

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

CASE NO.: 08 CA 11315

DIVISION: B

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, JOHN VANDERMOLEN,
an individual, JOSEPH SALERNO,
an individual, and MARY LOU
MCNULTY, an individual,

Defendants.

DEPOSITION OF MARGARET CUSHMAN
Volume I of I
Pages 1 through 189

Thursday, December 17, 2009
8:29 a.m. to 12:49 p.m.
Kirk-Pinkerton
First Bank Building
1301 6th Avenue West
Bradenton, Florida 34206

Stenographically Reported By:
FRANCES CHIPPENDALE

U.S. Legal Support
(813) 876-4722

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q. Okay.

A. Uh-uh.

Q. Did you have those sorts of pre-meetings prior to one of the District Board's organizational meetings?

A. No. You mean that first meeting in January?

Q. Exactly.

A. No. No, we didn't.

Q. Okay. Why is that?

A. I have no idea, I'm not the Chairman, nor was I ever.

Q. So the Chairman would call these pre-meetings?

MR. CARROLL: Object to form.

MR. SCOTT: Join.

A. There were no pre-meetings.

Q. Okay. Well, the meetings before the Board meetings, were they called by the Chairman?

MR. CARROLL: Form.

MR. DYE: Form.

A. No, they weren't called. It was just a setup.

Q. What do you mean?

A. It was a procedure. We just met, that's all.

Q. All right. So everyone was aware that the meetings in the office --

A. They could be there. They could be there or they didn't have to be, either way.

1 Q. But everyone would know that they were
2 occurring?

3 A. Pretty much.

4 Q. I'm sorry?

5 A. Yes.

6 Q. Okay. And as I understand your testimony, this
7 was an opportunity for the Board members to get to know
8 each other?

9 A. Yes.

10 Q. So, in that regard, were people other than
11 Board members invited to attend?

12 A. They could come and go. People came in and
13 asked questions or gave messages, like that, uh-huh.

14 Q. Like who?

15 A. Mark Yawberg came in with a question for
16 someone one time, and T.J. would come in with a
17 telephone call for someone else, just incidental
18 occurrences.

19 Q. Okay. So the employees of the District were
20 aware that the Board members would be gathering in the
21 office before the meetings and have an opportunity
22 perhaps to talk to them or catch-up with them there?

23 A. Yes.

24 Q. Do you recall what it was that Mark Yawberg
25 came in and asked?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. No.

Q. Okay. But he's the maintenance man, right?

A. Yes.

Q. What about the -- you know, the public, the residents, would they come in and interrupt this gathering at all?

A. They could.

Q. But, to your knowledge, did they?

A. We don't get very many of our residents to come to a meeting, much less to something else.

Q. So you don't recall ever --

A. No.

Q. This is another one of those examples.

You don't recall ever -- you know, a citizen coming to the office ahead of the Board meetings?

A. Not that I can recall.

Q. Okay. Was the office -- did it -- was there a door to the office that you would meet in?

A. No.

Q. Is there a door there now?

A. Not to that area. There's one to the whole area, but not to that specific area, no.

Q. Okay. But the Board -- or the District has added a door preventing people from walking into the Trustees office area?

1 A. Yes.

2 Q. Which ones?

3 A. Janet Jones. John Vander Molen. At that point
4 in time, Mary Lou McNulty and Peg Durham. These are
5 some of the fun things in our park that we all go to.

6 Q. Well, have you ever sat down at the same table
7 with any of those Trustees during Coffee Break?

8 A. Yes.

9 Q. And at those times, did you ever talk to them?

10 A. Yes.

11 Q. And during those conversations, did you ever
12 discuss Board business?

13 A. No.

14 Q. Are you certain?

15 A. Absolutely.

16 Q. Okay. Why is that?

17 A. I've got so -- I have to -- I've got so much on
18 my mind that that's a separate entity. This is what I'm
19 doing right now and that's all I can handle, okay.

20 Q. Do you ever -- did you ever observe the other
21 Trustees at Coffee Break discussing Board business?

22 A. No.

23 Q. Do you recall on April 16, 2007 meeting with
24 with Mary Lou McNulty, Janet Jones and Pam Cole, and at
25 that time you discussed a disaster plan for the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

District?

MR. CARROLL: Form.

A. Yes.

Q. Okay. Tell me about that. How did that come about?

A. Someone in the park said something about having a get-together to do something about disaster. So we went to the meeting and minutes I think were taken by Mary Lou McNulty and that was the end of it for me. I went to that meeting and nothing came of it, as far as I was concerned.

Q. Do you recall who ran that meeting?

A. No.

Q. Do you recall who invited you to attend that meeting?

A. No one invited me, I just knew it was going to happen and I went.

Q. Was this a committee that had been created by the Board to --

A. No.

Q. -- put together --

A. I'm sorry.

Q. -- a disaster plan?

A. No.

Q. Okay. Was this a committee that had been

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

appointed by a Trustee to prepare a disaster plan?

