

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 :
SHARON DENSON, an individual, :
:
Plaintiffs, :
:
vs. :
DEPOSITION OF
:
JANET JONES
:
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 19, 2009
Commencing at 9:14 A.M.

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

1 **Q** **Okay. And did you actually have to testify?**

2 A No. When the Judge asked me why I was there,
3 I told him that I was the Chairman of nine volunteer
4 Trustees and that I had no personal knowledge on either
5 side that I could testify to.

6 **Q** **Uh-huh.**

7 A I wasn't involved in that; that I directed
8 complaints that come in to the proper Trustee to
9 handle, and the Judge dismissed me.

10 **Q** **Okay. So with regard to Deed Restriction**
11 **complaints, were you responsible for dealing with those**
12 **or was there another Trustee?**

13 A There were other Trustees responsible for
14 that.

15 **Q** **Which --**

16 A Public Relations, one.

17 **Q** **Which Trustee would that be at that time in**
18 **2007, 2008 when you were -- when you were Chair?**

19 A Huh. Let's see, that was on the north side.
20 I believe it was Joe Bigley, but I'm -- I'm
21 not sure.

22 **Q** **Okay. Did you ever utilize the Administrative**
23 **Committee or otherwise referred to as an Executive**
24 **Committee to assist you in the day-to-day operations of**
25 **the District?**

1 A No.

2 Q Do you know what I mean by the,
3 "Administrative Committee?"

4 A Uh-huh.

5 Q I'm sorry?

6 A Yes, the -- you mean the Chairman, First Vice
7 and Second Vice?

8 Q And that's a committee that's identified in
9 your Bylaws?

10 A Yes.

11 Q And you've heard that referred to as the
12 Administrative Committee?

13 A (Nods head up and down.)

14 Q "Yes?"

15 A Executive or Administrative.

16 Q That's used -- those terms are used
17 interchangeably?

18 Those terms are used interchangeably?

19 A I believe so.

20 Q Okay. So if I say Executive Committee or
21 Administrative Committee, to you it means the same
22 thing?

23 A Uh-huh.

24 Q Pardon?

25 A Uh-huh, yes.

1 Q Okay. And if I see something in writing that
2 says Administrative or Executive Committee, to you it
3 means the same thing?

4 A Yes.

5 Q Okay. Did you serve as the Chairman of the
6 Administrative Committee while you were Chairman of the
7 Board of Trustees?

8 A Well, we never had any Executive or
9 Administrative Committee meetings.

10 Q When you say you, "never," you mean you never
11 while you were Chair?

12 A While I was Chair, no.

13 Q So you never attended an Administrative or
14 Executive Committee?

15 A No.

16 Q And I'm sorry, an Administrative or Executive
17 Committee meeting, you never attended one?

18 A No.

19 Q Okay. Do you know that such meetings
20 occurred?

21 A Yes.

22 Q Okay. To your knowledge, when did those
23 meetings occur?

24 A Well, I can't remember all of them because
25 there was none during my tenure as Chairman, except in

1 -- prior to that, in 2006, I was up north for six weeks
2 and they had an Executive Committee meeting on
3 September 6th of 2006.

