

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

MARY LOU SMITH  
an individual, and  
SHARON DENSON,  
an individual

Plaintiffs,

vs.

CASE NO.: 08 CA 11315  
Division B

TRAILER ESTATES PARK AND  
RECREATION DISTRICT,  
an independent special taxing district,

Defendant.

**PLAINTIFFS' MOTION TO STRIKE  
DEFENDANT'S SUBMISSION TO THE COURT DATED NOVEMBER 29, 2010**

COMES NOW, Plaintiffs MARY LOU SMITH and SHARON DENSON (hereinafter referred to as "Plaintiffs") by and through their undersigned counsel and pursuant to Rule 1.140(f), Florida Rules of Civil Procedure, and hereby file this Motion to Strike Defendant's Trailer Estates Park and Recreation District's (the "District") submission to the Court dated November 29, 2010, and as grounds therefore state as follows:

1. Under Rule 1.140(f), Florida Rules of Civil Procedure, a party may move to strike redundant, immaterial, impertinent, or scandalous material from any pleading at any time. A motion to strike matters from the pleadings as redundant, immaterial, or scandalous should only be granted if the material is wholly irrelevant, and can have no bearing on the equities and no influence on the decision. *See, Rice-Lamar v. City of Fort Lauderdale*, 853 So. 2d 1125, 1133-34

(Fla. 4th DCA 2003); *McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A. v. Weiss*, 704 So. 2d 214, 216 (Fla. 2d DCA 1998).

2. On November 3, 2010, the Court issued its Final Judgment in the above referenced matter.

3. Pursuant to Rule 1.530, Florida Rules of Civil Procedure in a matter tried before the Court without a jury, a party may serve a motion for rehearing on all or part of the issues within 10 days after the date of filing of the judgment.

4. On November 15, 2010, the Plaintiffs timely filed their Motion for Rehearing alleging errors on the face of the record and errors committed during trial.

5. The Defendant failed to file a timely Motion for Rehearing and chose not to file a Response to Plaintiffs' Motion for Rehearing. Nor did Defendant timely file a Motion to Alter or Amend the Judgment as provided for in Rule 1.530(g).

6. Instead, on November 29, 2010, District counsel sent a letter to the Honorable Janette Dunnigan and copy to Plaintiffs' counsel enclosing a proposed Order on Plaintiffs' Motion for Rehearing of Judgment which would grant Plaintiffs' Motion in part and deny it in part. Attached as Exhibit A is the November 29, 2010, letter with its enclosed proposed Order on Plaintiffs' Motion for Rehearing of Judgment. It is clear from its content that the Defendant's submission would have the effect of a Motion for Rehearing or a Motion to Alter or Amend the Judgment and, is therefore, untimely, improper, and should not be considered by the Court.

7. In the Defendant's proposed Order on Plaintiffs' Motion for Rehearing of Judgment, the Defendant concedes error on several issues, deletes prior findings of this Court, provides additional language that is contrary to the evidence presented at trial, and amends language such that it is contrary to this Court's prior rulings.

8. To date, this Court has not issued an order for rehearing of this matter. Due process requires an evidentiary hearing before a trial court can amend a final judgment pursuant to a motion for rehearing. *J.R. Fenton, Inc. v. Gallery 600, Inc.*, 488 So. 2d 587, 588 (Fla. 2d DCA 1986).

9. Furthermore, the local rules provide that an attorney charged with preparing the proposed order should prepare it promptly and provide it to opposing counsel prior to submitting it to the Court. Twelfth Judicial Circuit for DeSoto, Manatee, and Sarasota Counties, Fla. Admin. Order 2010-22.2, Section F.4. Also, the drafting attorney is responsible for advising the Court of whether the proposed order has been approved by the opposing counsel. *Id.* “The proposed order must fairly and adequately represent the ruling of the court.” *Id.*

