

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

CITY OF BRADENTON BEACH, a municipal
Corporation of the State of Florida, and
JACK CLARKE,

Plaintiffs,

v.

CASE NO.

JOHN METZ, PATRICIA SHAY,
REED MAPES, WILLIAM VINCENT,
TJET MARTIN, and ROSE VINCENT,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, CITY OF BRADENTON BEACH, a municipal corporation of the State of Florida, and JACK CLARKE, through counsel, sues Defendants, JOHN METZ, PATRICIA SHAY, REED MAPES, WILLIAM VINCENT, TJET MARTIN, and ROSE VINCENT, and alleges:

INTRODUCTION

This is an action under the Government-in-the-Sunshine Law ("Sunshine Law") against the defendants seeking declaratory and injunctive relief for holding meetings outside of the Sunshine Law and contrary to the express written directive of the City Attorney. While serving as appointed members of the City's Planning & Zoning Board, defendants METZ, SHAY, MAPES and WILLIAM VINCENT met without any notice to the public and in violation of the Sunshine Law for the purpose of discussing matters reasonably foreseeable to come before them. Additionally, defendants MARTIN and ROSE VINCENT, as appointed members of the City's Scenic Waves Partnership

Committee, met without any notice to the public and in violation of the Sunshine Law for the purpose of discussing matters reasonably foreseeable to come before them.

JURISDICTION

1. This Court has jurisdiction pursuant to Art. I, Sec. 24(b), Fla. Const.; Art. V, Sec. 20(c)(3), Fla. Const.; § 26.012(2)(e) and (3), Fla. Stat.; and § 286.011(4), Fla. Stat.

2. Venue lies in Manatee County, Florida, because the acts for which suit is brought have occurred or are occurring in Manatee County, Florida, and Defendants are located within Manatee County, Florida.

3. Plaintiff, CITY OF BRADENTON BEACH, FLORIDA, (“CITY”), is a Florida municipal corporation and a citizen within the State of Florida within the meaning of § 286.011, Florida Statutes.

4. Plaintiff, JACK CLARKE, (“CLARKE”), is a resident of Bradenton Beach, Florida, and citizen of the State of Florida.

5. Defendant, JOHN METZ, (“METZ”), is a resident of Manatee County. He is sued in his official capacity as an appointed member of the City’s Planning & Zoning Board, and in his individual capacity for purposes of an award of attorneys’ fees under § 286.011(4), Fla. Stat.

6. Defendant, WILLIAM VINCENT, (“WILLIAM VINCENT”),¹ is a resident of Manatee County. He is sued in his official capacity as an appointed member of the City’s Planning & Zoning Board, and in his individual capacity for purposes of an award of attorneys’ fees under § 286.011(4), Fla. Stat.

¹ To avoid confusion, defendants William Vincent and Rose Vincent will be referred to by their full names.

7. Defendant, PATRICIA SHAY, ("SHAY"), is a resident of Manatee County, Florida. She is sued in her official capacity as an appointed member of the City's Planning & Zoning Board, and in her individual capacity for purposes of an award of attorneys' fees under § 286.011(4), Fla. Stat.

8. Defendant, REED MAPES, ("MAPES"), is a resident of Manatee County, Florida. He is sued in his official capacity as an appointed member of the City's Planning & Zoning Board, and in his individual capacity for purposes of an award of attorneys' fees under § 286.011(4), Fla. Stat.

9. Defendant, TJET MARTIN, is a resident of Manatee County, Florida. She is sued in her official capacity as an appointed member of the City's Scenic Waves Partnership Committee, and in her individual capacity for purposes of an award of attorneys' fees under § 286.011(4), Fla. Stat.

10. Defendant, ROSE VINCENT, ("ROSE VINCENT"), is a resident of Manatee County, Florida. She is sued in her official capacity as an appointed member of the City's Scenic Waves Partnership Committee, and in her individual capacity for purposes of an award of attorneys' fees under § 286.011(4), Fla. Stat.