4 Q Okay.

5 A I didn't return home from up north until the
6 twelfth; I did not attend that meeting.

7 Q How did you know it occurred?

8 A I saw records in the office and -- and mail.

9 Q Okay. So --

10 A Interoffice mail.

11 Q Okay. How often would the Executive Committee
12 meet in prior years?

13 A How long would they --

14 Q How often?

15 A I have -- I don't remember.

16 Q Where would they meet?

17 A Probably in the office.

18 Q When you say, "probably," you don't know for
19 certain?

20 A I don't -- I don't know for sure.

21 Q How many Executive Committee meetings or
22 Administrative Committee meetings have you attended?

23 A None to my knowledge.

24 Q Either as Chairman or as --

25 A No.

1 Q -- just a Trustee?

2 A No.

3 Q Okay. So to your knowledge, you've never
4 attended an Administrative or --

5 A No.

6 Q -- Executive Committee meeting?

7 A No.

8 Q Okay. But you know that they occurred
9 prior --

10 A Yes.

11 Q -- or without you?

12 A (Nods head up and down.)

13 Q And they occurred while you were on the Board?

14 MR. CARROLL: Object to form.

15 MR. SHULTS: I'll object to form as well.

16 MR. CARROLL: Which Board are you referring
17 to?

18 BY MR. HENNESSY:

19 Q Okay. While you were on the Board of
20 Trustees, you are aware that Executive Committee
21 meetings occurred?

22 MR. SHULTS: I'll object to form.

23 MR. CARROLL: Same.

24 Go ahead and answer it if you can.

25 THE DEPONENT: Huh?

1 MR. CARROLL: Go ahead and answer the
2 question.

3 THE DEPONENT: Well, I understand there were
4 Executive Committee meetings, yes.

5 BY MR. HENNESSY:

6 Q Okay. How is it that you know that those
7 Executive Committee meetings occurred?

8 MR. SHULTS: Object to form.

9 THE DEPONENT: From Minutes.

10 BY MR. HENNESSY:

11 Q Okay. So you never talked to another Trustee
12 about it?

13 A Huh-uh.

14 Q I'm sorry?

15 A No.

16 Q So no other Trustee ever told you, hey, we had
17 an Executive Committee meeting and this is what we
18 talked about?

19 A There were Minutes written up.

20 Q Okay. So that's the only way that you know
21 that an Executive Committee meeting was held --

22 A Yes.

23 Q -- was because you've seen some Minutes?

24 A (Nods head up and down.) Yes.

25 Q You're absolutely certain about that?

1 A Yes.

2 Q Okay. You were talking about an
3 **Administrative Committee that occurred while you were**
4 **out of town and that you received something in the mail**
5 **about it. Tell me about that. What -- what happened**
6 **at that meeting?**

7 MR. CARROLL: Form.

8 MR. SHULTS: Object to form.

9 MR. CARROLL: Answer it if you can.

10 THE DEPONENT: There was an interoffice memo
11 that came out that said due to the fact that Janet
12 Jones was out of town, they asked Pam Cole to sit
13 in in my place.

14 BY MR. HENNESSY:

15 Q **Sit in on an Executive Committee meeting?**

16 A Uh-huh.

17 Q **I'm sorry?**

18 A Yes.

19 Q **Okay. Do you know who called that meeting?**

20 A Do what?

21 Q **Do you know who called that meeting?**

22 A That would have been Mary Lou McNulty.

23 Q **What was her position with the Board at that**
24 **time?**

25 A She was Chairman.

1 A Six -- six -- six weeks.

2 **Q So you'd just gone on vacation?**

3 A I was up visiting my family in Toledo.

4 **Q Okay. Are you aware of the Executive**
5 **Committee or the Administrative Committee having a role**
6 **in the budget making process?**

7 A No.

8 **Q So to your knowledge, did the Administrative**
9 **Committee ever review preliminary budgets and make**
10 **recommendations to the Board of Trustees about such**
11 **preliminary budgets?**

12 A Now say that again.

13 **Q To your knowledge, did the Executive Committee**
14 **review preliminary budgets for the District and make**
15 **recommendations to the Board of Trustees regarding**
16 **those preliminary budgets?**

17 A No.

18 MR. CARROLL: Form.

19 You're fine.

20 MR. HENNESSY: Yeah, it's form of the
21 question; not the answer, I'm sure.

22 BY MR. HENNESSY:

23 **Q Do you know how the budgets for the Trailer**
24 **Estates District are developed?**

25 A Each Trustee is asked to submit what they need

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 Q Okay. You were involved in the hiring of
2 Kirk-Pinkerton as District Counsel?

