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IN THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO.: CL 91-14417 AA

CITIZENS FOR A BETTER
ROYAL PALM BEACH, INC.,
a Florida corporation
not for profit, and NORTON TYSON,

Plaintiffs,

vs.

VILLAGE OF ROYAL PALM BEACH,
a Florida municipal corporation;
RPB INVESTORS, INC., a Florida
corporation; and ANTHONY R.
MASILOTTI, Trustee,

Defendants.

SUMMARY FINAL JUDGMENT

This matter came before the court upon plaintiffs' motion for summary judgment on all counts of the plaintiffs' amended complaint. The court having reviewed the amended complaint, answers thereto, plaintiffs' and defendants' motions for summary judgment, the memorandum of law submitted by the parties in support of their respective positions, and having heard the argument of counsel, reviewed the depositions filed of record, and being otherwise fully advised in the premises makes the following findings:

MATERIAL FACTS

In late 1990, at a regularly scheduled Village Council meeting, the Village of Royal Palm Beach (the Village) decided to sell four acres of a 21.82 acre parcel of land located at the Southwest corner of Okeechobee Boulevard and Royal Palm Beach Boulevard known as Tract 115. When the Village purchased this property on November 30, 1988, the entire purchase, except for approximately 1.25 acres on the corner of the tract, was financed through the proceeds of a bond issue.

On November 5, 1991, the Village advertised in the Fort Lauderdale Sun-Sentinel that it would accept bids for the sale of 1 to 4 acres of Tract 115. The ad specified that the terms of the purchase sale were to be "cash at closing."

The Village received numerous bids on the property. After making three successive proposals, Anthony Masilotti, a resident and businessman in Royal Palm Beach, offered to purchase the four lots for \$1,550,000.00 in cash.

Masilotti's bid was discussed at a public Village Council meeting on March 21, 1991. Councilman Zabik moved to "direct staff to proceed to closing." The Village Council approved the motion.

Between March 21, 1991, and May 4, 1991, the Village Manager met on a one-on-one basis with the individual members of the Village Council to discuss the progress of the negotiations for the sale of the Tract 115 lots. As a result of the meetings and negotiations, the Mayor signed an agreement on the behalf of the Village to sell Lot 4 (approximately 1.54 acres of Tract 115) to Anthony Masilotti Enterprises, Inc. (Masilotti Enterprises) for

\$600,000.00 cash. The Village also agreed to give Masilotti Enterprises an option to purchase the balance of the four acres. These contracts were never, prior to execution, considered or discussed by the Village Council in an open public meeting.

The substance of the deal again changed without any formal approval at a Village Council meeting after it was determined that Masilotti Enterprises could not come up with the \$600,000.00 cash for the sale. After determining that the Village could not enter into a long-term lease for 100 years with \$5,000/month in rental payments (based on 10% annual interest on the \$600,000.00 value of the lease) with a private party, the parties restructured the all-cash sale.

On October 18, 1991, the Village agreed to sell Lot 4 (1.66 acres of Tract 115) to RPB Investors, Inc. (RPB) for \$600,000.00. RPB was not required to put any money down and the Village agreed to take a purchase money note and mortgage back for the entire sales price. The note bore interest at 10% annually and the entire \$600,000.00 sales price was payable at the end of 100 years. The Village agreed to pay all closing costs and the intangible tax and documentary stamp taxes on the mortgage loan. Additionally, the Village agreed to subordinate its mortgage loan to the construction loan or permanent loan obtained by RPB and, if requested to by RPB, to "forego the mortgage or satisfy the mortgage of record ..." without payment from RPB.

The negotiations for this final transaction were again handled by the Village Manager and discussed on a one-on-one basis with the members of the Village Council. The new deal was never discussed at any public Village Council meeting until November 21, 1991,

after the contracts and agreements were signed. At the November 21st meeting, the residents of Royal Palm Beach vehemently voiced their opposition to the October 18th transaction and called for the Village Council to request an opinion from the attorney general on the validity of the deal. The Village Council refused and told its constituents that "the only solution ... is for the citizens to get together and sue the Village ... to go into court and prove that something shady was done here ...".

