

IN THE NINTH JUDICIAL CIRCUIT COURT
IN AND FOR OSCEOLA COUNTY FLORIDA

FRIENDS OF SPLIT OAK FOREST, INC.,
SPEAK UP WEKIVA, INC., and
VALERIE ANDERSON

Plaintffs

v.

Case No.

OSCEOLA COUNTY, FLORIDA, a
Political Subdivision
Defendant

_____ /

COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This Complaint is filed and seeks relief under Sections 286.0114(6), Florida Statutes and Chapter 86, Florida Statutes for a violation of Florida's Sunshine Law which occurred when the OSCEOLA COUNTY Board of County Commissioners ("BOCC") took action at a Board Workshop held on April 16, 2018 by consensus, i.e., without a formal vote, without first allowing the public to comment as memorialized later in a letter by the Chairman of the BOCC dated May 2, 2018. Venue is appropriate in this Court pursuant to Fla. Stat. § 47.011

2. Florida's Government-in-the-Sunshine Law was enacted in 1967. Today, the Sunshine Law regarding open government can be found in [Chapter 286](#) of the Florida Statutes.

These statutes establish a basic right of access to most meetings of boards, commissions and other governing bodies of state and local governmental agencies or authorities.¹

3. Throughout the history of Florida's open government, its courts have consistently supported the public's right of access to governmental meetings.

4. In 2013, the legislature created section 286.0114 Florida Statutes to ensure that the public would have an opportunity to be heard on most issues, with a few exceptions, before any final action is taken by local governments.

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees. —

(1) For purposes of this section, “board or commission” means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

(c) A meeting that is exempt from s. 286.011; or

¹ Florida Attorney General – Florida Sunshine Law.
<http://myfloridalegal.com/pages.nsf/Main/DC0B20B7DC22B7418525791B006A54E4>

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

(a) Provide guidelines regarding the amount of time an individual has to address the board or commission;

(b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or

(d) Designate a specified period of time for public comment.

(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

(6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.

(7)(a) Whenever an action is filed against a board or commission to enforce this section, **the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section.** The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

History.—s. 1, ch. 2013-227.

5. Plaintiffs, FRIENDS OF SPLIT OAK FOREST, INC., a Florida Not for Profit Corporation in good standing, SPEAK UP WEKIVA, INC., a Florida Not for Profit Corporation in good standing, and VALERIE ANDERSON a Florida citizen, were present but were denied the ability to speak during the workshop on the item. Only an invited guest, Charles Lee of Florida Audubon, and staff were allowed to speak to the BOCC on the item before BOCC consensus on a final action was reached, albeit without a formal vote, resulting in the letter from the Chair dated May 2, 2018 describing the consensus to support a particular highway alignment through Split Oak State Forest and conservation lands.

6. Plaintiffs, FRIENDS OF SPLIT OAK FOREST, INC., SPEAK UP WEKIVA, INC., and VALERIE ANDERSON desired to speak against this action, but were not afforded the ability to speak on the item before consensus was reached on April 16, 2018, to send a letter from the BOCC on Osceola County BOCC letterhead with all BOCC members listed on the side of the letterhead dated May 2, 2018 states:

“The Osceola County Board of County Commissioners supports the Osceola Parkway Extension Alignment 1A East through the very southern part of Split Oak (see attached graphic).”

Exhibit A to Complaint - Letter dated May 2, 2018

7. This position supporting this particular highway alignment (1A) was taken without first affording Plaintiffs and other members of the public the opportunity to comment on the decision to support the alignment (1A), or other alternative alignments, before the BOCC choose which alignment to support.

8. “Prior to the adoption of s. 286.0114, F.S. (2013), Florida courts had determined that s. 286.011, F.S., provides a right to attend public meetings, but does not provide a right to

be heard. See *Herrin v. City of Deltona*, 121 So. 3d 1094, 1097 (Fla. 5th DCA 2013) (phrase “open to the public” as used in s. 286.011, F.S., means that “meetings must be properly noticed and reasonably accessible to the public, not that the public has the right to be heard at such meetings”). See also *Keesler v. Community Maritime Park Associates, Inc.*, 32 So. 3d 659 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1289 (Fla. 2010); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010).”²

“However, as the court observed in *Herrin*, s. 286.0114(2), F.S., now mandates that “[m]embers of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission.” The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if the opportunity “occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action.” Section 286.0114(2), F.S. The terms “proposition” or “official action” are not defined in the statute, nor is there a distinction between official action taken at a formal meeting versus an informal setting, such as a workshop. *Inf. Op. to Jacquot*, April 25, 2014. “In light of the purpose of the statute to allow public participation during the decisionmaking process on a proposition, it should be liberally construed to facilitate that purpose.” *Id.*”³

² Florida Government-in-the-Sunshine Manual 2017, Florida Attorney General p. 43.

