

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.

2010 JUN 15 PM 2: 58
CLERK CIRCUIT COURT
MANATEE CO. FLORIDA

FILED FOR RECORD
R.B. SHORE

**ORDER GRANTING IN PART AND DENYING IN PART TRAILER ESTATES PARK
AND RECREATION DISTRICT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

BEFORE THE COURT is Trailer Estates Park and Recreation District's ("District") Motion for Partial Summary Judgment. The Court having conducted hearings on this motion on Friday, March 5, 2010 and Monday, March 22, 2010. The Court having read the motion and memoranda of law in support, having reviewed the documents filed in support and in opposition, having heard the argument in support and in opposition, and being otherwise fully advised in the premises, ORDERS:

1. 37(i)- ARC Members Acted as a Committee of One Approving Permits. As to allegation 37(i), the Court finds foreseeable action could be taken upon the decisions made regarding the permits; therefore, the Court DENIES summary judgment to the District.



2. 37(x)- Ms. Jones' Decision to Limit Public Comment to 3 Minutes. Allegation 37(x) was previously withdrawn by the Plaintiffs.

3. 37(aa)- McNeil Settlement Agreement. As to allegation 37(aa), the Court finds the memoranda prepared by Mr. Vander Molen on June 4, 2007 are unilateral memoranda and do not violate the Sunshine Law. The Court also finds Mr. Vander Molen's phone calls to other Trustees informing them that a copy of the McNeil Mediated Settlement Agreement was available for them to pick up did not violate the Sunshine Law. Therefore, the Court GRANTS summary judgment to the District.

4. 37(bbb)- Mr. Salerno's Memorandum Regarding Document Management. As to allegation 37(bbb), the Court finds Mr. Salerno's memorandum regarding the document management system is a position statement permissible under the Sunshine Law; therefore, the Court GRANTS summary judgment to the District.

5. 37(qqq)- Mr. Vander Molen's Institution of Page 4 of the Public Records Policy. The motion for summary judgment was withdrawn by the District regarding allegation 37(qqq).

6. 37(g)- Executive Committee Members met with Ms. Jones regarding appointment of Tom Featheringill.

As to allegation 37(g), the Court DENIES summary judgment to the District.

7. 37(bbbb)- Discussion Regarding PP 41, PP 40, PP 13 and Swimming Rules. As to allegation 37(bbbb), the Court GRANTS summary judgment to the District for the same reasons previously announced in the Order on Janet Jones' Motion for Partial Summary Judgment, to wit: that at the time notice of the Policy and Procedures Committee meeting was posted and publically announced within the park that there was no Sunshine Law violation and the intervening, subsequent election of committee member Martha Brauer as a Trustee-elect

three days prior to the committee meeting did not negate the reasonableness of the prior posted notice.

8. 37(rr)- Execution of Manatee County Easement Agreement by Mr. Hamblen. As to allegation 37(rr), the Court finds the summary judgment standard precludes the Court from ruling on the issue of laches; therefore, the Court DENIES summary judgment to the District.

9. 37(dd)- Determine Whether Legal Opinion Needed Regarding Complaint 216. As to allegation 37(dd), the Court finds that not all the facts regarding this allegation are known; therefore, the Court DENIES summary judgment to the District.

10. 37(y)- Determination Regarding Application of OSHA. As to allegation 37(y), the Court DENIES summary judgment to the District.

11. 37(ss)- Determination Regarding Application of FS 849.01. As to allegation 37(ss), the Court GRANTS summary judgment to the District based upon the same reasons previously announced in the Order on Janet Jones' Motion for Partial Summary Judgment to wit: that the memo referencing the gambling statute does not affect conduct, policy or procedure.

12. 37(mmmm)- Determination of timing and distribution of year-end financial report and proposed budget.

As to allegation 37(mmmm), the Courts finds that the discussion involved deciding how and why to act which is in the interest of the public; therefore, the Court DENIES summary judgment to the District.

