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

THOMAS RASK
Plaintiff

UCN: 522024CA000923XXCICI
Case No. 24-000923-CI

vs.

CITY OF ST. PETE BEACH,
(a political subdivision of the State of Florida)
Defendant
_____/

RESPONSE TO DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Plaintiff THOMAS RASK ("Plaintiff") responds as follows to the Motion to Dismiss ("MTD") filed by the CITY OF ST. PETE BEACH ("the City"), the Defendant in this civil complaint ("Complaint"), and responds using numbered items for ease of reference for all:

The MTD is unsigned - violates the Florida Rules of Judicial Administration

1. Although the certificate of service is signed, the MTD itself is not signed. Failure to sign a motion violates Fla. R. Jud. Admin. Rule 2.515(a) "Attorney's Signature and Certificates" requiring that *"every document of a party represented by an attorney shall be signed by at least 1 attorney of record in that attorney's individual name"* [quoted in relevant part]
2. The signature of Defendant's counsel on the "Certificate of Service" ("CoS") does not suffice because the MTD and said certificate are separate documents. The sole purpose of a CoS is to certify initial service of process has been (or will be) made of the document preceding the CoS, or that it has been filed with the Clerk of the Court.

3. Said rule reads in relevant part as follows, with underlining added by Plaintiff:

RULE 2.515. SIGNATURE AND CERTIFICATES OF ATTORNEYS AND PARTIES

(a) Attorney's Signature and Certificates. Every document of a party represented by an attorney shall be signed by at least 1 attorney of record in that attorney's individual name whose current record Florida Bar address, telephone number, including area code, primary e-mail address and secondary e-mail addresses, if any, and Florida Bar number shall be stated, and who shall be duly licensed to practice law in Florida or who shall have received permission to appear in the particular case as provided in rule 2.510. The attorney may be required by the court to give the address of, and to vouch for the attorney's authority to represent, the party. Except when otherwise specifically provided by an applicable rule or statute, documents need not be verified or accompanied by affidavit. The signature of an attorney shall constitute a certificate by the attorney that:

(1) the attorney has read the document;

(2) to the best of the attorney's knowledge, information, and belief there is good ground to support the document;

(3) the document is not interposed for delay; and

(4) the document contains no confidential or sensitive information, or that any such confidential or sensitive information has been properly protected by complying with the provisions of rules 2.420 and 2.425. If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the document had not been served.

(b) **Pro Se Litigant Signature.** A party who is not represented by an attorney shall sign any document and state the party's address and telephone number, including area code.

(c) **Form of Signature.**

[the remaining rule text is irrelevant to this matter and has been omitted]

4. As will be shown, the MTD is so legally deficient that the *"good ground to support the document"* [the MTD] is lacking that said rule requires. For that reason, Plaintiff asks this Court to find that the MTD was *"not signed...with intent to defeat the purpose of this rule"* and therefore that *"the action may proceed as though the document had not been served"* [quoting from the above rule].

5. Subsection (b) of said rule requires signature (without any certification) by *pro se* litigants like Plaintiff. Attorneys are held to a high standard, and this Court should enforce that standard.

The MTD's allegations in response to Count One of the Complaint - (§119)

6. The MTD's §3 through §5 fails to clearly explain that Plaintiff's allegations of legal insufficiency are *different* for the two complained of executive sessions. In order to respond to the MTD, this response will make that delineation clear, even though it was already made in the Complaint.
7. The MTD §6 incorrectly gives the date of one of those executive sessions as "April 12, 2022." The correct date on which the executive session took place April **26**, 2022 ("the 2022 ES").
8. This Response will now discuss facts relevant to the 2022 ES, and the application of law.

