

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

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

Plaintiffs,

vs.

CASE NO.: 08 CA 11315
Division: B

TRAILER ESTATES PARK AND
RECREATION DISTRICT,
an independent special taxing district,
JANET JONES, an individual,
JOHN VANDERMOLEN, an individual,
JOSEPH SALERNO, an individual, and
MARY LOU MCNULTY, an individual

Defendants.

FILED FOR RECORD
R.B. SHORE
2009 DEC 17 PM 4:13
CLERK OF CIRCUIT COURT
MANATEE CO., FLORIDA

**NOTICE OF FILING PARTIAL DEPOSITION TRANSCRIPTS IN SUPPORT OF
PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT JONES' MOTION
FOR PARTIAL SUMMARY JUDGMENT**

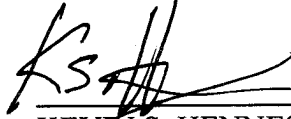
Plaintiffs, MARY LOU SMITH and SHARON DENSON, by and through their undersigned counsel, file the following partial deposition transcripts in support of Plaintiffs' Memorandum in Opposition to Defendant, Jones' Motion for Partial Summary Judgment and for such other purposes permitted under the Florida Rules of Civil Procedure or Florida Law.

1. Trailer Estates Park & Recreation District Representative, Martha Brauer, Pgs. 9-10; and 124.
2. Defendant, Janet Jones, Pgs. 7; 13-18, 32-33; 74-76; 93-95; and 131-134.
3. Defendant, Mary Lou McNulty, Pgs. 41-43; and 89-94.
4. Witness, Bruce Smith, Pgs. 6-7; 12-14; 21-22; and 24-25.



5. Defendant, John Vandermolen, Pgs. 127-136.

Respectfully submitted,



KEVIN S. HENNESSY, ESQUIRE
Florida Bar No. 0602558
MAGGIE D. MOONEY-PORTALE, ESQUIRE
Florida Bar No. 0555924
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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to **Hunter Carroll, Esquire**, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, **James D. Dye, Esquire**, Dye, Deitrich, Petruff, & St. Paul, 1111 Third Ave. West, Suite 300, Bradenton, FL 34205, **Robert E. Turffs, Esquire**, 1444 First Street, Suite B, Sarasota, FL 34236, **Daniel E. Scott, Esquire**, Daniel E. Scott, P.A., 2033 Main Street, Suite 408, Sarasota, FL 34237, **Thomas D. Shults, Esquire**, Kirk Pinkerton, P.A., 50 Central Avenue, Suite 700, Sarasota, FL 34236, by *Hand Delivery*, this 17th day of December, 2009.



Kevin S. Hennessy, Esquire

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

CIRCUIT CIVIL CASE NO. 2008-CA-11315

----- -X
:
MARY LOU SMITH, an individual, and :
SHARON DENSON, an individual, :
:
Plaintiffs, :
:
vs. :
DEPOSITION OF :
:
MARTHA BRAUER :
:
TRAILER ESTATES PARK AND :
RECREATION DISTRICT, an :
independent special taxing district, :
JANET JONES, an individual, :
JOHN VANDER MOLEN, an individual, :
JOSEPH SALERNO, an individual, and :
MARY LOU McNULTY, an individual, :
:
Defendants. :
:
----- -X

TAKEN BY: THE PLAINTIFFS HEREIN

BEFORE: JOANN L. ZECK
Court Reporter
Notary Public
State of Florida at Large

DATE: May 20, 2009
Commencing at 9:15 A.M.

PLACE: KIRK PINKERTON, P.A.
1301 Sixth Avenue West
Suite 401
Bradenton, Florida 34205

1 **Q** **Yeah. Let's break it up.**

2 **Did you assist in answering Interrogatories**
3 **that were served on the District?**

4 **A** **No.**

5 **Q** **Did you assist in producing documents**
6 **responsive to a Request for Production of Documents**
7 **that was served on the District?**

8 **A** **Could you give a date of the letter on the**
9 **production requests? Because I have assisted in the**
10 **production requests, it --**

11 **Q** **Would have been December 12th of this past**
12 **year?**

13 **MR. SHULTS: Do you have a copy of it?**
14 **Because I think it's appropriate if you're asking**
15 **her if she assisted in -- in responding that she be**
16 **entitled to --**

17 **MR. HENNESSY: Okay.**

18 **MR. SHULTS: -- look at the -- the requests.**

19 **MR. HENNESSY: Sure.**

20 **BY MR. HENNESSY:**

21 **Q** **Well, let's -- we'll come back to that.**

22 **What is your current position, if you have**
23 **one, with Trailer Estates?**

24 **A** **I'm the Chairman of the Board of Trustees.**

25 **Q** **And how long have you been Chairman?**

1 A I was elected on January 2nd, 2009.

2 Q And when you say you were, "elected," you were
3 elected Chairman at that time?

4 A Yes, by the Board. The Board elects the
5 position of Chairman.

6 Q All right. How long have you been a Trustee?

7 A Since January 2nd, 2009.

8 Q When were you elected Trustee?

9 A December 2nd, 2008.

10 Q Prior to December 2nd, 2008, had you ever
11 served as a Trustee?

12 A No.

13 Q Had you ever held political office --

14 A No.

15 Q -- before?

16 A Sorry.

17 Q How is it that you came to seek a position on
18 the Board of Trustees of Trailer Estates?

19 A There were vacancies on the Board, both in
20 2008 and 2009, and at both those times I took out the
21 petition papers and -- to become a qualified candidate.

22 It was mainly there were openings on the Board
23 and --

24 Q Okay. So when you were elected in 2008, was
25 that the first time you had run for the position?

1 A Uh-huh.

2 Q I'm sorry, "yes?"

3 A Yes. Sorry.

4 Q Okay. And is that what prompted one of them
5 to resign?

6 A Yes.

7 Q Okay.

8 Okay. The ARC, Review Committee, the
9 Architectural Review Committee is also a standing
10 committee?

11 A Yes.

12 Q And did you appoint members to that committee
13 that were approved by the Board?

14 A No, I did not.

15 Q Okay. Who are the current ARC, Review
16 Committee members?

17 A Nancy Keegan, Ken Ilg, Marion Bartholf, Hank
18 Gatti.

19 Q Is there a Trustee Board member on the
20 committee?

21 A As a liaison, John Vander Molen.

22 Q How did these members become members of the
23 ARC committee?

24 A That would have been before -- standing
25 committees continue, do not expire December 31st.

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

CIRCUIT CIVIL CASE NO. 2008-CA-11315

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MARY LOU SMITH, an individual, and :
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TRAILER ESTATES PARK AND :
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JANET JONES, an individual, :
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JOSEPH SALERNO, an individual, and :
MARY LOU McNULTY, an individual, :
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Defendants. :
:
-----X

TAKEN BY: THE PLAINTIFFS HEREIN

BEFORE: JOANN L. ZECK
Court Reporter
Notary Public
State of Florida at Large

DATE: May 19, 2009
Commencing at 9:14 A.M.

