

IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

MARY LOU SMITH and  
SHARON DENSON,

ENTERED  
AUG 01 2011

Appellants/Plaintiffs,

v.

CASE NO. 2D11-315  
LT NO. 2008 CA 11315

TRAILER ESTATES PARK AND  
RECREATION DISTRICT,

Appellee/Defendant.

\_\_\_\_\_ /

**APPELLEE'S MOTION FOR ATTORNEYS' FEES**

Appellee, TRAILER ESTATES PARK AND RECREATION DISTRICT ("TRAILER ESTATES"), moves this Court, pursuant to Florida Rule of Appellate Procedure 9.400, to enter an order awarding it attorneys' fees associated with this appeal and, as grounds therefor, states as follows:

***I. TRAILER ESTATES IS ENTITLED TO RECOVER ITS ATTORNEYS' FEES PURSUANT TO FLORIDA STATUTE, §286.011(4)***

1. TRAILER ESTATES plead its entitlement to recover attorneys' fees from Appellants/Plaintiffs, MARY LOU SMITH and SHARON DENSON, based upon Florida's Sunshine Law. TRAILER ESTATES plead in its answer to the Third Amended Complaint that it was entitled "to an award of attorney's fees under various provisions of law including, but not limited to, the provisions of F.S.

286.011(4) because the Plaintiffs have filed this action in bad faith and/or the action is frivolous.”

2. TRAILER ESTATES was the prevailing party on all of Plaintiffs’ Sunshine Law claims. Some of Plaintiffs’ claims were dismissed via summary judgment motions, some were dismissed pursuant to a motion to dismiss at the conclusion of Plaintiffs’ case-in-chief, and the remainder of Plaintiffs’ Sunshine law claims were dismissed in the Final Judgment.

**A. ALL OF PLAINTIFFS’ SUNSHINE LAW CLAIMS WERE BROUGHT IN BAD FAITH**

3. Plaintiffs’ Sunshine Law claims against TRAILER ESTATES were brought in bad faith.

4. Plaintiffs filed their original action on November 26, 2008, a few days before the December 2, 2008, election of TRAILER ESTATES Trustees. In December 2008, Sharon Denson was, for a second time, seeking election to the TRAILER ESTATES Board of Trustees. The filing of the action against TRAILER ESTATES and the individual Trustees was reported in the Bradenton Herald on the day of the election. (*See* Exhibit “A”).

5. After the residents of TRAILER ESTATES again voted not to elect Ms. Denson as a Trustee (*See* Exhibit “B”), Plaintiffs and their counsel bombarded TRAILER ESTATES with public records requests in an attempt to find potential Sunshine Law violations, regardless of when the alleged violations occurred,

whether they had any impact on Plaintiffs, and whether they had become moot by the passage of time. As Ms. Smith noted at the time in an e-mail to Plaintiffs' attorneys, it was "happy hunting." (See Exhibit "C") When Plaintiffs found records that reflected any suggestion of a Sunshine Law violation, they added these claims to their pleadings, increasing the cost of defense to TRAILER ESTATES and raising the specter of a potential attorneys' fees award against TRAILER ESTATES. Plaintiffs' multiplication of their Sunshine Law claims is readily demonstrated by a comparison of the claims in the initial Complaint to those in the Third Amended Complaint and Addendum.

6. It was obvious from Plaintiffs' trial testimony and presentation that Plaintiffs did not agree with a number of policies of TRAILER ESTATES. Plaintiffs made much of the increase in storage park rental rates, the lease of dock spaces, and other actions. While these issues are at the root of Plaintiffs' objections and while Plaintiffs' counsel issued written opinions that TRAILER ESTATES was incorrect in regard to these issues, Plaintiffs chose not to bring those issues directly before the Court for resolution because such a lawsuit would not have permitted them to seek recovery of their attorneys' fees from TRAILER ESTATES. Instead, Plaintiffs sought, and continue to seek, to use the judicial system and the threat of an exorbitant attorneys' fees award against TRAILER ESTATES to gain the political leverage they have heretofore been unable to obtain

through the ballot box. Plaintiffs' Sunshine law claims reflect Plaintiffs' malicious motive in bringing this action to further their political aims within TRAILER ESTATES.

7. TRAILER ESTATES is entitled to recover its attorneys' fees from Plaintiffs, jointly and severally, because the Sunshine law claims were brought in bad faith. *See* Fla. Stat., §286.011(4).

***B. MANY OF PLAINTIFFS' SUNSHINE LAW CLAIMS WERE FRIVOLOUS***

8. Many of Plaintiffs' Sunshine Law claims against TRAILER ESTATES were frivolous and without a scintilla of evidence.

9. Plaintiffs' frivolous claims are those which were resolved through summary judgment motions. (*See* Plaintiffs' Third Amended Complaint and Addendum, paragraphs 37(aa), 37(ee), 37(ss), 37(bbb), 37(ggg), 37(bbbb), 37(gggg), 37(hhhh), 37(qqqq), 37(rrrr)(i), 37(rrrr)(iv), 37(rrrr)(v), 37(rrrr)(vi), 37(rrrr)(vii), 37(rrrr)(xi), 37(rrrr)(xii), 37(rrrr)(xiii), 37(rrrr)(xvi), 37(rrrr)(xviii), 37(rrrr)(xix), 37(rrrr)(xx), 37(z)).

