denied.

(mm) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(nn) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(oo) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(pp) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(qq) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(rr) Without knowledge; therefore denied.

(ss) Denied.

(tt) Denied.

(uu) This allegation is not directed at Ms. Jones as confirmed by the Court; thus no response is required.

(vv) Without knowledge; therefore denied.

(ww) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(xx) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(yy) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(zz) Denied.

(aaa) Denied.

(bbb) Without knowledge; therefore denied.

(ccc) Without knowledge; therefore denied.

(ddd) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(eee) Denied.

(fff) This allegation is not directed at Ms. Jones as confirmed by the Court; thus no response is required.

(ggg) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(hhh) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(iii) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(jjj) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(kkk) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(lll) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(mmm) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(nnn) Denied.

(ooo) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(ppp) Without knowledge; therefore denied.

(qqq) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(rrr) Without knowledge; therefore denied.

(sss) Denied.

(ttt) This allegation is not directed at Ms. Jones as confirmed by the

Court; thus no response is required.

(uuu) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(vvv) Denied.

(www) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(xxx) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(yyy) Denied.

(zzz) Without knowledge; therefore denied.

(aaaa) This allegation is not directed at Ms. Jones as confirmed by the Court; thus no response is required.

(bbbb) Denied.

(cccc) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(dddd) Without knowledge; therefore denied.

(eeee) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(ffff) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(gggg) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(hhhh) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(iiii) Denied.

(jjjj) Denied.

(kkkk) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(llll) This allegation is not directed at Ms. Jones as confirmed by the Court; thus no response is required.

(mmmm) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(nnnn) Denied.

(oooo) This allegation is not directed at Ms. Jones as confirmed by the Court; thus no response is required.

(pppp) This allegation is not directed at Ms. Jones as confirmed by the Court; thus no response is required.

(qqqq) Without knowledge; therefore denied.

(rrrr) Ms. Jones moves to strike this allegation. To the extent she is required to respond, Ms. Jones states that she is without knowledge; therefore denied.

(ssss) Without knowledge; therefore denied.

38. Without knowledge; therefore denied.

39. This allegation calls for a legal conclusion; without knowledge; therefore denied.

40. This allegation calls for a legal conclusion; without knowledge; therefore denied.

41. This allegation calls for a legal conclusion; without knowledge; therefore denied.

42. This allegation calls for a legal conclusion; without knowledge; therefore denied.

43. Without knowledge; therefore denied.

44. (i) Denied.

(ii) Denied.

(iii) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied

(iv) Denied.

45. Denied that Jones violated the Sunshine Law. Otherwise, denied.

46. Denied.

- 47. Denied.
- 48. Without knowledge; therefore denied.
- 49. Without knowledge; therefore denied.
- 50. Without knowledge; therefore denied.
- 51. Denied that Jones violated the Sunshine Law. Otherwise, denied.

All “Wherefore” clauses denied that Plaintiffs are entitled to such relief.

COUNT II
DECLARATORY JUDGMENT
PUBLIC RECORDS
(As to Trailer Estates, Vandermolen, and McNulty)

Count II, comprising paragraphs 52 through 76 is not directed against Defendant Jones and therefore are not responded to except to the extent those allegations are reincorporated into Count IV even though Plaintiffs do NOT complain about public records with respect to Ms. Jones:

.....

- 54. Article I, section 24 of the Florida Constitution speaks for itself; otherwise denied.
- 55. Section 119.011(2), Florida Statutes, speaks for itself; otherwise denied.
- 56. Section 119.07(1)(a), Florida Statutes, speaks for itself; otherwise denied.
- 57. This is a legal conclusion; otherwise denied.
- 58. This is a legal conclusion; otherwise denied.
- 59. This is a legal conclusion; otherwise denied.
- 60. Without knowledge; therefore denied.
- 61. Without knowledge; therefore denied.

62. Without knowledge; therefore denied (as to all suballegations).
63. Without knowledge; therefore denied.
64. Without knowledge; therefore denied (as to all suballegations).
65. Without knowledge; therefore denied.
66. Without knowledge; therefore denied.
67. Without knowledge; therefore denied (as to all suballegations).
68. Without knowledge; therefore denied.
69. Without knowledge; therefore denied.
70. Without knowledge; therefore denied.
71. Without knowledge; therefore denied.
72. Without knowledge; therefore denied.

COUNT III
MANDAMUS FOR BOTH PUBLIC RECORD AND SUNSHINE ALLEGATIONS
(as to Trailer Estates, Jones, Vandermolen, and Salerno)

The Court has dismissed Count III against Ms. Jones. Accordingly, no response is required.

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

86. Ms. Jones re-alleges her responses in paragraphs 1 through 22, 25 through 45, and 54 through 72, as if fully set forth here.

87. Without knowledge; therefore denied.

88. This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

89. Without knowledge; therefore denied.

90. Without knowledge; therefore denied.

91. Denied.

92. Denied.

93. Without knowledge; therefore denied.

94. Denied.

95. This paragraph does not allege any ultimate facts. To the extent it does, it is denied.

All “Wherefore” clauses denied that Plaintiffs are entitled to such relief.