3 A No.

4 Q Who hired Kirk-Pinkerton as District Counsel?

5 A The Chairman.

6 Q Okay. Who was the Chairman?

7 A Mary Lou Smith -- or, Mary Lou McNulty.

8 Q Okay. I'm surprised that mistake hasn't been
9 made previously.

10 A Too many Mary Lous.

11 Q The -- so she -- she did that -- that was a
12 responsibility given to her individually?

13 A It was a responsibility given to her, and then
14 it was brought to the Board's attention.

15 Q Okay. So it was brought to the Board's
16 attention that she had retained --

17 A Well, she --

18 Q -- Kirk-Pinkerton as District Counsel?

19 A She didn't retain it; we had a meeting --

20 Q Okay.

21 A -- to discuss having that.

22 Q Okay. Was this a -- what kind of meeting was
23 this?

24 A A Board meeting.

25 Q Okay. And by, "Board," you mean Board of

1 **Trustees of the --**

2 A Trustees.

3 **Q Okay.**

4 A Yes.

5 **Q All right. And were you in attendance at that**
6 **meeting?**

7 A Yes.

8 **Q Okay. Then was Kirk-Pinkerton's retention as**
9 **District Counsel discussed and voted on at that**
10 **meeting?**

11 A Yes, it was.

12 **Q Okay. Did you participate in that vote?**

13 A Yes.

14 **Q And did you vote to hire Kirk-Pinkerton?**

15 A Yes.

16 **Q All right. Do you know when that occurred?**

17 A 2006 -- I can't remember the exact date, but
18 it was around October 2006 or seven? I'd have to look
19 it up.

20 **Q Okay.**

21 A I don't know.

22 **Q Why do you think it was around October?**

23 A I don't -- it just sticks in my mind.

24 **Q Okay. Do you know why the District voted to**
25 **retain Kirk-Pinkerton as District Counsel?**

1 A Yes, because we were having difficulty with
2 accusations and innuendos and -- about the Sunshine
3 Laws and we felt we needed -- the Board felt that they
4 needed a legislative attorney for guidance.

5 Q Okay. So basically the District hired a
6 District attorney in response to claims made of
7 violations of the Sunshine by my clients?

8 A Yes.

9 Q Okay. And also I guess claims made about
10 violations of the Public Records Law?

11 A Yes.

12 Q Okay. And so did the District then seek
13 counsel from Kirk-Pinkerton concerning questions of the
14 Sunshine Law or questions of the Public Records Law?

15 A Say that again?

16 Q I said since -- well, I'll restate it.

17 Since hiring Kirk-Pinkerton, has it been one
18 of the responsibilities of the Kirk-Pinkerton firm to
19 advise the Board on questions concerning the Sunshine
20 Law or the Public Records Act?

21 A Yes.

22 Q Would you agree then that based on the hiring
23 of Kirk-Pinkerton and the advice that they've given
24 that the District has changed a number of its
25 operations?

1 MR. SHULTS: Object to form.

2 THE DEPONENT: Yes, they -- we've -- we've
3 followed his direction on having Sunshine seminars.

4 BY MR. HENNESSY:

5 Q Okay. When you say, "his direction," who do
6 you mean by, "his?"

7 Mr. Barnebey?

8 A Yes.

9 Q Okay. So what types of Sunshine -- or what
10 types of direction has the Board received from
11 Mr. Barnebey concerning the Sunshine Law?

12 MR. SHULTS: Let me interpose a caution at
13 this point.

14 MR. HENNESSY: Are you -- are you going to say
15 you want her to talk just about public meetings?

16 MR. SHULTS: Right.

17 MR. HENNESSY: Okay.

18 MR. CARROLL: He's going to ask you a new
19 question. I don't think he wants you to ask
20 whenever there's been a Shade meeting; just the
21 public meetings.