10. Plaintiffs' frivolous claims are those which were resolved through a motion to dismiss following Plaintiffs' case-in-chief and admission that they had proffered no evidence in support of them. (*See* Plaintiffs' Third Amended Complaint and Addendum, paragraphs 37(j), 37(k), 37(m), 37(t), 37(y), 37(cc),

37(ff), 37(gg), 37(hh), 37(ii), 37(jj), 37(kk), 37(ll), 37(mmm), 37(uuu), 37(vvv), 37(zzz), 37(aaaa), 37(kkkk), and 44(iii)).

11. The trial court below dismissed the balance of Plaintiffs' Sunshine law claims as having not been proven or as having been subsequently cured.

12. TRAILER ESTATES is entitled to recover its fees from Plaintiffs, jointly and severally, pursuant to Florida Statute, §286.011(4), with regard to those Sunshine law claims which were frivolous.

**II. TRAILER ESTATES IS ENTITLED TO RECOVER ITS ATTORNEYS' FEES PURSUANT TO FLORIDA STATUTE, §57.105(1) AND (4)**

13. TRAILER ESTATES properly served and filed motions pursuant to Florida Statute, §57.105(1) and (4), which made reference to particular claims and allegations which were clearly not supported by either law or fact.

14. Copies of TRAILER ESTATES's Motion For The Award Of Attorney's Fees And Costs Pursuant To F.S. 57.105(1) And (4), which was filed on March 2, 2010, and its Motion For The Award Of Attorney's Fees And Costs Pursuant To F.S. 57.105(1) And (4), which was filed on March 15, 2010, are attached as Exhibits "D" and "E," respectively.

15. Plaintiffs have abandoned all but a few of their allegations on appeal. Indeed, only three of Plaintiffs' ill-founded claims identified in the aforementioned motions (¶¶ 37(s), 62(b), and 62(d)) are presented here.

16. TRAILER ESTATES is entitled to recover its fees from Plaintiffs, pursuant to Florida Statute, §57.105(1) and (4), with regard to those claims described in TRAILER ESTATES' aforementioned motions which Plaintiffs do not address here and where this Court affirms the trial court's ruling below.

### ***III. CONCLUSION***

15. TRAILER ESTATES respectfully requests that this Court enter an order finding TRAILER ESTATES to be entitled to recover its attorneys' fees associated with this appeal from Plaintiffs, jointly and severally, as set forth above, remanding this action to the trial court to determine the amount of such award, and granting TRAILER ESTATES such further and additional relief as this cause and justice may require.

### **CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been sent via US Mail to Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1001 Third Avenue West, Suite 670, Bradenton, Florida 34205, on this 29<sup>th</sup> day of July, 2011.

### **CERTIFICATE OF COMPLIANCE**

I CERTIFY that this document was prepared in accordance with the font requirements of Florida Rules of Appellate Procedure 9.100(l) and 9.210(a)(2).

Respectfully submitted,

**KIRK - PINKERTON, P.A.**

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Tuesday, Dec 2, 2008

Posted on Tue, Dec. 02, 2008

## Trailer Estates residents claim Sunshine Law violated

By NATALIE NEYSA ALUND  
nalund@bradenton.com

BRADENTON — Two sisters are suing the Trailer Estates Park and Recreation District and some of its board members, claiming they are violating state open government laws.

Sharon Denson, of Illinois Avenue, and Mary Lou Smith, of Tarpon Lane, allege that since May 2006, the board and four other defendants violated the Florida Sunshine Law by holding meetings — including executive committee meetings — in private to discuss the public business of the park, according to a lawsuit filed Nov. 26.

District board Chairman Janet Jones, former board Chairman Mary Lou McNulty and board trustees John Vander Molen and Joseph Salerno are named as defendants in the 18-page suit. The petition also accuses them of charging "unreasonable fees" associated with the sisters' requests for public records.

"And in some cases they are withholding the documents completely, claiming exemptions that don't exist under the law," said Kevin Hennessy, one of the attorneys with the firm of Lewis, Longman & Walker, representing Denson and Smith.

For instance, he said the special public taxing district is withholding a "resident information database" that includes demographic information. District officials claim that information is private, Hennessy said.

McNulty, who said she and the other defendants had not been formally served with the suit Monday, declined comment.

"We have not read it through yet," she said.

Trailer Estates' attorney Mark Bamebey declined comment, saying he also had not seen the lawsuit.

"We'll have to look it over," he said.

The Legislature formed the Trailer Estates special taxing district in 1969 so that residents could pay an annual fee for the upkeep of recreational facilities and other amenities.

The suit states that for the past two years, the park's legal counsel has repeatedly advised the board of the Sunshine Law and Public Records Law and warned the board that committee members may not meet in private to discuss district business.

The lawsuit comes on the heels of several residents voicing concern over the behavior of some of their district's elected officials.

They have said the board conducts itself more like a homeowners' association than a local government overseeing a \$1 million annual budget.

In mid-May, Trailer Estates' board of trustees held a refresher course on the Sunshine Law.

Bamebey had recommended the seminar in April after the board's vice chair and most prominent member, John Vander Molen, told the Bradenton Herald that the board's Sunshine compliance could be better.

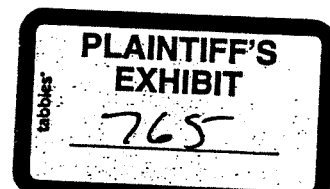
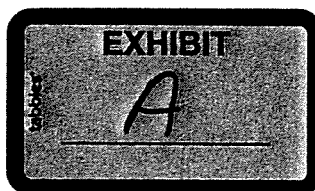
The suit seeks an injunctive relief and attorney's fees.

"We're hopeful to get the attention of the board and individual board members who refuse to comply with the laws governing public meetings and public records," Hennessy said.

