

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

ED DODD, Individually and as
Mayor of the City of Sebastian,
Florida; PAUL CARLISLE, Individually
and as City Manager of the City of
Sebastian, Florida; and MANNY
ANON, JR., Individually and as
City Attorney of the City of Sebastian, Florida,

Case No. 31-2020-CA-000269
Judge: Janet C. Croom

Plaintiffs,

vs.

CHARLES M. MAUTI; DAMIEN H.
GILLIAMS; and PAMELA PARRIS

Defendants.

MICHAEL BARFIELD, and
BARBARA PETERSEN,

Plaintiff-Intervenors,

vs.

CHARLES M. MAUTI; DAMIEN
H. GILLIAMS; PAMELA PARRIS; and
CITY OF SEBASTIAN, a Florida municipality,

Defendant(s).

COMPLAINT

Plaintiffs-Intervenors, MICHAEL BARFIELD and BARBARA PETERSEN
("Plaintiffs-Intervenors"), by and through their undersigned counsel, sue

Defendants, CHARLES M. MAUTI, DAMIEN GILLIAMS, PAMELA PARRIS (hereinafter “Individual Defendants”), and the CITY OF SEBASTIAN, a Florida municipality, and allege:

JURISDICTION AND VENUE

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)(c) and (3), Fla. Stat.; and §286.011(2) and (4), Fla. Stat.

2. All facts giving rise to this complaint occurred in Sebastian, Florida and therefore venue is proper in Indian River County, Florida.

PARTIES

3. Plaintiffs-Intervenors are citizens of the State of Florida within the meaning of §286.011, Florida Statutes.

4. Defendant, Damien Gilliams ("Gilliams") is a member of the City Council of the City of Sebastian. He is sued in his official capacity as an elected member of the City Council, and in his individual capacity.

5. Defendant, Charles Mauti ("Mauti") is the Vice Mayor of the City of Sebastian. He is sued in his official capacity as an elected member of the City Council, and in his individual capacity.

6. Defendant, Pamela Parris ("Parris") is a member of the City Council of the City of Sebastian. She is sued in her official capacity as an elected member of the City Council, and in her individual capacity.

7. Defendant, City of Sebastian (“City”), is a Florida municipal corporation, and is responsible for the acts of its elected officials, including members of the City Council.

8. All conditions precedent to the filing of this action have been performed, have been waived or are otherwise excused.

FACTS COMMON TO ALL COUNTS

9. On March 1, 2020, the Governor of the State of Florida issued Executive Order 20-51 directing the declaration of a public health emergency and establishing the State of Florida's response to COVID-19.

10. On March 9, 2020, the Governor of the State of Florida issued Executive Order 20-52 declaring a state of emergency.

11. §252.38, Florida Statutes, gives authority to duly constituted municipalities to declare a State of Local Emergency in order to provide for the health and safety of persons and property.

12. On March 17, 2020, a local state of emergency was declared to exist in all of Indian River County, Florida.

13. On March 17, 2020, Mayor Ed Dodd executed a declaration declaring a local state of emergency. See City of Sebastian Declaration of Local State of Emergency ("Emergency Declaration"), a copy of which is attached as **Exhibit A**.

14. The Emergency Declaration, pursuant to Florida Statutes and the Code of the City of Sebastian, authorized the Mayor to cancel and reschedule City meetings.

15. On April 1, 2020, the Governor of the State of Florida issued Executive Orders 20-91 and 20-92, directing that all persons in Florida to limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities.

16. A regularly scheduled meeting of the City Council of the City of Sebastian (“City Council”) had been set to take place on April 22, 2020.

17. However, on the same afternoon, Mayor Ed Dodd canceled the April 22nd meeting.

18. After Mayor Dodd canceled the meeting and after City Hall had closed for the day, Individual Defendants Gilliams, Mauti, and Parris used their electronic badges to unlock City Hall and enter the building for the purpose of holding a meeting (“the nonpublic meeting”).

19. After gaining entry to City Hall, the Individual Defendants took no action to ensure that members of the public were also able to gain entry into the building.

20. Individual Defendants then conducted the nonpublic meeting of the City Council and took action, made motions and voted on a variety of issues, including, but not limited to, suspending emergency declarations, firing the City Manager and City

Attorney, canceling a utility contract, appointing Defendant Gilliams as Mayor, retaining a new attorney for the City Council, and a hold on a land use extension.

21. There was no debate on any of the series of actions and votes taken by the Individual Defendants and all of this activity occurred in less than ten minutes including the pledge of allegiance.

