

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.

_____/

DEFENDANT JOHN VANDER MOLEN'S SUPPLEMENTAL
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' THIRD AMENDED
COMPLAINT AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S
ADDENDA AND MOTION TO STRIKE

Defendant, JOHN VANDER MOLEN 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 proper with this Court; deny the
remaining allegations within paragraph 2.

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.(tttt).
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 i. through iv.
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. Admitted that Mr. Vander Molen disposed of emails as a Board member but denies i. through ii. And iv.
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 unclear 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.

102. As his seventh affirmative defense, VANDER MOLEN, states that any of the following specific allegations of a Sunshine violation are specifically cured, as follows:

a. Regarding the allegations contained in paragraph 37(i), the Plaintiffs have failed to specifically allege details regarding the alleged discussion which constitutes an alleged Sunshine violation sufficient enough got the Plaintiff to specifically state the cure; however, any alleged Sunshine violation was cured at a subsequent Board meeting or Board workshop.

b. Regarding the allegations contained in paragraph 37(k), the Plaintiffs have failed to allege specific details regarding the alleged discussions which allegedly constitute a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop, including, but not limited to, the Board meeting's on June 16, 2008; July 7, 2008; and March 2, 2009; and the Board workshop on July 14, 2008. In addition, the Board states that at the time of the alleged

Sunshine violation, Tom Featheringill was not on the Board of Trustees.

c. Regarding the allegations contained in paragraph 37(m), the Plaintiffs have failed to allege specific details regarding the alleged discussions sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop.

d. Regarding the allegations contained in paragraph 37(o), the Plaintiffs failed to allege specifics regarding the conversation which allegedly constitutes a Sunshine violation sufficient enough to allow the Defendant to specifically state the cure; however, an alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop, including, but not limited to, the Board meetings on February 2, 2009 and February 16, 2009.

e. Regarding the allegations contained in paragraph 37(p), the Plaintiffs failed to allege specific details regarding the alleged discussions which allegedly constitute a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop, including, but not limited to, the Board meetings on February 16, 2009 and March 16, 2009.

f. Regarding the allegations contained in paragraph 37(r), the Plaintiffs have failed to allege specific details regarding the alleged discussions which allegedly constitute a Sunshine violation sufficient enough for the Defendant to specifically state the cure, however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop, including, but not limited to, the Board meetings on April 20, 2009 and May 18, 2009 and the Board workshops on April 27, 2009 and May 11, 2009.

g. Regarding the allegations contained in paragraph 37(y), the Plaintiffs have failed to allege specific details regarding the alleged determination which allegedly constitutes a Sunshine violation sufficient enough to allow the Defendant to specifically state the cure, however, any alleged Sunshine violation was cured by subsequent Board meetings and Board workshops, including, but not limited to, the Board meeting on February 11, 2008.

h. Regarding the allegations contained in paragraph 37(z), the Plaintiffs have failed to allege specific details regarding the alleged ARC permit handled which allegedly constitutes a Sunshine violation sufficient enough to permit the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by subsequent Board meetings and Board workshops, including, but not limited to, the Board meetings on August 20, 2007 and October 1, 2007.

i. Regarding the allegations in paragraph 37(aa), the Plaintiffs have failed to allege specific details regarding the alleged discussions sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by subsequent Board meetings or Board workshops, including, but not limited to, the Board meetings on June 4, 2007 and July 16, 2007.

j. Regarding the allegations in paragraph 37(ee) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure, however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including, but not limited to, the Board meetings on May 7, 2007, June 18, 2007, August 6, 2007, October 1, 2007, November 19, 2007 and December 15, 2007.

k. Regarding the allegations in paragraph 37(ff) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not limited to, the Board meeting on August 18, 2008 and the Board workshop on November 12, 2007.

l. Regarding the allegations in paragraph 37(gg) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not limited to, the Board meeting on May 19, 2008 and June 16, 2008.

m. Regarding the allegations in paragraph 37(hh) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not limited to, the Board meeting on November 5, 2007.

n. Regarding the allegations in paragraph 37(jj) the Plaintiffs have failed to allege specific details regarding the alleged conversation which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not limited to, the Board meetings on January 7, 2008, February 4, 2008, June 2, 2008, September 2, 2008, September 15, 2008, October 8, 2008, October 20, 2008, November 3, 2008, November 17, 2009, December 1, 2008, December 19, 2008 and the workshops on June 23, 2008.

o. Regarding the allegations in paragraph 37(ii) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not limited to, the Board meetings on October 6, 2008, October 24, 2008, November 7, 2008, November 17, 2008 and the Board workshop on November 10, 2008.

p. Regarding the allegations in paragraph 37(iii) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not limited to, the Board meetings on March 3, 2008, March 17, 2008, April 7, 2008, June 2, 2008, June 16, 2008, July 7, 2008, July 21, 2008, August 18, 2008, September 2, 2008, October 8, 2008, October 20, 2008 and the Board workshops on March 24, 2008 and June 9, 2008.

q. Regarding the allegations in paragraph 37(iv) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured

by a subsequent Board meeting or Board workshop including but not limited to, the Board meetings on December 17, 2007, January 7, 2008, February 4, 2008, February 18, 2008, April 7, 2008, April 21, 2008, June 2, 2008, August 6, 2008, September 15, 2008, October 6, 2008, October 24, 2008, November 7, 2008, November 17, 2008 and the Board workshop on November 10, 2008.

r. Regarding the allegations in paragraph 37(qq) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not limited to, the Board meetings on November 19, 2007, December 3, 2007, December 17, 2007, January 7, 2008, January 21, 2008, February 4, 2008, February 18, 2008, April 7, 2008, April 21, 2008, June 2, 2008, August 6, 2008, September 15, 2008, October 6, 2008, October 24, 2008, November 7, 2008, November 17, 2008 and the Board workshop on November 10, 2008.