Smith, who also has a home in East Lansing, Mich., said she lives in the park during the winter months. She's owned her home on Tarpon Lane for about 10 years.

Denson said she spends about nine months at her Trailer Estates home and spends the remainder of the year in Michigan.

They deferred comment to their attorneys.

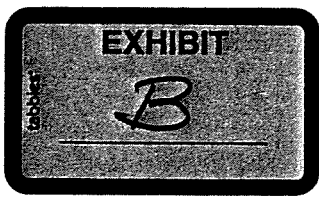


Election Summary Report  
 Trailer Estates Park Recreation Election  
 Manatee County, FL  
 12/02/2008

Summary For Jurisdiction Wide, All Counters, All Races  
 Results Summary

Registered Voters 0 - Cards Cast 736 0.00%

	Num. Report Precinct 1	- Num. Reporting 1	100.00%
<b>Trailer Estates</b>			
Number of Precincts	1	1	1
Precincts Reporting	1	1	1
Total Votes	2387	875	3262
Times Blank Voted	0	0	0
Times Over Voted	0	0	0
Number Of Under Votes	303	115	418
Martha Brauer	373	123	496
Sharon K. Denson	135	72	207
Robert L. Durrin	394	135	529
Harry Fitzpatrick	403	135	538
Fred Hoch	370	139	509
Gail J. Opper	315	110	425
Judy Riedel	178	73	251
Bruce W. Smith	219	88	307
			15.21%
			6.35%
			16.22%
			16.49%
			15.60%
			13.03%
			7.69%
			9.41%



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**From:** Maggie D. Mooney <mmooney@llw-law.com>  
**To:** msmith0603@aol.com  
**Cc:** Jennifer Cowan <jcowan@llw-law.com>  
**Subject:** RE: Records  
**Date:** Mon, 20 Aug 2007 9:03 am

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Got it. We will keep an eye out for any info. regarding this matter too. -Maggie

Maggie D. Mooney, Esq.  
[mmooney@llw-law.com](mailto:mmooney@llw-law.com)  
(941) 708-4040

---

**From:** msmith0603@aol.com [mailto:msmith0603@aol.com]  
**Sent:** Saturday, August 18, 2007 9:28 PM  
**To:** Maggie D. Mooney  
**Subject:** Records

Hi Maggie,

FYI - I am attaching a chronology of a current squabble in the park. We have another magically appearing letter.

John VanderMolen (who met with us), changed his mind about resigning from the ARC if appointed to the Board, after he was appointed. His second letter (rescinding his resignation) never was mentioned until Trustee Tom Featheringill put a motion forward to accept his letter of resignation. He passed the letter rescinding his motion out to the Trustees during the discussion portion of the motion. The letter had no office identification on it, to indicate when it was really written. At least three Trustees were never informed of the existence of the letter. Tom Featheringill has been demanding answers as to why the letter was never mentioned or presented to the Trustees until the motion was made to accept his resignation.

I have listed the correspondence that has gone back and forth over the past month, and briefly described the contents

I have most of the correspondence listed. It will be interesting if it is offered to you in the things you review. Tom F. has demanded that the issue be publicly dealt with at the Board meeting on Monday. Specifically, he is asking for a tracing of the path of the letter from the time it supposedly left John V's hand.

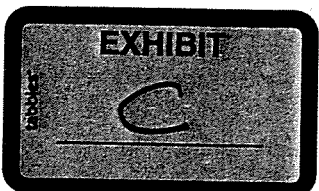
If Mr. Barnebey thinks he is making inroads with this Board, he is sorely mistaken, in my opinion.

Happy hunting!

Mary Lou

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AOL now offers free email to everyone. Find out more about what's free from AOL at [AOL.com](http://AOL.com).



MSSD01300

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 VANDERMOLEN, an individual,  
JOSEPH SALERNO, an individual, and  
MARY LOU McNULTY, an individual,

Defendants.

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**MOTION FOR THE AWARD OF ATTORNEY'S FEES AND COSTS**  
**PURSUANT TO F.S. 57.105(1) AND (4)**

COMES NOW, Trailer Estates Park and Recreation District (hereinafter referred to as the "District"), and hereby files the above-referenced Motion and as grounds thereof states:

1. In the Third Amended Complaint dated September 8, 2009 and the Addenda thereto dated October 19, 2009, the Plaintiffs made various allegations and claims which are not supported by the material facts necessary to establish such claims, including, the allegations set forth below:

37(q). During November 2005 through 2009, Board members attended ARC meetings wherein they discussed the denial of permits and these meetings were not advertised as Board meetings.

37(s). In October of 2006, the Board had meetings wherein they interviewed and hired legal counsel which was not properly noticed.

37(t). In November of 2007, Martha Brauer and Jones, both members of the



Policy and Procedure Committee, discussed policy and procedure committee matters outside of a public meeting.

37(w). In January 22, 2007, the Board had a workshop meeting regarding the Sunshine Law and failed to take appropriate minutes.

37(aa). In June 4, 2007, Vandermolen and other Board members discussed outside the Sunshine, the McNiel mediated settlement agreement.

37(rr). In or around October 12, 2006, Wayne Hamblen, a Board member, violated the Sunshine executed a Manatee County Easement Encroachment agreement without Board authorization granted at a public meeting; alternatively, the Board or its executive Committee met outside of the Sunshine and granted Wayne Hamblen authorization to execute the Manatee County Easement Encroachment Agreement.