22. A video of the nonpublic meeting at which these acts occurred can be found at <https://www.tcpalm.com/videos/news/local/2020/04/26/sebastian-city-council-meeting-wednesday-april-22-2020/3028448001/> (last accessed April 30, 2020).

23. Shortly before the nonpublic meeting adjourned, one individual can be heard on the videotape saying “Psst. Here comes the police.” At that point the nonpublic meeting was abruptly adjourned.

COUNT I

DECLARATORY RELIEF FOR VIOLATION OF SUNSHINE LAW (§286.011 & Art. I, §24(b))

24. Plaintiffs-Intervenors adopt and reallege the allegations of paragraphs 1-23 above.

25. This is an action for declaratory relief against Defendants Gilliams, Mauti, Parris and the City for violations of Florida’s Sunshine Law codified in §286.011, Fla. Stat., and Art. I, §24(b), Fla. Const.

26. 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.

27. Defendants Gilliams, Mauti and Parris are members of the City Council of the City of Sebastian (“City Council”) and were acting in that capacity at all times material to this action.

28. The City Council 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 its members are subject to the provisions of Florida’s Sunshine Law.

29. For purposes of declaratory relief, Defendant City is responsible for the acts of its elected officials.

30. Members of the public had no notice of the nonpublic meeting nor any opportunity to attend or provide public comment at the nonpublic meeting.¹

31. All of the acts, motions and votes that occurred at the nonpublic meeting were matters upon which it was reasonably foreseeable that the City Council would take action but only with proper notice and an opportunity for the public to attend and participate therein.

¹ At least two unknown individuals were present at the nonpublic meeting, one of whom videotaped the meeting.

32. Florida Statute §286.011(1) provides that all meetings of any commission “at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.”

33. Florida Statute §286.0114(2) provides that “[m]embers of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission.”

34. Action taken in violation of the Sunshine law is void *ab initio*.

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

36. Plaintiffs-Intervenors have incurred costs for bringing this action.

37. Plaintiffs are entitled to an award of their attorney’s fees and costs incurred in this action pursuant to §286.011(4), Florida Statutes.

WHEREFORE, Plaintiffs-Intervenors request that the Court grant the following relief:

A. a declaration that Defendants, as members of the City Council, 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 City Council;

B. a declaration that the issues discussed at the nonpublic meeting held on April 22, 2020, were reasonably foreseeable to come before the City Council and Defendants in their capacity as members of the City Council;

C. a declaration that Defendants failed to provide reasonable notice to the public of, and an opportunity for public comment on, their discussions and comments at the nonpublic meeting held on April 22, 2020;

D. a declaration that the acts of the Defendants at the nonpublic meeting held on April 22, 2020, are void *ab initio*;

E. entry of a judgment in favor of the Plaintiffs under §286.011(4), Florida Statutes, against the Defendants, jointly and severally, awarding the Plaintiffs their attorney fees and costs incurred in this action; and

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

COUNT II

INJUNCTIVE RELIEF FOR VIOLATION OF SUNSHINE LAW (§286.011(2))

38. Plaintiffs-Intervenors adopt and reallege the allegations of paragraphs 1-23 above.

39. This is an action for injunctive relief against Defendants Gilliams, Mauti, Parris and the City for violations of Florida's Sunshine Law codified in §286.011, Fla. Stat., and Art. I, §24(b), Fla. Const.

40. This Court has the specific authority to issue injunctions to enforce the Sunshine Law. See §286.011(2), Fla. Stat.

41. 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.

42. Defendants Gilliams, Mauti and Parris are members of the City Council of the City of Sebastian and were acting in that capacity at all times material to this action.

43. The City Council 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 its members are subject to the provisions of Florida’s Sunshine Law.

44. For purposes of injunctive relief, Defendant City is responsible for the acts of its elected officials.

45. Members of the public had no notice of the nonpublic meeting nor any opportunity to attend or provide public comment.

46. All of the acts, motions and votes that occurred at the nonpublic meeting were matters upon which it was reasonably foreseeable that the City Council would take action but only with proper notice and an opportunity for the public to attend and participate therein.

47. Florida Statute §286.011(1) provides that all meetings of any commission "at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting."

48. Florida Statute §286.0114(2) provides that “[m]embers of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission.”

49. Action taken in violation of the Sunshine law is void *ab initio*.

50. Plaintiffs-Intervenors have a substantial likelihood of success on the merits in this litigation. Defendants Gilliams, Mauti and Parris have already stipulated to an injunction entered by this Court as it relates to the nonpublic meeting.

51. Plaintiffs-Intervenors are suffering irreparable injury because the “[m]ere showing that the government in the sunshine law has been violated constitutes an irreparable public injury[.]” *See Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974).