PLACE: LUCENTE & ASSOCIATES, INC.
526 Twelfth Street West
Bradenton, Florida 34205

1 **full-time resident?**

2 A Uh-huh, yes.

3 **Q Okay. You're currently a member of the Board**
4 **of Trustees of Trailer Estates?**

5 A Yes.

6 **Q How long have you been a member of the Board**
7 **of Trustees?**

8 A Since April of 2002.

9 **Q What is the current office that you hold?**

10 A The current office I hold is in charge of
11 Health and Welfare.

12 **Q What are your responsibilities?**

13 A My responsibilities are to post names on the
14 bulletin board of people who are ill, send cards, help
15 people that are in need of transportation for doctor's
16 appointments and et cetera, and set up a health fair
17 once a year, oversee the flu shot vaccines that they
18 give.

19 **Q Okay. How long have you had this position?**

20 A Well, I have the position now from 2007 to
21 2008, I had it prior to that being Chairman.

22 **Q Okay. When you were Chairman, you fulfilled**
23 **these responsibilities as well?**

24 A As Chairman.

25 **Q Okay. When were you Chairman?**

1 BY MR. HENNESSY:

2 Q Well, when you were Chairman, was it your
3 responsibility to run the District on a day-to-day
4 basis?

5 A Yes, to oversee it, uh-huh.

6 Q Well, what do you mean by, "oversee?"

7 A Well, if problems came up.

8 Q What kinds of problems?

9 A Whatever.

10 Q Can you give me one example of a problem that
11 you had to oversee while you were Chairman?

12 A Well, one problem that came up was putting a
13 router in our office.

14 Q What do you mean by a, "router?"

15 A Well, I didn't know what it meant, I had to
16 ask because I'm not familiar with all the --

17 Q Who did you have to ask?

18 A I had to ask the gentleman who was our
19 computer analyst.

20 Q Who was that?

21 A Fred Jones.

22 Q Was Fred Jones a Trustee?

23 A No, he was a computer technician that came to
24 help us.

25 Q What did Mr. Jones tell you about the router?

1 A He told us that we should not have it in
2 there, that it would -- with people coming around to
3 use our Internet, it would slow up our computer. And
4 we were having enough problems with the computer.

5 **Q Now -- so a decision was made to remove the**
6 **router?**

7 A It was a decision that someone else made, yes.

8 **Q Who made that decision?**

9 A Mr. Vander Molen.

10 **Q Okay. Was Mr. Vander Molen a Trustee?**

11 A Yes.

12 **Q Was that a decision that Mr. Vander Molen told**
13 **you he was making?**

14 A I found out about it later.

15 **Q Okay. What do you mean by, "later?"**

16 A Well, I heard that he had it taken out, but he
17 didn't tell me ahead of time.

18 **Q Okay. Well, were you present when the router**
19 **was being removed?**

20 A I don't remember.

21 **Q Did Mr. Vander Molen then explain to you his**
22 **reasoning for removing the router?**

23 A It was stated at a meeting.

24 **Q Okay. But you learned from Mr. Vander Molen**
25 **that he'd made the decision to remove it outside of the**

1 **meeting; correct?**

2 A No, I -- I heard about it at a Trustee
3 meeting.

4 Q Okay. So let me see if I understand this
5 correctly. You were responsible for the day-to-day
6 operations which included dealing with this router
7 issue.

8 A Uh-huh.

9 Q "Yes?"

10 Is that a, "yes?"

11 A Yes.

12 Q Okay. And this was when you were Chairman
13 back in 2007?

14 A Uh-huh, yes.

15 Q Thank you.

16 And you spoke to your computer gentleman about
17 this issue of the router when it was -- while it was
18 still in place?

19 A Say that again?

20 Q In your responsibilities in governing the
21 day-to-day operations, you spoke to -- and I forget the
22 gentleman's name. What was it?

23 MS. COWAN: Fred.

24 BY MR. HENNESSY:

25 Q Fred Jones?

1 A Uh-huh.

2 Q How did you come to talk to Fred Jones about
3 **the router?**

4 A He came and talked to me about it.

5 Q All right. And he told you it needed to be
6 **removed?**

7 A He said it would cause a lot of problems with
8 our computer, and we'd been having a lot of problems
9 with it.

10 Q Okay.

11 A And he felt that it would cause more problems.

12 Q Now did you tell him to remove it?

13 A No, I think it was Mr. Vander Molen that told
14 him to remove it.

15 Q Okay. What did you do with regard to the
16 **router?**

17 A I suggested that the router be turned over to
18 the Computer Club.

19 Q Okay, all right. Well, when you had your
20 **conversations with Mr. Jones, had the router already**
21 **been removed?**

22 A No, it was still there.

23 Q Okay. Did you tell Mr. Jones, well, remove it
24 -- no, you said Mr. Vander Molen said that.

25 Were you planning on taking that -- the

1 question of the router to the Board?

2 A Yes, I was.

3 Q Okay. But --

4 A And it did come up in a meeting.

5 Q All right. But before you brought it up at a
6 meeting, Mr. Vander Molen had already had it removed?

7 A (Nods head up and down.)

8 Q "Yes?"

9 A Yes.

10 Q Okay. But you don't recall if you were
11 present when it was removed?

12 A No, I don't.

13 Q Do you recall speaking to Mr. Vander Molen in
14 the office about his decision to remove the router?

15 A No.

16 Q Okay.

17 A No.

18 Q Is it possible that such a conversation
19 occurred and you don't recall?

20 A No.

21 Q You don't believe such a conversation
22 occurred?

23 A No.

24 Q So you believe the only conversation that --
25 with Mr. Vander Molen about the router occurred at a

1 **Board meeting?**

2 A Uh-huh.

3 **Q Is that a, "yes?"**

4 A Yes.

5 **Q Okay. It's difficult.**

6 A I know.

7 **Q What other day-to-day responsibilities did you**
8 **have as a -- when you were Chairman?**

9 A Overseeing Trustees; if complaints came in,
10 direct them to the proper Trustee for dispersal.

11 **Q What kind of complaints?**

12 A Well, there were complaints concerning Deed
13 Restrictions.

14 **Q What kind of Deed Restrictions?**

15 A There was a Deed Restriction problem on
16 Nebraska about the lot lines, and it kind of ended up
17 in a civil between the people.

18 **Q Which people?**

19 A Mr. Sipich and Linda Brush.

20 **Q Do you know how, "Sipich," is spelled?**

21 A S-I-P-I-C-H.

22 **Q So did you have to resolve that issue?**

23 A I was subpoenaed to court by Mr. Sipich.

24 **Q Did you testify in court about that?**

25 A I went to court.

1 2006, would you have discussions with other Trustees
2 about the budget before it was presented to the Board?