s. Regarding the allegations contained in paragraph 37(vv), the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, the Defendant states that any alleged Sunshine violations were cured by the subsequent

Board meetings and Board workshops during the years 2007 and 2008.

t. Regarding the allegations in paragraph 37(zz) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop.

u. Regarding the allegations in paragraph 37(ccc), the Defendant states that the alleged Sunshine violation was cured at the Board meeting on April 21, 2008.

v. Regarding the allegations in paragraph 37(jjj) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not limited to, the Board meeting on February 2, 2009 and the Board workshop on March 23, 2009.

w. Regarding the allegations in paragraph 37(kkk) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not

limited to, the Board meetings on February 2, 2009, February 16, 2009 and March 16, 2009.

x. Regarding the allegations in paragraph 37(mmm) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop.

y. Regarding the allegations in paragraph 37(nnn) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not limited to, the Board meetings on July 2, 2007, July 16, 2007, August 6, 2007, August 20, 2007 and November 5, 2007 and the Board workshops on August 20, 2007, October 22, 2007 and November 19, 2007.

z. Regarding the allegations in paragraph 37(ooo) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop.

aa. Regarding the allegations contained in paragraph 37(qqq), the Defendants state that the alleged Sunshine violation was cured by the subsequent Board meetings on April 7, 2008 and Sept 15, 2008 and the Board workshop on November 10, 2008.

bb. Regarding the allegations contained in paragraph 37(uuu), the Plaintiffs have failed to specifically allege the details regarding what development and edits constitute the alleged Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by subsequent Board meetings and Board workshops, including but not limited to, the Board workshops on April 14, 2008 and June 9, 2008.

cc. Regarding the allegations in paragraph 37(cccc), the Plaintiffs have failed to allege specific details regarding the alleged Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not limited to, the Board meetings on January 3, 2006, January 16, 2006, February 6, 2006, March 20, 2006 and December 18, 2006.

dd. Regarding the allegations in paragraph 37(hhhh) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured

by a subsequent Board meeting or Board workshop including but not limited to, the Board meetings on May 18, 2009 and June 15, 2009 and the Board workshop on May 11, 2009.

ee. Regarding the allegations in paragraph 37(mmmm) the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop.

ff. Regarding to the allegations contained in paragraph 37(nnnn), the alleged Sunshine violation was cured at the Board meeting on April 21, 2008.

gg. Regarding the allegations in paragraph 37(oooo) the Plaintiffs have failed to allege specific details regarding the alleged determinations which allegedly constitutes a Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by a subsequent Board meeting or Board workshop including but not limited to, all Board meetings and Board workshops from November 2005 to present.

hh. Regarding the allegations in paragraph 37(rrrr), the following violations were cured by subsequent Board meetings and Board workshops as follows:

ii. Regarding the allegations in subparagraph (ii), the Plaintiffs have failed to allege specific details

regarding the alleged discussion which allegedly constitute Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violations were cured by subsequent Board meetings and Board workshops, including, but not limited to, the Board meetings on February 2, 2009, February 16, 2009, March 16, 2009, May 18, 2009, July 6, 2009, July 29, 2009, August 3, 2009, August 31, 2009, and the Board workshops on January 26, 2009, February 9, 2009 and February 23, 2009.

xv. Regarding the allegations in subparagraph (xv), the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitute Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violations were cured by subsequent Board meetings and Board workshops, including, but not limited to, the Board workshop on March 9, 2009.

xvii. Regarding the allegations in subparagraph (xvii), the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitute Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violations were cured by subsequent Board meetings and Board workshops, including, but not limited to, the Board meetings on July 6, 2009, August 3, 2009, August 17, 2009, August 31, 2009

and the Board workshops on May 11, 2009, May 28, 2009, June 22, 2009 and July 13, 2009.

xx. Regarding the allegations in subparagraph (xx), the Plaintiffs have failed to allege specific details regarding the alleged discussion which allegedly constitute Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violations were cured by subsequent Board meetings and Board workshops, including, but not limited to, the Board meetings and Board workshops in 2009 where the Board discussed compiling Board meeting recordings in accordance with Public Records.

ii. Regarding the allegations in paragraph 44(iii), the Plaintiffs have failed to specifically allege the details regarding what development and edits constitute the alleged Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by subsequent Board meetings and Board workshops, including, but not limited to, the Board workshops on April 14, 2008 and June 9, 2008.

jj. Regarding the allegations in paragraph 44(iv), the Plaintiffs have failed to specifically allege the details regarding what development and edits constitute the alleged Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine

violation was cured by subsequent Board meetings and Board workshops.

kk. Regarding the allegations in paragraph 69(iii), the Plaintiffs have failed to specifically allege the details regarding what development and edits constitute the alleged Sunshine violation sufficient enough for the Defendant to specifically state the cure; however, any alleged Sunshine violation was cured by subsequent Board meetings and Board workshops.

MOTION TO STRIKE

Mr. Vander Molen moves to strike paragraph 37(rrrr) of the Third Amended Complaint together with the Addendum. Plaintiffs continue to violate that 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 Mr. Vander Molen 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 Mr. Vander Molen no meaningful notice and violated his Due Process rights.

Accordingly, the Court must strike paragraph 37(rrrr) in its entirety.


ATTORNEY FEES

103. 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

104. 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 mail, on November 11, 2009.

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Mary Lou Smith and Sharon Denson v. Trailer Estates Park and Recreation District and others. Case No. 2008-CA-11315

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