

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

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

Plaintiffs,

v.

CASE NO. 08 CA 11315

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.

**TRAILER ESTATES PARK AND RECREATION DISTRICT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Defendant, Trailer Estates Park and Recreation District ("District"), moves for Partial Summary Judgment relating to the Plaintiffs' Third Amended Complaint and its Addenda, and as grounds states:

A movant is entitled to Summary Judgment if the evidence on file shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Estate of Githens v. Maria Manor Nursing Care Center*, 928 So. 2d 1272, 1274 (Fla. 2d DCA 2006). The Court must view every possible inference in favor of the party against whom summary judgment is sought. *Id.*

I. Committee of One and Unilateral Memoranda

Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law, is codified in Chapter 286, Florida Statutes. The law is equally applicable to the

elected and appointed boards and has been applied to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. *Government-in-the-Sunshine Manual*, Vol. 31, pg. 5 (2009). As such a public official acting alone cannot violate the Sunshine Law. FL

AGO 89-23 states that public officials may issue an unilateral memorandum to inform others of a subject which will be discussed at a public meeting without violating the Sunshine Law. Moreover, FL AGO 96-35 states that it is permissible for a board member to prepare and circulate an informational memorandum or position paper to other board members without violating the Sunshine Law.

a. 37(i)- ARC Members Acted as a Committee of One Approving Permits.

The Plaintiffs allege that the District violated the Sunshine Law when members of the Architectural Review Committee (“ARC”) acted as a committee of one by approving permits. There is no allegation of a conversation between two or more ARC members regarding these permits; therefore, as a matter of law, there cannot be a violation of the Sunshine Law.

b. 37(x)- Ms. Jones’ Decision to Limit Public Comment to 3 Minutes.

The Plaintiffs allege that the District violated the Sunshine Law when Ms. Jones acted as a committee of one to decide to limit public comments to three (3) minutes. The Plaintiffs fail to make any allegations of Ms. Jones communicating with any of the Trailer Estates Park and Recreation District Board of Trustees (“Board”) member regarding this decision; therefore, as a matter of law, there cannot be a violation of the Sunshine Law.

c. 37(aa)- McNeil Settlement Agreement.

The Plaintiffs allege that the District violated the Sunshine Law when on June 4, 2007 Board members discussed the McNeil Settlement Agreement outside of an open and noticed public meeting.

Prior to the Board meeting on June 4, 2007, Mr. Vander Molen, along with office staff, pursuant to a conversation with Attorney Mark Barnebey, contacted Board members to let them know a copy of the mediated settlement agreement was in their box at the District's office. (Vander Molen deposition 128:10 – 130:17; 132:4-134:19).¹

In addition, on June 4, 2007, Mr. Vander Molen issued two unilateral memoranda to the Board of Trustees stating his understanding of the terms of the mediated settlement agreement and providing a positive recommendation. *See* Mr. Vander Molen's memoranda dated June 4, 2007.

Pursuant to Florida law, Mr. Vander Molen may issue unilateral memoranda to the Board informing other Board members of a subject that will be discussed at a public meeting and providing his position on the subject without violating the Sunshine Law. In addition, Mr. Vander Molen's calling to inform his fellow Board members that copies of the Mediated Settlement Agreement are in their box at the District's office is not a matter which will foreseeably come before the Board for action. Therefore, Mr. Vander Molen's phone calls and memoranda do not violate the Sunshine Law. The Court has already granted

¹ Throughout this Motion the District shall cite to deposition transcript in the format page:line. As such, 128:10 means page 128, line 10.

summary judgment to Ms. Jones on this allegation. *See Order Granting in Part and Denying in Part Janet Jones' Motion for Partial Summary Judgment.*

d. 37(bbb)- Mr. Salerno's Memorandum Regarding Document Management.

The Plaintiffs allege that Mr. Salerno's memorandum to the other Board members regarding his opinions about the document management system which was to be discussed at an upcoming Board meeting that he was not going to attend violated the Sunshine Law. *See* Mr. Salerno's memorandum date stamped May 20, 2008. Pursuant to FL AGO 89-23 and FL AGO 96-35, Mr. Salerno is entitled to inform the other Board members and provide his position regarding a subject which will be discussed at an upcoming public meeting; therefore, as a matter of law, there cannot be a violation of the Sunshine Law.

e. 37(ggg)- Mr. Vander Molen's Institution of Page 4 of the Public Records Policy.

