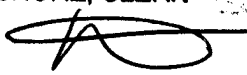



FILED IN OPEN COURT
THIS 12 DAY OF OCT 2010
R.B. SHORE, CLERK
BY  DC

Closing Argument

File
10-12-10


Sunshine Law:

1. Florida Statute § 286.011(1) and (2) Public Meeting and Records
2. Notice, public place, minutes taken and maintained.
3. A violation of the Sunshine occurs when any of the 3 requirements do not occur
4. Here we have examples of violations of all three:
 - Meetings of the Executive Committee were not noticed, held in public, nor adequate minutes taken and kept. They do not identify the participants, where the meeting took place, or other necessary details.
5. The fact that these meetings occurred under the belief that they were allowed by their By-Laws, or any other good intentions, does not avoid or eliminate the violation.
6. The landmark Florida Supreme Court case of Town of Palm Beach v. Gradison announced that:

Town of Palm beach involved a Planning Advisory Committee that provided recommendations to the Town Board, they were not open to the public, nor were minutes taken.
7. Another instructive case is Port Everglades v.
8. A third instructive case is Zorc v. City of Vero Beach
9. Similarly, the District's Referendum Committee which was tasked to recommend to the Board a process for going through the

referendum process, violated the Sunshine law by meetings unnoticed, private meetings, and no minutes were taken.

Pam Cole a Trustee and Chair of the Committee was Unaware of the Sunshine Law at that time – she was later informed of its existence by the Plaintiffs, clearly did not intend to violate the Sunshine law – but intent is not a burden or element the Plaintiffs’ must prove.

10. The ARC Committee which violated the Sunshine by its operation in two ways – by acting through individual members in issuing permits and by at times having meetings of at least 2 of its members, also violated the Sunshine. ARC members are fulfilling a task designated to it by the District, they are appointed by the District Board, as such they must meet and those meetings must comply with the Sunshine.
11. The 2nd District Court of Appeals case of Leach-Welles v. City of Bradenton is instructive on the violation of the Trailer Estates ARC Committee:
 - In finding that the lack of a meeting violated the Sunshine Law, the Court stated:
 - Quote 2: “Narrow question, do you have to hold a meeting”
 - I think that it is also helpful for the Court to know that in Leach-Welles, the 2nd District Court of Appeals found a violation of the Sunshine even though at the initial public

meeting considering the committee rankings no Sunshine law objection was raised:

- "From our review of the record"

12. Shown a violation of the Sunshine in the initial meeting of the Auditor Selection Committee

- The District has presented evidence and argument that it was just the initial meeting, an organizational meeting, but that does not eliminate that a violation has occurred.
- As the 2nd District Court of Appeals has stated in Times Publishing v. Williams:
- Similarly, the Leach-Welles Court found a sunshine violation in the first step of that selection process, even though numerous public meetings followed:
- The fact that the District subsequently complied with the Sunshine law, going forward after that meeting does not erase the occurrence of the violation. Further, the process was compounded by a second violation when Ms. Brauer and Mr. Vander Molen negotiated who would resign from the Committee.
- Further, violations were only averted by a chance conversation with Scott Rudacille, an attorney for the District, but the evidence reveals that these violations

occurred on February 25, 2009, three months after the filing of this Sunshine Law suit.

13. But it was not just the notice provided by the filing of our lawsuit in November of 2008, the District was on notice of the need to follow the Sunshine Law by Mary Lou Smith and Sharon Denson's appearances at Board of Trustee meetings and a letter dating back to September of 2006, when Mary Lou Smith learns in Michigan of the Executive Committee meeting and:
 - Read first paragraph of [Ex: 295] Letter from Mary Lou Smith to Mary Lou McNulty, dated September 11, 2006.
14. Clearly the District was not inclined to listen to the demands of Ms. Smith or Ms. Denson, but upon hiring their attorneys in October of 2006, you would expect that they would listen to their attorney's advice and not have meetings of Committees where two Trustees were present, either as a member, liaison, or a guest. The issue is that where matters are discussed that can reasonably be expected to come before the Board, than a Trustee needs to get up and leave the meeting.
15. Advice from Attorneys on numerous occasions starting in November of 2006
 - Included a Sunshine Law and Public Records Law Seminar in January of 2007, and again in May of 2008
 - Memorandums:

- August 24, 2007 (Plts Ex. 561) KP Memo re: ARC “Trustee on the ARC, as well as a Trustee liaison for that committee. Traditionally, the trustee liaison has not attended these meetings. Their presence in those roles is not a per se violation of the Sunshine Laws, but they may not discuss matters which may come before the Board of Trustees for action, outside of properly noticed meetings.”
- October 22, 2007 (Plts Ex. 577) KP memo on Trustee/Committee Issues “We have advised previously that the Board may want to avoid having 2 Trustees on the same committee, because there are inherent issues that arise with such situations. For example, when two Trustees are present discussing matters which may come before the Board, the committee meeting must be noticed as a Board meeting. Otherwise, a Sunshine violation may occur.... So, while it may make sense to have one Trustee present to act as a liaison with the committee, if multiple Trustees are present, it may begin to defeat the purpose of having a committee... it may make more sense for the Board to just hold workshops on that particular issue.

16. The Plaintiffs have put on evidence of the pattern and practice of Trustees jointly discussing matters that would foreseeably come before the Board for a decision, conversations involving multiple

Board members begin with Ms. Smith and Ms. Denson's first meeting with a Trustee through to the filing of the third amended complaint including:

- a. The 2006 meeting with Pam Cole and Joe Bigley
- b. The October 2006 meeting between Mike Neal and Wayne Hamblen discussing the District's enforcement of Deed Restrictions with Ms. Denson in the District office
- c. The February 2008 discussion between Jones, Salerno, and Cole concerning donations and funding to clubs
- d. Discussions in 2007 between Trustees concerning what matters could be presented to legal counsel and the specific discussions concerning the legal question of the Board's right to enter onto a resident's property
- e. Discussions at meetings directly before the Board meetings, in 2005, 2006, and 2007, one of which Pam Cole specifically identified as including a conversation about violations involving a Trustee, Joe Fulmer and whether the Board would require his resignation, and the minutes of March 21, 2005, identifying a pre-meeting for purpose of discussing marina and storage lot fees. While, District employee tried to explain these as round table discussions, Mary Lou McNulty admitted to these meetings were to discuss embarrassing matters the Trustees didn't want to discuss in public.

- f. Kay Hislop testified that while working in the office during 2007 and 2008, she routinely heard Trustees discussing matters that would come before the Board being discussed by Trustees including McNulty, Jones, Salerno, and Vander Molen.
- g. Ken Meierjorgen, a Trailer Estates resident, testified that he witnessed Mary Lou McNulty and Peg Durham discussing Board business routinely at dinners in 2007 and 2008.
- h. The conversation Mr. Meierjorgen overheard between Jones and Vander Molen concerning the vote on bids for improvement to the District Marina
- i. The March 2007 conversation between Margo Cushman and Joe Bigley preceding Budget vote concerning the need for Mr. Bigley's vote.
- j. The December 2007, meetings with Mary Lou McNulty, Peg Durham, Margo Cushman and Janet Jones with Bev Lew concerning her entitlement to use the District Kitchen facilities for a holiday dinner.
- k. The discussion observed by Jennifer Cowan between Fred Hoch and Bob Durrin in the District offices during her January 22, 2009, inspection of records.

17. Other matters that should be done in a public meeting – most appropriately a Committee:

- Decisions on content of Channel 95
- Decisions on content of District newsletter, the Tribune

These matters where the District does not have a policy and are clearly are made ad hoc by Trustees – when in the absence of a policy or a Committee meeting in public, need to be made by the District Board in a public meeting.

18. The argument posed by the District is that these are not significant matters or are not the type of government body needs to make – may not be the type of decision most Manatee County Commissioners make, but they are exactly the type of decisions this Recreational District does make – a review of the District minutes, Charter, By-Laws, and Policy and Procedures reveal this.