22 THE DEPONENT: (Nods head up and down.)

23 MR. CARROLL: Am I correct --

24 MR. HENNESSY: Yes, sir.

25 MR. CARROLL: -- Kevin? Okay.

1 **Q** Okay, all right. Do you know who has the keys
2 **to the offices?**

3 A We have a code.

4 **Q** Okay.

5 A Each Trustee is allowed a key and a code.
6 Some Trustees don't want it.

7 **Q** Okay.

8 A They come in during the daytime, they don't
9 want to come in at night and mess with the alarm
10 system.

11 **Q** So everybody in the District doesn't have a
12 **key?**

13 A No.

14 **Q** Is that a decision that the Board's made, or
15 **is that a decision that an individual Trustee has made?**

16 A Well, it's a decision that the Board's made.

17 **Q** Okay. What about deciding when the District
18 **Office will be open, is that a decision that the**
19 **Board's made or an individual Trustee?**

20 A Decision of the Board.

21 **Q** Okay. What about the hiring of the attorney,
22 **was that a decision of an individual Trustee or the**
23 **Board?**

24 A That was a decision of the Board.

25 **Q** What about questions?

1 A The what?

2 Q Questions that go to the attorneys, if you
3 have a -- if someone -- if a Trustee has a question for
4 the attorney, is that a decision that an individual
5 Trustee can make of going to the Board attorney, or is
6 that a decision of the Board?

7 MR. CARROLL: I'm going to object to form.
8 Are you going to give a time frame? Are you asking
9 her when she was Chair?

10 MR. HENNESSY: I'm sorry.

11 MR. CARROLL: I mean --

12 BY MR. HENNESSY:

13 Q These questions are going either at the time
14 you were Chair or since that time.

15 So basically actually for this question, this
16 question would be since Kirk-Pinkerton has been hired
17 as Board, okay, questions are asked of the attorney;
18 correct?

19 A Uh-huh.

20 Q "Yes?"

21 A Yes.

22 Q Okay. Is there any policy concerning who can
23 ask the attorney questions?

24 A There was a policy from Mary Lou Smith --
25 Mary Lou McNulty which I carried over; we were trying

1 to keep down expenses, and we asked Trustees if they
2 had any questions to turn them in to the office so we
3 could check to see if those questions had been asked
4 rather than get a repeat and cost extra money.

5 Q Okay. Was that decision on access to the
6 attorney a decision of the Board or a decision of an
7 individual Trustee?

8 A A decision of the Board.

9 Q Okay, all right. And then it would have had
10 to have occurred at a public Board meeting?

11 A Yes.

12 MR. HENNESSY: I apologize.

13 (There was a brief interruption.)

14 MR. HENNESSY: All right. Back on the record.

15 BY MR. HENNESSY:

16 Q The District has elections on an annual basis
17 for Trustees; correct?

18 A Yes.

19 Q And you're familiar that there have been
20 Candidate Nights or --

21 A Uh-huh.

22 Q Where candidates for the Board are interviewed
23 in a public setting?

24 A Uh-huh.

25 Q "Yes?"

1 Q Okay, good. So those e-mails would reflect
2 the matters that you had conversations with Mr. Dent
3 about?

4 A Uh-huh.

5 Q "Yes?"

6 A Yes.

7 Q Okay. I'd like to show you what's been marked
8 Exhibit One (handing document) to the deposition. It's
9 not dated and it says, Lawyer Question -- I'm assuming
10 that's, "lawyer," it's L-A-W-E-R. This is a document
11 you created?

12 A I've never seen this before. Never seen it
13 before.

14 Q Okay. So you don't believe you typed up these
15 questions?

16 A No, I -- no, I did not.

17 Q Okay. Do you have any idea who may have
18 prepared it then?

19 A I have no idea.

20 Q When you were interviewing Mr. Barnebey for
21 the position of District attorney, do you recall one of
22 the Trustees asking any of these questions?

23 A I don't remember, no.

24 Q Do you recall any of the Trustees ever asking
25 Mr. Barnebey any of these questions? Take a moment and

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?