37(eee). In December, 2008, Board members and Board members-elect, including Jones, Salerno, and Martha Brauer ("Brauer"), held meetings outside the Sunshine where they drafted, revised, and developed a Budget Questionnaire to assist with the upcoming Trailer Estates Budget.

37(bbbb). On December 5, 2008, Jones and Trustee-elect Brauer met and discussed PP31, PP40, PP13 and Swimming Rules outside of a properly noticed board meeting.

37(oooo). From November 2005 to the present, the Board through its individual Board members, including Vandermolen, Martha Brauer, Gail Opper, McNulty, and Peg Durham, have repeatedly acted outside of the Sunshine in

determining the content of information published on Trailer Estates' media sources, including its website, television station, and newspaper.

37(pppp). From November 2005 to the present, the Video Computer Club, acting as an arm of the Board, has repeatedly met outside of the Sunshine.

44. In violation of the Sunshine Law, Board members have also used residents to act as liaisons for communications between Board members to circulate information and thoughts relating to District business, such as the disaster plans, budget, Public Records/Privacy Act, and Policy and Procedures, including:

- i. In or around May 8, 2007, TJ Miller, acting as a liaison, conveyed information between Board members Jones and Peg Durham relating to the appointment of McNulty as second vice chair.
- ii. In November and December 2008, Brauer, acting as a liaison, conveyed information between Board members Jones and Salerno relating to the Budget Questionnaire.
- iii. In April 2008, Brauer, acting as a liaison, conveyed information between Board members McNulty and Vandermolen related to the Disaster Plan.
- iv. In November 2007, Brauer, acting as a liaison, conveyed information between Board members Jones and Vandermolen related to the public records policy.

61. From 2005 to the present, Trailer Estates has repeatedly withheld public

records within its possession without claiming any exemption, limited access to public records thus discouraging records requests, failed to inform the requester whether or not the documents sought exists, improperly claimed information as private/privileged and/or unavailable to the public, and redacted non-exempt information from public records.

62(a). In October 2005 and August 2006, Smith requested a copy of a citation for purported violations of the Deed Restrictions that was issued to the property located at 6603 Arizona ("Citation") and McNulty stated that the Citation was unavailable and failed to produce the public record.

62(b). On August 27, 2006, Smith requested Trailer Estates produce the 2006 Budget Hearing Video, to date Trailer Estates has failed to produce the video.

62(c). On August 27, 2006, Smith requested Trailer Estates produce the June 19, 2006 Board meeting video, to date, Trailer Estates has failed to produce the video.

62(d). In April 2008, 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 Trustees direct survey, Vandermolen denied this request, and Trailer Estates has never produced a complete copy of these public records.

62(e). In October 2008, Ken Meierjorgen requested a doctor's authorization relating to a resident's emotional support pet application, Trailer Estates refused to provide the document claim it was privileged, in violation of the Public Records

Law, and to date Trailer Estates has not provided Mr. Meierjurgan with the public record.

62(f). From December 12, 2008, counsel for the Plaintiffs requested the e-mails between the Trustees and Trustee-elects from January 1, 2006 to December 12, 2008 and Trailer Estates has not produced all of the emails responsive to this request.

62(g). In August 2009, counsel for the Plaintiffs requested documents related to the articles published in the Tribune, and Trailer Estates has not produced these public records.

62(h). In August 2009, counsel for the Plaintiffs requested Bill Secraw's letter to the Board received in March of 2006, and Trailer Estates has not produced this public record.

62(i). In August 2009, counsel for the Plaintiffs requested all minutes from the Trailer Estates Seasonal Recreation Committee, and Trailer Estates has not produced these records.

62(j). In August 2009, counsel for the Plaintiffs requested minutes of the October 23, 2006 Board meeting and Trailer Estates has not produced this public records.

62(k). In August 2009, counsel for the Plaintiffs requested all Trailer Estates Board meeting recordings from January 2005 through August 2009, Trailer Estates has not produced all of these public records.

64(d). In May 2009, more than 5 months after Denson submitted a public records request regarding the Board's policy on Trailer Estates keeping files on

individual residents, Trailer Estates' records custodian finally responded to the request.

66. Trailer Estates has repeatedly and inconsistently charged unreasonable fees associated with the Plaintiffs public records request.

67(a). Trailer Estates assessment to Smith in July and August 2006 of costs associated with the production of documents. The hourly fees assessed by Trailer Estates ranged from \$18.55 per hour to \$24.92 per hour.

67(b). Trailer Estates failed to claim that Smith's July and August 2006 public records request were of the nature or volume to require a special service charge, yet Trailer Estates subsequently imposed such a charge.

67(c). Trailer Estates' legal counsel's August 2007 charge of \$25.00 per hour in administrative costs to produce public records in excess of the actual hourly rate of the records custodian.

68. In March of 2008, Vandermolen issued a memo demanding the removal of public records from their customary location and ordering the redaction of parts of the records in violation of the Public Records Law.

69. Trailer Estates Board members and/or records custodians have destroyed public records and failed to comply with an adopted record retention policy. Specifically, 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. Further Board members have testified that they routinely destroyed public records:

- i. Fred Hoch testified that he disposes of all of his public records while on ARC and as a Board member.
- ii. McNulty testified that she disposed of public records including emails as a Board member.
- iii. Vandermolen testified that he disposed of public records including emails as a Board member.
- iv. Salerno testified that he disposed of minutes of the Seasonal Recreation or Entertainment Committee.

80. Trailer Estates, Jones, Vandermolen, and Salerno, continue to violate the Sunshine law by continuing to hold meetings and discussions of Board business in private and make decisions, rules, and policies that affect residents outside of the Sunshine.