3 A No.

4 Q Okay. Or discussions in either committees or
5 private settings about the budget?

6 A No.

7 Q While you were Chairman of the District, did
8 you ever call for an Executive Committee meeting?

9 A No.

10 Q To your knowledge, while you were Chairman did
11 an Executive Committee meeting ever occur?

12 A No.

13 Q While you were Chairman, were you involved in
14 the discussion or entry into an Easement Encroachment
15 Agreement with Manatee County?

16 A No.

17 Q Do you know who was?

18 A No.

19 Q Are you familiar with an Easement Encroachment
20 Agreement with Manatee County and the District?

21 A I -- I've heard of it, yes.

22 Q Have you seen it?

23 A No.

24 Q Do you know how it came to exist?

25 A No, I do not.

1 **Q It was never discussed at a Board meeting?**

2 A It could have been discussed prior to my time.

3 **Q Okay. So it was never discussed at a Board**
4 **meeting that you recall --**

5 A It could --

6 **Q -- attending?**

7 A Not to my recollection. It could have been --
8 it could have been called and talked about, but I don't
9 remember it.

10 **Q Okay. To your knowledge, would such an**
11 **Easement Encroachment Agreement have to come before the**
12 **Board to be authorized and entered into by the**
13 **District?**

14 MR. CARROLL: Form.

15 MR. SHULTS: I object to form.

16 THE DEPONENT: I would think so.

17 BY MR. HENNESSY:

18 **Q Now, you're aware that the District has**
19 **recently hired the Kirk-Pinkerton law firm.**

20 A (Nods head up and down.)

21 MR. CARROLL: Object to the form.

22 BY MR. HENNESSY:

23 **Q To represent it as District -- District**
24 **Counsel?**

25 A Yes.

1 A Outside --

2 Q -- and had attended a seminar --

3 A No.

4 Q -- of some sort?

5 A No.

6 Q Okay. You have to let me answer -- ask the
7 whole question before you start giving your answer.

8 A Pardon?

9 Q We're starting to talk over one another.

10 A Oh.

11 Q You need to wait till I'm done.

12 The dispute that you were talking about
13 involving Brush and -- what was the other name?

14 A Sipich.

15 Q -- Sipich, was that dealing with a carport
16 cover?

17 A Uh-huh, it was about a carport cover plus
18 other.

19 Q Okay. Issues concerning -- are you familiar
20 with OSHA?

21 A Yes.

22 Q Okay.

23 A A little bit.

24 Q Is that -- issues dealing with OSHA, does that
25 come under your responsibility as a Health and Welfare

1 **Trustee?**

2 A No, because most volunteers are not covered by
3 OSHA.

4 Q Is that a matter then that comes before the
5 Board as a whole?

6 MR. CARROLL: Object to form.

7 THE DEPONENT: Not to my knowledge.

8 BY MR. HENNESSY:

9 Q Well, if you had any questions or concerns
10 about OSHA violations, is that something that you would
11 deal with personally or something that the Board would
12 deal with as a whole?

13 A I would check into it, yes.

14 Q Okay.

15 A If somebody brought it up.

16 Q Is there any other Trustee that would have
17 responsibility for that?

18 A I don't know.

19 Q Would the Chairman have responsibility?

20 A I would say it would more likely be up to the
21 Chairman.

22 Q Would the Maintenance Trustee have
23 responsibility for it?

24 A Yes, if it concerned something with OSHA.

25 Q Okay. Have you ever had discussions with the

1 other Trustees about specific OSHA -- questions
2 concerning OSHA violations?

3 A No.

4 Q Boundary disputes or fence disputes, either
5 along the borders of the park or within the park, is
6 that a matter that would come before a specific Trustee
7 or before the Board as a whole?

8 A That would become a matter of the
9 Architectural Review Committee.

10 Q Okay. Who's currently the Chair of the
11 Architectural Review Committee?

12 A Oh, you would ask me that. It's a new gal and
13 -- oh, I've heard her name, but I can't come up with it
14 right now.

15 Q Okay.

16 A She just came on as Chairman of the Board.

17 Q Who is --

18 A Or the ARC.

19 Q Who was Chair before her?

20 Who was the prior Chair of ARC?

21 A The prior head of ARC committee was John
22 Vander Molen.

23 Q Who was Chair of ARC when you were Chairman of
24 the Board of Trustees?

25 A Who was Chair of ARC when I was Chairman?

1 read through it, if you will.

2 A Well, I can remember one Trustee at a meeting
3 asking if a Trustee could vote by proxy or phone.

4 Q Okay. Is that a practice that the District --

5 A No.

6 Q -- has had in the past?

7 A No. They have to be at the meeting to vote.

8 Q Do you know -- are you familiar with any
9 practice of the Board where Trustees have had
10 conversations with Chairmans and the Trustees outside
11 of Board meetings?

12 A No.

13 Q Are you aware of any instances where Trustees
14 have had conversations with the Chairman outside of
15 Board meetings with regard to Board business?

16 A No.

17 Q Are you aware of any situations where a
18 Trustee has discussed with another Trustee Board
19 business outside of a Board meeting?

20 A No.

21 Q Okay. Are you aware of instances where two or
22 more Trustees have attended a Trailer Estates committee
23 meeting?

24 A Yes, yes.

25 Q When do you recall that happening?

1 A I recall a Red Cross meeting that was being
2 arranged for disaster and they asked the Trustees to
3 attend the meeting.

4 **Q Do you know when that meeting occurred?**

5 A Somewhere around 2006 or seven, I'm not sure.

6 **Q Do you recall if it was before or during your**
7 **period as Chairman?**

8 A It was before my period of Chairman, yeah.

9 **Q Okay. And which Trustees attended that**
10 **Red Cross meeting?**

11 A Mary Lou McNulty was there, and I was there.
12 I think there might have been someone else, but I don't
13 know.

14 I did not take notes and I did not participate
15 in any discussions. I just listened to what they were
16 telling us.

17 **Q Did Mary Lou McNulty participate?**

18 A Pardon?

19 **Q Did Mary Lou McNulty participate in that**
20 **discussion?**

21 A She may have, I'm not sure.

22 **Q Did any other Trustees participate in that**
23 **discussion?**

24 A I believe -- oh, now I remember. I think
25 Bruce Smith was there.

1 Q Okay. Did he participate in the discussion?

2 A He probably did; I really can't remember all
3 of it.

4 Q And was this a matter then that ultimately
5 came before the Board for a discussion of disaster
6 preparedness?

7 A Yes, eventually it came before the Board.

8 Q Okay. And that meeting wasn't a public
9 meeting?

10 A Yes, it was a public meeting and it was
11 advertised on the board.

12 Q Right, but I meant the meeting with the
13 Red Cross, that wasn't a public meeting?

14 A Yeah, it was open to anybody that wanted
15 to go.

16 Q Okay. But Minutes weren't taken and it wasn't
17 advertised?

18 A I don't know whether -- I don't know whether
19 it was Bev Lew or Bruce or who was in charge of it, but
20 -- I don't know whether they took Minutes or not.