(i) The 2022 ES (i.e. the April 26, 2022 Executive Session)

9. The City held a so-called executive session (a.k.a. "closed door session" or "shade session") on April 26, 2022 to discuss litigation involving two civil complaints. The meeting was not open to the public, and said meeting what this Response refers to as "the 2022 ES."
10. Such executive sessions are allowed only if they are held pursuant to Sec. 286.011(8), Fla. Stat., which states that such a meeting is allowed *"provided that"* certain *"conditions"* are met.
11. Plaintiff alleged in the Complaint that two (2) said conditions were not met for the 2022 ES.
12. The first condition that was not met is the following requirement in Sec. 286.011(8)(a), Fla. Stat.: *"The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation"* [underlining added]. The City Attorney did not make such a statement, or one substantively similar to it, at a public meeting.
13. The meeting minutes for April 12, 2026 City Commission meeting ("Apr 12 CCM") included in Exhibit A of the MTD state that Assistant City Attorney McConnell ("McConnell") *"asked for a closed executive session on April 26th at 5:00 p.m. in these Chambers."* However, what the MTD fails to disclose is that said minutes show that he did so without stating that the City Attorney *"desires advice concerning the litigation"* or anything substantially similar.

14. As stated in §10 on the previous page, such a statement is required by Sec 286.011(8)(a), Fla. Stat. to be made at an open meeting before an executive session is held.
15. Importantly, said minutes are demonstrably incorrect for the following reason: the City's own meeting video from said meeting (at 1:43:20) shows McConnell stating that *"pursuant to Florida Statute 286.011(8)(a)"* that he is *"required to request a public hearing outside of the sunshine to discuss some settlement proposals"* [underlining added].
16. By incorrectly requesting a *"public hearing"* and not an executive session, McConnell didn't announce or request an executive session at the April 12, 2022 meeting. McConnell referenced "286.011(8)(a)" in his statement, which is the statute referenced above in §14. McConnell further and he admitted in that same statement that the City is *"required"* to adhere to it.
17. The MTD's Exhibit A did not include the meeting minutes from the April 26th, 2022 public meeting in which the 2022 ES opened. They are attached here as **Exhibit 1**. Said minutes show that neither the City Attorney nor anyone to which he delegated responsibility stated in said meeting that they desire advice concerning the litigation.
18. *"Desires advice concerning the litigation*" is the language that subsection (a) requires, not the *"request a public hearing outside of the sunshine to discuss some settlement proposals"* language that McConnell used.
19. Since McConnell referenced subsection (a) when he spoke, a subsection which is only 20 words long, this Court should presume that he read it and understood it, especially since he is an attorney.
20. Neither meeting audio nor video for said April 26th public meeting is not available on the City's website. If it is introduced as evidence, Plaintiff expects it will show the same: no "desires advice" statement was made.
21. Next, this Court should consider the "NOTICE OF EXECUTIVE SESSION" in the MTD's Exhibit A. Said notice says that it was posted on April 20, 2022.

22. However, said notice doesn't appear on the City's website, one of the places the City's Clerk has claimed it gives notice of meetings.

23. Said notice also does not state that the City Attorney *"desires advice concerning the litigation."* Even if it did, the statutory "desires advice" requirement would not be met, see Florida Attorney General Opinion ("AGO") 04-35. Essentially, said AGO opinion says that the "desires advice" announcement must be made at a public meeting of the board.

24. Said AGO also very importantly says the following: *"If the attorney does not advise the board at a public meeting that he or she desires the board's advice regarding the litigation, the board is not precluded from providing such advice to the attorney but it must* [then] *do so at a public meeting"* [underlining added].

25. As for providing the name of the people attending in said notice, see §6 of the Complaint, which states: *"The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending"* [underlining added]. The "names of the persons attending" were demonstrably not announced in the open meeting before the executive session.

26. In other words, providing the names of those attending in the notice fails the statutory requirement in 286.011(8)(d). Said names must be announced at the very public meeting in which the executive session is opened. The meeting minutes from said public meeting, which took place on April 26, 2022 (see Exhibit 1**)**, show that said requirement in (d) was not met.

27. As shown above, the record clearly shows that for this public meeting in which the 2022 ES was opened, the two requirements in subsections (a) and (d) were not met.

28. Sec. 286.011(8)(d), Fla. Stat. states that *"The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending"* [underlining added].