The Plaintiffs allege that the District violated the Sunshine Law when Mr. Vander Molen instituted page 4 of the Public Records Policy. The Plaintiffs alternatively allege that the Board met and decided to institute page 4 of the Public Records Policy, thus violating the Sunshine Law. As to the allegations that Mr. Vander Molen acting alone violates the Sunshine Law, there is no Sunshine violation as a matter of law because Mr. Vander Molen did not communicate with any other Board members regarding institution of Page 4.

II. Discussion After Formal Action

Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law, is codified in Chapter 286, Florida Statutes. The law is equally applicable to the elected and appointed boards and has been applied to any gathering of two or more

members of the same board to discuss some matter which will foreseeably come before that board for action. *Government-in-the-Sunshine Manual*, Vol. 31, pg. 5 (2009).

- a. 37(g)- Executive Committee Members met with Ms. Jones regarding appointment of Tom Featheringill.

The Plaintiffs allege that the District violated the Sunshine Law when members of the Board met with Ms. Jones after the appointment of Tom Featheringill to discuss the reasons for his appointment. It is an undisputed fact that Mr. Featheringill was appointed to the Board on September 5, 2006. See Board minutes September 5, 2006. Any alleged discussions after Mr. Featheringill's appointment were not regarding matters reasonably foreseeable to come before the Board; therefore, as a matter of law, there cannot be a violation of the Sunshine Law.

III. Reasonable Notice

There are three basic requirements of F.S. 286.011: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and (3) minutes of the meetings must be taken. *Government-in-the-Sunshine Manual*, Vol. 31, pg. 5 (2009).

- a. 37(bbbb)- Discussion Regarding PP 41, PP 40, PP 13 and Swimming Rules.

The Plaintiffs have alleged that the District violated the Sunshine Law when Ms. Jones and Ms. Brauer met on December 5, 2008 at a Policy and Procedures Committee meeting to discuss PP 41, PP 40, PP 13 and the Swimming Rules of the District.

The undisputed facts are that on November 14, 2008 notice was posted for the December 5, 2008 Policy and Procedure Committee Meeting. (Jones Affidavit, ¶5). On November 17, the notice was broadcast on the District's Channel 95. (Jones Affidavit, ¶5). On December 2, 2008, Ms. Brauer was elected to the Board of Trustees. (Jones Affidavit, ¶6). Prior to her election, Ms. Brauer had never served on the Board. (Jones Affidavit, ¶6).

The Plaintiffs allege that the Policy and Procedures Committee meeting notice was deficient because it did not state that the meeting was a Board meeting as both Ms. Jones and Ms. Brauer would be in attendance.

FS 286.011 requires reasonable notice of public meetings. At the time of notice of the Policy and Procedures Committee meeting was made in November, the notice was reasonable; therefore, as a matter of law, there is no violation of the Sunshine Law. *See Order Granting in Part and Denying in Part Janet Jones' Motion for Partial Summary Judgment.*

IV. Laches

Laches will apply where there is an unexpected delay in prosecuting a claim until death has closed the lips of the interested parties. *Thrasher v. Ocala Mfg. Ice and Parking Co.*, 153 Fla. 488 (1943). To render the defense of laches effective, the delay must be such as to practically preclude the court from arriving at a safe conclusion as to the truth of matters in controversy and thus make the doing of equity doubtful or impossible or such a change in conditions must have occurred which would render it inequitable to enforce the rights asserted. *Cone v. Benjamin*, 157 Fla. 800 (1946).

The elements of laches are: (1) conduct on the part of the defendant, or one under who he claims, giving rise to the situation of which complaint is made; (2) delay in asserting the plaintiff's rights, he having had an opportunity to institute suit; (3) lack of knowledge or notice on the part of the defendant that plaintiff would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in event relief is accorded to plaintiff. *Blumin v. Ellis*, 186 So. 2d 286 (Fla. 2d DCA 1996).

a. 37(rr)- Execution of Manatee County Easement Agreement by Mr. Hamblen.

The Plaintiffs allege that the District violated the Sunshine Law when on October 12, 2006 Mr. Hamblen executed a Manatee County Easement Encroachment Agreement without Board authorization at a public meeting.