21 Q Okay. Kirk-Pinkerton and Mark Barnebey,
22 they're hired to be the District attorneys; correct?

23 A Correct.

24 Q They're not your personal attorney?

25 A No.

1 Q So you were -- was Ms. Miller responsible for
2 distributing the agendas to the Trustees?

3 A Yes.

4 Q Was there to your knowledge a time where she
5 wasn't distributing it to Mr. Featheringill because he
6 was --

7 A Not to my knowledge there wasn't a time.

8 Q Not even a time because he was not in the
9 District?

10 A No.

11 Q Okay, all right. Is this also your note at
12 the bottom also with a 5/8/07 date to TJ where it says,
13 I told Barnebey that I felt Mary Lou McNulty should be
14 nominated by a motion to fill the Second Vice vacancy
15 position?

16 A Yes.

17 Q Okay. Was Mary Lou McNulty off the Board for
18 some time, or was this just a position switch?

19 A She -- a position switch.

20 Q Okay. So she was a Board member, but she had
21 not been Vice Chair, so you were proposing that she be
22 moved to Vice Chair?

23 A Uh-huh, uh-huh.

24 Q I'm sorry, is that a, "yes?"

25 A Yes, yes.

1 Q Was this your idea?

2 A Yes.

3 Q Did you talk to any other Board member about
4 this idea?

5 A No.

6 Q Okay. Before you prepared this note, you
7 didn't talk to any other Board member?

8 A No. No, I just felt that she had enough
9 experience.

10 Q Okay. So this was your recommendation alone?

11 A Yes, just my recommendation alone.

12 Q Okay. And so then what would happen, this was
13 -- did Ms. McNulty get nominated to fill the Second
14 Vice vacancy position?

15 A Well, it had to come before the Board and be
16 voted on.

17 Q And did that happen?

18 A I believe it did. I'd have to look at the
19 records.

20 Q Okay. Well, attached to it is some Minutes or
21 an agenda to the May 21st, 2007 meeting. Do you see
22 that?

23 A Uh-huh.

24 Q When you say -- if you want to say yes --

25 A Yes.

1 Q -- you need to say, "yes."
2 Do you see under Eleven, New Business?
3 A Under what?
4 Q Look at Number Eleven, New Business. It says,
5 **Appoint Mary Lou McNulty Second Vice Chairman?**
6 A Uh-huh.
7 Q Does it -- do you see that?
8 A Yes.
9 Q Okay. And then in parentheses it says, Peg
10 **Durham?**
11 A Yeah.
12 Q What --
13 A That meant she was going to read the motion.
14 Q Okay. So prior to the meeting, you spoke to
15 **Peg Durham about appointing Mary Lou McNulty Vice**
16 **Chair?**
17 A I don't remember whether I spoke to her or
18 whether TJ recommended that Peg make the motion. I
19 don't honestly remember.
20 Q Well, Peg Durham wouldn't make the motion
21 **without knowing that you were making the**
22 **recommendation; would she?**
23 MR. CARROLL: Object to form.
24 THE DEPONENT: She could, I don't know.
25 - - - - -

1 BY MR. HENNESSY:

2 Q So isn't it in fact a practice for the
3 Trustees to talk to each other before the Board
4 meeting --

5 A No.

6 Q -- about filling Board positions?

7 A No.

8 Q And also in terms of -- for discussions
9 between Trustees to fill the different Board offices,
10 that those discussions happen before a Board meeting?

11 MR. CARROLL: Form.

12 THE DEPONENT: No.

13 BY MR. HENNESSY:

14 Q So you just don't recall having a conversation
15 with Ms. Durham before the --

16 A No, I do not.

17 Q Okay. But you believe it could have occurred?

18 A No, I don't.

19 Q You just don't remember?

20 A Just don't remember, but I don't believe it
21 could have occurred.

22 MR. HENNESSY: Huh. Okay.

23 Why don't we take a two-minute break. I want
24 to go -- okay.

25 (There was a brief break.)

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

CIRCUIT CIVIL CASE NO. 2008-CA-11315

-----X
MARY LOU SMITH, an individual, and :
SHARON DENSON, an individual, :
: :
Plaintiffs, :
: DEPOSITION OF
vs. :
: MARY LOU McNULTY
TRAILER ESTATES PARK AND :
RECREATION DISTRICT, an :
independent special taxing district, :
JANET JONES, an individual, :
JOHN VANDER MOLEN, an individual, :
JOSEPH SALERNO, an individual, and :
MARY LOU McNULTY, an individual, :
: :
Defendants. :
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TAKEN BY: THE PLAINTIFFS HEREIN

BEFORE: JOANN L. ZECK
Court Reporter
Notary Public
State of Florida at Large

DATE: August 12, 2009
Commencing at 1:05 P.M.

PLACE: Lewis, Longman & Walker, P.A.
1001 Third Avenue West
Suite 670
Bradenton, Florida 34205

APPEARANCES: JENNIFER R. COWAN, Esquire
Lewis, Longman & Walker, P.A.
1001 Third Avenue West
Suite 670
Bradenton, Florida 34205
Appearing on Behalf of the
Plaintiffs

1 A I think somebody was calling the attorney and
2 we were getting bills and we didn't know about them.

3 **Q Do you recall who?**

4 A No.

5 **Q Did residents complain about that?**

6 A At times residents complained about the cost
7 of attorney bills.

8 **Q Anyone suggest this process to you?**

9 A I don't think so.

10 **Q Okay. Familiar with as part of this suit the**
11 **Manatee County Easement Encroachment Agreement? And**
12 **I'll list this as Exhibit Two (handing document).**

13 **If you could take a look at that, tell me if**
14 **you're familiar with that document?**

15 MR. CARROLL: We need one more down here.

16 MS. COWAN: Oh, sorry.

17 THE DEPONENT: I'm familiar with the case.

18 BY MS. COWAN:

19 **Q Okay. By this agreement, Mr. Wayne Hamblen**
20 **signed this agreement. Did the Board authorize him to**
21 **sign this agreement?**

22 A I believe this was ordered by the Court.

23 **Q The Court ordered Mr. Hamblen to sign this**
24 **agreement?**

25 A No, no; that this agreement was ordered by the

1 Court. Mr. Hamblen, as I see in his signature says
2 Wayne Hamblen, Maintenance Trustee, and I can only
3 assume that he signed it as the Maintenance Trustee.
4 Mr. Neal, I think his name is, was ordered to move the
5 fence by the Court.