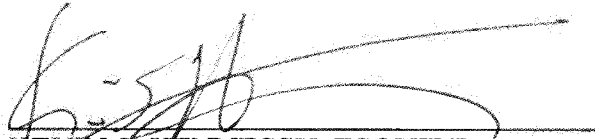
10. In the instant matter, a hearing has not been held, the Court has not directed any party to provide a proposed order, the proposed order was not provided to opposing counsel prior to its submission to the Court, the District’s attorney has not advised the Court that the Plaintiffs object to the proposed order, and most importantly, the proposed order does not fairly and adequately represent any ruling of the Court on the Plaintiffs’ Motion for Rehearing or otherwise. Defendant’s alleged proposed order is at best premature and Defendant counsel’s correspondence with the Judge in this matter is wholly inappropriate.

11. Defendant’s correspondence with the Judge is a blatant attempt by the Defendant to circumvent the Florida Rules of Civil Procedure, avoid placing an admission of error in the record, and have an untimely Motion for Rehearing or Motion to Alter or Amend the Judgment considered by this Court. Not only is District counsel’s action in violation of the rules of civil procedure, but also violates the local rules of this Court which specifically provide that an “attorney should not prepare a document that is intended to circumvent or violate applicable laws

or rules. Twelfth Judicial Circuit for DeSoto, Manatee, and Sarasota Counties, Fla. Admin. Order 2010-22.2, Section J.4.

WHEREFORE, as set forth herein, the Plaintiffs respectfully request that this Court enter an order finding that the Defendant's correspondence with the Judge on November 29, 2010 is an improper and untimely Motion for Rehearing or Motion to Alter or Amend the Judgment and striking the Defendant's Submission to the Court dated November 29, 2010, and grant such other and further relief as this Court deems to be reasonable and appropriate.


Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Kurt E. Lee, Esquire, Kirk Pinkerton, P.A., 50 Central Avenue, Suite 700, Sarasota, FL 34236, by U.S. Mail, this 8<sup>th</sup> day of December, 2010.



Kevin S. Hennessy, Esquire



# KIRK PINKERTON, P.A.

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November 29, 2010  
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The Honorable Janette Dunnigan  
Manatee County Judicial Center  
1051 Manatee Avenue West  
Bradenton, Florida 34206

Re: Smith and Denson vs. Trailer Estates Park & Recreation District, et al.  
Case No. 2008-CA-22315

Dear Judge Dunnigan:

We write, as counsel for Defendant Trailer Estates Park & Recreation District, to provide the Court with a proposed Order On Plaintiffs' Motion For Rehearing Of Judgment.

In the event the proposed order meets with the Court's approval, we have enclosed additional copies to be conformed to the original and pre-addressed, postage-paid envelopes for distribution of the Court's order to all parties of record.

We appreciate the Court's continued judicial attention to this action.

Respectfully submitted,

KIRK PINKERTON, P.A.

KURT E. LEE  
For the Firm

KEL/lm

Enclosure

cc: Kevin S. Hennessy, Esq. (w/enc.)

NOV 29 2010

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IN THE CIRCUIT COURT OF 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.

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**ORDER ON PLAINTIFFS' MOTION FOR REHEARING OF JUDGMENT**

THIS CAUSE having come before the Court on Plaintiffs' Motion For Rehearing Of Judgment, the Court having reviewed and considered the Motion, having been otherwise fully advised in the premises, and for good cause shown, it is

HEREBY ORDERED AND ADJUDGED that:

1. Plaintiffs' Motion For Rehearing Of Judgment is GRANTED in part and DENIED in part as set forth herein.

2. Paragraph 8 of the Final Judgment is modified to add, to the recitation of claims beginning after the fourth sentence, "37(u), 37(bb), 37(yy), 37(fff), 37(yyy), 37(iiii), 37(ssss), and 44(iii)." The claims referenced in paragraph 8 of the Final Judgment for which no proof was presented and which were, accordingly, dismissed with prejudice by directed verdict were claims 37(j), 37(k), 37(t), 37(y), 37(cc), 37(ff), 37(gg), 37(hh), 37(ii), 37(jj), 37(kk), 37(ll), 37(aaa), 37(mmm), 37(uuu), 37(vvv), 37(zzz), 37(aaaa), 37(kkkk), and 44(iii). Paragraph 8 is also

modified to add to the sixth sentence and following the words “amongst board members,” “Plaintiffs also failed to prove the elements of a Sunshine law violation with respect to claim 37(m).”