The undisputed facts are that Mr. Hamblen executed the agreement on October 12, 2006. *See* Manatee County Easement Encroachment Agreement. The Plaintiffs did not file suit in this case until November 26, 2008. *See* Complaint. Mr. Hamblen has since passed away. *See* Transcript of Hearing December 22, 2009, 31:15-16. None of the witnesses deposed in this case who were Board members on October 12, 2006 know anything about the execution of the Manatee County Easement Encroachment Agreement. *See* Depo of Durham (108:22 – 110:4); Depo of Jones (32:13 – 33:16); Depo of McNulty (41:10 – 43:12). The Plaintiffs were residents of Trailer Estates on October 12, 2006 and have continually owned property in Trailer Estates up to the present. Depo of Smith (19:13-14); Depo of Denson (14:25 – 15:5).

Mr. Hamblen's conduct is what gives rise to this allegation against the District. The Plaintiffs had an opportunity to institute suit against the District

prior to November 26, 2008, but failed to do so. As such, the District was unaware of a potential claim against them for Mr. Hamblen's conduct, and the District would be injured or prejudiced should the Court grant Plaintiff's requested relief. Mr. Hamblen's unfortunate death precludes the Court from safely concluding the truth relating to the execution of the Manatee County Easement Encroachment Agreement; therefore, the Plaintiffs are barred, as a matter of law, from asserting this claim against the District.

V. Administrative Matters

Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law, is codified in Chapter 286, Florida Statutes. The law is equally applicable to the elected and appointed boards and has been applied to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. *Government-in-the-Sunshine Manual*, Vol. 32, pg. 5 (2009).

Meetings between officers solely on their capacity as departmental heads, and merely for the purpose of coordinating administrative and operational matters between departments for which a vote or other formal action by the governing body is neither required nor contemplated in the future are not subject to the Government in the Sunshine law. FL AGO 81-88. Discussions between members of a public body regarding matters that do not require the public body to act do not fall within the scope of the Sunshine Law. FL AGO 93-41.

a. Matters to be presented to Legal Counsel

- i. 37(dd)- Determine Whether Legal Opinion Needed Regarding Complaint 216.

The Plaintiffs allege that the District violated the Sunshine Law when from November 5, 2007 through December 12, 2007, the Board members determined outside of an open and noticed public meeting that a legal opinion should not be provided regarding Complaint 216.

It is an undisputed fact that on August 6, 2007 the District approved PP 17, stating "Trailers Estates Park & Recreation District Board of Trustees will only have the attorney present upon request. Trustees shall be allowed to contact attorney as needed." (See PP 17).

At the time of the alleged Sunshine violations any of the Board members could contact the attorney; no vote or other formal action by the Board was required nor contemplated. Therefore, as a matter of law, any alleged discussion and/or determination cannot violate the Sunshine Law.

b. Determination of Application of Law to Trailer Estates

i. 37(y)- Determination Regarding Application of OSHA.

The Plaintiffs allege that on December 7, 2007 the District violated the Sunshine Law when Board members discussed and determined outside of an open and noticed public meeting the application of OSHA to Trailer Estates.

The application of OSHA to Trailer Estates is a legal determination over which the District has no authority; it does not affect conduct, policy, or procedure. The determination of whether OSHA applies to Trailer Estates neither requires nor contemplates a vote or other formal action by

the Board; therefore, as a matter of law, any alleged discussion and/or determination cannot violate the Sunshine Law.

ii. 37(ss)- Determination Regarding Application of FS 849.01.

The Plaintiffs allege that on February 26, 2007 Board members met and determined outside of an open and noticed public meeting that FS 849.01 does not apply to Trailer Estates.

The application of FS 849.01 is a legal determination over which the District has no authority. It does not affect conduct, policy or procedure. The determination of whether FS 849.01 applies to Trailer Estates neither requires nor contemplates a vote or other formal action by the Board; therefore, as a matter of law, any alleged discussion and/or determination cannot violate the Sunshine Law. The Court has already granted Ms. Jones summary judgment to this allegation. *See Order Granting in Part and Denying in Part Janet Jones' Motion for Partial Summary Judgment.*

iii. 37(mmmm)- Determination of timing and distribution of year-end financial report and proposed budget.

The Plaintiffs allege that the District violated the Sunshine Law when in April 2008 Board members met and determined the timing and distribution of the District's year-end financial report and the proposed budget outside of an open and noticed public meeting.

The distribution of the year-end financial report and the proposed budget are governed by Sections 7 and 12 of the District's Charter and F.S. 189.418(3) and (5).