81. Trailer Estates and its Board members, Vandermolen and McNulty violated the Public Records Law by failing to produce the public records identified in paragraphs 62 and 65 for inspection and copying.

88. Trailer Estates, Vandermolen, and McNulty have repeatedly refused to produce public records for inspection.

92. For more than three years and in spite of legal counsel's advice, Jones, Vandermolen, Salerno, and McNulty, as well as other Trustees have refused to comply with the Sunshine laws.

93. For more than three years and in spite of legal counsel's advice, Trailer Estates and its Board members, Vandermolen, and McNulty, have failed to comply

with the Public Records Law.

2. In the Third Amended Complaint dated September 8, 2009 and the Addenda thereto dated October 19, 2009 filed by the Plaintiffs, the Plaintiffs make various allegations and claims set forth below, which are not and will not be supported by the application of then-existing law to the material facts:

37(g). Between September and December 2006, members of the Executive Committee met with Jones outside of the Sunshine to discuss the reasons for appointing Tom Featheringill to the Board.

37(h). From January 2006, to August 2007, the Executive Committee and its individual members met with Trustees outside the Sunshine to determine whether issues would be presented to the District's legal counsel. On or around May 14, 2007, Board Members, Bruce Smith and Jones met out of the Sunshine and discussed whether Mr. Smith was allowed to bring a legal question concerning the marina to the District's legal counsel. In January 2007, all the Board members discussed outside of a public meeting matters that were to come before Trailer Estates legal counsel. Between November 5, 2007 and December 12, 2007, all Board members were involved, outside of the Sunshine, in determining that a legal opinion should not be provided regarding Complaint 216.

37(i). From November 2005 through August 2007 Vandermolen and other member of the ARC acted as a committee of one outside the Sunshine, by approving permits.

37(j). In January or February 2007, Board members Tom Featheringill and

Wayne Hamblen met outside the Sunshine and discussed dredging the Trailer Estates marina.

37(k). In January or February 2008, Board members Tom Featheringill and Vandermolen met outside the Sunshine and discussed dredging the Trailer Estates marina.

37(r). In February 25, 2009, Board members Martha Brauer and Vandermolen discussed the auditor selection, outside of properly noticed board meeting.

37(u). In January 2007, all the Trustees discussed outside of a public meeting, matters to come before legal counsel.

37(y). In or around December 7, 2007, Board members Bruce Smith, Jones, and Vandermolen discussed and determined outside the Sunshine the application of OSHA to Trailer Estates.

37(aa). In June 4, 2007, Vandermolen and other Board members discussed outside the Sunshine, the McNiel mediated settlement agreement.

37(bb). In or about February 11, 2008, Salerno discussed outside of the Sunshine with Jones and Pam Cole, a Board member, District procedures regarding donations from clubs and funding to the clubs.

37(cc). Between January and May 14, 2007, Board members Bruce Smith and Jones discussed outside of the Sunshine, matters for legal counsel concerning boats.

37(dd). Between November 5, 2007, and December 12, 2007, all Board

members were involved, outside of the Sunshine, in determining that a legal opinion should not be provided regarding Complaint 216.

37(ff). In or about November 12, 2007, Board members Vandermolen and Bruce Smith met outside the Sunshine to discuss the combination of boats slips.

37 (kk). On or about May 27, 2008, Board members McNulty and Peg Durham met outside the Sunshine and discussed upgrading the sound system.

37(rr). In or around October 12, 2006, Wayne Hamblen, Board member, violated the Sunshine and executed a Manatee County Easement Encroachment Agreement without Board authorization granted at a public meeting; alternatively, the Board or its Executive Committee met outside of the Sunshine and granted Wayne Hamblen authorization to execute a Manatee County Easement Encroachment Agreement.

37(ss). On February 26, 2007, Board members Jones and Tom Featheringill met outside of the Sunshine and determined that Fla. Stat. § 849.01 does not affect Trailer Estates.

37(zz). At the end of 2007, Board members Vandermolen and Jones held meetings out of the Sunshine and determined that video of District meetings were not public records.

37(bbb). In or around May of 2008, Salerno communicated outside the Sunshine to the entire Board how he intended to vote on document management matters scheduled to come before the Board.

37(ccc). In March 2008, Board members met outside the Sunshine and

discussed their personal information being contained in public records and the redaction of such information, ultimately resulting in Vandermolen's order that Trustee's and Employee's cell phone information be redacted from public records.

37(ddd). In December of 2007, Board members McNulty, Peg Durham and Margo Cushman held meetings discussing and determining the permitted use of Trailer Estates property by its residents.

37(fff). In January and February of 2009, the Website Committee held meetings where the Website Committee, which included Brauer, developed, and determined the operation and content of the Trailer Estates' website on behalf of Trailer Estates and those meetings were not open to the public or properly noticed. Furthermore, during this time, the Website Committee utilized a process for altering the Trailer Estates' website in direct violation of the Board established policy regarding altering the website.

37(ggg). On January 7, 2009, Board members Brauer and Harry Fitzpatrick met outside the Sunshine to discuss Bingo and Trailer Estates' volunteer program.

37(hhh). On January 22, 2009, Board members Fred Hoch and Bob Durrin met outside the Sunshine and discussed Trailer Estates' website and the appointment of committees.

37(iii). On January 27, 2009, Board members Fred Hoch and Brauer met outside of the Sunshine and discussed the upcoming meeting agenda and bulletin boards.