Any allegation not specifically admitted is denied.

MOTION TO STRIKE

Ms. Jones moves to strike paragraph 37(rrrr) of the Third Amended Complaint together with the Addendum. Plaintiffs continue to violate the Court’s requirement that Plaintiffs specify the individual participating in the alleged Sunshine communication, the subject of that alleged communication, and identifying when that alleged communication occurred.

Plaintiffs identified twenty specific instances within their addendum. The *only* possible allegation against Ms. Jones is 37(rrrr)(ix), which states: “During 2009, Martha Brauer met with individual Board members, with the exception of Margo Cushman, regarding District business.”

Again, this type of catch-all allegation is woefully insufficient to state a cause of action, and it violated this Court's numerous orders requiring Plaintiffs to be specific. This allegation gives Ms. Jones no meaningful notice and violates her Due Process rights. Accordingly, the Court must strike paragraph 37(rrrr) in its entirety.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Communications referenced in the Third Amended Complaint were merely administrative matters and not governed by the Sunshine Law.

Second Affirmative Defense

Communications referenced in the Third Amended Complaint were not matters then reasonably foreseeable to come before the Board/Committee, which are outside the reach of the Sunshine Law.

Third Affirmative Defense

Communications referenced in the Third Amended Complaint were information gathering for fact-finding purposes, which are outside the reach of the Sunshine Law.

Fourth Affirmative Defense

Communications referenced in the Third Amended Complaint occurred after Board action, which are outside the reach of the Sunshine Law.

Fifth Affirmative Defense

Plaintiffs, through their inaction, are now estopped from bringing this action under the doctrine of laches.

Sixth Affirmative Defense

Plaintiffs come to this Court with unclean hands and are equitably estopped from complaining of Ms. Jones' conduct.

Seventh Affirmative Defense

Plaintiffs invited and advised that there is no Sunshine Law violation if multiple trustees attended the same (non-Board of Trustees) meeting and therefore they are now estopped from alleging such conduct is a Sunshine Law violation.

Eighth Affirmative Defense

Should the Court conclude there is a Sunshine Law violation, such violation was "cured" by subsequent Board of Trustee action. To the extent Ms. Jones is able to be specific at this point, given Plaintiffs general pleading, Ms. Jones states specifically:

37(s). Each and every subsequent Board of Trustees meeting since October 2006 at which the Trustees approved payment of Kirk Pinkerton, P.A.'s legal fees.

37(x). On or about February 19, 2007, the Board of Trustees within a duly noticed meeting discussed the matter of the length of residents' comments. The Board of Trustees rejected a motion by a vote of 2-7 to make the limit six minutes. Thereafter, the Board of Trustees approved a motion by a vote of 6-3 to limit resident comments to three minutes.

37(aa). On or about June 4, 2007, the Board of Trustees within a duly noticed meeting discussed and approved the mediated settlement agreement.

37(bbb). On or about May 12, 2008, the Board of Trustees within a duly noticed workshop discussed matters involving document management. Thereafter, on May 19, 2008, the Board of Trustees within a duly notice meeting again discussed matters involving document

management and ultimately voted to table the pending proposal. Thereafter, on June 9, 2008, the Board of Trustees within a duly noticed workshop discussed amending the budget to include an expenditure for document management. Thereafter, on June 16, 2008, the Board of Trustees within a duly noticed meeting again discussed matters involving document management and ultimately approved removing the document management proposal from the table and then approved it.

37(eee). On or about November 17, 2008, the Board of Trustees within a duly noticed meeting reviewed Plaintiff Denson's letter concerning a questionnaire. Thereafter, on or about December 8, 2008, the Board of Trustees within a duly noticed meeting discussed a budget questionnaire. Thereafter, on or about December 15, 2008, the Board of Trustees within a duly noticed meeting discussed and approved a budget questionnaire 8-0. Even removing Defendant Jones and Mr. Salerno's votes (Ms. Brauer was not then a Trustee), there still were six trustees voting, which constitutes a quorum, and more than a majority of those individuals voted in favor of issuing the budget questionnaire to the residents. Thereafter, the Board of Trustees discussed the budget within duly noticed meetings on at least February 23, 2009, March 9, 2009, and March 16, 2009, at which meeting the budget was adopted.

37(sss). On or about March 24, 2008, the Board of Trustees within a duly noticed workshop discussed the adoption of a disaster plan. Thereafter, on or about April 7, 2008, the Board of Trustees within a duly noticed meeting adopted a disaster plan by a vote of 8-0. Even removing the votes of Defendant McNulty, Ms. Cole, and Ms. Cushman (Defendant Jones was absent from the meeting and did not vote), there were still five trustees voting, which constitutes a quorum, and more than a majority of those individuals voted in favor of adopting the disaster

plan.