52. The grant of an injunction serves the public interest. Florida’s Sunshine Law was enacted for the public benefit. *See Zorc v. City of Vero Beach*, 722 So. 2d 891, 897 (Fla. 4th DCA 1998) (“it is well settled that the Sunshine Law, enacted for the public benefit, should be liberally construed to give effect to its public purpose while exemptions should be narrowly construed.”).

53. Absent the entry of an injunction, Plaintiffs-Intervenors have no adequate remedy at law.

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

55. Plaintiffs-Intervenors have incurred costs for bringing this action.

56. Plaintiffs are entitled to an award of their attorney's fees and costs incurred in this action pursuant to §286.011(4), Florida Statutes.

WHEREFORE, Plaintiffs-Intervenors request that the Court grant the following relief:

A. entry of an injunction that enjoins the Defendants, their agents and representatives, from taking any action in furtherance of the acts, motions and votes that occurred at the nonpublic meeting held on April 22, 2020;

B. entry of a judgment in favor of the Plaintiffs under §286.011(4), Florida Statutes, against the Defendants, jointly and severally, awarding the Plaintiffs their attorney fees and costs incurred in this action; and

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

DATED this 14th day of May, 2020.

Respectfully submitted,

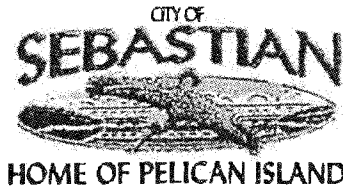
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2020, a copy of the foregoing was electronically served on the Clerk of the Court via the e-Portal, which shall cause a copy of same to be sent via e-mail to: **Jonathan Douglas Barkett, Esq.**, jbarkett@verolaw.com, mlee@verolaw.com; **C. Douglas Vitunac, Esq.**, dvitunacpleadings@verolaw.com; dhaidary@verolaw.com; **Michael Jeffrey Kessler, Esq.**, michaelfreakinkessler@gmail.com, admin@kesslerlawfirm.com, swood@kesslerlawfirm.com; **Craig Marc Rappel, Esq.**, cmr@rappelhealthlaw.com; and **Pamela Parris**, pparris@cityofsebastian.org, pamelaparris516@gmail.com.

/s/ Victor L. Chapman
VICTOR L. CHAPMAN



CITY OF SEBASTIAN DECLARATION OF LOCAL STATE OF EMERGENCY

WHEREAS, Chapter 252.38, Florida Statutes, gives authority to duly constituted municipalities to declare a State of Local Emergency in order to provide for the health and safety of persons and property; and

WHEREAS, by virtue of Section 2-37 of the Code of the City of Sebastian, the power to declare a Local State of Emergency is vested in the office of the Mayor, and;

WHEREAS, on March 1, 2020, the Governor of the State of Florida issued Executive Order 20-51, directing the declaration of a public health emergency and establishing the State of Florida's response to COVID-19; and

WHEREAS, on March 9, 2020, the Governor of the State of Florida issued Executive Order 20-52, declaring that a state of emergency exists in the State of Florida by reason of COVID-19; and

WHEREAS on March 13, 2020, President Donald Trump proclaimed that the COVID-19 outbreak in the United States constitutes a National Emergency beginning March 1, 2020; and

WHEREAS on March 17, 2020, Indian River County declared a local state of emergency exists in all of Indian River County.

NOW, THEREFORE, as Mayor the City of Sebastian, I hereby declare a State of Local Emergency in the City of Sebastian that will continue for the period of time in conjunction with the State of Florida Declaration unless otherwise canceled by the city council and includes the following area(s):

- a) The recalling or reassigning of City employees from vacation, canceling days off and mobilizing all personnel required for disaster response;
- b) The suspension of normal leasing and bid procedures to procure space, structures or other items under their normal authority for disaster response;
- c) The procurement of supplies, equipment, and services without formal bidding procedures;
- d) The closing to the public of public places including streets, alleys, public ways, parks amusement areas and public buildings;
- e) The prevention of price gouging for any essential commodity, dwelling unit, or storage facility;
- f) The conservation of water supplies; and
- g) The cancellation or rescheduling of City meetings.

Pursuant to this Declaration, the City Manager through the Chief of Police is hereby authorized to take whatever prudent actions are necessary to ensure the health, safety, and welfare of the community:

Enacted: Signed by Mayor: *Paul E. Jones* Date: 3/17/2020
Time: 2:38 pm

Witness: *Janette Williams*

Cancelled: Signed by Mayor: _____ Date: _____
Time: _____: _____

Witness: _____