

IN THE CIRCUIT COURT THE NINTH JUDICIAL CIRCUIT  
IN AND FOR OSCEOLA COUNTY, FLORIDA  
CIVIL DIVISION

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

v.

CASE NO.: 2018-CA-001528

OSCEOLA COUNTY, FLORIDA,  
a Political subdivision,  
Defendant,

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**DEFENDANT, OSCEOLA COUNTY'S MOTION TO DISMISS PLAINTIFFS'  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendant, OSCEOLA COUNTY, FLORIDA, by and through its undersigned counsel, pursuant to Fla. R. Civ. P. 1.140, and files this motion to dismiss Plaintiffs', FRIENDS OF SPLIT OAK FOREST, INC., SPEAK UP WEKIVA, INC., and VALERIE ANDERSON, Complaint for Declaratory and Injunctive Relief, with prejudice, and in support thereof, states as follows:

**SUMMARY OF GROUNDS FOR DISMISSAL**

This is a cause of action for declaratory and injunctive relief based on an allegation that the Osceola County Board of County Commissioners (BOCC) should have allowed public comment at a public meeting before the chairperson at the BOCC sent a letter. The applicable statute, §286.0114, Fla Stats., only requires that a commission provide the public an opportunity to speak on a matter before taking **official action**. Since the mailing of the letter was not official action, this matter should be dismissed with prejudice.

At the meeting in question, no vote was taken by the BOCC (see Complaint, para. 5). Rather, the BOCC merely heard a presentation and received information from County staff. The discussion led the chairperson to send a letter. Since there was no official action, the BOCC was not required to receive public comment before the chairperson sent the letter.

## MEMORANDUM OF LAW

### STANDARD FOR A MOTION TO DISMISS

In ruling on a motion to dismiss, a court should confine its consideration to the four corners of the complaint, accept all well-pleaded allegations as true, and view the allegations in the light most favorable to the plaintiff. *See Alvarez v. E & A Produce Corp.*, 708 So. 2d 997, 999 (Fla. 3d DCA 1998); *Bell v. Indian River Mem'l Hosp.*, 778 So. 2d 1030, 1032 (Fla. 4th DCA 2001). Mere conclusions unsupported by specific facts will not suffice to withstand a motion to dismiss. *See Dr. Navarro's Vein Centre of Palm Beach, Inc. v. Miller*, 22 So. 3d 776, 778 (Fla. 4th DCA 2009). In this case, even taking all of Plaintiffs' factual allegations as true, Plaintiffs' Complaint does not state a cause of action, and the Complaint should be dismissed with prejudice.

### ARGUMENT

Plaintiffs' Complaint fails to state a cause of action. The May 2, 2018, letter from the BOCC chairperson to Linda Reeves of the Florida Communities Trust does not constitute official action under §286.0114(2), and no vote by the BOCC was required under §286.012. Additionally, Plaintiffs' Complaint does not seek appropriate relief. The Plaintiffs are only entitled to an injunction and fees under §286.011. Here, an injunction is meaningless as the May 2, 2018, letter cannot be rescinded, and the injunctive relief requested by the Complaint is too broad and indefinite. Therefore, Plaintiffs' Complaint should be dismissed.

**I. Plaintiffs' Complaint Fails to State a Cause of Action as the May 2, 2018, Letter Does Not Constitute Official Action Under Fla. Stat. §286.0114(2)**

The Plaintiffs' Complaint alleges a violation of §286.0114(2), which provides:

(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 decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action.....

Fla. Stat. §286.0114(2) (emphasis added).

Section 286.0114 does not define “official action” or “proposition” but provides some insight as to the nature of the action required to invoke the public comment requirement in subsection (3)(b), where it provides examples of “official” acts that do **not** require public comment:

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

...

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

Fla. Stat. §286.0114(3). (Emphasis added.)

There was no proposition before the BOCC at the April 16, 2018, workshop. The BOCC heard a presentation and the chairperson wrote a letter. (See Exhibit A to the Complaint.) No vote was taken nor required to send a letter. The letter is not an “official act” of the BOCC. And, if it is, it was merely a ministerial one.