6 **Q Is signing these agreements part of the**
7 **responsibilities of the Maintenance Trustee?**

8 A I'm not sure of that. I don't remember seeing
9 this come across my desk as Chairman at the time.

10 **Q Do you recall any discussions with Mr. Hamblen**
11 **regarding this agreement?**

12 A The agreement? Not offhand, no.

13 **Q Or the need to enter into an agreement -- an**
14 **Easement Encroachment Agreement?**

15 A It wasn't an agreement, it -- the man was
16 ordered to move the fence. We didn't make an agreement
17 with him. He was ordered to move the fence.

18 **Q The man, you're saying McNeal --**

19 A Yes.

20 **Q -- was ordered to move the fence, and there**
21 **was no agreement with him, and that's what this**
22 **pertains to? "This," being Exhibit Two.**

23 A Well, not knowing the address -- not knowing
24 the address, I'm -- it says fence, I'm assuming it's
25 the McNeal case. It only gives me a Post Office Box

1 here.

2 **Q During the time that you served --**

3 A Oh, excuse me.

4 **Q Excuse me.**

5 A Said property is located at 1903 Sixty-ninth
6 Avenue. I have no idea what this is. I have no idea
7 what a fence on Sixty-ninth Avenue is --

8 **Q It's not the McNeal fence that you --**

9 A No, it's not the McNeal, no. It says, Said
10 property is located at the following address:
11 1903 Sixty-ninth Avenue. I have no idea what this is.
12 McNeal property is on New Jersey.

13 **Q Okay. During the time that you served on the**
14 **Executive Committee, who else was a member of the**
15 **Executive Committee?**

16 A The First and Second Vice.

17 **Q And who were those individuals?**

18 A Oh, it would have been Bob Poor, Wayne
19 Hamblen, Janet Jones.

20 I don't remember who else were First and
21 Second Vice at the time.

22 MR. CARROLL: Object to the form of the
23 question.

24 BY MS. COWAN:

25 **Q When did the Administrative Committee meetings**

1 Q When you went to them, were they noticed?

2 A Yes.

3 Q Have they always been noticed?

4 A I don't know.

5 Q Were Minutes taken?

6 A I don't know. I don't know.

7 Q Who were the members of the Beautification
8 Committee when you attended those meetings?

9 A Lillian Walsh, Joe Trinkle, Walter Dietz.

10 Q Okay. Let's talk about the Disaster
11 Committee. Was there a Disaster Committee that
12 existed?

13 MR. DYE: Form.

14 THE DEPONENT: Yes.

15 BY MS. COWAN:

16 Q Was that Disaster Committee a standing
17 committee?

18 A No.

19 Q Was it a Trustee committee?

20 A I don't know.

21 Q When did the committee exist?

22 A '07 sometime.

23 Q '07?

24 Who were the members of that committee?

25 A Pam Cole, Bev Lew. I don't know who else.

1 **Q Did you ever attend a Disaster Committee**
2 **meeting?**

3 A One meeting, the first sort of like an
4 organizational meeting.

5 **Q Did any other Trustees attend that meeting?**

6 A Yes.

7 **Q What other Trustees?**

8 A Margo Cushman.

9 There were other Trustees, but I -- I don't
10 want to say because I'm not sure who they were.

11 **Q Did Mr. Vander Molen attend that meeting?**

12 A No.

13 **Q Did Ms. Jones attend that meeting?**

14 A I'm not sure.

15 **Q Did Mr. Salerno attend that meeting?**

16 A No.

17 **Q Did Ms. Cole attend that meeting?**

18 A Oh, Pam, yes, Pam attended it.

19 **Q Where was that meeting held?**

20 A In the Large Hall.

21 **Q Was it noticed?**

22 A Yes.

23 **Q How was it noticed?**

24 A On the bulletin board and it was announced at
25 a meeting.

1 **Q Were Minutes taken?**

2 A I don't know.

3 **Q Was that the only Disaster Committee meeting**
4 **you attended?**

5 A Of that particular committee, yes.

6 **Q Was there another Disaster Committee?**

7 A I had a Disaster Committee to set up a
8 disaster plan for the District.

9 **Q Can you explain to me the difference between**
10 **the two committees?**

11 A The first committee was a disaster plan for
12 the residents. The second one was a disaster plan for
13 the office.

14 **Q Okay. The disaster plan -- the Disaster**
15 **Committee that handled the disaster plan for the**
16 **residents --**

17 A Uh-huh.

18 **Q -- is the one that you were speaking of that**
19 **Ms. Cole and Ms. Lew were members of?**

20 A Yes.

21 **Q And that there was the organizational meeting**
22 **that you attended?**

23 A Yes.

24 **Q Okay. The Disaster Committee that was the**
25 **plan for the office --**

1 A Yes.

2 Q -- were there meetings?

3 A One.

4 Q Where was that meeting?

5 A The Recreation Center.

6 Q Who attended that meeting?

7 A Martha Brauer, myself, Kay Hislop and Bev Lew.

8 Q Was the meeting noticed?

9 A Yes.

10 Q How was it noticed?

11 A Posted on the bulletin board.

12 Q Were Minutes taken?

13 A I don't know. I don't know.

14 Q You said it met once. Did it accomplish its
15 task of a disaster plan for the office during that one
16 meeting?

17 A No, most of it had been accomplished before
18 the meeting.

19 Q How was it accomplished before the meeting?

20 A Over the telephone.

21 Q Between the committee members?

22 A No, between Martha Brauer and myself.

23 And my husband.

24 Q Your husband didn't attend the committee
25 meeting?

1 A No.

2 Q Did the disaster plan for the residents ever
3 come before the Board?

4 A No.

5 Q Was the disaster plan that the Disaster
6 Committee was designing, the plan for the residents,
7 the first Disaster Committee we'll call it --

8 A Yes.

9 Q -- what was -- what was that committee tasked
10 with?

11 A Well, I guess they were supposed to work out a
12 plan for the residents, what would happen if they were
13 evacuated, what the procedure would be for them to come
14 back in and that type of thing, what -- what they would
15 do if they were evacuated, where shelters were, that
16 type of stuff.

17 Q After that plan was developed, what were they
18 to do with that plan?

19 A Bring it before the Board.

20 Q The disaster plan for the office.

21 A Yes.

22 Q After that disaster plan was created, what was
23 that Disaster Committee to do with its plan?

24 A Bring it before the Board.

25 Q Did that plan come before the Board?

1 A Yes, it did.

2 Q Did the Board vote on that plan?

3 A Yes, it did.

4 Q We've previously discussed a Seasonal
5 Recreation Committee is what I called it and you said
6 it was a Trustee committee for the Seasonal Recreation
7 Trustee. Do you recall that?

8 A Yes.

9 Q Okay. What would the -- what would that
10 Trustee committee -- what would be its
11 responsibilities?

12 A As far as Seasonal Recreation, I don't know, I
13 -- as I said, work on the dances and stuff and the
14 parties, different parties that they had. I never went
15 to their meetings so I don't know.