3. Paragraph 9 of the Final Judgment is modified to read as follows:

The District By-Laws attempted to exempt an Executive or Administrative Committee consisting of the Chair, the First Vice Chair and the Second Vice Chair from the requirements of the Sunshine Law. There were at least five executive meetings called by Mary Lou McNulty while she was the Chair. The meetings of the Executive Committee were not noticed to the public. These meetings would therefore be in violation of the Sunshine Law, provided the matters discussed were matters that would foreseeably come before the Board. Minutes of the Executive Committee were taken and filed with the District's public records. The Board then took action on these items as public meetings, in which the public had an opportunity to speak, and in some cases the matters were discussed in more than one subsequent public meeting. While the discussions by the Board at these meetings may not have risen to the level of a 5-hour discussion, as described by the court in Finch v. Seminole County School Bd., 995 So.2d 1068 (Fla. 5<sup>th</sup> DCA 2008), that case involved a controversial redistricting of the school zones, and the subsequent curative meeting of the school board was attended by 800 to 900 interested members of the public. The matters being considered by the Trailer Estates Board in this case were of a much more remedial nature and would not be expected to engender such prolonged discussion. This is evidenced by the fact that the Plaintiffs waited more than two years after all of these matters had been decided to bring this action, and there was no evidence presented that there was any objection raised by the Plaintiffs or any member of the public throughout this period. In one of the matters complained of, the Board member who was appointed had already served out the remainder of his term prior to the filing of the original complaint in this case. Consequently, any violation that may have occurred in the 2006 Executive Committee meetings was cured through subsequent meetings and actions of the Board or was otherwise mooted or barred by the doctrine of laches. Claims 37(a), 37(b), 37(c), 37(d), 37(e), 37(f), 39, 40, 42. The same reasoning applies to the claim regarding the hiring of Mark Barnebey as the District's attorney. Claim 37(ppp). The workshop was noticed and open to the public and was attended by one of the Plaintiffs, but the District was unable to produce minutes of such meeting. Mr. Barnebey was subsequently hired by the Board at a public meeting and has served as District counsel without objection since that time.

4. Paragraph 10 of the Final Judgment is modified to read as follows:

The District Charter provides the schedule of when financial information is to be mailed to the residents. Therefore, the conversation on this subject – in which one of the Plaintiffs participated – between two Trustees was not a matter which would foreseeably come before the Board or upon which the Board would take action. The discussions involved the administrative implementation of the procedure ordained by the Legislature. Hence, there is no violation of the Sunshine law. Claim 37(mmmm). Similarly, the District's Charter provides how lot calculations are to be made. Therefore, any conversation on this subject among members of the Future Planning Committee would not be a matter which would foreseeably come before the Board or upon which the Board would take action. The discussions would involve the administrative implementation of the procedure ordained by the Legislature. Hence, there is no violation of the Sunshine law. Claim 37(dddd).