- Section 13 of the Charter – Recreation Facilities Article IV of the By-Laws establishing Recreation Trustees; Article IX of the By-Laws requiring rules for use of Recreation Facilities
- Rules governing use of Facilities – Section VI – A Stating that all requests must be approved by the Board of Trustees
- It is an important note that the Sunshine Law does not provide that cases be treated differently based upon their level of public importance.
- Monroe County v. Pigeon Key Historical Park, Inc.

19. What may foreseeably come before the board – need only look at the Policy and Procedure Manual of the District.

A. [Ex: 237] Includes the Charter Section 13, which creates them as a Recreation District

- Section 15: Powers of Trustees – As a whole.
- Quote (G) – Promulgates rules for use of facilities.
- Insert (H) – Provides central TV services

B. Includes By-Laws, which discuss Trustee areas of responsibility to include in Article IV – Continuing Recreation Activities and Seasonal Recreation Activities.

- Also States in Section V, the belief that the Administrative Committee can operate outside of the Sunshine; Changed by Temporary Injunction in this Case. But also identifies that Trustees can appoint Committees to assist them in their duties – does not say how they appoint, but clearly if they are assigning tasks to multiple people it is a Committee – the fact these people are volunteers does not prevent them from being Committee members – as we have been told the Trustees consider themselves volunteers.

- Article IX – Adopts Rules Governing Use of Facilities

C. It contains ^{RULES} including:

~~D.~~ Section V – Requests for facilities

→ ~~E~~. Kitchen policy – Trustee approved private events

F. It contains Policy and Procedures Including:

- PP 16: Proceedings for violations for yards and lots – identified 4 Trustees potentially involved with dealing with lot/yard violations
- PP 40: Public Relations Trustee – Reports problems to the Board of Trustees for Review and action; Oversee maintenance of rulings and actions taken by Board re: violations
- PP 40: Seasonal Recreation Duties:
- PP 47: A website policy inviting submissions to the District office but no statement how District will decide what goes on the web.

20. District has argued that there is not sufficient detail of violations for this Court to find violations and cites to:

- *BMZ Corp. v City of Oakland Park* – That is a case on cure – an injunction that was already in place was lifted because the evidence showed the private discussions were followed by 3 separate public hearings and a referendum vote of the electorate. – Something we don't have here.

21. District also argues their discussions among Trustees are simply administrative, they cite no case law to allow this method of avoiding the Sunshine, but cite to an Attorney General Opinion:

- AGO 93-41: Important to note that the Attorney General was considering a city that had a Charter providing for a Mayor/Commission Manager government – Something that does not exist at Trailer Estates and the Attorney General points out that.
 - Sunshine law reaches all stages
 - Strongly advises against holding such discussions or meetings
22. Similarly, the District Counsel has advised against such discussions or meetings yet they have continued.

Public Records Law:

1. Florida Statute § 119.01(1) Policy of State
 - This includes Trailer Estates a Special Taxing District
2. Florida Statute § 119.01(2)(a)(b)(c) Automation
 - District maintains a resident database – capable of common format in Excel – No excuse that the Records Custodian not properly trained
3. Florida Statute § 119.07(1)(a) Every person who has custody of public records shall permit inspection and copy

4. Florida Statute 119.07(1)(c) Records custodian must acknowledge promptly and respond in good faith – includes making reasonable efforts to determine whether such a record exists.
 - Prompt is not being directed by the Chair to “take your time with the Plaintiffs’ requests”
 - Good faith is not avoiding looking in Trustees desks
5. Florida Statute § 119.07(e)(f) State in writing reasons to withhold documents – Never done except Shade Transcript
6. Florida Statute § 119.021 Custodial Requirements
 - (a) Records kept in buildings where they are used
 - 2(a) Protocols for disposal
 - 4(b) Records custodian shall demand public records from person having illegal possession of them.
 - Public Records Custodian is empowered to demand from individuals that public records be produced to her – such as records held by Trustee and Committee members.

— ENTERED EXHIBITS 857, 864 & 873 DECLARING THAT
Public Records NO PUBLIC RECORDS HAD BEEN DESTROYED FROM
 FY 2005 - 2008

1) **Never Received**

a. Citation (62a)

- i. Requested in March 2005 and subsequently thereafter for years.
- ii. No exemption claimed
- iii. Response in August 2006 – Unavailable – not does not

exist.