Interpreting Sections 7 and 12 of the District's Charter and F.S. 189.418(3) and (5) to decide whether the year-end financial report could be sent along with the proposed budget and the timing of said distribution does not require nor contemplate a vote or other formal action to be taken by the Board; therefore, as a matter of law, any alleged discussion and/or determination cannot violate the Sunshine Law.

iv. 37(rrr)(xx)- Determination to Compile Records in Accordance with Public Records Law.

The Plaintiffs allege that the District violated the Sunshine Law when in 2009 Board members met and discussed compiling Board meeting recordings in accordance with the Public Records Law outside of an open and noticed public meeting.

As a public body, the District is required by law to compile its records in accordance with the Public Records Law. The Board of Trustees has no authority to deviate from the law. Therefore, no vote or other formal action is required nor contemplated for the District to compile records in accordance with the Public Records Law and, as a matter of law, any alleged discussions and/or determinations cannot violate the Sunshine Law.

v. 37(zz)- Determination that Video is not Public Record.

The Plaintiffs allege that the District violated the Sunshine Law when at the end of 2007 Board members met and determined that videos of District meetings were not public records outside of an open and noticed public meeting.

The determination of whether or not the videos are a public record involves interpreting Florida law. The Board has no authority to determine whether or not videos are public records. No vote or other formal action is required nor contemplated for the District to interpret Florida law as to whether or not the videos are public records; therefore, as a matter of law, any alleged discussions and/or determinations cannot violate the Sunshine Law.

c. Discussion of Resignation

Whether a resignation is effective upon its submission or whether some authority needs to accept it is a matter controlled by Florida's Constitution. Article X, section 3, Florida Constitution provides that "[v]acancy in office shall occur upon ... resignation of the incumbent." The Florida Supreme Court has held that this provision means that resignation is complete upon the tender of the resignation; no acceptance by an authority is required. *See Smith v. Brantley*, 400 So. 2d 433, 448-49 (Fla. 1981).

i. 37(ee)- Discussion Regarding Vander Molen's Resignation.

The Plaintiffs allege that the District violated the Sunshine Law when on May 7, 2007 Board members discussed the withdrawal of Mr. Vander Molen's resignation from ARC outside of an open and noticed public meeting.

Florida law does not require the Board to accept or reject Mr. Vander Molen's tender of his resignation; that decision can only be made by him. There is no vote or other formal action required nor contemplated

by the District regarding Mr. Vander Molen's resignation from ARC; therefore, as a matter of law, any alleged discussion and/or determination cannot violate the Sunshine Law.

ii. Addenda 37(rrr)(iv)- Discussion Regarding Mr. Fitzpatrick's Duties and Resignation.

The Plaintiffs allege that the District violated the Sunshine Law when on January 2, 2009 Board members discussed Mr. Fitzpatrick's inability to execute his duties as the Continuing Recreation Trustee and his letter of resignation.

Any alleged discussion of Mr. Fitzpatrick's inability to execute his duties in his capacity as a departmental head, the Continuing Recreation Trustee, involves administrative matters which neither require nor contemplate a vote or other formal action to be taken by the Board. Furthermore, Mr. Fitzpatrick's letter of resignation does not require nor contemplate a vote or other formal action by the Board. Therefore, as a matter of law, any alleged discussion and/or determination cannot violate the Sunshine Law.

iii. Addenda 37(rrr)(vi)- Discussion Regarding Fitzpatrick's Resignation.

The Plaintiffs allege that the District violated the Sunshine Law when in early 2009 Board members discussed outside of an open and noticed public meeting Mr. Fitzpatrick's resignation.

Florida law provides that Mr. Fitzpatrick's resignation is effective upon tender and no acceptance by the authority is required. No vote or other formal action was required nor contemplated by the Board; therefore, as a matter of law, any alleged discussion cannot violate the Sunshine Law.

iv. Addenda 37(rrrr)(vii)- Discussion Regarding Fitzpatrick's Resignation.

The Plaintiffs allege that the District violated the Sunshine Law when in 2009 Board members discussed Mr. Fitzpatrick's resignation.

Under Florida law, no vote or other formal action is required nor contemplated by the Board regarding Mr. Fitzpatrick's resignation; therefore, as a matter of law, any alleged discussion cannot violate the Sunshine Law.

v. Addenda 37(rrrr)(xiv)- Discussion Regarding Mr. Hoch's Resignation from ARC.

The Plaintiffs allege that the District violated the Sunshine Law when in the spring of 2009 Board members discussed outside of an open and noticed public meeting Mr. Hoch's resignation from ARC.

