

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 VANDERMOLEN, an individual,  
JOSEPH SALERNO, an individual, and  
MARY LOU McNULTY, an individual,

Defendants.

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**MOTION FOR THE AWARD OF ATTORNEY'S FEES AND COSTS**  
**PURSUANT TO F.S. 57.105(1) AND (4)**

COMES NOW, Trailer Estates Park and Recreation District (hereinafter referred to as the "District"), and hereby files the above-referenced Motion and as grounds thereof states:

1. In the Third Amended Complaint dated September 8, 2009 and the Addenda thereto dated October 19, 2009, the Plaintiffs made various allegations and claims which are not supported by the material facts necessary to establish such claims, including, the allegations set forth below:

37(q). During November 2005 through 2009, Board members attended ARC meetings wherein they discussed the denial of permits and these meetings were not advertised as Board meetings.

37(s). In October of 2006, the Board had meetings wherein they interviewed and hired legal counsel which was not properly noticed.

37(t). In November of 2007, Martha Brauer and Jones, both members of the

Policy and Procedure Committee, discussed policy and procedure committee matters outside of a public meeting.

37(w). In January 22, 2007, the Board had a workshop meeting regarding the Sunshine Law and failed to take appropriate minutes.

37(aa). In June 4, 2007, Vandermolen and other Board members discussed outside the Sunshine, the McNiel mediated settlement agreement.

37(rr). In or around October 12, 2006, Wayne Hamblen, a Board member, violated the Sunshine executed a Manatee County Easement Encroachment agreement without Board authorization granted at a public meeting; alternatively, the Board or its executive Committee met outside of the Sunshine and granted Wayne Hamblen authorization to execute the Manatee County Easement Encroachment Agreement.

37(eee). In December, 2008, Board members and Board members-elect, including Jones, Salerno, and Martha Brauer ("Brauer"), held meetings outside the Sunshine where they drafted, revised, and developed a Budget Questionnaire to assist with the upcoming Trailer Estates Budget.

37(bbbb). On December 5, 2008, Jones and Trustee-elect Brauer met and discussed PP31, PP40, PP13 and Swimming Rules outside of a properly noticed board meeting.

37(oooo). From November 2005 to the present, the Board through its individual Board members, including Vandermolen, Martha Brauer, Gail Opper, McNulty, and Peg Durham, have repeatedly acted outside of the Sunshine in

determining the content of information published on Trailer Estates' media sources, including its website, television station, and newspaper.

37(pppp). From November 2005 to the present, the Video Computer Club, acting as an arm of the Board, has repeatedly met outside of the Sunshine.

44. In violation of the Sunshine Law, Board members have also used residents to act as liaisons for communications between Board members to circulate information and thoughts relating to District business, such as the disaster plans, budget, Public Records/Privacy Act, and Policy and Procedures, including:

- i. In or around May 8, 2007, TJ Miller, acting as a liaison, conveyed information between Board members Jones and Peg Durham relating to the appointment of McNulty as second vice chair.
- ii. In November and December 2008, Brauer, acting as a liaison, conveyed information between Board members Jones and Salerno relating to the Budget Questionnaire.
- iii. In April 2008, Brauer, acting as a liaison, conveyed information between Board members McNulty and Vandermolen related to the Disaster Plan.
- iv. In November 2007, Brauer, acting as a liaison, conveyed information between Board members Jones and Vandermolen related to the public records policy.

61. From 2005 to the present, Trailer Estates has repeatedly withheld public

records within its possession without claiming any exemption, limited access to public records thus discouraging records requests, failed to inform the requester whether or not the documents sought exists, improperly claimed information as private/privileged and/or unavailable to the public, and redacted non-exempt information from public records.

62(a). In October 2005 and August 2006, Smith requested a copy of a citation for purported violations of the Deed Restrictions that was issued to the property located at 6603 Arizona ("Citation") and McNulty stated that the Citation was unavailable and failed to produce the public record.

62(b). On August 27, 2006, Smith requested Trailer Estates produce the 2006 Budget Hearing Video, to date Trailer Estates has failed to produce the video.

62(c). On August 27, 2006, Smith requested Trailer Estates produce the June 19, 2006 Board meeting video, to date, Trailer Estates has failed to produce the video.