29. The "names of the persons attending" were demonstrably not announced in the open meeting in which the 2022 ES was opened.
30. Both said conditions, (a) and (d) are required to be met under Sec. 286.011(8), Fla. Stat.
31. Both the meeting minutes and the meeting video show that the conditions were not met, and the City did not dispute those two allegations by Plaintiff after being informed of them prior to the filing of the Complaint.
32. On January 17, 2024, Plaintiff made a Florida §119 public records request for the court reporter's transcript of the 2022 ES.
33. In response, the City provided Sec. 286.011(8)(e), Fla. Stat., as the basis for not providing 12 of the 28 pages of the meeting transcript.
34. However, in *Chmielewski v. City of St. Pete Beach*, 161 So. 3d 521 - Fla: Dist. Court of Appeals, 2nd Dist. 2014, the 2nd Fla. Dist. Court of Appeals concluded that *"the City must demonstrate the applicability of a statutory exemption"* and that *"we resolve any doubt in favor of disclosure."*
35. Because of *Chmielewski*, a case decided in 2004 in which the City was the defendant and that also involved *ss.* (8), the City had been on notice for over seven (7) years prior to the 2022 ES that it must *fully* comply with Sec. 286.011(8), Fla. Stat. before entering into any executive session.
36. The City has been on notice for that same amount of time and also through *Chmielewski* that public records otherwise exempt from disclosure become disclosable if it fails to comply by taking necessary protective steps.
37. In another case also decided in 2014, the court found that even if the court found no need for it to take any other action, the Plaintiff was *"still entitled to a declaration that the City violated the Sunshine Law"* provided that the Court concluded that it did (*Anderson v. City of St. Pete Beach*, 161 So. 3d 548 - Fla: Dist. Court of Appeals, 2nd Dist. 2014). As can be seen, *Anderson* also involved the City as the Defendant, as in this case.

38. In *Anderson*, the court's decision states that City conceded in oral arguments that the Plaintiff in that case *"is at least entitled to a declaration that the City violated the Sunshine Law, provided we* [the 2nd DCA] *conclude that it did."* Plaintiff in this case is entitled to the same relief.
39. The statutory public records exemption that the City is relying on in withholding the requested records in this case, Sec. 286.011(8)(e), Fla. Stat., states that *"the transcript shall be made part of the public record upon conclusion of the litigation,"* meaning that the redacted portion involving ongoing litigation can no longer be withheld once litigation has concluded.
40. However, a plain reading of Sec. 286.011(8), Fla. Stat., shows that said exemption is *only* enjoyed *"provided that the following conditions are met"* [underlining added], followed by a listing of said conditions. *Chmielewski* and *Anderson* supports Plaintiffs interpretation of said statute.
41. When the conditions are not met, the meeting becomes open to the public — yet it was not. Because said conditions were not met, records of said meeting become unexempted public records, including the statutorily required court reporter transcript.

(ii) The 2024 ES (i.e. the January 23, 2024 Executive Session)

42. The City held an executive session on January 23, 2024 ("the 2024 ES") to discuss litigation involving two other civil complaints unrelated to the ones in the 2022 ES.
43. The executive session that was opened inside of the open meeting was noticed.
44. However, the open meeting in which the executive session was opened was not noticed.
45. The MTD does not deny §19 in the Complaint that the *"open meeting in which the executive session was opened was not noticed"* [underlining added]
46. Not noticing the open meeting is a violation of the requirement in Sec. 286.011(1), Fla. Stat., that a "*commission must provide reasonable notice of all such meetings* [that are "public meetings open to the public]" [underlining added]

47. When notice of meetings is customarily given in a certain way by a public agency, failing to provide any notice through said customary means fails the statutory *"reasonable notice"* test.

48. This Court should especially note that in the case of the 2022 ES, the public meeting and the executive session were both noticed. It therefore appears that the failure to notice the 2024 ES was due to mistake or oversight. However, such reasons are not a defense against failure to provide notice. The City has also not raised excusable neglect or similar as a defense in the MTD.