On December 18, 1991, the Citizens for a Better Royal Palm Beach (Citizens) filed a four-count complaint against the Village, RPB, and Masilotti. The complaint was subsequently amended to include Norton Tyson, Citizens' president, as a party plaintiff. In Counts I, II and IV of the amended complaint, plaintiffs seek injunctive relief, cancellation and rescission, and declaratory relief, respectively, regarding the October 18th agreements between the Village and RPB asserting that the agreements violate Article VII, Section 10 of the Florida Constitution and section 286.011, Florida Statutes. Additionally, plaintiffs seek independent relief in Count III based on violation of section 286.011.

On January 14, 1992, the closing of the property took place. RPB received a warranty deed in exchange for the purchase money promissory note for the entire \$600,000.00 purchase price and a purchase money mortgage to secure the note. The deed and mortgage were duly recorded.

On February 20, 1992, two months after suit had been filed and one month after closing, at a public Village Council meeting at which Tyson was present, the Village Council approved and ratified the October 18th agreements and the January 15th closing. Although

the public was given an opportunity to question the Village Council about the transaction, no comments were made.

On February 18, 1992, Masilotti filed a motion for summary judgment, alleging that Masilotti "has no further rights, privileges, or interest in the effect, validity, or potential rescission of the various contracts referenced in Plaintiffs' Amended Complaint." On March 5, 1992, the Village filed a motion for summary judgment (the Village's motion for summary judgment), to which RPB and Masilotti joined, alleging that there are no genuine issues of material fact and that because the sales transaction did not violate Florida's Constitution or the "Government in the Sunshine Law," the Village was entitled to the entry of summary judgment in its favor. On March 30, 1992, plaintiffs filed their motion for summary judgment. On April 16, 1992, the court denied the Village's motion for summary judgment. The defendants have moved ore tenus for reconsideration and/or rehearing on the court's denial of their motion for summary judgment.

The parties have agreed that, because the facts are undisputed, this case can be resolved at the summary judgment phase of the litigation. Based on the foregoing undisputed facts, the court makes the following findings:

I. PLAINTIFFS HAVE STANDING TO BRING THIS LAWSUIT.

"Florida has a checkered history concerning the requirements for standing to bring a taxpayer's suit." Godheim v. City of Tampa, 426 So.2d 1084, 1086 (Fla. 2d DCA 1983). The general rule is that the taxpayer may bring suit only upon a showing of special

injury that is different from the injury suffered by other taxpayers in that district or municipality. Department of Revenue v. Markham, 396 So.2d 1120 (Fla. 1981); Paul v. Blake, 376 So.2d 256 (Fla. 3d DCA 1979).

In this case, it is beyond dispute that neither Citizens nor Tyson has alleged any special injury. Thus, it appears that neither party has standing to sue the defendants in this action. However, the special injury rule has two exceptions, one judicially and the other statutorily created, which apply in this case to give the plaintiffs standing to sue.

First, a taxpayer has standing to sue a municipality in the absence of special injury if the taxpayer attacks the constitutionality of the government's actions. Department of Revenue v. Markham, supra; Department of Admin. v. Horne, 269 So.2d 659 (Fla. 1972).

The second exception to the special injury requirement was statutorily created and applies when a party alleges a violation of Florida's "Government in the Sunshine Law," section 286.011, Florida Statutes. Section 286.011(2) provides in part:

The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

Florida courts have held that this provision of the sunshine law gives a citizen standing to sue a public body despite the absence of any special injury. McCoy Restaurants, Inc. v. City of Orlando, 465 So.2d 546 (Fla. 5th DCA 1985)(Judge Sharp, concurring in part and dissenting in part); Godheim v. City of Tampa, supra. The rationale for this exception is that a violation of the

sunshine law "constitutes an irreparable public injury." State ex rel. Boyles v. Florida Parole and Probation Comm'n, 436 So.2d 207, 210 (Fla. 1st DCA 1983).

In this case, Citizens and Tyson have alleged violations of the sunshine law and Article VII, section 10, of the Florida Constitution. Accordingly, these parties do not have to allege special injury to sue the defendants. Therefore, Citizens and Tyson have standing to bring this action against the Village, RPB, and Masilotti.