13. Addenda 37(rrrr)(xx)- Determination to Compile Records in Accordance with Public Records Law. As to allegation 37(rrrr)(xx), the Court GRANTS summary judgment to the District. Counsel for the Plaintiffs made an oral motion to renew or rehear their Motion to

Compel production of documents which have been withheld due to privilege, which the Court DENIES.

14. 37(zz)- Determination that Video is not Public Record. As to allegation 37(zz), the Court DENIES summary judgment to the District.

15. 37(ee)- Discussion Regarding Vander Molen's Resignation. As to allegation 37(ee), the Court finds that the decision whether or not to withdraw Mr. Vander Molen's resignation is his alone; therefore, the Court GRANTS summary judgment to the District.

16. Addenda 37(rrrr)(iv)- Discussion Regarding Mr. Fitzpatrick's Duties and Resignation. As to allegation 37(rrrr)(iv), the Court GRANTS summary judgment to the District.

17. Addenda 37(rrrr)(v)- Discussion Regarding Bingo and Delegation of Duties. As to allegation 37(rrrr)(v), the Court GRANTS summary judgment to the District.

18. Addenda 37(rrrr)(vii)- Discussion Regarding Fitzpatrick's Resignation. As to allegation 37(rrrr)(vii), the Court GRANTS summary judgment to the District.

19. Addenda 37(rrrr)(xiv)- Discussion Regarding Mr. Hoch's Resignation from ARC. As to allegation 37(rrrr)(xiv), the court DENIES summary judgment to the District.

20. 37(qqqq)- Determined Content of Minutes. As to allegation 37(qqqq), the Court GRANTS summary judgment to the District.

21. 37(ll)- Discussion Regarding Handling Deed Restriction Violations. As to allegation 37(ll), the Court DENIES summary judgment to the District.

22. 37(ggg)- Discussion Regarding Bingo and Volunteer Program. As to allegation 37(ggg), the Court GRANTS summary judgment to the District.

23. Addenda 37(rrrr)(iii)- Discussion Regarding Fulfilling Secretary's Duties in Absence. As to allegation 37(rrrr)(iii), the Court DENIES summary judgment to the District.

24. Addenda 37(rrrr)(vi)- Discussion Regarding Fitzpatrick's Resignation. As to allegation 37(rrrr)(vi), the Court GRANTS summary judgment to the District.

25. Addenda 37(rrrr)(xviii)- Discussion Regarding Lawn Maintenance and Mr. Fitzpatrick's Trustee Duties. As to allegation 37(rrrr)(xviii), the Court finds discussions between Ms. Brauer and Mr. Fitzpatrick related to his fulfillment of his Trustee duties are administrative; therefore, the Court GRANTS summary judgment to the District.

26. Addenda 37(rrrr)(xi) and 37(rrrr)(xii)- Discussion of Recreational Roundtable. As to allegations 37(rrrr)(xi) and 37(rrrr)(xii), the Court finds that the discussion as to whether there should be a secretary taking minutes at the recreational roundtable is administrative; therefore, the Court GRANTS summary judgment to the District.

27. 37(iii)- Discussion Regarding Upcoming Meeting Agenda and Bulletin Boards. As to allegation 37(iii), the Court DENIES summary judgment to the District.

28. Addenda 37(rrrr)(i)- Discussion to Place Committees on Agenda. As to allegation 37(rrrr)(i), the Court GRANTS summary judgment to the District.

29. Addenda 37(rrrr)(xix)- Discussion of Board's Workshop Agenda. As to allegation 37(rrrr)(xix), the Court finds that the placement of a subject on an agenda is administrative; therefore, the Court GRANTS summary judgment to the District.

30. 37(fff)- Website Committee Determined Operation and Content of Website. As to allegation 37(ff), the Court DENIES summary judgment to the District.

31. 37(ffff)- Discussion of Website and Its Budget/Expense. As to allegation 37(ffff), the Court DENIES summary judgment to the District.

32. 37(gggg)- Discussion of Website's Content. As to allegation 37(gggg), the Court finds that Mr. Bigley's attendance at the Website Committee meeting was as a visitor so notice was not required; therefore, the Court GRANTS summary judgment to the District.