49. The MTD §9 falsely claims that *"Plaintiff claims that the City violated section 286.011(8)(a), Fla. Stat, by failing to request at a public meeting the executive session. See Pl. Compl. 16 ."* [underlining added]

50. In fact, Plaintiff alleged no such thing. Plaintiff correctly alleged that the "desires advice" statement was never made. The City failed to do so in open meetings, both on January 9th, 2024, and on January 23rd, 2024.

51. After creating a straw man, the MTD §9 then defeats it by saying that *"the publically* [sic] *available minutes that Plaintiff reference prove otherwise."* The minutes that the MTD relies on shows that the statutorily required "desires advice" statement was ever made.

52. The City's own video and audio proves Plaintiff's allegation. City Attorney Dickman ("Dickman") announced the 2024 ES at a January 9th city commission meeting (starting at 2:37:33). Dickman used the same incorrect term "public hearing" (instead of executive session) that McConnell also used. Dickman also failed to make the required "desires advice" statement.

53. The City's own audio of the January 26 public meeting in which the 2024 ES was opened is incomplete. However, Plaintiff was there in person to record the entirety of said public meeting. No "desires advice" statement was made.

54. No notice of the public meeting was provided on the City's website. No "paper notice" (meaning a physical notice) was created either.

55. In an effort to settle this case outside of court, Plaintiff on April 5, 204 provided the City's counsel with three (3) time-stamped and geolocated photos. Said photos showed that less than half an hour before the meeting, no notice of said public meeting appeared on the locked bulletin just outside of city hall. Said bulletin board is where the city customarily provides such physical notices.

The MTD's allegations in response to Count Two of the Complaint - (§286.011)

56. The MTD §12 states the following:

    "In Plaintiff's view, any action taken at meetings subject to these notices are void ab initio. See Pl. Amd. Compl. ¶ 54-55. Plaintiff's view is mistaken as the statute states otherwise." [underlining added]

    The words *"says otherwise"* would suggest that *"the statute"* referenced has language to contradict Plaintiff's claim, yet the MTD doesn't provide that language. §54 of the Complaint, which the MTD cited in the above quote, provides case law support for Plaintiffs "void *ab initio*" assertion, as does §53 and §55 of the Complaint.

57. The MTD's §10, §11 and §12 (three items, totaling 77 words) is Defendant's entire response to Count II of the Complaint's three pages and over 1,300 words to establish the validity of Count II. While there is no requirement that "Motions to Dismiss" make lengthy or brief arguments, Plaintiff is satisfied that all that needs to be said about Count II now has been said in this Response, with reservations for clarifications that need to be made to address typos in any of either party's filings.

The MTD's allegations in response to Count Three of the Complaint - (§286.0114)

58. The MTD §15 states as follows:

> "Plaintiff also states that he chose to watch the meeting from home, despite being unsure whether the Commission intended to take action to fill the district 3 seat. See Pl. Amd. Compl. ¶ 60-61." [underlining added]

Nowhere in the Complaint is the word "unsure" used, nor anything substantially similar.

59. Plaintiff asks this Court to note the MTD's repeated misrepresentations of Plaintiff's claims, as well as several misleading characterizations of the facts and statute in this matter (as shown here and previously in this response).

60. There was nothing for Plaintiff or others to be "unsure" of as there was no indication prior to the complained of St. Pete Beach City Commission meeting ("the January meeting") that official action would be taken on the item in question. The first indication came once the meeting began (the Complaint §67).

61. As soon as said indication was given, Plaintiff texted City Attorney Dickman and expressly cited Sec 286.0114, Fla. Stat. (the statute applicable to this Count), and said that Plaintiff would sue if the City proceeded (the Complaint §68). The City was thus put on notice of the Complaint.

62. The MTD §19 states that *"citizens were given that opportunity to comment"* in response to the part of the Complaint §81 mentioning the three who did comment on the proposition in question. However, the fact that some "citizens" were able to comment in no way shows that Plaintiff or all *"members of the public"* were given the *"reasonable opportunity to be heard on a proposition before a board or commission"* that Sec. 286.0114(2), Fla. Stat., says *"shall be given."*

63. The legislative history of said statute is such that it exists in part to prevent exactly the kind of action taken by the City in this case, namely not exposing themselves to a roomful of people speaking up in opposition to whatever action elected officials may furtively be trying to take.