The sending of the letter was not an “official act” of the BOCC. It was an unofficial act of the chairperson. Alternatively, if the Court believes it was an “official act,” it was purely ministerial.<sup>1</sup>

Even accepting all of the Plaintiffs’ factual allegations as true, Plaintiffs’ Complaint fails to establish a violation of §286.0114 as the only “act” that occurred here was the chairperson

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<sup>1</sup> The cases cited in the Complaint were decided on the law prior to the adoption of §286.0114(2). In *Herrin v. City of Deltona*, 121 So.3d 1094 (5<sup>th</sup> DCA 2013), the court ruled that a city commission did not have to allow for public comment prior to **adopting** a memorandum of understanding with Volusia County. Clearly, adopting an MOU is quite different from having a discussion that leads the chairperson writing a letter. Thus, the 5<sup>th</sup> DCA’s implication that if §286.0114(2) applied in *Herrin*, the result might have been different is of no avail to the Plaintiffs here.

sending a letter following a workshop discussion. This “act” was not an “official” act of the BOCC invoking §286.0114(2). Therefore, Plaintiffs’ Complaint fails to state a cause of action and should be dismissed with prejudice.

**II. Plaintiffs’ Complaint Fails to State a Cause of Action for Violation of Fla. Stat. §286.012 as this Section Does Not Require a Vote Be Taken**

Plaintiffs’ Complaint also alleges that the BOCC violated Fla. Stat. §286.012 by failing to take a vote on the Osceola Expressway at the April 16, 2018, meeting. However, §286.012 does not require a vote be taken. Rather, §286.012 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.

(Emphasis added.)

This section merely requires a commissioner who is at a meeting **when** official action is taken, to vote (and not abstain) so long as the commissioner does not have a conflict of interest. It does not require a vote be taken by the BOCC on any item whatsoever. The intent of the statute is to mandate that all members present at a BOCC meeting cast a vote on all matters on which a vote is taken and the minutes reflect the vote of each member. *See* Plaintiffs’ Complaint, page 6, fn. 4. Section 286.012 clearly does not demand that a vote be taken on any specific matter, let alone for the chairperson to send a letter.

Since Plaintiffs’ Complaint cannot allege a violation of §286.012, Plaintiffs’ Complaint fails to state a cause of action and should be dismissed with prejudice.

### **III. Plaintiffs' Complaint Seeks Relief Not Provided for Under Chapter 286**

A violation of §286.0114 may be remedied by the issuance of an injunction and the award of attorneys' fees. *See Fla. Stat. §286.011*. However, an official act taken without public comment is **not** void. §286.0114(8).

The Plaintiffs request the following relief:

1. A declaration “that the April 16, 2018, decision to support alignment 1A was taken in violation of ... sections 286.0114 and 286.012.”
2. A permanent injunction enjoining “future violations of Florida Statutes Chapter 286 in particular regarding support for particular highway alignment routs [sic].”
3. An award of attorneys' fees.

The first requested relief is not appropriate not only because the BOCC did not violate sections 286.0114 and 286.012 for the reasons stated above, but also because it would contravene §§286.0114(6) and (8). The only permitted relief for a violation of §286.0114 is injunctive relief and attorneys' fees (§§286.0114(6) and (7)). A declaration as requested by Plaintiffs is not proper relief for a violation of §286.0114.

With regard to the injunctive relief requested by Plaintiffs, while injunctions for future conduct are permitted, the future conduct must be “specified, with such reasonable definiteness and certainty that the defendant could readily know what it must refrain from doing without speculation and conjecture.” *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1, supra*, quoting from *Board of Public Instruction v. Doran*, 224 So. 2d 693, 699 (Fla. 1969). Here, Plaintiffs' broad request to enjoin future violations of the Sunshine Law does not meet the required specificity standard, and is much broader than the alleged

violation. Since Plaintiffs' requested relief is not provided for under the Sunshine Law and is improper as too broad and indefinite, Plaintiffs' Complaint should be dismissed.

**Conclusion**

Plaintiffs' Complaint fails to state a cause action upon which relief can be granted as the May 2, 2018, letter does not constitute official action under §286.0114(2), and the BOCC was not required to vote under §286.012 prior to the mailing by the Chairperson of the May 2, 2018, letter. Furthermore, Plaintiffs' Complaint seeks declaratory relief which is not authorized by §286.0114 and injunctive relief that is too broad and vague. Therefore, Plaintiffs' Complaint requires dismissal with prejudice.

WHEREFORE, Defendant, OSCEOLA COUNTY, FLORIDA, respectfully requests this Honorable Court dismiss Plaintiffs' Complaint with prejudice and grant any other relief this Court deems just and proper.

Respectfully submitted,

*s/Alan S. Zimmet*

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**CERTIFICATE OF SERVICE**

I CERTIFY that on September 20, 2018, a copy hereof has been filed electronically with the Clerk of Court via the Florida E-Filing Portal, which will provide an electronic copy to:

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