11. As reflected in the affidavit of the City Attorney, Ricinda Perry, filed concurrently herewith, all defendants were on actual notice of the requirements of the Sunshine Law and each has received ongoing training on the requirements of the Sunshine Law.

FACTS

12. The Sunshine Law, as codified in § 286.011, Fla. Stat., requires advance notice to the public, and an opportunity for public comment at, any meeting or discussion on issues that are reasonably foreseeable to come before any board or collegial body.

The P&Z Board

13. The City has a Land Development Code (LDC) through which all decisions or recommendations affecting land development in the City are to be initially made.

14. The City created the Planning & Zoning Board (P&Z Board), to implement a wide variety of duties as it relates to the LDC, including, but not limited to:

- a. act as the Local Planning Agency under Florida Statutes, Section 163, and to carry out such duties as prescribed by the Comprehensive Plan;
- b. hold public hearings on Zoning Atlas Amendments, Land Development Code Amendments, special permits, planned development site plans, site and development plans where no plan currently exists or modifications to an approved plan, and Developments of Regional Impact and provide recommendations to the City Commission;
- c. hold workshops and special meetings as necessary and appropriate to carry out the responsibilities of the Planning and Zoning Board;
- d. initiate, review and make recommendations to the City Commission in regard to adoption and amendment of the text of this Code;
- e. make its special knowledge and expertise available, upon written request of the City Commission;

- f. recommend to the City Commission that special studies be performed as may be deemed necessary and proper to conduct the work of the Planning and Zoning Board, subject to the approval of the City Commission and available funding;
- g. adopt rules of procedure which are not inconsistent with this Code and are necessary for the administration of the Planning and Zoning Board; and
- h. perform other duties which may be lawfully assigned to it by the City Commission or Community Redevelopment Agency of the City of Bradenton Beach (CRA).

See LDC, Sections 203.1.1 – 203.1.8.

15. Section 160.360(4), Fla. Stat., provides that:

Prior to its consideration of a community redevelopment plan, the community redevelopment agency shall submit such plan to the local planning agency of the county or municipality for review and recommendations as to its conformity with the comprehensive plan for the development of the county or municipality as a whole. The local planning agency shall submit its written recommendations with respect to the conformity of the proposed community redevelopment plan to the community redevelopment agency within 60 days after receipt of the plan for review.

16. The P&Z Board is a “collegial public body” within the meaning of Art. I, § 24(b), Fla. Const., and a “board” within the meaning of § 286.011(1), Fla. Stat., and is otherwise subject to the provisions of Florida’s Sunshine Law.

17. As part of its duties as the local planning agency for the City, the P&Z Board has engaged in substantive discussions about a parking garage.

18. These discussions about a parking garage have included, but are not limited to, determining whether the amended plan of the City’s Community

Redevelopment Agency (CRA) was consistent with the City's Comprehensive Plan as it relates to a parking garage.

19. At a meeting held on April 12, 2017, the P&Z Board met to review the City's proposed amendments to the 2017 CRA Plan (Amended CRA Plan), which included an issue relating to a parking garage. Upon request of the City Attorney, the P&Z Board was requested to review the Amended CRA Plan, including the reference to a parking garage, to determine if it was consistent with the City's Comprehensive Plan.

20. During the April 12th P&Z meeting, City Planner Alan Garrett advised the P&Z Board that the Amended CRA Plan had one inconsistency with the Comprehensive Plan as it relates to a parking garage.

21. On April 19, 2017, the P&Z Board met again to discuss the Amended CRA Plan, including issues relating to a parking garage, and determined that it was consistent with the City's Comprehensive Plan.

22. Because the P&Z Board acts as the local planning agency, it is reasonably foreseeable that its duties will include future consideration of whether a parking garage should be constructed within the City, and whether the construction of a parking garage is consistent with the City's Comprehensive Plan.