II. THE VILLAGE COUNCIL VIOLATED SECTION 286.011, FLORIDA'S "GOVERNMENT IN THE SUNSHINE LAW."

The Village contends that it did not violate the sunshine law because the Village Council did not meet among themselves outside of a public meeting to discuss the sale of the land to RPB. Further, defendants claim that even if a technical violation occurred, the Council's actions have been rendered "sunshine bright" by the February 20, 1992 public meeting in which the agreements were discussed and ratified by the council. The preliminary issue presented is whether the Village Manager's individual meetings with the Village Council members that resulted in the restructuring of the sale violated the sunshine law.

In Blackford v. School Bd. of Orange County, 375 So.2d 578 (Fla. 5th DCA 1979), the school board was faced with a major redistricting problem in which 6000 students would have to be transferred to other schools. The superintendent met individually with board members in two hour intervals to exclusively discuss

this problem. After this procedure was repeated numerous times over a three month period, the reclassification of Cherokee Junior High was announced. The resolutions were placed on the board's agenda for final approval. The circuit court held that "scheduled successive meetings between a school superintendent and individual members of his school board did not violate the Government in the Sunshine Act." Id. at 579. The Fifth District reversed the trial court's decision and stated:

... we are convinced that the scheduling of six sessions of secret discussions, repetitive in content, in rapid-fire seriatim and of such obvious official portent, resulted in six de facto meetings by two or more members of the board at which official action was taken. As a consequence, the discussions were in contravention of the Sunshine Law.

Id. at 580.

Similarly, the individual meetings between the Village Manager and the Village Council members resulted in de facto meetings by the Village Council in which official action was taken. As a result of these individual meetings, the terms of the sale were substantially changed without any approval at a public meeting. Instead of selling four lots to Masilotti for \$1,550,000.00 cash, the Village sold one lot to RPB for \$600,000.00 at 10% interest with the principal to be repaid at the end of 100 years. Further, the Mayor actually executed the contracts as a result of these de facto meetings before holding a public vote on the subject. Therefore, the individual discussions between the Village Manager and the Village Council members which resulted in a substantial change in the terms of the sale and which resulted in the actual execution of the contracts between the Village and RPB clearly violated the sunshine law. The question now becomes whether the

subsequent ratification of the deal at the February 20th public meeting cured the initial violation of the sunshine law.

In Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974), the petitioners filed a writ of certiorari challenging a zoning ordinance adopted by the Town Council of the Town of Palm Beach. The Town Council appointed a citizens planning commission at a nonpublic administrative hearing and "delegated to the committee much of their administrative and legislative decisional zoning formulation authority which was ordinarily exercised by a city-governing body itself -- and particularly the position of the process where the affected citizens expect to be officially heard." Id. at 474-475. Numerous meetings between the committee and a planning firm took place. None of these meetings were held in public. After full and open meetings of the zoning commission and Town Council, the Town's comprehensive zoning plan was approved in virtually the same form as produced by the planning advisory committee.

The Court explained why the public approval of the ordinance was not sufficient to make the ordinance "sunshine bright":

One purpose of the government in the sunshine law was to prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency, and relates to any matter on which foreseeable action will be taken.

The principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State.

Id. at 477.

Gradison stands for the proposition that a public body cannot summarily approve at "a purely ceremonial public meeting" a public decision that was made in private. Occidental Chem. Co. v. Mayo, 351 So.2d 336, 342 (Fla. 1977). In this case, the Mayor had already executed the agreements before the February 20th meeting. Closing on the property had already taken place a month before the attempted ratification. Obviously, the decision to enter into this transaction with RPB had been made in secret long before the February 20th meeting. The Village Council's ratification of the agreements was clearly a "ceremonial acceptance of secret actions and ... a perfunctory ratification of secret decisions at a later meeting open to the public." Tolar v. School Bd. of Liberty County, 398 So.2d 427, 429 (Fla. 1981). Because the February 20th meeting did not render the actions of the Village Council "sunshine bright," this Court should deny the defendants' motion for summary judgment on this point.