A. No, not that I know of.

Q. At that time, though, you were a Trustee?

A. Yes.

Q. And so was Ms. Jones, Ms. McNulty and Ms. Cole?

A. Yes.

Q. All right. Did you-all agree at that time on any specifics of a disaster plan?

A. I don't recall.

Q. Well, do you recall what you discussed at that meeting?

A. I didn't discuss anything. I just listened.

Q. Do you recall what Pam Cole discussed at that meeting?

A. No.

Q. Do you recall what Mary Lou McNulty --

A. No.

Q. -- discussed at that meeting?

A. No.

Q. Do you recall what Peg Durham discussed at that meeting?

A. No.

Q. Do you recall what anyone discussed at that meeting?

A. No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q. Okay.

A. I went the one time and that was it.

Q. All right. You say that Mary Lou McNulty took minutes of the meeting?

A. I didn't say that.

Q. Oh, I'm sorry.

A. Oh, maybe I did. Yeah, Mary Lou said if something came up, she had minutes, that's right.

Q. Okay. So that's something she told you later on?

A. That what?

Q. That's something that she told you after the meeting?

A. Yes, that she had minutes.

Q. All right. Where did that conversation take place?

A. I don't remember.

Q. Did you ever ask to see her notes?

A. No.

Q. Have you seen those notes?

A. No.

Q. Did this disaster plan meeting ever get discussed by the Board?

A. No.

Q. So, to your knowledge, this disaster plan

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

meeting was not Board business?

A. Was not for what?

Q. Was not ultimately something that would be Board business?

A. No, it wasn't Board business.

Q. And then, to your knowledge, it was never discussed at the Board?

A. Not that one, no.

Q. Not that meeting?

A. No.

Q. Were -- did Ms. McNulty discuss the notes that she -- the minutes that she had taken at the Board Meeting?

A. No.

Q. All right. Do you recall in the spring of this year, 2009, meeting with Martha Brauer in the District offices and discussing Board business?

A. No. In the office, no, or anywhere.

Q. Have you ever met with Ms. Brauer in the District offices?

A. Not in the -- no. Uh-uh.

Q. Okay. Have you ever met with Martha Brauer in the District offices this year while you were both Trustees?

A. Yes.

1 **incorrect?**

2 A. It says here --

3 MR. ROSS: Form.

4 MR. SCOTT: Form.

5 MR. CARROLL: Form.

6 MR. DYE: Form.

7 MR. TURFFS: Form.

8 A. Wait a minute. All the trustees available, and
9 they picked it up. If I weren't available, I didn't
10 pick it up.

11 Q. Okay. But you have no memory here today of
12 either picking it up or somebody coming by and
13 delivering it?

14 A. No.

15 Q. And you don't have any recollection of Mr.
16 Vander Molen contacting you and discussing the
17 Settlement Agreement with you?

18 A. No.

19 Q. Are you saying that it didn't happen or just
20 that you don't recall?

21 A. I don't recall.

22 Q. Do you recall the Board deciding to hire the
23 Kirk-Pinkerton law firm?

24 A. Yes.

25 Q. Do you know why the Board decided to hire the

1 **Kirk-Pinkerton law firm?**

2 A. Because we had been accused of not observing
3 Sunshine Law and open whatever, whatever, and we felt --
4 or the Chairman felt that we needed to have somebody
5 that was onto that kind of procedures, and so they did.

6 **Q. Somebody familiar with Government law?**

7 A. Pardon me? Yes, familiar with Government law.

8 **Q. Okay. And the Chairman at that time was Janet**
9 **Jones?**

10 A. Yes.

11 **Q. Do you recall interviewing the Kirk-Pinkerton**
12 **law firm for the job?**

13 A. Do I recall what?

14 **Q. The Board --**

15 A. I wear a hearing aid, so you're going to have
16 to --

17 **Q. I apologize. Do you recall the Board**
18 **interviewing Mark Barnebey concerning the District**
19 **attorney job?**

20 A. No. I wasn't present.

21 **Q. You were not present for that?**

22 A. I wasn't.

23 **Q. You are aware that it happened, though?**

24 A. It probably did, I don't -- I'm not aware of
25 it, no.

1 question.

2 A. That was the first -- that was that very first
3 one and we decided to go to help and Mary Lou kept
4 minutes of everything.

5 Q. I don't want to cut you off.

6 A Okay.

7 Q. Did you finish your answer?

8 A. Yes.

9 Q. But the Red Cross was somehow involved with
10 that meeting?

11 MR. HENNESSY: Objection to the form.

12 A. I'm not -- I don't know that for sure. I just
13 know that there was a meeting.

14 Q. And if I understood you correctly, you sat in
15 the back and didn't discuss the issues with the other
16 Trustees, is that what I heard?

17 MR. HENNESSY: Objection to the form.

18 A. That's right. I didn't, no.

19 Q. Did you observe Ms. Jones talk with other
20 trustees at that disaster discussion?

21 A. No.

22 Q. Okay. Do you have any first-hand knowledge
23 that Ms. Jones, outside of a Board Meeting, Board of
24 Trustees Meeting, had communicated with any other
25 Trustee about Board business?

1 A. No.

2 Q. No further questions.

3 CROSS-EXAMINATION

4 BY MR. TURFFS:

5 Q. Ma'am, my name is Bob Turffs. I represent Joe
6 Salerno.

7 A. Yes.

8 Q. And at the very beginning when I came in, and I
9 apologize for getting here about 10 minutes late, I
10 heard some questions and some answers that sounded like
11 they might have pertained to seasonal recreation, but
12 it's my understanding -- and I think it got cleared
13 up --

14 A. It's clear. I think he changed that to
15 continuing recreation.

16 Q. But you're in charge of continuing recreation?

17 A. Yes.

18 Q. And Mr. Salerno is in charge of the seasonal?

19 A. Yes.

20 Q. And when continuing recreation is referenced,
21 is that a committee or is it just your responsibility?

22 A. It's my responsibility. All the work part of
23 the Board, other than the political part, is my job. I
24 get all the skullery stuff to do, okay. I don't really
25 mess around with a lot of these other things. I've got