- iv. In March 2009, following a hearing on Plaintiff's Motion for Temporary Injunction and more than three years after Smith's initial request, Trailer Estates informed Smith that it no longer had the Citation in its possession, despite its filing with the Department of State that reflects that Trailer Estates has not disposed of any records from 2005 through 2008. **(64b)**

b. Videos

- i. August 2006 – request for video of 2006 Budget Hearing Video **62(b)**
- ii. **Advised by counsel in December 5, 2007 (Plts. Ex. 587) KP Memp on Public Record Policy Issues – “Currently the VCC makes a HCS recording of our board meetings and workshops. They copy this to a DVD and make it available to the public through TE Office.... If the Board does videotape the meeting, then they are a public record.... If the District maintains copies of the meetings... then the public is entitled to listen to or obtain a copy...”**
- iii. No exemption claimed
- iv. On June 4, 2009, two months after a hearing on Plaintiff's Motion for Temporary Injunction and almost

three years after Smith's initial request, Trailer Estates produced a recording of the 2006 Budget Hearing, but not the video that Smith requested. **(64f)**

- c. Documents related to the articles published in the Tribune **(62g)** - No exemption claimed
- d. Bill Secraw's letter to the Board received in March of 2006 **62(h)** - No exemption claimed
- e. All minutes from the Trailer Estates Seasonal Recreation Committee **62(i)** No exemption claimed– **Salerno admits has some and destroyed some.**
- f. All Trailer Estates Board meeting recordings from January 2005 through August 2009 **62(k)** - No exemption claimed

2) Delay

- a. Opinion Letter (64h)
 - i. Requested in May 2006 for Atty Opinion
 - ii. May 2006 District Receives Opinion from Atty but does not share it with Smith bcz not supports Smith's position
 - iii. No exemption claimed
 - iv. Request in June 2006 for Atty Opinion – “all communications with atty regarding my request”
 - v. In July 2007, only after Plaintiff hired an attorney – Plaintiff's counsel find letter from attorney “re: TE –

Challenge to Charter Letter by MLS” dated May 18, 2006

b. Database

- i. In April 2008, Request **(62d)**
- ii. **May 8, 2007 (Plts. Ex. 354) KP Ltr to GO “we see no legal basis under the Privacy Act for withholding information obtained by the District in administering the Fair Housing Act....”**
- iii. No exemption claimed
- iv. In March of 2009, following a hearing on Plaintiff’s Motion for Temporary Injunction and more than a year after 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 Trustee direct survey, Trailer Estates produced an incomplete and inaccurate copy of these public records.

(64c)

c. Emails between the Trustees from January 1, 2006, to December 12, 2008

- i. Request 12/12/08 **(62f)**
- ii. No exemption claimed
- iii. One month later Trailer Estates produced 187 pages

- iv. Three months later produced approximately 800 additional **(62g)**
- d. “Number 73 and 76” of the Trailer Estates Public Records Log
 - i. Request in November 2008
 - ii. No exemption claimed
 - iii. Allegedly provided in Jan. 2009 one document and other one is missing. **64(a)**
- e. All letters Kirk Pinkerton provided to Trailer Estates during January – March of 2009 and all documents from anyone at Ruden, McClosky, Robert Turffs, Dye Deitrick, Petruff, St. Paul, and Matthews, Eastmoore, Hardy, Crauwels, & Garcia, - 3 month delay, No exemption claimed. **(64e)**
- f. Brauer Pet Application - withheld the record without stating a proper exemption for approximately 5 days to provide chairman time to consult her personal attorney **(64i)**

3) Improper Assertion of an Exemption

- a. Transcript - Jan. 8, 2009 request and never provided**(65)**

4) Destruction

- a. **All those items not provided**
- b. 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.

