

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

MARY LOU SMITH, et al

Plaintiff

vs

Case No. 2008-CA-11315

TRAILER ESTATES PARK AND RECREATION  
DISTRICT, et al

\_\_\_\_\_  
Defendants \_\_\_\_\_/

**DEFENDANT MARYLOU McNULTY'S  
ANSWER, AND AFFIRMATIVE DEFENSES TO  
THIRD AMENDED COMPLAINT AND ITS ADDENDA**

Defendant MARY LOU MCNULTY, an individual, by and through her undersigned counsel, hereby responds to the Third Amended Complaint as follows:

1. Without knowledge.
2. Admit that venue is proper in this court; the remainder of this paragraph is denied.
3. Without knowledge
4. Without knowledge.
5. Without knowledge.
6. Admit.
7. Admit that Trailer Estates is governed by an elected Board of Trustees; the

remainder of this paragraph is denied.

8. Without knowledge.
9. Without knowledge.
10. Without knowledge.
11. Without knowledge.

12. Without knowledge.

13. Admit.

14. Admit the contents of Florida's Public Records Law, the Florida Constitution, and Chapter 119, Florida Statutes; the remainder of this paragraph is denied.

15. Admit.

16. Denied.

17. Without knowledge.

18. Without knowledge.

19. Without knowledge.

20. Denied.

21. Without knowledge.

22. Without knowledge.

#### Count I

#### Declaratory Judgment Pursuant to Chapter 86

23. The responses to paragraphs 1 – 22 of the Amended Complaint are hereby re-alleged.

24. Admit that Count I purports to be an action for Declaratory Relief pursuant to Chapter 86, Florida Statutes; without knowledge as to the remainder of this paragraph.

25. Admit the contents of the Florida Constitution; without knowledge as to the remainder of this paragraph.

26. Admit the contents of Section 286.011; without knowledge as to the remainder of this paragraph.

27. Admit the contents of Section 286.011, Florida Statutes; the remainder of this paragraph is without knowledge.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Without knowledge.

33. Denied.

34. Without knowledge.

35. Denied.

36. Denied.

37. Paragraph 37, including all of its subparts, is denied.

38. Without knowledge.

39. Paragraph 39 is a legal conclusion, not an allegation of fact. It is denied to the extent a response is necessary.

40. Paragraph 40 is a legal conclusion, not an allegation of fact. It is denied to the extent a response is necessary.

41. Paragraph 41 is a legal conclusion, not an allegation of fact. It is denied to the extent a response is necessary.

42. Paragraph 42 is a legal conclusion, not an allegation of fact. It is denied to the extent a response is necessary.

43. Denied.

44. Denied.

45. Denied.
46. Denied.
47. Denied.
48. Denied.
49. Without knowledge.
50. Without knowledge.
51. Without knowledge.

Plaintiffs' wherefore clauses and requests for relief are denied.

## Count II

### Declaratory Judgment Pursuant to Chapter 86

52. Defendant McNulty's responses to the allegations set forth in paragraphs 1 – 22 are hereby re-alleged.

53. Without knowledge.

54. Admit the contents of the Constitution of the State of Florida; the remainder of this paragraph is without knowledge.

55. Admit the contents of Florida Statutes, Section 119.011(2); the remainder of this paragraph is denied.

56. Admit the contents of Section 119.071(1)(a), Florida Statutes; the remainder of this paragraph is denied.

57. Without knowledge.

58. Without knowledge.

59. Without knowledge.

60. Without knowledge.

61. Without knowledge.
62. Paragraph 62, including all sub-parts, is denied.
63. Without knowledge.
64. Paragraph 64, including all subparts, is denied.
65. Without knowledge.
66. Without knowledge.
67. Paragraph 67, including all subparts, is denied.
68. Without knowledge.
69. Denied.
70. Without knowledge.
71. Denied.
72. Denied.
73. Denied.
74. Denied.
75. Denied.
76. Denied.
77. Denied.

Plaintiffs' wherefore clauses, including all subparts and requests for relief, are denied.

### Count III

### Mandamus

Defendant McNulty is not named in this Count. To the extent a response is necessary.

Paragraphs 78 – 85, including Plaintiffs' wherefore clauses and requests for relief, are denied.

Count IV

Temporary and Permanent Injunction Relief

86. Defendant McNulty's responses to the allegations set forth in paragraphs 1 – 22 are hereby re-alleged.

87. Admit this action purports to be one for injunctive relief; the remainder of this paragraph is denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

Plaintiffs' wherefore clauses and requests for relief are hereby denied.

