

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL ACTION

DAVID MCDONALD,

Plaintiff,

v.

Case No.: _____

ERIC SEIDEL, ANDREW KNAPP
STEVE GRABER and KATIE GANNON,
the Mayor and Council Members of the City
of OLDSMAR, a municipality of the State of
Florida, and the City of OLDSMAR, a
municipality of the State of Florida;

Defendants.

_____ /

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, DAVID MCDONALD (“Plaintiff”), by and through his undersigned counsel and pursuant to Florida Statutes § 286.011 (the “Sunshine Law”), sues Defendants, the CITY OF OLDSMAR, a municipality of the State of Florida (hereinafter “the City”), its Mayor, ERIC SEIDEL, Vice Mayor, ANDREW KNAPP, and Council members STEVE GRABER and KATIE GANNON, and alleges:

1. This action is brought to enforce Article I, Section 24(b) of the Florida Constitution, and the Sunshine Law, and §286.011 Florida Statutes.
2. Plaintiff seeks a declaratory judgment that the City and its Council Members violated the Sunshine Law.

JURISDICTION, PARTIES AND VENUE

3. Oldsmar is a municipality in Pinellas County, Florida.

4. This Court has jurisdiction pursuant to Florida Statutes §§ 26.012, 286.011 and 86.011.

5. Venue is proper in Pinellas County, Florida. § 47.011, Fla. Stat.

6. Plaintiff is a citizen of this State who has standing to bring this action.

7. The City is a municipality located within Pinellas County, Florida, and is governed by a Charter.

8. The Charter vests governmental and legislative authority of the City in a City Council (“Council”), consisting of a Mayor, Vice Mayor and three Council members (collectively the “Council Members”).

9. ERIC SEIDEL was, at all times material, the Mayor of the City and a member of the Council.

10. ANDREW KNAPP was, at all times material, the Vice Mayor of the Council.

11. STEVE GRABER was, at all times material, a member of the Council.

12. KATIE GANNON was, at all times material, a member of the Council.

13. Plaintiff has a right to request a declaration from this court because he has a present, practical need regarding a bona fide dispute, about which he is in doubt, relating to the violation of §286.011 Fla. Stat. (the “Sunshine Law”) by the City and the Council Members. There is a justiciable question as to the right of the Plaintiff to request the Court to determine whether the City and the Council Members violated the Sunshine Law and the Constitutional rights of Plaintiff, to wit Article I Sections 24(b) of the Florida Constitution and § 286.011 of Florida Statutes. *May v. Holley*, 59 So.2d 636, 639 (Fla.1952).

GENERAL ALLEGATIONS

May 25, 2021 Meeting In Hillsborough County

Outside of Oldmar's Territorial Jurisdiction

14. On May 25, 2021, the Council Members met at the Armature Works Show 'N' Tell Room in Tampa, Hillsborough County, Florida for its Annual Planning Conference and Capital Improvement Plan Work Session (the "Planning Council Session").

15. The agenda and the minutes of the Council Session are attached as exhibits A and B respectively.

16. On May 4, 2021, the provision regarding the Downtown Development Plan (AIR-1492) was publicly scheduled and approved by the Council to be held at a public meeting within the City on May 18, 2021.

17. However, for unexplained reasons, the City removed AIR-1492 (relating to the Downtown Development Plan) from the May 18, 2021 public council meeting agenda and instead discussed and resolved issues relating to AIR-1942 at the May 25, 2021 Council Meeting (at Armature Works in Tampa).

18. This meeting was not just an ordinary meeting. The Council Meeting agenda and meeting minutes show that this was the City's annual planning session, and it lasted all day.

19. The meeting started at 8:30am and concluded at 2:44pm. The morning session included an update on Council Priorities and discussions of infrastructure renovations, and other items listed as: Execute Economic Development Plans and Strategies, Build the Downtown Corridor, Downtown Development Status, and Council Selection Priorities.

20. According to the minutes of the meeting, the afternoon session of more than two hours discussed the entire City's Capital Improvement Projects and its Downtown Development

Plan.

21. The Council Meeting resulted in decision making on significant City issues including land use issues. For example: Library Services Council consensus was to keep the overpass in the CIP; Council consensus was to keep the timing of the \$40,000 as presented; Council consensus was to address the control building and the aeration system at the WRF in the 21/22 year; Council consensus was to provide seating, and plan for restrooms and shelters.

22. The City's authority to act is limited to its territorial limits which do not include Hillsborough County.

23. The City is not authorized to hold public meetings outside the territorial limits of Oldsmar. "[A]bsent authority from a general or special law, it was concluded that a municipality's governing body could not hold meetings outside its jurisdictional boundaries." Fla. Att'y Gen. Op. 2003-03, (Jan. 6, 2003).

December 7, 2021 Meeting Amending Oldsmar's Comprehensive Plan

24. On December 7, 2021, the Council held a public meeting to adopt a controversial and publicly opposed comprehensive plan amendment ordinance and corresponding ordinance which drastically increase density within the City ("Increased Density Ordinances").

25. More than 150 people tried to attend and submit public comments at the December 7, 2021 meeting, but there was insufficient room for them to attend the meeting. Mayor Seidel joked that people were trying to get into the bathroom so that they could hear what was being said.