Under Florida law, no vote or other formal action is required nor contemplated by the Board regarding Mr. Hoch's resignation; therefore, as a matter of law, any alleged discussion cannot violate the Sunshine Law.

d. Discussion of Trustee Duties

i. 37(qqqq)- Determined Content of Minutes.

The Plaintiffs allege that the District violated the Sunshine Law when in October 2006 Board members determined outside of an open and noticed public meeting the content of information published in the District's minutes.

Pursuant to the District's Bylaws and PP 40, the administrative duty of maintaining the District's minutes is the responsibility of the Secretary. No vote or formal action is required nor contemplated by the Board for the Secretary to change the content of information published in the District's minutes prior to the Board's approval; therefore, as a matter of law, any alleged determination cannot violate the Sunshine Law. The Court has already granted summary judgment to Ms. Jones on this allegation. *See Order Granting in Part and Denying in Part Janet Jones' Motion for Partial Summary Judgment.*

ii. 37(II)- Discussion Regarding Handling Deed Restriction Violations.

The Plaintiffs allege that the District violated the Sunshine Law when on October 6, 2008 Board members discussed the handling of a deed restriction violation outside of an open and noticed public meeting.

Under the Bylaws of Trailer Estates, the Trustee assigns to members of the Board areas of responsibility to plan, implement and supervise various District operations or activities. Included within the duties of the Public Relations Trustee is the responsibility to resolve problems concerning complaints involving compliance with the deed restrictions. *See* PP 40. Any alleged discussion regarding the handling of

a deed restriction violation relates to the Public Relations Trustee's administrative duties. No vote or other formal action is required nor contemplated by the Board; therefore, as a matter of law, any alleged discussion cannot violate the Sunshine Law.

iii. 37(ggg)- Discussion Regarding Bingo and Volunteer Program.

The Plaintiffs allege that the District violated the Sunshine Law when on November 12, 2007 Board members discussed Bingo and Trailer Estates' volunteer program outside of an open and noticed public meeting.

Under the District's Rules and Regulations and PP 40, the Continuing Recreation Director Trustee is responsible for the direction and supervision of Bingo and is responsible to plan and oversee the continuing recreation volunteer appreciation luncheon. To fulfill their administrative duties, Trustees are permitted to use volunteers. (*See* Deposition of Cushman 104:11-13). The operation of Bingo and the District's volunteer program do not require nor contemplate a vote or other formal action by the Board; therefore, as a matter of law, any alleged discussions cannot violate the Sunshine Law.

iv. 37(rrr)(iii)- Discussion Regarding Fulfilling Secretary's Duties in Absence.

The Plaintiffs allege that the District violated the Sunshine Law when in April or May of 2009 Board members discussed and determined who would be performing the duties of the District's Secretary in Ms. Oppen's absence outside of an open and noticed public meeting.

The administrative duties of the Secretary are outlined in the District's Bylaws, Rules and Regulations, and PP 40. The performance of these duties does not require nor contemplate a vote or other formal action by the Board. Therefore, as a matter of law, any discussion and/or determination regarding Ms. Opper delegating these duties for someone else to cover during her absence cannot violate the Sunshine Law.

v. 37(rrr)(v)- Discussion Regarding Bingo and Delegation of Duties.

The Plaintiffs allege that the District violated the Sunshine Law when on January 9, 2009 Board members discussed Mr. Fitzpatrick's duties as the Continuing Recreation Trustee including Bingo and delegation of his duties outside an open and noticed public meeting.

The duties of the Continuing Recreation Trustee according to the District's Bylaws, Rules and Regulations, and PP 40 involve the responsibility to plan, implement and supervise various District operations, including Bingo. No vote or other formal actions is required nor contemplated for the Continuing Recreation Trustee to perform these duties; therefore, as a matter of law, any alleged discussion cannot violate the Sunshine Law.

vi. 37(rrr)(xviii)- Discussion Regarding Lawn Maintenance and Mr. Fitzpatrick's Trustee Duties.

The Plaintiffs allege that the District violated the Sunshine Law when in 2009 Board members discussed lawn maintenance and Mr. Fitzpatrick's Trustee duties outside an open and noticed public meeting.