37(yyy).¹ On or about November 17, 2008, the Board of Trustees within a duly noticed meeting reviewed Plaintiff Denson's letter concerning a questionnaire. Thereafter, on or about December 8, 2008, the Board of Trustees within a duly noticed meeting discussed a budget questionnaire. Thereafter, on or about December 15, 2008, the Board of Trustees within a duly noticed meeting discussed and approved a budget questionnaire 8-0. Even removing Defendant Jones and Mr. Salerno's votes (Ms. Brauer was not then a Trustee), there still were six trustees voting, which constitutes a quorum, and more than a majority of those individuals voted in favor of issuing the budget questionnaire to the residents. Thereafter, the Board of Trustees discussed the budget within duly noticed meetings on at least February 23, 2009, March 9, 2009, and March 16, 2009, at which meeting the budget was adopted.

37(bbbb). On or about December 8, 2008, the Board of Trustees within a duly noticed meeting discussing the swimming rules and PP 41. Thereafter, on or about December 15, 2008, the Board of Trustees discussed and approved PP 41 and the pool rules, each by a vote of 8-0. Even removing Defendant Jones (as Ms. Brauer after December 5, 2008 was a trustee-elect, but not a yet a trustee with a vote), there still were seven trustees voting, which constitutes a quorum, and more than a majority of those individuals voted in favor of these items. Thereafter, on or about January 12, 2009, the Board of Trustees within a duly noticed workshop discussed PP 13 and PP 40. Thereafter, on or about January 19, 2009, the Board of Trustees discussed and approved PP 13 and PP 40 each by a vote of 9-0. Even removing Defendant Jones

¹It appears that Addenda paragraph 6, which references a non-existent paragraph 37(tttt) of the Third Amended Complaint, may, in fact, be referencing the second sentence of 37(yyy). Ms. Jones incorporates her answer/affirmative defense here to Addenda paragraph 6.

and Ms. Brauer from the votes, there were still seven trustees voting for each policy, which constitutes a quorum, and more than a majority of those individuals voted in favor of PP 13 and PP 40.

37(jjjj). On or about May 21, 2007, the Board of Trustees within a duly noticed meeting approved Ms. McNulty as second vice chair by a vote of 7-0. Even removing Defendant Jones and Peg Durham's votes, there still were five trustees voting, which constitutes a quorum, and more than a majority of those individuals voted in favor of Ms. McNulty's appointment.

37(nnnn). On or about April 7, 2008, the Board of Trustees within a duly noticed meeting discussed the router issue. Thereafter, on or about April 21, 2008, the Board of Trustees within a duly noticed meeting discussed the router issue again. Thereafter, on or about September 8, 2008, the Board of Trustees within a duly noticed workshop discussed providing wireless internet access within the District. Thereafter, on or about September 15, 2008, the Board of Trustees within a duly noticed meeting discussed and approved by a vote of 7-0 a contract change with Brighthouse that would permit Brighthouse to offer wireless internet access free to charge a location within the District. Even removing Defendant Jones and Defendant Vander Molen's votes, there still were five trustees voting, which constitutes a quorum, and more than a majority of those individuals voted in favor of the contract amendment.

37(qqqq). Each and every subsequent Board of Trustee meeting since October 2006 at which minutes from a previous meeting has been approved constitutes a cure.

44i. On or about May 21, 2007, the Board of Trustees within a duly noticed meeting approved Ms. McNulty as second vice chair by a vote of 7-0. Even removing Defendant Jones and Peg Durham's votes, there still were five trustees voting, constituting a quorum, and

more than a majority of those individuals voted in favor of Ms. McNulty's appointment.

44ii. On or about November 17, 2008, the Board of Trustees within a duly noticed meeting reviewed Plaintiff Denson's letter concerning a questionnaire. Thereafter, on or about December 8, 2008, the Board of Trustees within a duly noticed meeting discussed a budget questionnaire. Thereafter, on or about December 15, 2008, the Board of Trustees within a duly noticed meeting discussed and approved a budget questionnaire 8-0. Even removing Defendant Jones and Mr. Salerno's votes (Ms. Brauer was not then a Trustee), there still were six trustees voting, which constitutes a quorum, and more than a majority of those individuals voted in favor of issuing the budget questionnaire to the residents. Thereafter, the Board of Trustees discussed the budget within duly noticed meetings on at least February 23, 2009, March 9, 2009, and March 16, 2009, at which meeting the budget was adopted.

44iv. On or about November 12, 2007, the Board of Trustees within a duly noticed workshop discussed the public records policy. Thereafter, on or about December 17, 2007, the Board of Trustees within a duly noticed meeting discussed and tabled a vote on the public record policy. Thereafter, on or about January 7, 2008 (as noted in the December 15, 2008 correction to January 7, 2008 minutes), the Board of Trustees within a duly noticed meeting adopted a public record by a vote of 8-0. Even removing the votes of Defendants Jones and Vander Molen, there were still six trustees voting, which constitutes a quorum, and more than a majority of those individuals voted in favor of the policy. Thereafter, the public record policy was again discussed within duly noticed meetings on at least February 16, 2009, February 23, 2009, and March 16, 2009, at which meeting the policy was revised by a vote of 8-0. Even removing the votes of Defendants Jones and Vander Molen and Ms. Brauer, there were still five

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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/s/ Hunter W. Carroll