16 Q Would they handle Coffee Break?

17 A No.

18 Q What is Coffee Break?

19 A Coffee Break is held one Saturday a month; for
20 a dollar-and-a-half you get a coffee and doughnut, or
21 now it's coffee, doughnut and fruit, and sometimes
22 there are speakers and sometimes there aren't.

23 Q Is that something that's put on by the
24 District?

25 A Yes.

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

CIRCUIT CIVIL CASE NO. 2008-CA-11315

-----X
MARY LOU SMITH, an individual, and :
SHARON DENSON, an individual, :
: :
Plaintiffs, : DEPOSITION OF
: :
vs. : BRUCE SMITH
: :
TRAILER ESTATES PARK AND :
RECREATION DISTRICT, an :
independent special taxing district, :
JANET JONES, an individual, :
JOHN VANDER MOLEN, an individual, :
JOSEPH SALERNO, an individual, and :
MARY LOU McNULTY, an individual, :
: :
Defendants. :
-----X

TAKEN BY: THE DEFENDANT, TRAILER ESTATES PARK
AND RECREATION DISTRICT, HEREIN

BEFORE: JOANN L. ZECK
Court Reporter
Notary Public
State of Florida at Large

DATE: August 14, 2009
Commencing at 1:36 P.M.

PLACE: KIRK-PINKERTON, P.A.
1301 Sixth Avenue West
Suite 401
Bradenton, Florida 34205

APPEARANCES: JENNIFER R. COWAN, Esquire
Lewis, Longman & Walker, P.A.
1001 Third Avenue West
Suite 670
Bradenton, Florida 34205
Appearing on Behalf of the
Plaintiffs

1 Sunshine Law?

2 A Basically any -- anything that would -- if
3 you're on the Board, anything that would come in front
4 of the Board that would come up for a vote or sway a
5 vote, you cannot talk to another Trustee because it's
6 business coming in front of the -- of the Board and
7 that needs to be in a public forum.

8 Q And what is your understanding of the Florida
9 Public Records Law?

10 A Any record that pertains to the park or the
11 people's business must be maintained by the park and is
12 available to the public.

13 Q Have you ever witnessed with your own two eyes
14 what you believe to be a violation of the Florida
15 Sunshine Law at Trailer Estates?

16 A I cannot remember a specific -- well, there
17 was one time that Mrs. Jones called me into -- it was
18 pertaining to a Safe Committee that -- it was not a
19 committee, it was a group of people that wanted to make
20 a committee, and she called me in and said basically
21 that was not my job responsibility and said it wouldn't
22 become a committee. I listened to her and I left.

23 Q When did that occur?

24 A While I was on the Board. Probably -- I don't
25 know if I can give you a specific time frame.

1 Q But it was while you were on the Board?

2 A Yes.

3 Q And what years were you on the Board?

4 A My term ended last December, so it would have
5 been 2008 and 2007.

6 Q You don't remember whether it was in 2007 or
7 2008 that this event occurred?

8 A Not for sure. I think it was in 2008, but I
9 wouldn't swear to it.

10 Q Other than that event that you've just
11 described by -- concerning Mrs. Jones calling you into
12 the office over the Safe Committee, did you ever
13 witness with your own two eyes or ears a violation of
14 the Florida Sunshine Law at Trailer Estates?

15 A There was one time that comes to mind. I
16 don't remember the time period, but we were having
17 trouble with the swimming pool. And I don't think
18 there was any intention of violation, but I walked in
19 and the Maintenance manager was explaining to most of
20 the Board members what the problem was. And whether
21 that would come up of course for a vote or not I don't
22 know, but I immediately left because it crossed my mind
23 it could be a violation.

24 I -- I've heard a lot of things around the
25 park, but it's all hearsay. Early in the game -- by

1 Q All right. And was this a matter that later
2 came before the Board for discussion?

3 A Yes.

4 Q And what was the nature of that discussion?

5 A The only thing I remember about it, we
6 authorized the necessary funds to make the correction.
7 That's about all I remember about it.

8 Q Okay. Now, let me ask you about the event
9 where you met with Mrs. Jones. Where did that meeting
10 occur?

11 A At the Trailer Estates Office.

12 Q And where within the office did it occur?

13 A I'm not -- it was either in her office or in
14 the lob -- or in the main entrance.

15 Q Now --

16 A Don't remember for sure.

17 Q Okay. Now what was your job on the Board at
18 the time you had this meeting with Mrs. Jones?

19 A I was Public Relations.

20 Q And what did that job entail?

21 A Well, anything that pertains to question --
22 concerns that the public would have, which I felt this
23 was one of them because it's safety, we -- in fact we
24 ended up this year with a gentleman that was shot so --
25 but ensure if -- if people violated or had problems or

1 didn't understand park rules, assist them on that; do
2 an inspection of yards, make sure they're cut during
3 the summer primarily. It could be a wide variation of
4 duties, whatever concerns the public.

5 Q And let's go back to that discussion again. I
6 think you said that somebody had the thought of forming
7 a new committee; is that right?

8 A Yes.

9 Q Tell me --

10 A Yes.

11 Q -- about that.

12 A We were in the pro -- I had a group of people
13 and we were going to make a proposal to the Board for
14 it to be a committee for the Board at that time, and it
15 never was a committee, okay? That's -- somewhere
16 Mrs. Jones knew about it, and she called me in while I
17 was meeting with these people and told me what I told
18 you a while ago. So I went on back out and I informed
19 the people in the group and I said, well, we'll just
20 make a club out of it, and we -- and it still exists
21 today, but it's a Safe Club rather than a Safe
22 Committee. A group of citizens.

23 Q All right. Now what was it -- what is it that
24 you remember that Mrs. Jones said to you specifically
25 about this?

1 A It wasn't my job.

2 Q What wasn't your job?

3 A To have a Safe Committee.

4 That was the content of what she said, and
5 exactly how she said it I don't -- don't remember,
6 but --

7 Q All right. And did the topic of whether your
8 job was to have a Safe Committee ever come before the
9 Board thereafter?

10 A No.

11 Best I remember.

12 Q Let me ask you about the Public Records Law.
13 Have you ever made a public records request to the
14 District that you felt wasn't adequately responded to
15 by the District?

16 A No.

17 Q Have you ever talked to any lawyer or
18 paralegal at the Lewis, Longman firm regarding this
19 case?

20 A Yes.

21 Q Could you tell me when and to whom?

22 A They wanted to talk to me and they -- I talked
23 to them over the phone. And they asked a series of
24 questions, I couldn't tell you what the questions are
25 now, about different things that might come up in the

1 common complaint that I've heard.

