

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. 2008-CA-11315

TRAILER ESTATES PARK AND RECREATION  
DISTRICT, an independant 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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DEFENDANT JOESPH SALERNO'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant, JOSEPH SALERNO, an individual, by and  
through his undersigned counsel, hereby moves this Court for  
Partial Summary Judgment, pursuant to Rule 1.540 Florida Rules  
of Civil Procedure and, as grounds for this Motion, states:

I. ALLEGATIONS 37(eee), 37(yyy - second sentence),

37(tttt) and 44(ii)

1. Plaintiffs have alleged that in November and December  
2008, Board members including Salerno held meeting outside of the  
Sunshine where they drafted, revised, and developed a budget  
questionnaire or other questionnaires.

2. On or about November 17, 2008, the Board of Trustees, within a duly noticed meeting, reviewed Sharon Denson's letter regarding the budget questionnaire. On December 8, 2008, the Trustees, at a duly noticed meeting, discussed the budget questionnaire. On December 15, 2008, the Board of Trustees, at a duly noticed meeting, approved the budget questionnaire 8-0. Even without the votes of Salerno and Jones, there were sufficient votes to accept the questionnaire. Again, the Board of Trustees discussed the budget within duly noticed meetings on February 23, 2009, March 9, 2009, and March 16, 2009.

3. As result of the foregoing, there was a cure of any alleged sunshine violation, if indeed such a violation occurred.

4. The court has already granted Defendant Jones' motion on Allegations 37(eee), 37(tttt) and Addenda 44ii.

## **II. ALLEGATION 37 (bb)**

5. Plaintiffs allege that on February 11, 2008, Mr. Salerno discussed with Ms. Jones and Ms. Cole District procedures regarding donations from clubs and funding to clubs. Summary Judgment on the basis of cure is appropriate because by independent and separate action of the Board of Trustees discussed club donations and the budget and too action on the budget on February 18, 2008, March 3, 2008, March 10, 2008, March 17, 2008.

6. As result of the foregoing, there was a cure of any alleged sunshine violation, if indeed such a violation occurred.

### III. ALLEGATION 37(vv)

7. This allegation states that resident Kay Hislop from 2007 to 2008 saw Trustees McNulty, Vander Molen, Jones, and Salerno as a regular practice discuss board business outside of the Sunshine. Ms. Hislop, however, in her deposition could not identify any specific topic that any two or more then trustees were discussing prior to a board meeting. (Hislop depo pp. 10:6-20; 18:14-21; 20:7-12). Moreover, Plaintiffs' in their interrogatory responses state, "The specific business to which this allegation refers is unknown." (Rog 11/25/2009, ¶10).

8. Ms. Hislop's testimony does not inform of any specific allegation, thus the Court should grant summary judgment.

### IV. ALLEGATION 37(mmmm)

9. The Plaintiffs allege that Board members Vander Molen and Salerno met outside of the sunshine and determined the timing and distribution of the year-end financial report and proposed budget to the residents.

10. 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).

11. Deciding when and if these documents could be mailed together does not require a board vote, or other formal action to be taken by the board, and therefore any alleged discussion and/or determination cannot violate the Sunshine Law.

WHEREFORE, Defendant, JOSEPH SALERNO, moves this court to grant partial summary judgment.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. first class mail to the addressees listed on the attached Service List this 9<sup>th</sup> day of April, 2010.

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