According to the District's Bylaws, the Trustees duties are to plan, implement and supervise various District operations or activities. These duties fall under the Trustees' duties as department heads. See Bylaws and PP 40. No vote or other formal action is required nor contemplated by the Board; therefore, as a matter of law, any alleged discussion cannot violated the Sunshine Law.

vii. Addenda 37(III) (xi) and 37(III) (xii) Discussion of Recreational Roundtable

The Plaintiffs allege that the District violated the Sunshine when in January 2009 Board members discussed the recreational roundtable outside of an open and noticed public meeting.

Pursuant to the Bylaws and PP 40, the Seasonal Social and Recreation Trustee shall plan and organize recreational activities that may occur during the season. Any alleged discussion about the recreational roundtable relates to administrative duties that do not require nor contemplate a vote or other formal action by the Board therefore, as a matter of law, said alleged discussions cannot violate the Sunshine law.

e. **Placing Items on the Agenda**

i. 37(iii)- Discussion Regarding Upcoming Meeting Agenda and Bulletin Boards.

The Plaintiffs allege that the District violated the Sunshine Law when on January 27, 2009 Board members discussed the upcoming meeting agenda and bulletin boards outside an open and noticed public meeting.

Pursuant to the Bylaws, “[a]ny Trustee desiring to have matters placed on the meeting agenda shall notify the Chairman three (3) working days in advance of the meeting.” The guidelines for the District’s bulletin board are contained in PP 4, which was adopted on September 4, 2001. No vote or other formal action is required nor contemplated by the Board regarding meeting agendas or the bulletin boards; therefore, as a matter of law, any alleged discussion cannot violate the Sunshine Law.

ii. Addenda 37(rrr)(i)- Discussion to Place Committees on the Agenda.

The Plaintiffs allege that the District violated the Sunshine Law when in January through March 2009 Board members met to discuss placing Committees on the District’s meeting agenda outside of an open and noticed public meeting.

Pursuant to the Bylaws, “[a]ny Trustee desiring to have matters placed on the meeting agenda shall notify the Chairman three (3) working days in advance of the meeting.” No vote or other formal action is required nor contemplated by the Board to place an item on the District’s meeting agenda; therefore, as a matter of law, any alleged discussions cannot violate the Sunshine Law.

iii. Addenda 37(rrr)(xix)- Discussion of Board’s Workshop Agenda.

The Plaintiffs allege that the District violated the Sunshine Law when on July 29, 2009 and August 4, 2009 Board members discussed the Board’s Workshop agenda outside of an open and noticed public meeting.

Pursuant to the Bylaws, “[a]ny Trustee desiring to have matters placed on the meeting agenda shall notify the Chairman three (3) working days in advance of the meeting.” No vote or other formal action is required nor contemplated by the Board to place an item on the District’s meeting agenda; therefore, as a matter of law, any alleged discussions cannot violate the Sunshine Law.

f. Matters that Do Not Require the Board to Act

i. Discussions of Website and Media Sources

A. 37(fff)- Website Committee Determined Operation and Content of Website.

The Plaintiffs allege that the District violated the Sunshine Law when in January and February 2009 the Website Committee developed, determined and altered the operation and content of the District’s website outside of an open and noticed public meeting.

Pursuant to the Bylaws, only the Board of Trustees has authority to create committees which act as arms of the Board. In January 2009, no Website Committee was formed. *See* January 5, 2009 Board minutes.

Developing, determining, and altering the operation and content of the District’s website do not require nor contemplate a vote or formal action of the Board; therefore, as a matter of law, these allegations cannot violate the Sunshine Law.

B. 37(ffff)- Discussion of Website and Its Budget/Expense.

The Plaintiffs allege that the District violated the Sunshine Law when on December 6, 2007 Board members discussed the District’s

website and its budget/expense outside of an open and noticed public meeting.

The budget is a matter that requires and contemplates a vote or formal action by the Board; however, the website does not. Therefore, as a matter of law, any alleged discussion regarding the website cannot violate the Sunshine Law.

C. 37(gggg)- Discussion of Website's Content.

The Plaintiffs allege that the District violated the Sunshine Law when on March 6, 2008 Board members discussed the content of the District's website outside of an open and noticed public meeting.

The content of the District's website is not a matter that requires nor contemplates a vote or other formal action by the Board; therefore, as a matter of law, any alleged discussion cannot violate the Sunshine Law.

D. 37(hhhh)- Discussion of Website.

The Plaintiffs allege that the District violated the Sunshine Law when on April 27, 2009 Board members discussed the District's website outside of an open and noticed public meeting.