5. Paragraph 11 of the Final Judgment is modified to read as follows:

The Architectural Review Committee (“ARC”) is a committee created by the Deed Restrictions and not by the Board of Trustees. The Deed Restrictions are contractual and are voted on by all property owners of Trailer Estates. The ARC is empowered by this contract to issue building permits in accordance with the criteria stated within the Deed Restrictions. It does not act in an advisory capacity to the Board and its authority is not derived from or delegated to it by the Board. In fact, the Board has no authority under its Charter to step in and carry out the functions of the ARC. The Board of Trustees has no authority except to appoint the members of the ARC. There is no right to appeal the ARC's failure to issue permits to the Board. The deed restrictions do authorize the Board of Trustees to enforce the deed restrictions, but only in the same manner as any other property owner in the Park. Deed Restriction 1. News-Press Publishing Co., Inc. v. Carlson, 410 So.2d 546 (Fla. 2d DCA 1982); Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974). Thus, because the ARC does not serve in an advisory capacity to the District and because the ARC was not delegated any decision-making authority by the District, the ARC is not subject to the Sunshine laws. Claims 37(i), 37(l), 37(n), 37(o), 37(p), 37(q). Plaintiffs also complain that the ARC acted as a “committee of one” in the approval and denial of permits. However, because the ARC is not subject to the Sunshine laws, it is of no consequence whether they acted as a group or as a committee of one.

6. Paragraph 12 of the Final Judgment is modified to add “in claim 37(w)” after the word “complain.”

7. Paragraph 13 of the Final Judgment is modified to read as follows:

The Deed Restriction Committee became a standing committee in 2001. It met in October 2007 and January 2008 with the minutes reflecting that two Trustees were in attendance. The committee meetings were noticed and minutes were taken and retained in the public records. The minutes do not reflect, nor was there any evidence presented to indicate, that the Trustees engaged in any kind of debate between the Trustees. As such, no Sunshine violation was shown. In regard to claim 37 (pp), there was testimony that the District held an extensive workshop regarding deed restriction amendments in March of 2009, which only covered a portion of the deed restrictions, and no further action was taken. As such, any discussions regarding potential amendments to the deed restrictions were cured or mooted. The Court notes that any amendment to the Deed Restrictions would have been subject to a vote of the property owners of the District. Claims 37(oo), 37(pp), 37(qq).

8. Paragraph 14 of the Final Judgment is modified to read as follows:

The so-called Seasonal Recreation Committee consists of a Trustee and a group of volunteers. The Trustee is responsible for arranging and organizing many of the recreational events that occur at this 55 and older mobile home park. The Trustee meets with a group of volunteers to determine the mechanics of presenting such recreational activities. The evidence presented did not show that the committee was formed by the Board, served in any advisory capacity to the Board, or was granted any decision-making authority of the Board. The group of volunteers merely assisted the Trustee in carrying out his administrative duties. As such, no violation of the Sunshine law was proven.

9. Paragraph 16 of the Final Judgment is modified to add, following the reference to claim 37(rrrr)(xiv), references to claims 37(ee) and 37(rrrr)(xv).

10. Paragraph 17 of the Final Judgment is modified to read as follows:

The Referendum Committee met three times during a one-month period in 2006. Two Trustees participated in these meetings. The meetings were not noticed or open to the public. The purpose of the committee was to make recommendations to the Board on a procedure to initiate a referendum for voter action. The recommendations were placed on the agenda for public discussion at a public meeting of the Board of Trustees, but the record does not reflect that any subsequent action was taken by the Board in regard to this issue. Again, no objections were raised by the Plaintiffs or any member of the public in the two years that elapsed between these meetings and the institution of this lawsuit. As such, any violations that may have occurred have been cured, or otherwise were mooted or barred by the doctrine of laches. Claim 37(cccc).

11. Paragraph 18 of the Final Judgment is modified to read as follows:

The Plaintiffs claim that the District violated the Sunshine law in determining the content of information published in the Tribune or aired on the District's closed circuit television channel. The evidence presented did not show that Trustees ever met outside of public meetings to determine the content of either media. The evidence showed that, on a few occasions, individual Trustees would review prospective Tribune articles based on policies established by the Board. The Video Club has its own bylaws which state that it shall manage and operate the closed circuit television system in accordance with the policies set by the Board of Trustees. The Video Club does not act as an arm of the Board. A Sunshine violation was not proven. Claim 37(oooo), 37(pppp).