[http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AXJGEU/\\$file/2018+Government+in+the+Sunshine+Manual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AXJGEU/$file/2018+Government+in+the+Sunshine+Manual.pdf)

³ *Id.*

9. Although a final decision by “consensus” was reached, no actual vote on the item was taken in violation of Chapter 286, Florida’s Sunshine Law. Section 286.012, F.S., provides:

286.012 Voting requirement at meetings of governmental bodies.—A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is, or appears to be, a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. If the only conflict or possible conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

History.—s. 1, ch. 72-311; s. 9, ch. 75-208; s. 2, ch. 84-357; s. 13, ch. 94-277; s. 19, ch. 2013-36; s. 7, ch. 2014-183.

“While s. 286.012, F.S., requires that each member present cast a vote either for or against the proposal under consideration by the public board or commission, it is not necessary that a roll call vote of the members present and voting be taken so that each member’s specific vote on each subject is recorded. The intent of the statute is that **all members present cast a vote** and that the **minutes so reflect that by either recording a vote or counting a vote for each member.**”⁴ (emphasis added).

⁴ Florida Government-in-the-Sunshine Manual 2017, Florida Attorney General p. 46.
[http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AXJGEU/\\$file/2018+Government+in+the+Sunshine+Manual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AXJGEU/$file/2018+Government+in+the+Sunshine+Manual.pdf)

10. The BOCC's April 16, 2018 decision to support alignment 1A was taken in violation of Florida Sunshine Law, sections 286.0114 and 286.012, Florida Statutes.

11. Declaratory relief and attorney's fees are available under sections 286.0114(7) and chapter 286, Florida Statutes.

REQUEST FOR RELIEF

11. Plaintiffs seek an order of this court declaring that the April 16, 2018 decision to support alignment 1A was taken in violation of Florida Sunshine Law, sections 286.0114 and 286.012, Florida Statutes, enjoining future violations of Florida Statutes Chapter 286 in particular regarding support for particular highway alignment routes, and awarding attorney's fees under 286.0114(7) and such other relief as this court deems just and proper.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email on May 15, 2018 to

County Attorney for Defendant OSCEOLA COUNTY

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BOARD OF COUNTY COMMISSIONERS



May 2, 2018

Ms. Linda Reeves
Land & Recreation Grants Section Manager
Florida Communities Trust
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Greetings Ms. Reeves:

I am writing to update you on recent developments related to the proposed Osceola Parkway Extension and its potential impact on the Split Oak Forest Wildlife and Environmental area. We recently secured a major environmental win for the project that provides a reasonable option for the parkway expansion while also adding substantial acreage to Split Oak and surrounding environmental areas.

District I
Peggy Choudhry

District II
Viviana Janer

District III
Brandon Arrington

District IV
Cheryl L. Grieb
Vice Chair

District V
Fred Hawkins, Jr.
Chair

As you know, the existing Split Oak trust documents allow a linear facility to run through a portion of the property. Given the environmental significance of this particular land, we take considerable care in balancing the regional transportation needs of our area (as outlined by the Governor's East Central Florida Corridor Task Force Final Report on December 1, 2014) and any impact it may have on Split Oak Forest WEA.

The Osceola County Board of County Commissioners supports the Osceola Parkway Extension Alignment 1A East through the very southern part of Split Oak (see attached graphic). This alignment will allow approximately 1,400+/- acres of additional land including scrub jay habitat to be placed into perpetual conservation in conjunction with Split Oak as well as the adjoining areas of Moss Park and Isle of Pines. The actual area of impact for the road right-of-way is estimated at 66 acres, so the compensation contemplated is very meaningful at a factor of 21:1.

While the Osceola Parkway Extension is currently going through a refresh of the project development and environment study to finalize alignments and associated feasibilities, we believe alignment 1A East is the most feasible alignment possible and contributes to an enormous expansion of Split Oak Forest – a win-win result. We request your assistance to help us understand the required parties and specific steps necessary to obtain the release of right-of-way associated with this alignment.

We look forward to meeting with you soon to further discuss how to best move this project forward.

Sincerely,

Fred Hawkins, Jr.
Chair
Osceola County Board of County Commissioners

407-742-2000

Osceola County

1 Courthouse Square • Kissimmee, Florida 34741

EXHIBIT A to COMPLAINT