2 Q Did these complaints involve Mrs. McNulty?

3 A You're asking me to go back a couple years,
4 okay?

5 Q Yes, I am.

6 A There's been a -- there's been a
7 misunderstanding on the Board, okay? If you read the
8 Charter, there are nine equal Trustees. The Trustees
9 appoint a Chairman. The Chairman's only job that is
10 more than being a Trustee is to run the public meetings
11 basically, okay? And through time, we have gotten away
12 from what the Charter says and we've built up this
13 position that by the Charter is wrong, okay? And
14 because of that, whoever has been sitting in the Chair
15 since I've been around, which is only about five years,
16 you know, you can't -- it's hard to do anything without
17 the approval of that person, and it shouldn't be that
18 way. And that's the root of a lot of these problems.

19 Q And as you describe that with the -- you seem
20 to describe a situation in which the Chair has more
21 authority than what the Charter gives the Chair?

22 A That's correct.

23 Q Is that correct?

24 Does that involve Mrs. McNulty?

25 A It did when she was Chairman, and it did when

1 -- when Janet was Chairman. And that's the only
2 Chairmen that I -- two Chairmen that I was involved
3 with.

4 Q Okay.

5 A Can I speak just a little bit more --

6 Q You bet.

7 A -- on this?

8 This is the age old problem of the trainer
9 training the trainer. Habits, bad habits have been
10 picked up over fifty years, and I personally believe
11 people have gone into the position with good -- with
12 good intentions, but then they've been schooled by a
13 person that has been mis-schooled before him or her and
14 mis-schooled before him and her, and I guess it almost
15 -- it has come to a significant emotional event, okay?
16 In this case they call it a lawsuit, okay? And we must
17 as a Board give the -- give more decision making, more
18 participation back to the owners of Trailer Estates and
19 involve them more and the Board shall only be a general
20 guidance, financial guidance and we need to not have
21 this super -- superpower as a Trustee.

22 And I probably went a lot further than I
23 should, but that's my opinion of the situation.

24 Q That's fine, but let me get back to my
25 question.

1 tell me so I didn't take it any further.

2 MR. DYE: Okay. Thank you, sir.

3 THE DEPONENT: Thank you.

4 CROSS-EXAMINATION

5 BY MR. CARROLL:

6 Q Good afternoon, sir. My name is Hunter
7 Carroll; I'm Ms. Jones' attorney, and I want to talk a
8 little bit more about this Safe group.

9 A Uh-huh.

10 Q At the time of that conversation between
11 Ms. Jones and yourself, was there actually a group that
12 was formed, or was it in the process of being formed?

13 A It was in -- it was in its -- in the process
14 of being formed and hopefully getting certified, she --
15 I was called out of an actual meeting of it to her
16 office.

17 Q Who was organizing that meeting?

18 A I was, because I felt like it was part of
19 Public Relations. I could see a trend of security in
20 the park and I wanted to involve people in the park as
21 to how we could answer a correction of those problems.

22 Q At your organizational meeting, was there any
23 other Trustee present at that meeting?

24 A No.

25 Q Did you prior to organizing that meeting

1 announce to the Board that you were going to do that?

2 A No, because I wanted to get some people
3 involved first and see if it was a workable idea or
4 not.

5 Q During that -- when you said Ms. Jones pulled
6 you into her office, did you actually respond to
7 Ms. Jones and discuss the issue?

8 A No.

9 Q So it was a one-sided conversation?

10 A That's correct.

11 Q During that one-sided conversation between
12 yourself and Ms. Jones, was there any other person
13 present?

14 A I'm sure there was somebody in there, but I
15 don't remember it. The discussion was a matter of
16 thirty seconds or a minute, okay? I came in the
17 office, she told me what she wanted, I left.

18 Q You indicated there was someone else present?

19 A Well, no.

20 Q Or just in the whole building area?

21 A It was -- it was in the Trailer Estates Office
22 so I'm sure there was someone -- a secretary or someone
23 in there, but I don't -- don't remember. I didn't look
24 around and see who all was there.

25 Q But no other Trustee?

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

CIRCUIT CIVIL CASE NO. 08-CA-11315

- - - - - X
 MARY LOU SMITH, an individual,)
 and SHARON DENSON, an individual,)
)
 Plaintiffs,)
)
 Vs.)
)
 TRAILER ESTATES PARK AND RECREATION)
 DISTRICT, an independent special)
 taxing district, JANET JONES, an)
 individual, JOSEPH SALERNO, an)
 individual, and MARY LOU MCNULTY,)
 an individual,)
)
 Defendants.)
 - - - - - X

DEPOSITION OF JOHN VANDER MOLEN

TAKEN BY: THE PLAINTIFFS HEREIN

 BEFORE: DIANE GULDIN-TEMPLETON
 Court Reporter
 Notary Public
 State of Florida at Large

 DATE: April 16, 2009
 Commencing at 1:03 P.M.

 PLACE: Vincent M. Lucente & Associates
 526 Twelfth Street West
 Bradenton, Florida

1 BY MR. HENNESSY:

2 Q Mr. Vander Molen, I'm showing you what's
3 been marked as Exhibit 11 to the deposition, it's a
4 memo from you to Trailer Estates trustees regarding
5 release of copies of the mediated settlement
6 agreement of the case regarding the McNeil of 6626
7 New Jersey; is this the McNeil case that you referred
8 to earlier about a prior deposition?

9 A Yes.

10 Q Okay. Do you recall preparing this memo?

11 A Yes.

12 Q Okay. Did you prepare this one yourself?

13 A Yes.

14 Q Okay. Is it correct?

15 A Is it correct?

16 Q Yes. The contents, the statements, the
17 facts in here, are they correct?

18 A As I knew them.

19 Q Yes, sir. Okay. What was the purpose of
20 writing this memo?

21 A I believe the first paragraph explains that.

22 Q Is it fair to say that you had copies of a
23 mediated settlement agreement that you withheld from
24 other board members?

25 A Yes.

1 Q Okay. And this is your explanation as to
2 why you withheld it?

3 A Yes.

4 Q Okay. And does it also include, I guess
5 your explanation about correcting your error in
6 withholding the -- the record, the settlement
7 agreement?

8 A I think the next to the last paragraph
9 speaks to that.

10 Q Okay. And you had a conversation with Mr.
11 Barnebey about providing copies of the settlement
12 agreement. It states in that paragraph that you
13 pressed for a reason as to what prompted this late
14 action. He responded that he felt the settlement was
15 a public record, and therefore should be released.
16 What did you mean by, you prompted the reason for
17 late action?

18 A Are you talking about the sentence, when I
19 pressed for a reason as to what prompted this --

20 Q Late action?

21 A -- late action?

22 Q What did you mean by late action?

23 A Well, late in that I had withheld it.

24 Q Uh-huh. Okay. You stated that he
25 acknowledged he received a phone call from a trustee

1 concerning the release. So, you were -- you were
2 trying to -- you were asking Mr. Barnebey why he was
3 so late in asking you to release the document, and he
4 said that another trustee had been asking for it?

5 A I'm not sure of your question. It states
6 there what happened.

7 Q I'm trying to understand what you've
8 written, my interpretation, and I'm asking you if my
9 interpretation is correct?