The District's website does not require nor contemplate a vote or other formal action by the Board; therefore, as a matter of law, any alleged discussion cannot violate the Sunshine Law.

E. 37(iii)- Discussion of Website Content.

The Plaintiffs allege that the District violated the Sunshine Law when on February 17, 2009 Board members discussed the District's website content outside of an open and noticed public meeting.

The District's website content does not require nor contemplate a vote or other formal action by the Board; therefore, as a matter, any alleged discussion cannot violate the Sunshine Law.

F. 37(oooo)- Content of Media Sources.

The Plaintiffs allege that the District violated the Sunshine Law when from November 2005 to present Board members discussed the content of information published in the District's media sources.

The content of information published in the District's media sources does not require nor contemplate a vote or other formal action by the Board; therefore, as a matter of law, any alleged discussion cannot violate the Sunshine Law.

G. Addenda 37(rrrr)(xvi)- Discussion of Website Content

The Plaintiffs allege that the District violated the Sunshine Law when in 2009 Board members discussed the content of the District's website outside of an open and noticed public meeting.

The content of the District's website does not require nor contemplate a vote or other formal action by the Board; therefore, as a matter of law, any alleged discussion cannot violate the Sunshine Law.

ii. Discussion of Other Matters Not Requiring Formal Action

A. 37(cc)- Discussion of Redacting Personal Information.

The Plaintiffs allege that the District violated the Sunshine Law when in March 2008 Board members discussed and determined that the Board members' and the District's employees' cell phone information be redacted from the public records.

The redaction of personal information from public records does not require nor contemplate a vote or other formal action by the Board; therefore, as a matter of law, any alleged discussions and/or determinations cannot violate the Sunshine Law.

B. 37(rrr)- Deny Publication of Articles.

The Plaintiffs allege that the District violated the Sunshine Law when in July 2008 Board members decided to deny the publications of articles authored by Ms. Denson in the *Tribune*.

The publication of articles in the *Tribune* does not require nor contemplate a vote or other formal action by the Board; therefore, as a matter of law, any alleged decision cannot violate the Sunshine Law.

C. Addenda 37(rrrr)(xiii)- Discussion of Residents' Complaint Concerning Ms. Opper.

The Plaintiffs allege that the District violated the Sunshine Law when in spring 2009 Board members discussed residents' complaints concerning threats made by Ms. Opper.

Pursuant to the Bylaws and PP 40, the Public Relations Trustee is responsible for handling residents' complaints; no vote or other formal

action is required nor contemplated by the Board. Therefore, as a matter of law, any alleged discussion cannot violate the Sunshine Law.

VI. Cure

Public final action of a board will not always be void and incurable merely because the topic of final public action was previously discussed at a private meeting. *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 428 (Fla. 1981). The Board's public final action will stand where it was "not merely a ceremonial acceptance of secret actions and was not merely a perfunctory ratification of secret decisions at a later meeting open to the public. *Id.* at 429.

a. Cure Found in Janet Jones Motion for Partial Summary Judgment

i. 37(s)- Hiring of Legal Counsel in October 2006.

The Plaintiffs allege that the District violated the Sunshine in October 2006 because the Board held meetings wherein they interviewed and hired legal counsel which were not properly noticed.

Subsequent to the hiring of legal counsel in October 2006, the Board has discussed and voted to pay legal bills of counsel hired in October 2006. *See* December 21, 2009 Board minutes. The subsequent open discussion and vote regarding payment of these legal bills cured any alleged Sunshine violations regarding the interviewing and hiring of the District's legal counsel. The Court previously granted Ms. Jones summary judgment on this same ground. *See Order Granting in Part and Denying in Part Janet Jones' Motion for Partial Summary Judgment.*

ii. 37(eee) and addenda 44(ii)- Budget Questionnaire.

The Plaintiffs allege Sunshine violations regarding the 2008 Trailer Estates Budget Questionnaire. Any alleged violations were subsequently cured by open discussions and voting on the Budget Questionnaire and the Budget at the open and noticed public meetings on December 8, 2008 and December 15, 2008. *See* December 8, 2008 and December 15, 2008 Board minutes. The budget questionnaire was approved at the December 15, 2008 Board meeting. *See* December 15, 2008 minutes. The Court previously granted Ms. Jones summary judgment on this same ground. *See Order Granting in Part and Denying in Part Janet Jones' Motion for Partial Summary Judgment*

iii. 37(x)- Ms. Jones' February 12, 2007 Memo.