CNOBB

23. Sometime in the summer of 2017, a private entity titled Concerned Neighbors of Bradenton Beach (CNOBB) was created. According to a draft of its Bylaws, CNOBB's mission and purpose includes, but is not limited to, "membership education, citizen initiatives and referendum, positive reconciliation of concerns and

growth and development of the organization.” Art. 5, § 3, CNOBB Bylaws (Jun. 27, 2017), available at <https://www.cnobb.org/by-laws> (last accessed Aug. 6, 2017).

24. CNOBB’s Mission Statement asserts that the entity was formed to:

Give Bradenton Beach residents, owners, and businesses common group whereby everyone will have a voice. The goals are to maintain Bradenton Beach with an atmosphere as intended and stated in the city charter; to preserve the character and quality of its neighborhoods and local businesses; to provide information and education to the residents of the community; and to encourage broader participation in city government.

CNOBB Mission Statement, attached hereto as Exhibit 1, available at <https://www.cnobb.org/our-mission> (last accessed Aug. 6, 2017).

25. CNOBB has multiple committees, including a Steering Committee.

26. Defendants METZ, WILLIAM VINCENT, MAPES and SHAY are members of CNOBB’s Steering Committee.

27. On July 25, 2017, CNOBB’s Steering Committee met for the purpose of considering a variety of matters. Defendants METZ, WILLIAM VINCENT, MAPES and SHAY attended and engaged in substantive discussions between, among and in the presence of each other on the subject of a parking garage.

28. Defendants METZ, WILLIAM VINCENT, MAPES and SHAY took a vote on a variety of issues during the course of the July 25, 2017, meeting of the CNOBB Steering Committee.

29. Substantive discussions between, among and in the presence of Defendants METZ, WILLIAM VINCENT, MAPES and SHAY occurred at the CNOBB meeting on the subject matter of a parking garage, including an acknowledgment that the issue was on the CRA’s budget, and it was a “hot button issue.”

30. The substantive discussions at the CNOBB meeting included prohibitions against the construction of a parking garage on public or private property within the City, and recognition that the Comprehensive Plan prohibits the construction of any stand-alone parking garage.

31. Only after engaging in substantive discussions about a parking garage between, among and in the presence of Defendants METZ, WILLIAM VINCENT, MAPES and SHAY at the CNOBB meeting held on July 25, 2017, did the defendants recognize that they should not discuss the matter any further because of the Sunshine Law.

32. Based on information and belief, Defendants METZ, WILLIAM VINCENT, MAPES, and SHAY have attended and participated in other CNOBB meetings.

Scenic Waves Partnership Committee

33. The Scenic Waves Partnership Committee is a “collegial public body” within the meaning of Art. I, § 24(b), Fla. Const., and a “board” within the meaning of § 286.011(1), Fla. Stat., and is otherwise subject to the provisions of Florida’s Sunshine Law.

34. Defendants ROSE VINCENT and MARTIN are either members of CNOBB or have participated in the CNOBB meetings and discussions.

35. On July 25, 2017, and on August 3, 2017, Defendants MARTIN and ROSE VINCENT attended and participated in CNOBB meetings.

36. During the course of the August 3rd CNOBB meeting, a discussion occurred between, among and in the presence of Defendants MARTIN and ROSE

VINCENT about issues that were reasonably foreseeable to come before the Scenic Waves Partnership Committee, including, but not limited to, the utilization of ropes and bollards within the CITY.

37. The issue of ropes and bollards is a frequent topic of discussion at the meetings of the Scenic Waves Partnership Committee.

38. During the course of the August 3rd CNOBB meeting, defendant MARTIN acknowledged that the issue of ropes and bollards was scheduled to come before the Scenic Waves Partnership Committee.

39. Plaintiffs have retained the undersigned to bring this action and have agreed to pay a reasonable attorneys fee for same.

40. Plaintiffs have incurred costs for bringing this action.

COUNT I

41. Plaintiffs repeat and incorporate all paragraphs 1-8, 11-32, and 39-40 as if fully set forth herein.

42. This is an action seeking declaratory relief under art. I, sec. 24(b), Fla. Const., and § 286.011, Florida Statutes.

43. As members of the P&Z Board, Defendants METZ, WILLIAM VINCENT, MAPES, and SHAY are required by law to provide reasonable notice of, and an opportunity for public comment on, all discussions, meetings, comments and proceedings between two or more of them on any issue that is reasonably foreseeable to come before the P&Z Board.