Standard of review

64. Without providing any reasoning or evidence, the MTD claims that *"Plaintiff fails to show that he is entitled to a writ of mandamus <u>because</u> the documents incorporated by reference in his Amended Complaint prove that the City did not violate section 119.07"* [underlining added].

65. Because said claim fails to elaborate or explain further, it is the kind of "vague or ambiguous" pleading that Fla. R. Jud. Admin. Rule 1.140(e) "Motion for More Definite Statement" offers Plaintiff relief from.

66. Said rule states that if a pleading is *"so vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading, that party may move for a more definite statement before interposing a responsive pleading."*

67. Plaintiff will therefore make a separate "Motion for More Definite Statement" so that this Court can separately rule on it, rather than make said motion part of this Response.

68. The MTD's section titled "Standard of Review" hinges on two assumptions for Count One:

    (i) That the City did not violate §286.011(8).
    (ii) That the City did not violate §119.07.

69. In fact, the entire MTD depends on both those two assumptions being true. However, said assumptions are demonstrably <u>not</u> true, as shown in the Complaint and in this Response. Therefore, the MTD fails to establish that Count One in the Complaint should be dismissed.

70. In discussing the standard of review for Count Two, the MTD claims that "meeting information" is posted online and in various places around the city, including *"the locked bulletin board outside of city hall."* Said object is identical to the "locked bulletin board" Plaintiff referenced in §55 of this Response. In §55, Plaintiff stated that evidence in the form of photographs, already provided to Defendant, clearly show that no "meeting information" was posted for the January 26, 2024 public meeting at which the 2024 ES was opened. Said photographs are attached as **Exhibit 2.**

71. The MTD additionally alleges that because the Plaintiff does not *"allege the name of any public official who allegedly violated the Sunshine Law,"* then cites the *Deerfield Beach* decision, which dealt with allegations of an elected official having non-public non-noticed meetings with another elected official, both serving on the same city commission. The reason that the Plaintiff, a publishing company, in *Deerfield Beach* lost their case is because they failed to state the name of the other commissioner(s) in said meetings.

72. However, Count Two in the present case makes no such allegations or similar. Instead, it makes allegations of failure to provide the statutorily required *"reasonable notice"* for the meetings enumerated in Count Two. Therefore, *Deerfield Beac*h is completely irrelevant to the present case.

73. Defendant's invocation of *Deerfield Beach* appears to be based on a failure to understand the various facets of the so-called "Sunshine Law." Just because a court decision references the "Florida Sunshine Law" (which *Deerfield Beach* does) doesn't mean that it is applicable here.

74. As for Count Three, Defendant again misstates Plaintiff's position, and misleads, by stating:

> "While Plaintiff may disagree with the 'acting' title placed upon Ms. Rzewnicki ["Rzewnicki"] at the January 9, 2024 meeting ,District 3 only had one resident qualify for the election therefore, no election would happen and she [Ms. Rzewnicki] would assume the District 3 seat in March."
> [underlining added]

To which Plaintiff responds:

(i) The word "acting" was never used by Plaintiff in the Complaint.

(ii) Instead, what Plaintiff has disagreed with, but outside of the Complaint, was the "commissioner-elect" title falsely and repeatedly conferred upon Rzewnicki by City Attorney Dickman. He did so in direct contradiction of AGO 98-60, reaffirmed in an Attorney General Informal opinion dated August 11, 2016.

Dickman later admitted in an open meeting, without referencing Plaintiff's citation of said AGO's, that he had used said "commissioner-elect" term in error.

(iii) Defendant uses the word "would" in the above quoted text, and arguments using the word "will" have also been used by Dickman to inappropriately try to confer a special status upon Rzewnicki.

(iv) The Complaint §63 showed that at least two other city commissioners, who like Rzewnicki are unelected, used language like "will become the District 3 Commissioner" in speaking about Rzewnicki before voting to appoint her. All four of the unelected commissioners currently serving are named as defendants in an unrelated lawsuit alleging that they were unlawfully seated.