The Plaintiffs allege Ms. Jones violated the Sunshine Law by unilaterally issuing a memorandum to the other Board members regarding limiting the amount of time for public comment to three (3) minutes. *See* Ms. Jones memorandum dated February 12, 2007. Any alleged violation of the Sunshine was subsequently cured by the open discussion and ultimate approval of the three (3) minute policy at the open and noticed public Board meeting on February 19, 2007. *See* February 19, 2007 Board minutes. The Court previously granted Ms. Jones summary judgment on this same ground. *See Order Granting in Part and Denying in Part Janet Jones' Motion for Partial Summary Judgment.*

b. Cure not addressed in Ms. Jones Motion for Partial Summary Judgment

i. 37(gg) and 37(bbb)- Discussions Regarding Document Management.

The Plaintiffs allege that Board members violated the Sunshine Law by communicating regarding the document management system for the District outside of an open and noticed public meeting. Any alleged violations were subsequently cured by the open discussions during the Board meetings on May 19, 2008 and June 16, 2008. *See* May 19, 2008 and June 16, 2008 Board minutes. At the June 16, 2008 Board meeting the District voted to purchase the document management system. *See* June 16, 2008 Board minutes.

ii. Addenda 37(rrrr)(xi) and 37(rrrr)(xii)- Discussion of Recreational Roundtable.

The Plaintiffs allege that members of the Board violated the Sunshine Law by discussing the recreational roundtable outside of an open and noticed public meeting. Any alleged violations were subsequently cured by the open and noticed public recreational roundtable on January 13, 2009. *See* January 13, 2009 Recreational Roundtable minutes.

iii. 37(eee) and addenda 37(tttt)- Discussion of Budget Questionnaire and Budget.

These allegations are similar to allegations of 37(eee) and addenda 44(ii) addressed above. The Plaintiffs allege that Board members violated the Sunshine Law by discussing the budget questionnaire and budget outside of an open and noticed public meeting. Any alleged violations were subsequently cured by the open and noticed public meetings on

December 8, 2008; December 15, 2008; February 23, 2009; March 9, 2009; and March 16, 2009. *See* December 8, 2008; December 15, 2008; February 23, 2009; March 9, 2009; and March 16, 2009 Board minutes. The budget questionnaire was approved at the December 15, 2008 Board meeting and the budget was approved at the March 16, 2009 Board meeting. *See* December 15, 2008 and March 16, 2009 Board minutes.

iv. 37(nn)- Decision to Allow Opper to Participate via Telephone.

The Plaintiffs allege that Board members decided to declare an emergency and allow Ms. Opper to participate in the May 28, 2009 Board meeting via telephone outside of an open and noticed public meeting. Any alleged Sunshine violation was subsequently cured at the May 28, 2008 Board meeting. *See* May 28, 2008 Board minutes.

v. 37(III)- Discussion of Litigation Expenses.

The Plaintiffs allege that the District violated the Sunshine when Board members discussed litigation expenses outside of an open and noticed public meeting. Any alleged violation was subsequently cured at an open and noticed public meeting where litigation expenses were discussed and the Board voted to pay the District's legal bills. *See* December 21, 2009 Board minutes.

vi. 37(qqqq)- Determined the Content of Minutes.

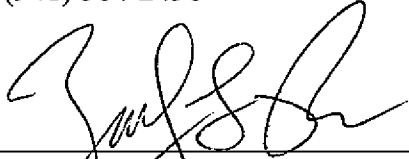
The Plaintiffs allege that the District violated the Sunshine when the contents of the October 16, 2006 Board minutes were changed outside of an open and noticed public meeting. Any alleged violation was

subsequently cured when the Board reviewed and approved the minutes in the November 6, 2006 Board meeting. *See* November 6, 2006 Board minutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail and Hand Delivery to Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1001 Third Avenue West, Suite 670, Bradenton, Florida 34205, and by U.S. Mail to Daniel E. Scott, Esquire, Daniel E. Scott, P.A., 2033 Main Street, Suite 408, Sarasota, FL 34237, Robert E. Turffs, P.A. 1444 First Street, Suite B, Sarasota, Florida 34236, James D. Dye, Esquire, Dye Deitrich, Petruff & St. Paul, P.L., 1111 3rd Avenue W., Bradenton, FL 34205-7834, and Hunter W. Carroll, Esquire, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, on this 12th day of February, 2010.

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By: 

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