62(d). In April 2008, Denson and other members of the Trailer Estates' Future Planning Committee ("FPC") submitted public records requests for a copy of the Trailer Estates' database for use in the preparation of the Board of Trustees direct survey, Vandermolen denied this request, and Trailer Estates has never produced a complete copy of these public records.

62(e). In October 2008, Ken Meierjurgan requested a doctor's authorization relating to a resident's emotional support pet application, Trailer Estates refused to provide the document claim it was privileged, in violation of the Public Records

Law, and to date Trailer Estates has not provided Mr. Meierjorgen with the public record.

62(f). From December 12, 2008, counsel for the Plaintiffs requested the e-mails between the Trustees and Trustee-elects from January 1, 2006 to December 12, 2008 and Trailer Estates has not produced all of the emails responsive to this request.

62(g). In August 2009, counsel for the Plaintiffs requested documents related to the articles published in the Tribune, and Trailer Estates has not produced these public records.

62(h). In August 2009, counsel for the Plaintiffs requested Bill Secraw's letter to the Board received in March of 2006, and Trailer Estates has not produced this public record.

62(i). In August 2009, counsel for the Plaintiffs requested all minutes from the Trailer Estates Seasonal Recreation Committee, and Trailer Estates has not produced these records.

62(j). In August 2009, counsel for the Plaintiffs requested minutes of the October 23, 2006 Board meeting and Trailer Estates has not produced this public records.

62(k). In August 2009, counsel for the Plaintiffs requested all Trailer Estates Board meeting recordings from January 2005 through August 2009, Trailer Estates has not produced all of these public records.

64(d). In May 2009, more than 5 months after Denson submitted a public records request regarding the Board's policy on Trailer Estates keeping files on

individual residents, Trailer Estates' records custodian finally responded to the request.

66. Trailer Estates has repeatedly and inconsistently charged unreasonable fees associated with the Plaintiffs public records request.

67(a). Trailer Estates assessment to Smith in July and August 2006 of costs associated with the production of documents. The hourly fees assessed by Trailer Estates ranged from \$18.55 per hour to \$24.92 per hour.

67(b). Trailer Estates failed to claim that Smith's July and August 2006 public records request were of the nature or volume to require a special service charge, yet Trailer Estates subsequently imposed such a charge.

67(c). Trailer Estates' legal counsel's August 2007 charge of \$25.00 per hour in administrative costs to produce public records in excess of the actual hourly rate of the records custodian.

68. In March of 2008, Vandermolen issued a memo demanding the removal of public records from their customary location and ordering the redaction of parts of the records in violation of the Public Records Law.

69. Trailer Estates Board members and/or records custodians have destroyed public records and failed to comply with an adopted record retention policy. Specifically, the Records Compliance Statements that Trailer Estates files with the State reflect that no records have been destroyed, yet the above referenced records that have not been produced. Further Board members have testified that they routinely destroyed public records:

- i. Fred Hoch testified that he disposes of all of his public records while on ARC and as a Board member.
- ii. McNulty testified that she disposed of public records including emails as a Board member.
- iii. Vandermolen testified that he disposed of public records including emails as a Board member.
- iv. Salerno testified that he disposed of minutes of the Seasonal Recreation or Entertainment Committee.

80. Trailer Estates, Jones, Vandermolen, and Salerno, continue to violate the Sunshine law by continuing to hold meetings and discussions of Board business in private and make decisions, rules, and policies that affect residents outside of the Sunshine.

81. Trailer Estates and its Board members, Vandermolen and McNulty violated the Public Records Law by failing to produce the public records identified in paragraphs 62 and 65 for inspection and copying.

88. Trailer Estates, Vandermolen, and McNulty have repeatedly refused to produce public records for inspection.

92. For more than three years and in spite of legal counsel's advice, Jones, Vandermolen, Salerno, and McNulty, as well as other Trustees have refused to comply with the Sunshine laws.

93. For more than three years and in spite of legal counsel's advice, Trailer Estates and its Board members, Vandermolen, and McNulty, have failed to comply

with the Public Records Law.