- c. Board members destroyed public records: Fred Hoch and Salerno

Relief

Declaratory

- Sunshine
 - Declaring that Trailer Estates is subject to the Sunshine Law;
 - Declaring that Trailer Estates repeatedly violated the Sunshine Law, and all of its actions and decisions in violation of the Sunshine Law are not binding and void ab initio;
 - Declaring that the actions and decisions by the Board, its members, and Trailer Estates Committees in paragraph 37 are not binding and void ab initio;
 - Declaring the appointments of Mike Neal and Tom Featheringill to the Board were made in violation of the Sunshine Law and void ab initio;
 - Declaring that any actions taken by Mike Neal and Tom Featheringill as Board members of Trailer Estates are void ab initio;

- Declaring that all Executive Committee meetings from November 2004 to the present were held in violation of the Sunshine Law, and therefore, all official actions taken at or pursuant to the recommendations from those Executive Committee meetings are void ab initio;
 - Enter a judgment against the District and award to the Plaintiffs' the reasonable Plaintiffs attorneys fees and costs pursuant to Florida Statute §§ 286.011(4) and 86.081, associated with the Plaintiffs' enforcement of the Sunshine Law and the bringing of these claims;
 - Award the Plaintiffs' prejudgment interest associated with the Plaintiffs' enforcement of the Sunshine Law and the bringing of these claims; and such as other relief as necessary and proper.
- Public Records
- Declaring that Trailer Estates is subject to the Public Records Law;
 - Declaring that Trailer Estates violated the Public Records Law by failing to produce the public records set forth in paragraphs 62 and 65 of the Complaint for inspection and copying;

- Declaring that Trailer Estates failed to produce public records identified in paragraph 64 for inspection and copying within a reasonable time;
- Declaring that the recordings of the Video Computer Club are public records of the District and must be maintained as public records;
- Declaring that Trailer Estates charged an unreasonable and unauthorized fee for production and duplication of public records identified in paragraph 67;
- Enter a judgment against Trailer Estates of the Plaintiffs' reasonable attorneys fees and costs pursuant to Florida Statute §§ 119.12 and 86.081;
- Award the Plaintiffs' interest associated with the Plaintiffs' enforcement of the Public Records Law and the bringing of these claims; and such other relief as is necessary and proper.

Mandamus

- Ordering Trailer Estates to perform its nondiscretionary duty in accordance with Section 119.07 of the Florida Statutes and provide Plaintiffs with the public records identified in paragraphs 62 and 65 for inspection and copying;

- Mandating that the District comply with the Records and Information Management (Fla. Stat. § 257.36) and Public Records Scheduling and Dispositioning (F.A.C. 1B-24)
- Order Trailer Estates to pay Plaintiffs' attorneys' fees and costs and prejudgment interest pursuant to Florida Statutes § 119.12 that are associated with the Plaintiffs' enforcement of the Public Records law; and

Injunction

- Continue the Injunction entered on May 29, 2009. Specifically requiring the continued broadcasting of District meetings and maintenance of copies of broadcast as public records until a Policy is adopted by the District, adequately providing for the operation of Channel 95 and its records as a public broadcast and public records.
- Enjoining the Trailer Estates from conducting business through its Executive Committee or other meetings outside the meetings that are not open and noticed to the public;
- Enjoining the Board of Trailer Estates from having any meeting with any other Trustee(s) outside of publically noticed meetings to discuss Trailer Estates business or matters which will foreseeably come before the Board for action;
- Enjoin the Board from determining the content of its media sources outside of a public noticed and open meeting until and

- unless the Board adopts policies and procedures regulating the content of its media sources, including its closed circuit television station, website, newsletter, and bulletin boards.
- Mandate that the Board revise its PP 16 revised so as to no longer require multiple Trustees' involvement in the enforcement of the deed restrictions of the District.
 - Enjoining Trailer Estates from withholding public records without specifying an exemption;
 - Mandate that the Board attend a public records and Government in the Sunshine workshop to teach Board members their obligations under these laws;
 - Mandate that Trailer Estates Board, its Committees, and its Board members conduct Trailer Estates business in the Sunshine and in accordance with Section 286.011 of the Florida Statutes;
 -
 - Ordering Trailer Estates to pay the Plaintiffs' reasonable attorneys fees, costs and prejudgment interest associated with the bringing of these claims pursuant to Florida Statutes §§ 286.011(4) and 119.12; and
 - Ordering such other relief as this Court deems just and proper.