44. At the time of the meeting held on July 25, 2017, Defendants METZ, WILLIAM VINCENT, MAPES, and SHAY knew or should have known that the issues

of parking and a parking garage were reasonably foreseeable to come before them in their position as members of the P&Z Board.

45. Defendants METZ, WILLIAM VINCENT, MAPES, and SHAY did not provide reasonable notice to the public or an opportunity for public comment at CNOBB meeting and discussions held on July 25, 2017.

46. By failing to provide the public with reasonable notice and an opportunity for public comment at CNOBB meetings on the discussions and comments of two or more members of the P&Z Board on issues reasonably foreseeable to come before the P&Z Board, Defendants METZ, WILLIAM VINCENT, MAPES, and SHAY violated the Sunshine Law.

47. Plaintiffs are entitled to an award of attorney fees and costs for prosecuting this action.

WHEREFORE, Plaintiffs pray for the following relief:

- A. a declaration that, on July 25, 2017, Defendants METZ, WILLIAM VINCENT, MAPES, and SHAY, as P&Z Board members, were subject to Art. I, § 24, Fla. Const., and § 286.011, Fla. Stat., as it related to any issue that was reasonably foreseeable to come before the P&Z Board;
- B. a declaration that the issues of parking and a parking garage were reasonably foreseeable to come before Defendants METZ, WILLIAM VINCENT, MAPES, and SHAY in their capacity as P&Z Board members;
- C. a declaration that Defendants METZ, WILLIAM VINCENT, MAPES, and SHAY failed to provide reasonable notice to the public of, and an opportunity

for public comment on, their discussions and comments at the CNOBB meeting held on July 25, 2017;

D. awarding attorney fees and costs to Plaintiffs for prosecuting this action; and

E. any other relief the Court deems just and proper.

COUNT II

48. Plaintiffs repeat paragraphs 1-4, 9-12, 22-25, and 33-40 as if fully set forth herein.

49. This is an action seeking declaratory relief under art. I, sec. 24(b), Fla. Const., and section 286.011, Florida Statutes.

50. As members of the Scenic Waves Partnership Committee, Defendants MARTIN and ROSE VINCENT are required by law to provide reasonable notice of, and an opportunity for public comment on, all discussions, meetings, comments and proceedings between and among them on any issue that is reasonably foreseeable to come before the Scenic Waves Partnership Committee.

51. At the time of the meeting held on August 3, 2017, Defendants MARTIN and ROSE VINCENT knew or should have known that the issues discussed at the CNOBB meeting held on August 3, 2017 were reasonably foreseeable to come before them in their position as members of the Scenic Waves Partnership Committee.

52. Defendants MARTIN and ROSE VINCENT did not provide reasonable notice to the public on the discussions and comments in the presence of two or more members of the Scenic Waves Partnership Committee or an opportunity for public comment at the CNOBB meetings held on July 25, 2017, and August 3, 2017.

53. By failing to provide the public with reasonable notice on the discussions and comments in the presence of two or more members of two or more members of the Scenic Waves Partnership Committee, Defendants MARTIN and ROSE VINCENT violated the Sunshine Law.

54. By failing to provide the public with an opportunity for public comment on the discussions and comments in the presence of two or more members of the Scenic Waves Partnership Committee, Defendants MARTIN and ROSE VINCENT violated the Sunshine Law.

55. Plaintiffs are entitled to an award of attorney fees and costs for prosecuting this action.

WHEREFORE, Plaintiffs pray for the following relief:

- A. a declaration that, as Scenic Waves Partnership Committee members, Defendants MARTIN and ROSE VINCENT were subject to Art. I, § 24, Fla. Const., and § 286.011, Fla. Stat., at the meetings held on July 25, 2017 and August 3, 2017;
- B. a declaration that Defendants MARTIN and ROSE VINCENT failed to provide reasonable notice to the public of the discussions and comments at the CNOBB meetings held on July 25, 2017 and August 3, 2017;
- C. a declaration that Defendants MARTIN and ROSE VINCENT failed to provide the public with an opportunity for public comment on the discussions and comments in the presence of two or more members of the Scenic Waves Partnership Committee at the CNOBB meetings held on July 25, 2017 and August 3, 2017;

- D. awarding attorney fees and costs to Plaintiffs for prosecuting this action; and
- E. any other relief the Court deems just and proper.