2. In the Third Amended Complaint dated September 8, 2009 and the Addenda thereto dated October 19, 2009 filed by the Plaintiffs, the Plaintiffs make various allegations and claims set forth below, which are not and will not be supported by the application of then-existing law to the material facts:

37(g). Between September and December 2006, members of the Executive Committee met with Jones outside of the Sunshine to discuss the reasons for appointing Tom Featheringill to the Board.

37(h). From January 2006, to August 2007, the Executive Committee and its individual members met with Trustees outside the Sunshine to determine whether issues would be presented to the District's legal counsel. On or around May 14, 2007, Board Members, Bruce Smith and Jones met out of the Sunshine and discussed whether Mr. Smith was allowed to bring a legal question concerning the marina to the District's legal counsel. In January 2007, all the Board members discussed outside of a public meeting matters that were to come before Trailer Estates legal counsel. Between November 5, 2007 and December 12, 2007, all Board members were involved, outside of the Sunshine, in determining that a legal opinion should not be provided regarding Complaint 216.

37(i). From November 2005 through August 2007 Vandermolen and other member of the ARC acted as a committee of one outside the Sunshine, by approving permits.

37(j). In January or February 2007, Board members Tom Featheringill and

Wayne Hamblen met outside the Sunshine and discussed dredging the Trailer Estates marina.

37(k). In January or February 2008, Board members Tom Featheringill and Vandermolen met outside the Sunshine and discussed dredging the Trailer Estates marina.

37(r). In February 25, 2009, Board members Martha Brauer and Vandermolen discussed the auditor selection, outside of properly noticed board meeting.

37(u). In January 2007, all the Trustees discussed outside of a public meeting, matters to come before legal counsel.

37(y). In or around December 7, 2007, Board members Bruce Smith, Jones, and Vandermolen discussed and determined outside the Sunshine the application of OSHA to Trailer Estates.

37(aa). In June 4, 2007, Vandermolen and other Board members discussed outside the Sunshine, the McNiel mediated settlement agreement.

37(bb). In or about February 11, 2008, Salerno discussed outside of the Sunshine with Jones and Pam Cole, a Board member, District procedures regarding donations from clubs and funding to the clubs.

37(cc). Between January and May 14, 2007, Board members Bruce Smith and Jones discussed outside of the Sunshine, matters for legal counsel concerning boats.

37(dd). Between November 5, 2007, and December 12, 2007, all Board

members were involved, outside of the Sunshine, in determining that a legal opinion should not be provided regarding Complaint 216.

37(ff). In or about November 12, 2007, Board members Vandermolen and Bruce Smith met outside the Sunshine to discuss the combination of boats slips.

37 (kk). On or about May 27, 2008, Board members McNulty and Peg Durham met outside the Sunshine and discussed upgrading the sound system.

37(rr). In or around October 12, 2006, Wayne Hamblen, Board member, violated the Sunshine and executed a Manatee County Easement Encroachment Agreement without Board authorization granted at a public meeting; alternatively, the Board or its Executive Committee met outside of the Sunshine and granted Wayne Hamblen authorization to execute a Manatee County Easement Encroachment Agreement.

37(ss). On February 26, 2007, Board members Jones and Tom Featheringill met outside of the Sunshine and determined that Fla. Stat. § 849.01 does not affect Trailer Estates.

37(zz). At the end of 2007, Board members Vandermolen and Jones held meetings out of the Sunshine and determined that video of District meetings were not public records.

37(bbb). In or around May of 2008, Salerno communicated outside the Sunshine to the entire Board how he intended to vote on document management matters scheduled to come before the Board.

37(ccc). In March 2008, Board members met outside the Sunshine and

discussed their personal information being contained in public records and the redaction of such information, ultimately resulting in Vandermolen's order that Trustee's and Employee's cell phone information be redacted from public records.

37(ddd). In December of 2007, Board members McNulty, Peg Durham and Margo Cushman held meetings discussing and determining the permitted use of Trailer Estates property by its residents.

37(fff). In January and February of 2009, the Website Committee held meetings where the Website Committee, which included Brauer, developed, and determined the operation and content of the Trailer Estates' website on behalf of Trailer Estates and those meetings were not open to the public or properly noticed. Furthermore, during this time, the Website Committee utilized a process for altering the Trailer Estates' website in direct violation of the Board established policy regarding altering the website.