Affirmative Defenses

1. Any records of Defendant Trailer Estates in the possession of Defendant McNulty are duplicates of the record copies, which are in possession of the custodian of records for Trailer Estates. Any copies in the possession of Defendant McNulty are obsolete, have been superseded, or their administrative value has been lost. Notwithstanding the foregoing affirmative defense, Defendant McNulty has previously provided to Plaintiffs copies of all records that she maintained.

2. Any meetings of Trailer Estates' boards or committees at which Defendant McNulty attended or participated, did not take final action but the subject matter was subsequently heard and decided by the full Board of Trustees.

3. As to allegations in the Third Amended Complaint , including its addenda, directed specifically to Defendant McNulty, she responds as follows:

- a. Paragraph 37(a) is too vague to respond directly to. This subject matter was taken up by the full board on February 20, 2006, which acts as a cure for any alleged Sunshine violation.
- b. Any alleged violation within Paragraph 37(b) was cured by Board action on June 5, 2006.
- c. Any alleged violation described in Paragraph 37(c) was cured by Board action on June 19, 2006.
- d. Any alleged violation described in Paragraph 37(e) was cured by Board action on August 7, 2006.
- e. Any alleged violation described in Paragraph 37(f) was cured by Board action on September 5, 2006.
- f. Any alleged violation described in Paragraph 37(g) describes previous actions of the Board, not future action, and is not a violation of the Sunshine laws.
- g. Any alleged violations described in Paragraph 37(h) are presented without specificity and make it impossible to frame a response. Regardless, any violations were cured by subsequent action of the full Board in proper public meetings.

- h. Any alleged violations regarding Defendant McNulty described in Paragraph(ii) were cured by full Board action on January 3 and January 16, 2006.
- i. Any alleged violations regarding Defendant McNulty described in Paragraph(kk) were cured by full Board action on June 9, and July 7, 2008.
- j. Paragraph 37(vv) does not identify where Kay Hislop provided her testimony nor does it identify the topics of the alleged violations. Consequently, Defendant McNulty cannot frame a specific cure to this allegation. To the extent necessary, any alleged violations regarding Defendant McNulty described in Paragraph(vv) were cured by full Board action at properly noticed Board meetings held in 2007 and 2008.
- k. Any alleged violations regarding Defendant McNulty described in Paragraph(ww) were cured by full Board action at properly noticed Board meetings held in 2007 and 2008.
- l. Any alleged violations regarding Defendant McNulty described in Paragraph(sss) were cured by full Board action at properly noticed Board meetings and workshops. Discussions and votes on the disaster plan were held on at least May 7, June 25, July 9, July 16, August 6, October 1 and November 5, 2007. The full board adopted the disaster plan on April 7, 2008.
- m. Any alleged violations regarding Defendant McNulty described in Paragraph(uuu) were cured by full Board action at properly noticed Board meetings held on at least April 14 and June 9, 2008.

- n. Any alleged violations regarding Defendant McNulty described in Paragraph(vvv) were cured by full Board action at properly noticed Board meetings and workshops held on at least March 6, 2006.
- o. Any alleged violations regarding Defendant McNulty described in Paragraph(www) were cured by full Board action at properly noticed Board meetings and workshops held on at least April 7, and April 28, 2008.
- p. Any alleged violations regarding Defendant McNulty described in Paragraph(xxx) were cured by full Board action at properly noticed Board meetings and workshops held on at least April 7, and April 28, 2008.
- q. Any alleged violations regarding Defendant McNulty described in Paragraph(kkkk) appear to be about past actions of the Board and are outside the scope of the Sunshine law. Additionally, any alleged violations regarding Defendant McNulty were cured by full Board action at properly noticed Board meetings and workshops held on at least October 15, November 5, November 19, December 3, and December 17, 2007.

4. Defendant McNulty was no longer an elected official as of January 1, 2009. Any allegations arising out of Defendant McNulty's actions after this date are actions of a private person and beyond the scope of the Public Records Act or the Sunshine Laws.

Date: November 9, 2009

s/JAMES D. DYE  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9th day of November, 2009, a true and correct copy of the foregoing Defendant Marylou McNulty's Answer and Affirmative Defenses to Third Amended Complaint and its Addenda has been forwarded via first class U. S. Mail to:

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s/JAMES D. DYE\_\_\_\_\_

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