(v) Some of the commissioner who resigned and in doing so gave room for the unelecteds have also made similar statements

(vi) In total, these appear to be actions aimed at inappropriately creating an aura of inevitability of Rzewnicki's eventual ascendance to the dais upon which the St. Pete Beach City Commission sits. Such actions were taken in conjunction with the appointment process.

(vi) Said aura of inevitability is wholly inappropriate because it ignores potential events such as relocation creating ineligibility to serve, informal or legal challenges to Rzewnicki's (or any commissioner's) eligibility resulting in resignation, death, or any number of other possibilities.

75. Even with Rzewnicki being slated to serve on the City's commission starting in March, that fact in no way relieves the City from its duties under Sec. 286.0114, Fla. Stat. This Court should look very skeptically at any attempt by city officials to avoid having to face public opposition <u>in public</u> to what the majority consisting of the unelected city commission intends to approve. This Court should not allow the City to play the political game of "if only I had known that there was strong opposition to the proposition among my constituents, I would have voted differently!"

76. The MTD also objects to this Court issuing any form of injunction involving Count Three. Plaintiff is willing to abandon his prayer for injunction and accept a finding by this Court that Sec. 286.0114(2), Fla. Stat. was violated in this instance.

77. The MTD argues that this Court should strike Plaintiff's request for *"attorney's fees"* for Counts One and Two. However, what Plaintiff actually prayed for is "attorney's fees <u>and costs</u>" [underlining added] in said two counts. Although Plaintiff has not yet engaged counsel, he has incurred such costs and fees, which at the present time amount to slightly less than $500.

78. Apart from misstating Plaintiff's request, the MTD's request to strike also fails to contemplate the possibility that an attorney may be hired by Plaintiff in the future and enter this case through a "Notice of Appearance."

79. Notably, the MTD does not ask that this Court strike Plaintiff's conditional request in Count Three that *"if the Court deems such an award is authorized by Sec. 286.0114(7)(a), Fla. Stat., award appropriate costs and fees"* [underlining added]. Defendant therefore appears to understand the difference between attorney's fees, costs and fees, which are all three distinct categories of expenses, yet appeared to not understand such differences in discussing Counts Two and Three.

80. Furthermore, the MTD's "request" to strike is legally deficient in two ways. First, it fails to adhere to Fla. R. Civ. P. Rule 1.1.40 "DEFENSES" which in subsection (f) "Motion to Strike" states:

> "A party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time." [underlining added]

By using the word "strike," the MTD seeks relief that can only be granted through a motion, yet the MTD instead "requests" such relief. This Court should therefore disregard said request.

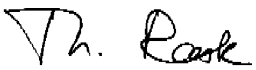
In addition, Motions to Strike can only be made under said rule for "matter[s]" that a court deems *"redundant, immaterial, impertinent, or scandalous."* Plaintiff's request, or any Plaintiff's request, for "attorney's fees and costs" can not be made to fit in any of those subject area "matters."

WHEREFORE Plaintiff respectfully requests that this Court:

(a) STRIKE "Defendant's Motion to Dismiss Plaintiff's Amended Complaint" based on a finding that it was *"not signed...with intent to defeat the purpose of this rule"* and *"proceed as if the document had not been filed"* (see Fla. R. Jud. Admin. Rule 2.515(a)), or alternatively;

(b) DENY "Defendant's Motion to Dismiss Plaintiff's Amended Complaint"

Dated: April 12, 2024



Thomas Rask
Plaintiff (Pro Se)
13565 Heritage Drive
Seminole, FL 33776
(727) 710-2800
tom@rask.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 16, 2024, the undersigned electronically filed the foregoing with the Clerk of Court using the Florida Courts E-Filing Portal.

Dated: April 12, 2024

/s/ Thomas Rask

Thomas Rask
Plaintiff (Pro Se)
13565 Heritage Drive
Seminole, FL 33776
(727) 710-2800
tom@rask.com