37(jjj). On January 27, 2009, Board members Vandermolen and Salerno met

outside the Sunshine and discussed Trailer Estates' survey.

37(III). On or around February 23, 2009, Board members Gail Opper and Brauer met outside the Sunshine and discussed Trailer Estates' litigation expenses.

37(mmm). On or around February 27, 2008, Board members Salerno and Vandermolen met outside of the Sunshine and discussed Trailer Estates loans and interest rates.

37(qqq). In or around March of 2008, Vandermolen violated the Sunshine and instituted page 4 of the Trailer Estates Park and Recreation District Public Records Policy and Procedure ("Public Records Policy"); alternatively, the Board met outside the Sunshine and adopted page 4 the Public Records Policy.

37(rrr). In July 2008, the Board met outside the Sunshine and decided to deny the publication of articles authored by Denson in the Tribune, the newsletter/newspaper published by Trailer Estates.

37(uuu). In or around April 8 and 14, 2008, McNulty, Vandermolen, and Brauer met outside the sunshine to develop and edit the Disaster Preparedness Plan for Trustees.

37(vvv). In or around November 4, 2005, Jones and McNulty discussed the future planning survey outside of the Sunshine.

37(aaaa). On or about April 3, 2006, the Marina Committee met outside the Sunshine and interviewed and ultimately recommended Bruce Smith for the position of dockmaster.

37(bbbb). On December 5, 2008, Jones and trustee-elect Brauer met and

discussed PP41, PP40, PP13, and Swimming Rules outside of a properly noticed board meeting.

37(dddd). Between March 28 to April 5, 2006, members of the Future Planning Committee discussed lot calculations outside of the sunshine.

37(ffff). On December 6, 2007, Board members Pam Cole and Bruce Smith met and discussed Trailer Estates' website and its budget/expenses outside of a properly noticed board meeting.

37(gggg). On March 6, 2008, Board members Bruce Smith and Joe Bigley met and discussed content of the Trailer Estates website outside of the properly noticed board meeting.

37(hhhh). On April 27, 2009, Board members Vandermolen and Brauer discussed Trailer Estates' website out of the Sunshine.

37(iiii). On February 17, 2009, Brauer, Cole, Jones, Hoch and Salerno discussed and voted on the Trailer Estates' website content outside of the Sunshine.

37(IIII). During 2007 through 2009, Trailer Estates Seasonal Recreation Committee or Entertainment Committee has met outside the Sunshine. During 2007 through 2009, the Seasonal Recreation Committee or Entertainment Committee's members have included Ellie Miller and Joseph Salerno. The Seasonal Recreation or Entertainment Committee held its meetings in the Activity Building, Small Hall or at Salerno's home, where committee members discussed strategies for completing upcoming events.

37(mmmm). In April, 2008, Board members Vandermolen and Salerno, met

outside of the Sunshine and determined the timing and of distribution of the District's year-end financial report and the proposed budget to the District's residents.

37(nnnn). In April 2008, Board members Jones and Vandermolen met outside of the Sunshine and determined that free internet service should not be offered to the residents of Trailer Estates.

37(oooo). From November 2005 to the present, the Board through its individual Board members, including Vandermolen, Martha Brauer, Gail Opper, McNulty, and Peg Durham, have repeatedly acted outside of the Sunshine in determining the content of information published on Trailer Estates' media sources, including its website, television station, and newspaper.

37(pppp). From November 2005 to present, the Video Computer Club, acting as an arm of the Board, has repeatedly met outside of the Sunshine.

37(rrrr)(i). In January through March, 2009, Board members Brauer and Bob Durrin met out of the Sunshine and discussed placing Committees on the Board of Trustees meeting agenda.

37(rrrr)(iii). In April or May, 2009, Board members Brauer and Gail Opper met outside the Sunshine and discussed and determined who would be performing the Secretary of the Board's duties in Opper's absence.

37(rrrr)(iv). On January 2, 2009, Board members, Brauer and Harry Fitzpatrick, discussed in a telephone call outside of the Sunshine, Fitzpatrick's inability to execute his duties as the Continuing Recreation Trustee and his letter of resignation.

37(rrrr)(v). On January 9, 2009, Board members, Brauer and Harry Fitzpatrick, met outside the Sunshine and discussed Fitzpatrick's duties as the Continuing Recreation Trustee including Bingo and the delegation of his duties.

37(rrrr)(vi). In early 2009, Board members, Brauer and Bob Durrin met outside the Sunshine and discussed Fitzpatrick's resignation.

37(rrrr)(vii). In 2009, outside of the previously mentioned January 2, 2009 meeting, Board members Brauer and Fitzpatrick again met outside of the Sunshine and discussed Fitzpatrick's resignation.

37(rrrr)(viii). In or around May 20, 2009, Board members, Pam Cole and Brauer discussed in a telephone call outside of the Sunshine a special Workshop and Board of Trustees to consider the District television contract.

37(rrrr)(xi). In January, 2009, Board members, Brauer and Salerno met outside the Sunshine and discussed the recreational round table.

37(rrrr)(xii). In January 2009, Board members, Brauer and Gail Opper met outside the Sunshine and discussed the recreational round table.

37(rrrr)(xiv). In spring 2009, Board members, Brauer and Fred Hoch discussed in a telephone call outside of the Sunshine, Hoch's resignation from ARC.

37(rrrr)(xvi). In 2009, Board members, Brauer discussed with Pam Cole outside of the Sunshine, the content of the Trailer Estates Website.

37(rrrr)(xviii). In 2009, Board members, Brauer and Harry Fitzpatrick met outside of Sunshine and discussed lawn maintenance and Fitzpatrick's Trustee duties.