26. There were no external monitors or audio of the meeting which would have permitted the people who could not attend to hear what was happening at the meeting when the Increased Density Ordinances were adopted.

27. *As a result, the Plaintiff and members of the public were unable to attend the meeting.*

28. All conditions precedent to the maintenance of this action, if any, have been met, waived or satisfied.

29. Plaintiff has retained the undersigned counsel to represent him in this action and has agreed to pay them a reasonable fee.

THE SUNSHINE LAW

30. The purpose of the Sunshine Law is the "protection of the public's right to be present and to be heard during all phases of enactments by governmental boards and commissions" *School Bd. of Duval Cty. v. Florida Publishing Co.*, 670 So. 2d 99, 101 (Fla. 1st DCA 1996), and "to prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance." *See Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So.2d 857, 860 (Fla. 3d DCA 1994) (quoting *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla.1974)). The act must be "broadly construed to effect its remedial and protective purpose," *Wood v. Marston*, 442 So.2d 934, 938 (Fla.1983), and all exemptions to the law must be narrowly construed. *Zorc v. City of Vero Beach*, 722 So. 2d 891, 897 (Fla. 4th DCA 1998).

31. The Sunshine Law was enacted in the public interest to protect the public from "closed door" politics. In addition, it should be "construed so as to frustrate all evasive devices." *Board of Public Instr. of Broward Co. v. Doran*, 224 So. 2d 693, 699 (Fla. 1969).

32. Art. I, § 24(b) of the Florida Constitution requires that all meetings at which public business is to be transacted or discussed be open and noticed to the public, requiring:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

33. Notwithstanding the self-executing nature of the State Constitution, the Legislature further implemented this mandate through the Sunshine Law, which broadly requires all formal municipal action to be taken at a public meeting, as follows:

34. All decisions that were made at either the May 25, 2021 or the December 7, 2021 meetings are void *ab initio*.

All meetings of any board or Council of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or Council, but who has not yet taken office, 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.** (Emphasis supplied)

§ 286.011(1) Fla. Stat.

COUNT I – VIOLATION OF ART. I, § 24, FLA. CONST. AND § 286.011

(Conducting Public Meeting Outside of Oldsmar’s Territorial Jurisdiction)

35. Plaintiff incorporates herein by reference the paragraphs set forth above.

36. Plaintiff seeks a declaration that the City and Council Members violated Florida Statutes §286.011, the Sunshine Law, implemented pursuant to Art. I, § 24(b) of the Florida Constitution.

37. The City convened the Annual Planning Session outside the territorial boundaries of the City, and Council Members met at the Armature Works in Hillsborough County to conduct City business during the Council Meeting.

38. At that Council Meeting, matters were discussed which foreseeably would come before the Council at other meetings or public hearings, e.g. the Downtown Development Plan, AIR-1492.

39. The City and the Council Members violated the Sunshine Law by holding a meeting outside of the jurisdictional territory of the City.

40. All decisions or consensus by the Council at that meeting or any matter which was a precondition for taking further legislative action of the City are void *ab initio*.

WHEREFORE, Plaintiff demands judgment declaring that the City and Council Members violated the Sunshine Law by conducting a meeting outside of the City’s territorial jurisdiction and declaring void *ab initio* any decisions made or any matter which was a precondition for taking further legislative action of the City and awarding Plaintiff’s costs and attorney’s fees pursuant to § 286.011(4), Florida Statutes, and granting such other and further relief as this Court deems appropriate.

COUNT II – VIOLATION OF ART. I, § 24, FLA. CONST. AND § 286.011

**(Failure to Provide Citizens A Reasonable Opportunity
to Attend the December 7, 2021 Public Meeting)**

41. Plaintiff restates the paragraphs set forth above.

42. The City held a public meeting at which it was foreseeable that a large overflow crowd would be present to hear and speak about a controversial comprehensive plan amendment and ordinance which permitted increased density.

43. The limited space did not afford the citizens of the City a reasonable opportunity to attend the meeting. The public was, therefore, denied the reasonable opportunity to attend the meeting as required by the Sunshine Law because it was not a **“public meeting[] open to the public at all times.”**

44. Any actions at the December 7, 2021 meeting to approve the City’s Comprehensive

Plan Amendment and related ordinance to increase density are void *ab initio*.

WHEREFORE, Plaintiff demands judgment declaring that the City and Council Members violated the Sunshine Law by not affording the citizens of Oldsmar a reasonable opportunity to attend the public meeting on December 7, 2021 at which the Increased Density Ordinances were discussed and adopted, and declaring any action at the December 7, 2021 meeting to approve such ordinances void *ab initio*, and awarding Plaintiff's costs and attorney's fees pursuant to § 286.011(4), Florida Statutes, and granting such other and further relief as this Court deems appropriate.

Respectfully submitted this 14th day of March, 2022.

/s/ Timothy W. Weber
Timothy W. Weber, Esq.
FBN: 86789
Amber L. Nicol, Esq.
FBN: 1028018
timothy.weber@webercrabb.com
amber.nicol@webercrabb.com
lisa.willis@webercrabb.com
Weber, Crabb & Wein, P.A.
5453 Central Avenue
St. Petersburg, FL 33710
Phone No. (727) 828-9919
Fax No. (727) 828-9924
Attorneys for DAVID MCDONALD