COUNT III

56. Plaintiffs repeat paragraphs 1-4, 9-12, 22-25, and 33-40 as if fully set forth herein.

57. This is an action seeking injunctive relief Rule 1.610, Fla. R. Civ. P., and section 286.011, Florida Statutes.

58. As Scenic Waves Partnership Committee members, Defendants MARTIN and ROSE VINCENT are required by law to provide reasonable notice of all discussions, meetings, comments and proceedings and an opportunity for public comment on matters reasonably foreseeable to come before the Scenic Waves Partnership Committee.

59. Defendants MARTIN and ROSE VINCENT have not provided reasonable notice to the public or an opportunity for public comment of the CNOBB meetings and discussions relating to matters reasonably foreseeable to come before the Scenic Waves Partnership Committee.

60. The failure to provide the public with reasonable notice of and an opportunity for public comment on the discussions and comments in the presence of two or more members of the Scenic Waves Partnership Committee on matters reasonably foreseeable to come before the Scenic Waves Partnership Committee violates the Sunshine Law.

61. Plaintiffs and the public have been irreparably harmed by the failure of Defendants MARTIN and ROSE VINCENT to provide reasonable notice of the CNOBB

meetings and discussions and an opportunity to comment at such meetings on matters reasonably foreseeable to come before the Scenic Waves Partnership Committee.

62. Plaintiffs and the public would be irreparably harmed by the failure of the Defendants MARTIN and ROSE VINCENT to provide reasonable notice of the CNOBB meetings and discussions and an opportunity to comment at such future meetings on matters reasonably foreseeable to come before the Scenic Waves Partnership Committee.

63. Plaintiffs have demonstrated a substantial likelihood of success on the merits.

64. An injunction serves the public interest because the right to transparency in government is of constitutional dimension.

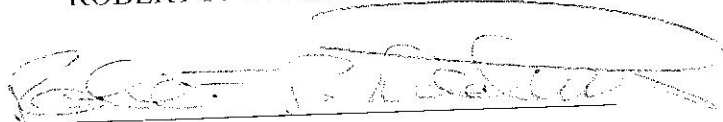
65. Plaintiffs are entitled to an award of attorney fees and costs for prosecuting this action.

WHEREFORE, Plaintiff pray for the following relief:

- A. enjoining Defendants MARTIN and ROSE VINCENT from jointly attending any meetings during which there is a discussion related to matters reasonably foreseeable to come before the Scenic Waves Partnership Committee without advance notice to the public and an opportunity for public comment;
- B. awarding attorney fees and costs to Plaintiffs for prosecuting this action; and
- C. any other relief the Court deems just and proper.

Respectfully submitted,

ROBERT P. WATROUS, CHARTERED

A handwritten signature in cursive script, appearing to read "Robert P. Watrous", is written over a horizontal line.

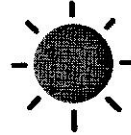
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Concerned Neighbors CNOBB

OUR MISSION of Bradenton Beach



- HOME
- YOU SHOULD KNOW!
- BY-LAWS
- INITIATIVES
- CONTACT US
- FORUM
- MEETINGS & MINUTES

Our Mission Statement

This association was formed to give Bradenton Beach residents, owners, and businesses common ground whereby everyone will have a voice. The goals are to maintain Bradenton Beach with an atmosphere as intended and stated in the city charter; to preserve the character and quality of its neighborhoods and local businesses; to provide information and education to the residents of the community; and to encourage broader participation in city government. More information available at cnoobb.org or call (941) 730-7715.

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