33. 37(hhhh)- Discussion of Website. As to allegation 37(hhhh), the Court GRANTS summary judgment to the District.

34. 37(iiii)- Discussion of Website Committee. As to allegation 37(iiii), the Court DENIES summary judgment to the District.

35. 37(oooo)- Content of Media Sources. As to allegation 37(oooo), the Court finds that the District has failed to meet the high standard of summary judgment; therefore, the Court DENIES summary judgment to the District.

36. Addenda 37(rrrr)(xvi)- Discussion of Website Content. As to allegation 37(rrrr)(xvi), the Court finds that the discussion requesting to gather information to give to the webmaster and the discussion that treasury reports exist do not come under the Sunshine Law; therefore, the Court GRANTS summary judgment to the District.

37. 37(ccc)- Discussion of Redacting Personal Information. As to allegation 37(ccc), the Court DENIES summary judgment to the District.

38. 37(rrr)- Deny Publication of Articles. As to allegation 37(rrr), the Court finds that the District has failed to meet the high standard of summary judgment; therefore, the Court DENIES summary judgment to the District.

39. Addenda 37(rrrr)(xiii)- Discussion of Residents' Complaint Concerning Ms. Opper. As to allegation 37(rrrr)(xiii), the Court GRANTS summary judgment to the District.

40. 37(s)- Hiring of Legal Counsel in October 2006. As to allegation 37(s), the Court finds that the records demonstrate that there was ample opportunity for protest in subsequent

meetings regarding the hiring of legal counsel in October 2006; therefore, the subsequent meetings were not perfunctory. The Court finds that any potential taint in the hiring process has been cured; therefore, the Court GRANTS summary judgment to the District.

41. 37(eee) and addenda 44(ii)- Budget Questionnaire. As to allegations 37(eee) and addenda 44(ii), the Court GRANTS summary judgment to the District on the basis of cure.

42. 37(gg) and 37(bbb)- Discussions Regarding Document Management. As to allegation 37(gg), the Court DENIES summary judgment to the District on the basis of cure. As to allegation 37(bbb), the Court previously granted summary judgment hereinabove; therefore, the Court need not rule on the issue of cure.

43. Addenda 37(rrrr)(xi) and 37(rrrr)(xii)- Discussion of Recreational Roundtable. As to allegations addenda 37(rrrr)(xi) and 37(rrrr)(xii), the Court previously granted summary judgment hereinabove; therefore, the Court need not rule on the issue of cure.

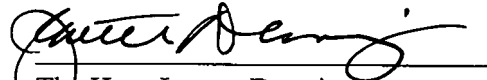
44. 37(eeee) and addenda 37(tttt)- Discussion of Budget Questionnaire and Budget. As to allegations 37(eeee) and addenda 37(tttt), the Court finds that if there was a violation, it was cured at subsequent meetings of the District's Board of Trustees which provided ample opportunity for discussion; therefore, the Court GRANTS summary judgment to the District on the basis of cure.

45. 37(nn)- Decision to Allow Ms. Opper to Participate via Telephone. As to allegation 37(nn), the Court finds that the written memorandum received May 28, 2009 and the discussion held during the District's Board of Trustees meeting on May 28, 2009 cured any alleged violation of the Sunshine Law; therefore, the Court GRANTS summary judgment to the District on the basis of cure.

46. 37(III)- Discussion of Litigation Expenses. As to allegation 37(III), the Court finds that any alleged violation was subsequently cured; therefore, the Court GRANTS summary judgment to the District on the basis of cure.

47. 37(qqqq)- Determined Content of Minutes. As to allegation 37(qqqq), the Court previously granted summary judgment hereinabove; therefore, the Court need not rule on the issue of cure.

DONE and ORDERED this 14 day of ^{June}~~May~~, 2010.


The Hon. Janette Dunnigan
Circuit Court Judge

cc: Thomas D. Shults, Esquire
Kevin S. Hennessy, Esquire
Robert E. Turffs, Esquire
Daniel E. Scott, Esquire
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