37(rrrr)(xix). Between July 29, 2009, and August 4, 2009, Board members,

Brauer and Fred Hoch met outside the Sunshine and discussed the Board's Workshop agenda.

37(tttt). On December 3, 2008, Bruce Smith, Peg Durham, Fred Hoch, and Bob Durrin, all Trustees or Trustees-Elect met outside of a properly noticed board meeting and discussed the upcoming Board workshop of December 8, 2008, regarding the Budget Questionnaire.

3. After conducting depositions and producing documents in this matter and after the Court's Order Granting in Part and Denying in Party Janet Jones' Motion for Partial Summary Judgment, it became apparent to the Plaintiffs and the Plaintiffs' counsel knew or should have known that the matters set forth above, when initially presented to the Court and during the discovery process thereafter, were not supported by the material facts necessary to establish the claims and/or would not be supported by the application of then existing laws to those material facts.

4. Based on the foregoing, the District seeks an award of reasonable attorney's fees to be paid to the District in equal amounts by the Plaintiffs and their counsel. It is clear that the Plaintiffs and their counsel knew or should have known that the claims described herein when initially presented to the Court, or during the course of discovery, were not supported by the material facts necessary to establish their claims and/or that the claims were not supported by the application of existing law to the material facts.

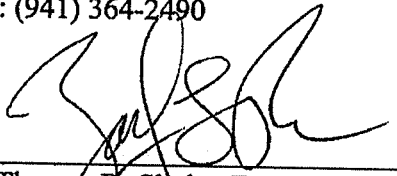
5. The District has served this Motion seeking sanctions pursuant to the provisions of F.S. 57.105(4) on Plaintiffs and provided Plaintiffs with 21 days after service of this Motion to withdraw or appropriately correct the claims and allegations described herein. The Plaintiffs failed to withdraw or appropriately correct the claims and allegations described herein.

WHEREFORE, the District respectfully requests this Honorable Court to enter an award of reasonable attorneys' fees to be paid in equal amounts by the Plaintiffs and their counsel.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail to Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1001 Third Avenue West, Suite 670, Bradenton, Florida 34205, Daniel E. Scott, Esquire, Daniel E. Scott, P.A., 2033 Main Street, Suite 408, Sarasota, FL 34237, Robert E. Turffs, P.A. 1444 First Street, Suite B, Sarasota, Florida 34236, James D. Dye, Esquire, Dye Deitrich, Petruff & St. Paul, P.L., 1111 3rd Avenue W., Bradenton, FL 34205-7834, and Hunter W. Carroll, Esquire, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, on this 15<sup>th</sup> day of March, 2010.

**KIRK ■ PINKERTON, P.A.**  
50 Central Avenue, Suite 700  
Sarasota, FL 34236  
Tel: (941) 364-2425  
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By:   
Thomas D. Shults, Esquire  
Florida Bar No. 363219  
Zachary L. Ross, Esquire  
Florida Bar No. 0028351

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 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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**MOTION FOR AWARD OF ATTORNEYS FEES AND COSTS**  
**PURSUANT TO 57.105(1) AND (4)**

COMES NOW Trailer Estates Park and Recreation District (hereinafter referred to as the "District"), and hereby files the above-referenced Motion and as grounds thereof states:

1. In the Amended Complaint dated April 13, 2009 filed by the Plaintiffs and their counsel in this matter, Plaintiffs make various allegations and claims which are not supported by the material facts necessary to establish such claims, including those set forth below:

37(p) *In December 2008, Board members and Board members elect, including Jones, Salerno, and Martha Brauer ("Brauer") held meetings outside the Sunshine where they drafted, revised and developed a budget questionnaire to assist with the upcoming Trailer Estates budget. [Plaintiffs' claim that this event occurred and/or violated the Sunshine law is not supported by material facts necessary to establish the claim.]*

37(t) *The Board's inclusion and adoption of an additional page 4 of the Trailer Estates Park and Recreation District Public Records Policy and Procedure ("Public Records Policy"). [Plaintiffs' claim that this event occurred and/or violated the Sunshine law is not supported by material facts necessary to establish the claim.]*



- 37(y) *The determination by Board members Jones and Vander Molen in April 2008 that free internet service should be offered to the residents of Trailer Estates. [Plaintiffs' claim that this event occurred and/or violated the Sunshine law is not supported by material facts necessary to establish the claim.]*
- 62(a) *In October 2005 and August 2006, Smith requested a copy of a citation for purported violations of the Deed restrictions that was issued to the property located at 6603 Arizona ("citation") and McNulty stated that the citation was unavailable and failed to produce the public record. [Plaintiffs' allegations that such a citation exists is not supported by material facts necessary to establish this claim. Plaintiffs know that such a citation from the District does not exist.]*
- 62(b) *In April 2008, Denson and other members of the Trailer Estates Future Planning Committee (FPC) submitted a public records request for a copy of the Trailer Estates database for use in preparation of the Board of Trustee direct survey, Vander Molen denied this request, and Trailer Estates has never produced these public records. [Plaintiffs' allegations that the District did not produce these records is not supported by material facts necessary to establish this claim. Plaintiffs know that the database has been produced.]*
- 62(c) *In November 2008, Denson submitted a public records request for items 'number 73 and 76' of the Trailer Estates public records log regarding a disruption that occurred at a February Board meeting. [The allegation that the District did not comply with this Request is not supported by material facts necessary to establish this claim. Plaintiffs know these public records have been produced.]*
- 62(d) *In November 2008, Denson submitted a Public Records Request regarding the Board's policy on Trailer Estates keeping files on individual residents. [The allegation that the District did not comply with this Request is not supported by material facts necessary to establish this claim. Plaintiffs know that such a policy does not exist.]*
- 62(e) *In December 12, 2008, Smith requested the e-mails between the Trustees and Trustee elects from January 1, 2006 to December 12, 2008. [The allegation that the District did not comply with this Request is not supported by material facts necessary to establish this claim. In January 2009, Plaintiffs were permitted an entire day to inspect and copy the requested public records.]*
- 62(f) *On March 12, 2009, Smith requested all letters Kirk-Pinkerton provided to Trailer Estates during January - March of 2009 regarding litigation and legal fees, and all documents from anyone at Ruden McClosky, Robert Turffs, Dye, Dietrich, Petruff, St. Paul and Matthews, Eastmoore, Hardy,*