37(ggg). On January 7, 2009, Board members Brauer and Harry Fitzpatrick met outside the Sunshine to discuss Bingo and Trailer Estates' volunteer program.

37(hhh). On January 22, 2009, Board members Fred Hoch and Bob Durrin met outside the Sunshine and discussed Trailer Estates' website and the appointment of committees.

37(iii). On January 27, 2009, Board members Fred Hoch and Brauer met outside of the Sunshine and discussed the upcoming meeting agenda and bulletin boards.

37(jjj). On January 27, 2009, Board members Vandermolen and Salerno met

outside the Sunshine and discussed Trailer Estates' survey.

37(III). On or around February 23, 2009, Board members Gail Opper and Brauer met outside the Sunshine and discussed Trailer Estates' litigation expenses.

37(mmm). On or around February 27, 2008, Board members Salerno and Vandermolen met outside of the Sunshine and discussed Trailer Estates loans and interest rates.

37(qqq). In or around March of 2008, Vandermolen violated the Sunshine and instituted page 4 of the Trailer Estates Park and Recreation District Public Records Policy and Procedure ("Public Records Policy"); alternatively, the Board met outside the Sunshine and adopted page 4 the Public Records Policy.

37(rrr). In July 2008, the Board met outside the Sunshine and decided to deny the publication of articles authored by Denson in the Tribune, the newsletter/newspaper published by Trailer Estates.

37(uuu). In or around April 8 and 14, 2008, McNulty, Vandermolen, and Brauer met outside the sunshine to develop and edit the Disaster Preparedness Plan for Trustees.

37(vvv). In or around November 4, 2005, Jones and McNulty discussed the future planning survey outside of the Sunshine.

37(aaa). On or about April 3, 2006, the Marina Committee met outside the Sunshine and interviewed and ultimately recommended Bruce Smith for the position of dockmaster.

37(bbbb). On December 5, 2008, Jones and trustee-elect Brauer met and

discussed PP41, PP40, PP13, and Swimming Rules outside of a properly noticed board meeting.

37(dddd). Between March 28 to April 5, 2006, members of the Future Planning Committee discussed lot calculations outside of the sunshine.

37(ffff). On December 6, 2007, Board members Pam Cole and Bruce Smith met and discussed Trailer Estates' website and its budget/expenses outside of a properly noticed board meeting.

37(gggg). On March 6, 2008, Board members Bruce Smith and Joe Bigley met and discussed content of the Trailer Estates website outside of the properly noticed board meeting.

37(hhhh). On April 27, 2009, Board members Vandermolen and Brauer discussed Trailer Estates' website out of the Sunshine.

37(iiii). On February 17, 2009, Brauer, Cole, Jones, Hoch and Salerno discussed and voted on the Trailer Estates' website content outside of the Sunshine.

37(llll). During 2007 through 2009, Trailer Estates Seasonal Recreation Committee or Entertainment Committee has met outside the Sunshine. During 2007 through 2009, the Seasonal Recreation Committee or Entertainment Committee's members have included Ellie Miller and Joseph Salerno. The Seasonal Recreation or Entertainment Committee held its meetings in the Activity Building, Small Hall or at Salerno's home, where committee members discussed strategies for completing upcoming events.

37(mmmm). In April, 2008, Board members Vandermolen and Salerno, met

outside of the Sunshine and determined the timing and of distribution of the District's year-end financial report and the proposed budget to the District's residents.

37(nnnn). In April 2008, Board members Jones and Vandermolen met outside of the Sunshine and determined that free internet service should not be offered to the residents of Trailer Estates.

37(oooo). From November 2005 to the present, the Board through its individual Board members, including Vandermolen, Martha Brauer, Gail Opper, McNulty, and Peg Durham, have repeatedly acted outside of the Sunshine in determining the content of information published on Trailer Estates' media sources, including its website, television station, and newspaper.

37(pppp). From November 2005 to present, the Video Computer Club, acting as an arm of the Board, has repeatedly met outside of the Sunshine.

37(rrrr)(i). In January through March, 2009, Board members Brauer and Bob Durrin met out of the Sunshine and discussed placing Committees on the Board of Trustees meeting agenda.