Tolar v. School Bd. of Liberty County, supra, a case in which the Florida Supreme Court held that ratification occurred to cure a violation of the sunshine law, is distinguishable from the instant case. In Tolar, the super-intendent elect of schools in Liberty County met privately with the School Board members to discuss reorganization, which included abolishing Tolar's position as director of administration of the School Board. At an open and public meeting in which Tolar was present and given an opportunity to be heard, the School Board voted to abolish his position. Tolar

challenged the School Board's action by seeking to have the School Board's final action set aside as violative of the sunshine law. The trial court denied Tolar's motion for summary judgment and the district court agreed, holding that although the initial discussions technically violated the sunshine law, the final vote ratified the School Board's secret discussions. The Florida Supreme Court agreed and distinguished Gradison:

The present case is likewise not controlled by Gradison because here the Board took independent, final action in the sunshine in voting to abolish the position. The Board's action was not merely a ceremonial acceptance of secret actions and was not merely a perfunctory ratification of secret decisions at a later meeting open to the public. Rather, the Board's action was a decision made in the "sunshine" to abolish Tolar's position. This case is more akin to Bassett v. Braddock wherein we were confronted on a cross-appeal with the question of whether the election of the chairman and vice-chairman of the Dade County School Board was valid under the particular circumstances. Although initially the election was held by secret ballot, it was later conducted by motion and vote in open meeting. We held that: "In this particular instance, any initial violation by secret written ballot was cured and rendered 'sunshine bright' by the corrective open, public vote which followed."

398 So.2d at 429.

In this case, the Village Council did not take "independent, final action in the sunshine" when it voted to ratify the agreements on February 20th. The agreements had already been executed and closing had taken place on Lot 4. The deal had already been completed when the Village Council attempted to ratify its secret actions. This case is "more akin" to Gradison in which the Town Council and the zoning authorities virtually adopted verbatim the comprehensive zoning plan that had been formulated during secret meetings of the citizens planning committee. In fact, this case is stronger than Gradison because the Town Council

and the zoning authorities could have changed the comprehensive zoning plan at the public meeting. In this case, the deal had been completed and RPB had closed on Lot 4 at the time of the "ratification" meeting. Therefore, the court finds that the actions of the Village Council taken at the February 20th meeting were ceremonial, perfunctory and a sham and did not cure the Village's violation of Florida's "Government in the Sunshine Law."

IT IS THEREUPON ORDERED AND ADJUDGED THAT:

1) The defendants ore tenus motion for reconsideration and/or rehearing of the court's denial of the Village's motion for summary judgment, to which RPB and Masilotti joined, is hereby granted and taken into consideration in reaching the decision in this order.

2) There is no genuine issue of material fact or law that precludes entry of a summary final judgment in favor of the plaintiffs against the defendants on plaintiffs' first amended complaint.

3) The Village's motion for summary judgment, to which RPB and Masilotti joined, is hereby denied.

4) Summary final judgment is hereby entered in favor of the plaintiffs, CITIZENS FOR A BETTER ROYAL PALM BEACH, INC.; and NORTON TYSON; and against defendants VILLAGE OF ROYAL PALM BEACH; RPB INVESTORS, INC.; and ANTHONY R. MASILOTTI, TRUSTEE on plaintiffs' first amended complaint.

5) Title to Lot 4 of Tract 115, according to the Plat thereof as recorded in Plat Book 68, Page 43 of the Public Records of Palm Beach County, Florida is hereby vested in the Village of Royal Palm Beach.

6) All documents of record regarding this transaction, including, but not limited to, the Easement Agreement recorded in Official Record Book 7089, Page 287, the Mortgage Deed recorded in Official Record Book 7089, Page 251, both of the Public Records of Palm Beach County, Florida, are declared null and void.

7) This court retains jurisdiction over the parties hereto and the subject matter hereof for the purpose of taxing costs and attorneys' fees in favor of Plaintiffs and against Defendants jointly and severally.

DONE AND ORDERED in Chambers of West Palm Beach, Palm Beach County, Florida, this 14 day of May, 1992.

SIGNED AND DATED

MAY 14 1992

JUDGE EDWARD RODGERS

EDWARD RODGERS,
CIRCUIT COURT JUDGE

Copies furnished to:

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