*Crawwels and Garcia from December 1, 2008 to the present.* [The allegation that the District did not comply with this Request is not supported by material facts necessary to establish this claim. Plaintiffs know these public records have been produced.]

2. In the Amended Complaint dated April 13, 2009 filed by the Plaintiffs and their counsel in this matter, Plaintiffs make various allegations and claims set forth below which are not or would not be supported by the application of then existing law to these material facts, including those set forth below:

37(i) *In 2006, McNulty as Chairman issued a policy that any Trustees needing to contact the Trailer Estates attorney must first discuss the issue with a member of the administrative committee.* [Plaintiffs know this alleged sunshine violation is not supported by the application of then existing law to the material facts. Plaintiffs do not present a good faith argument for the extension, modification, or renewal of existing law or the establishment of new law, as it applies to the material facts, with a reasonable expectation of success.]

...  
37(q) *In January and February 2009, the website committee held meetings where the website committee, which included Brauer, developed, and determined the operation and content of the Trailer Estates website on behalf of Trailer Estates and these meetings were not open to the public or properly noticed. Furthermore, during this time, the website committee utilized the process for altering the Trailer Estates website in direct violation of the Board established policy regarding altering the website.* [Plaintiffs know this alleged sunshine violation is not supported by the application of then existing law to the material facts. Plaintiffs do not present a good faith argument for the extension, modification, or renewal of existing law or the establishment of new law, as it applies to the material facts, with a reasonable expectation of success.]

...  
37(t) *The Board's inclusion and adoption of an additional page 4 of the Trailer Estates Park and Recreation District Public Records Policy and Procedure ("Public Records Policy").* [Plaintiffs know this alleged sunshine violation is not supported by the application of then existing law to the material facts. Plaintiffs do not present a good faith argument for the extension, modification, or renewal of existing law or the establishment of new law, as it applies to the material facts, with a reasonable expectation of success.]

37(u) *The Board's decisions to deny the publication of articles authored by Denson in the Tribune (the newsletter published by the Trailer Estates).* [Plaintiffs know this alleged sunshine violation is not supported by the application of then existing law to the material facts. Plaintiffs do not present a good faith argument for the extension, modification, or renewal of existing law or the establishment of new law, as it applies to the material facts, with a reasonable expectation of success.]

...

37(y) *The determination by Board members Jones and Vander Molen in April 2008 that free internet service should be offered to the residents of Trailer Estates.* [Plaintiffs know this alleged sunshine violation is not supported by the application of then existing law to the material facts. Plaintiffs do not present a good faith argument for the extension, modification, or renewal of existing law or the establishment of new law, as it applies to the material facts, with a reasonable expectation of success.]

3. In paragraph 64 (a), (b), and (c), Plaintiffs allege examples of unreasonable delay in providing public records. These allegations are not supported by the material facts necessary to establish these claims.

4. After the conduct of several depositions and production of documents in this matter, it became apparent that the Plaintiffs and the Plaintiffs' counsel knew or should have known that the matters set forth above when initially presented to the Court, or during the discovery process thereafter, were not supported by the material facts necessary to establish the claims or would not be supported by the application of then existing law to those material facts.

5. Based upon the foregoing, the District seeks an award of reasonable attorney's fees to be paid to the District in equal amounts by the Plaintiffs and their counsel. It is clear that the Plaintiffs and their counsel knew or should have known that the claims described herein when initially presented to the Court, or during the course of discovery, were not supported by the material facts necessary to establish the claims and/or that the claims were not supported by the application of

existing law to the material facts.

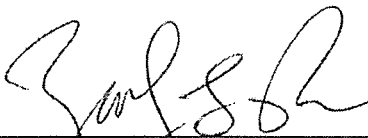
6. Pursuant to the provisions of F.S. 57.105, a copy of this Motion was served on Plaintiffs at least 21 days prior to filing this Motion. The Plaintiffs failed to withdraw or appropriately correct the claims and allegations described herein.

WHEREFORE, the District respectfully requests this Honorable Court to enter an award of reasonable attorney's fees to be paid in equal amounts by the Plaintiffs and their counsel.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Mail to Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1001 Third Avenue West, Suite 670, Bradenton, Florida 34205, Daniel E. Scott, Esquire, Center Pointe, Suite 408, Sarasota, Florida 34237-6056, Robert E. Turff, P.A. 1444 First Street, Suite B, Sarasota, Florida 34236, James D. Dye, Esquire, Dye Deitrich, Petruff & St. Paul, P.L., 1111 3rd Avenue W., Bradenton, FL 34205-7834, and Hunter W. Carroll, Esquire, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, on this 15<sup>th</sup> day of March, 2010.

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