37(rrrr)(iii). In April or May, 2009, Board members Brauer and Gail Opper met outside the Sunshine and discussed and determined who would be performing the Secretary of the Board's duties in Opper's absence.

37(rrrr)(iv). On January 2, 2009, Board members, Brauer and Harry Fitzpatrick, discussed in a telephone call outside of the Sunshine, Fitzpatrick's inability to execute his duties as the Continuing Recreation Trustee and his letter of resignation.

37(rrrr)(v). On January 9, 2009, Board members, Brauer and Harry Fitzpatrick, met outside the Sunshine and discussed Fitzpatrick's duties as the Continuing Recreation Trustee including Bingo and the delegation of his duties.

37(rrrr)(vi). In early 2009, Board members, Brauer and Bob Durrin met outside the Sunshine and discussed Fitzpatrick's resignation.

37(rrrr)(vii). In 2009, outside of the previously mentioned January 2, 2009 meeting, Board members Brauer and Fitzpatrick again met outside of the Sunshine and discussed Fitzpatrick's resignation.

37(rrrr)(viii). In or around May 20, 2009, Board members, Pam Cole and Brauer discussed in a telephone call outside of the Sunshine a special Workshop and Board of Trustees to consider the District television contract.

37(rrrr)(xi). In January, 2009, Board members, Brauer and Salerno met outside the Sunshine and discussed the recreational round table.

37(rrrr)(xii). In January 2009, Board members, Brauer and Gail Opper met outside the Sunshine and discussed the recreational round table.

37(rrrr)(xiv). In spring 2009, Board members, Brauer and Fred Hoch discussed in a telephone call outside of the Sunshine, Hoch's resignation from ARC.

37(rrrr)(xvi). In 2009, Board members, Brauer discussed with Pam Cole outside of the Sunshine, the content of the Trailer Estates Website.

37(rrrr)(xviii). In 2009, Board members, Brauer and Harry Fitzpatrick met outside of Sunshine and discussed lawn maintenance and Fitzpatrick's Trustee duties.

37(rrrr)(xix). Between July 29, 2009, and August 4, 2009, Board members,

Brauer and Fred Hoch met outside the Sunshine and discussed the Board's Workshop agenda.

37(tttt). On December 3, 2008, Bruce Smith, Peg Durham, Fred Hoch, and Bob Durrin, all Trustees or Trustees-Elect met outside of a properly noticed board meeting and discussed the upcoming Board workshop of December 8, 2008, regarding the Budget Questionnaire.

3. After conducting depositions and producing documents in this matter and after the Court's Order Granting in Part and Denying in Party Janet Jones' Motion for Partial Summary Judgment, it became apparent to the Plaintiffs and the Plaintiffs' counsel knew or should have known that the matters set forth above, when initially presented to the Court and during the discovery process thereafter, were not supported by the material facts necessary to establish the claims and/or would not be supported by the application of then existing laws to those material facts.

4. Based on the foregoing, the District seeks an award of reasonable attorney's fees to be paid to the District in equal amounts by the Plaintiffs and their counsel. It is clear that the Plaintiffs and their counsel knew or should have known that the claims described herein when initially presented to the Court, or during the course of discovery, were not supported by the material facts necessary to establish their claims and/or that the claims were not supported by the application of existing law to the material facts.

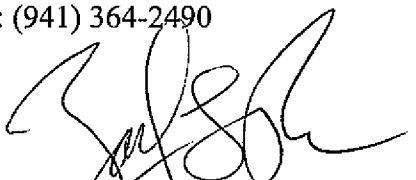
5. The District has served this Motion seeking sanctions pursuant to the provisions of F.S. 57.105(4) on Plaintiffs and provided Plaintiffs with 21 days after service of this Motion to withdraw or appropriately correct the claims and allegations described herein. The Plaintiffs failed to withdraw or appropriately correct the claims and allegations described herein.

WHEREFORE, the District respectfully requests this Honorable Court to enter an award of reasonable attorneys' fees to be paid in equal amounts by the Plaintiffs and their counsel.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail to Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1001 Third Avenue West, Suite 670, Bradenton, Florida 34205, 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 1<sup>st</sup> day of March, 2010.

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