12. Paragraph 19 of the Final Judgment is modified to read as follows:

In 2006, the Chair of the Board of Trustees received advice that only one Trustee should be present at committee meetings to avoid a possible violation of the Sunshine law. The Future Planning Committee and Policy and Procedures Committee had meetings in which more than one Trustee was present. However, no evidence was presented that during these meetings the Trustees engaged each other in any discussion or debate regarding issues that might come before the Board of Trustees. As Plaintiffs noted in their Motion for Rehearing, the mere presence of more than one Trustee at a meeting or in a room does not constitute a Sunshine law violation. Plaintiffs have failed to establish that a Sunshine violation occurred.

13. Paragraph 20 of the Final Judgment is modified to read as follows:

The Auditor Selection Committee was established pursuant to Florida Statute, §218.391. The primary purpose of this committee is to assist the District in selecting an auditor to conduct annual financial audits required by law. The Auditor Selection Committee is subject to the Sunshine law. However, Plaintiffs do not allege that the Auditor Selection Committee violated the Sunshine law. Plaintiffs allege that a violation of the Sunshine law occurred because two Trustees discussed auditor selection outside of a public meeting. Plaintiffs failed to prove that the Trustees present at such committee meetings ever engaged each other in any discussion or debate. As such, no Sunshine violation was proven. Claim 37(r).

14. Paragraph 21 of the Final Judgment is modified to add, following the first sentence, "Claim 62(a)."

15. Paragraph 22 of the Final Judgment is modified to add, following the first sentence, "Claim 62(h)."

16. Paragraph 23 of the Final Judgment is modified to read as follows:

Plaintiffs claim the District failed to timely respond to a request to inspect a pet application. Claim 64(i). However, the evidence clearly shows that counsel for the District e-mailed Plaintiff's counsel the same day requesting time to research whether information requested was privileged and cited to a statute that might be applicable. The records were then produced within three business days and prior to Plaintiff's amended complaint which included the allegation. This is clearly a reasonable response. Roberts v. News Press Pub. Co., Inc., 409 So.2d 1089 (Fla. 2d DCA 1982).

17. Paragraph 24 of the Final Judgment is modified to add, following the first sentence, "Claim 65."

18. Paragraph 25 of the Final Judgment is modified to add, following the first sentence, "Claims 62(d), 64(c)."

19. Paragraph 26 of the Final Judgment is modified to read as follows:

Plaintiffs made a public records request on August 26, 2006, for the 2006 Budget Hearing Video. Claims 62(b), 64(f). Much was made of whether the Plaintiffs asked only for the video and not audio tape and whether the District or Video Club had possession of the video. The evidence did not establish that the District had possession of the video at the time of the requests and unlawfully failed to produce it. The video was finally located and Trailer Estates attorney Tom Shults hand delivered the copy in April 2009. The court does not find that the District unlawfully refused to produce this item. While the production of the record may have been delayed, the court does not find that it was unreasonable given the circumstances of this case. Town of Manalapan v. Rechler, 674 So.2d 789 (Fla. 4<sup>th</sup> DCA 1996).

20. Paragraph 28 of the Final Judgment is modified to read as follows:

The court finds that Plaintiffs failed to carry their burden of proof as to any claim not specifically addressed, because (1) the Plaintiffs failed to prove that the Plaintiffs requested the records; (2) Plaintiffs failed to prove that the records existed at the time the request was made; (3) Plaintiffs failed to prove that the District unlawfully failed to produce the requested records; (4) Plaintiffs failed to prove that any delay in responding was unreasonable under

the circumstances; (5) Plaintiffs failed to prove that fees charged by the District were unreasonable or excessive; or (6) Plaintiffs otherwise failed to carry their burden of proof as to the claim.

DONE AND ORDERED at Bradenton, Florida, this \_\_\_\_ day of November, 2010.

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THE HONORABLE JANETTE DUNNIGAN  
Circuit Judge

Conformed Copies Furnished to:

Kevin S. Hennessy, Esquire  
Kurt E. Lee, Esquire

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