10 A And your interpretation was?

11 Q That Mr. Barnebey called, told you, you had
12 to release the settlement agreement, because it was a
13 public record.

14 You asked him, why are you telling me this
15 now?

16 And he said, well, I've got another trustee
17 asking for the document; is that a fair
18 understanding?

19 MR. SHULTS: Object to form.

20 MR. CARROLL: Join.

21 THE DEPONENT: Mr. Barnebey it says here, he
22 acknowledged, meaning Mr. Barnebey, he had
23 received a phone call from a trustee concerning
24 the release.

25 BY MR. HENNESSY:

1 **Q Uh-huh.**

2 A Doesn't that explain? In other words, he
3 was asking why wasn't it released, I assumed the
4 trustee was asking Mr. Barnebey this.

5 **Q Right.**

6 A I can't speculate what Mr. Barnebey was
7 thinking.

8 **Q I'm not asking you to speculate what Mr.**
9 **Barney was thinking.**

10 A Okay. Ask him.

11 **Q I'll -- I'll ask him.**

12 A Okay.

13 **Q No. What I'm saying is, is it fair to say**
14 **that you asked Mr. Barnebey why he was telling you,**
15 **you had to release this document?**

16 A And he responded he felt the settlement was
17 a public record, and therefore should be released.

18 **Q Okay. And you further asked him, what was**
19 **the reason for him pursuing this? And the basis was,**
20 **a trustee wanted the document?**

21 MR. SHULTS: Object to form.

22 MR. CARROLL: Join. Is there a question
23 there?

24 THE DEPONENT: I don't believe that's what it
25 says. When I press for a reason --

1 BY MR. HENNESSY:

2 Q Well, I'm asking you what you recall?

3 A I don't recall anything, other than what
4 you've shown me here at this --

5 Q Well, do you know who the trustee was that
6 was concerned about the -- or was asking about
7 releasing the documents?

8 A No.

9 Q Okay. You said that you requested -- that
10 Mr. Barnebey put his decision in writing, to your
11 knowledge did he do that?

12 A I believe he did, yes.

13 Q Okay. Did you make -- retain a copy of that
14 document?

15 A If it came to the office, it should be on
16 record.

17 Q At the office?

18 A If it came to the office, it should be on
19 record.

20 Q Well, you specifically state, his fax was
21 received in the TE office at 2:44 P.M., Friday, June
22 1st, 2007 --

23 A Okay.

24 Q -- do you recall going and checking to
25 confirm that he had produced -- he had made such a

1 **fax?**

2 A I think I would have, otherwise I wouldn't
3 have released this.

4 Q Okay. You then say, the office and I --
5 office manager and I immediately contacted all of the
6 trustees, who was the office manager at that time?

7 A T. J. Miller.

8 Q Okay. So, you and her contacted the
9 trustees, where -- how did you contact them?

10 A I said, all available, and they did pick up
11 or had delivered to them copies of the settlement
12 before three P.M., telephone probably.

13 Q Okay. All right.

14 A No, by telephone.

15 Q Okay.

16 A Strike probably.

17 Q All right. So, you -- where were you when
18 you made the telephone call?

19 A In the office.

20 Q Okay. And by the office, you mean the
21 Trailer Estates office?

22 A I believe so, yes.

23 Q All right. And did you jointly contact all
24 of them or did you contact some of them, and she
25 contacted others or what -- how -- how did that

1 **proceed?**

2 A Well, if -- my memo states, the office
3 manager and I --

4 **Q Uh-huh.**

5 A -- immediately contacted all of the trustees
6 available.

7 **Q Uh-huh.**

8 A I don't know which ones she did, and which
9 ones I did.

10 **Q Okay.**

11 A The conversation would have been trustee,
12 whoever, the settlement is available in the office
13 for your pick up.

14 **Q Do you have a specific recollection of your**
15 **conversations with trustees about the settlement**
16 **agreement?**

17 A I think I just stated that, I said, the copy
18 of the --

19 **Q Well, you were reading what was in the**
20 **document. What I'm asking is apart from what's in**
21 **the document do you recall specifically your**
22 **conversations with any trustees?**

23 A I would only have said the copy of the
24 settlement is in the office available for your pick
25 up.

1 **Q** Okay. Why do you believe that your
2 conversation would be limited to that? Do you have a
3 -- are you speculating on that or do you have a
4 specific recollection?

5 A No, I have -- I had no other reason for
6 contacting them --

7 **Q** Uh-huh.

8 A -- other than to say, if this is what you're
9 asking me, probably said Mr. Barnebey advised me I
10 must release -- or this must be released, and it's
11 ready for your pick up.

12 **Q** All right. Why would you have placed Mr.
13 Featheringill's copy in the mail?

14 A He wasn't here. He wasn't on site when --

15 **Q** Okay.

16 A -- this action took place in June 4th, 2007.

17 **Q** Okay. And, again, these -- that's your
18 signature at the bottom?

19 A Yes.

20 **Q** Did you make any recommendations to the
21 board about approving or rejecting the settlement?

22 A I recommended that they approve the
23 settlement.

24 **Q** And did you recommend that in the written
25 document that you provided to each of the individual

1 **trustees?**

2 A No. That would have been at a board
3 meeting.

4 Q Okay. Why wouldn't it be in a written
5 recommendation to them?

6 A Because it wasn't an open public meeting.

7 Q Okay. So, it's your understanding that it
8 would be improper for you to make a written
9 recommendation in these documents that were
10 distributed to the board?

11 A Absolutely, yes.

12 Q Okay.

13 MR. SHULTS: Was the word proper or
14 improper? Was the word used in the question
15 proper or improper? I didn't -- I couldn't tell.

16 THE COURT REPORTER: Improper.

17 MR. SHULTS: Thank you.

18 MR. HENNESSY: And that was the intent.

19 BY MR. HENNESSY:

20 Q And was that your understanding, too?

21 A No. You'd have to --

22 Q Okay. The question was: Is it your
23 understanding that it would have been improper for
24 you to have provided a written recommendation to
25 these board members as to whether they should approve

1 **the settlement agreement?**

2 A And I believe I answered, it would be
3 improper.

4 Q Okay. And that's why you believe you did
5 not do it?

6 A I believe I did not do it.

7 Q Okay. So, you're certain that you did not
8 do it?

9 A I'm certain I did not do it --

10 Q Okay.

11 A -- to the best of my recollection.

12 Q Are you familiar with candidate nights that
13 are put on by the board?

14 A Yes.

15 Q Have you been involved in any candidates
16 nights since 2007?

17 A Since, you mean the year 2008 and 2000 --

18 Q No. 2007, 2008, 2009. I apologize. I could
19 be a little more specific.

20 A I was -- you said, since. Since I was a
21 candidate in 2007, I would have been present at that
22 meeting.

23 Q All right. Were you a -- were you also a --
24 a board member on that candidate night in 2007?

25 A Yes.