

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

WILLIAM G. GAY, and  
CATHY P. MOORE,

Plaintiffs,

v.

Case No. 16-004836-CI

The CITY OF MADEIRA BEACH, a  
Municipal Government of the State of  
Florida, TRAVIS PALLADENO, TERRY LISTER,  
NANCY HODGES and HOUSH GHOVAEE,

Defendants.

---

**SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT  
AND WRIT OF MANDAMUS**

Plaintiffs, WILLIAM G. GAY and CATHY P. MOORE (“PLAINTIFFS”), by and through their undersigned counsel, and pursuant to Florida Statutes Chapter 86 and Chapter 119 and §286.011 Fla. Stat., file this Complaint for declaratory judgment against the DEFENDANTS, THE CITY OF MADEIRA BEACH, a municipal government of the State of Florida (hereinafter “CITY”), TRAVIS PALLADENO (“PALLADENO”), TERRY LISTER (“LISTER”), NANCY HODGES (“HODGES”), and HOUSH GHOVAEE (“GHOVAEE”) in their individual capacities and in support thereof states:

1. This is an action for declaratory relief and for a writ of mandamus. This court has subject matter jurisdiction pursuant to Florida Statutes Chapter 86, and §286.011 Fla. Stat. and Chapter 119 and §119.07 Fla. Stat. and Article V, section 5(b) of the Florida Constitution and Rule 1.630 of the Florida Rules of Civil Procedure.

2. Venue is proper in Pinellas County pursuant to Florida Statutes § 47.011, because

all of the parties are located in Pinellas County, and because the cause of action accrued in Pinellas County, Florida. § 47.011, Fla. Stat.

3. PLAINTIFFS are residents, citizens and taxpayers in the CITY.

4. PLAINTIFFS have a present, practical need regarding a *bona fide* dispute, about which they are in doubt, regarding the violation of §286.011 Fla. Stat. (the “Sunshine Law”) and Florida Statutes Chapter 119 (the “Public Records Law”) by the CITY, PALLADENO, LISTER, HODGES, and GHOVAEE. There is a justiciable question as to the right of the PLAINTIFFS to request the Court to determine whether the CITY, PALLADENO, LISTER, HODGES, and GHOVAEE violated the Constitutional rights of PLAINTIFFS and of the citizens of the CITY, to wit Article I Sections 24 (a) and (b) of the Florida Constitution and that the DEFENDANTS failed to provide the public records requested. Without such relief, the PLAINTIFFS will be unable to obtain such public records..

5. Defendant, CITY, is an incorporated municipality located within Pinellas County, Florida, which operates under a City Charter (the “Charter”).

6. The CITY is governed by four commissioners and a mayor (the “Commission”).

7. Defendant PALLADENO, is the mayor of the CITY.

8. The Commissioners of the CITY are LISTER, HODGES, HOUSH GHOVAEE and Elaine Poe (“Poe”).

### **COUNT 1**

#### **VIOLATION OF SUNSHINE LAW: VOTING BY SECRET BALLOT**

9. PLAINTIFFS reallege paragraphs 1 through 8 as fully as set forth herein.

10. Over the last several months, from January to May 2016, the Commission considered the rezoning of two controversial developments, Holiday Isle and Town Center (the

“Developments”).

11. The Developments were contingent on the Commission approving the rezoning of the parcels of land on which the Developments would be constructed.

12. Commissioner Pat Shontz (“Shontz”) had a material interest in the Town Center development because she was the seller of the cornerstone piece of property required for the development.

13. The week before the final hearing of rezoning was scheduled, over 1000 residents (more than two thirds of the number of residents who voted in the previous election) petitioned the CITY to repeal the ordinance which permitted the rezoning. The CITY refused even to consider the petitions.

14. On June 14, 2016, the Commission held a meeting to vote on the final approval of the rezoning of both Developments. The vote was to occur in two stages. The Holiday Isle development was to be voted on first. The Town Center development was to be voted on immediately thereafter.

15. After voting to approve the Holiday Isle development, Commissioner Shontz resigned because she had a material interest in the Town Center developments.

16. This resignation left only three commissioners in the CITY and created a vacancy in District 4 of the CITY (the “Vacancy”).

17. Thereafter, the CITY, without any public meeting, established a deadline of July 1, 2016, for interested persons to file applications to fill the Vacancy. (**Exhibit 1, Page 1**).

18. Applications for the Vacancy (the “Applications”) were submitted to the CITY by three candidates (the “Candidates”), John E. Douthirt (“Douthirt”), Joseph Fala (“Fala”), and GHOVAEE. (**Exhibit 2**)

19. Interestingly, GHOVAEE is a developer in the CITY and developed several projects in the CITY, including the Marriott Courtyard.

20. The Applications required the Candidates to complete Form 1, a financial disclosure statement required by Florida law. Douthirt and Fala completed and signed Form 1. GHOVAEE did not<sup>1</sup>.

21. The CITY distributed the Applications and ballots (the “Ballots”) to fill the Vacancy to Mayor PALLADENO, and Commissioners LISTER, HODGES, and POE.

22. The Ballots listed the three candidates. The instruction to the Commissioners was to fill out the Ballots and, in doing so, they were to list the order of preference. The preferences were to be ranked from 1 to 3 to fill the Vacancy, with 1 being the first choice and 3 being the last choice.

23. Commissioner Poe objected to candidate GHOVAEE being considered because of possible conflicts he may have with the CITY. **(Exhibit 3)**

24. On or before July 7, 2016, PALLADENO, LISTER, and HODGES submitted their Ballots.

25. The Ballots of PALLADENO, LISTER and HODGES listed the Candidates in identical order, GHOVAEE, Fala, Douthirt. Poe listed GHOVAEE last.

26. On July 8, 2016, the CITY reported that GHOVAEE had been selected by the Commission to fill the Vacancy and that he would be sworn in at the Commission meeting to be held on July 12, 2016. **(Exhibit 4)**

27. Prior to the July 12, 2016 Commission meeting, a Special Commission Workshop

---

<sup>1</sup> On July 7, at 1:14 pm, the City Clerk sent the Mayor and Commissioners an email stating that she had advised the Candidates that Form 1 did not have to be completed until the Candidate was sworn in. It is not yet known whether the Commissioners received that email before submitting their ballots to the CITY.

was scheduled for July 12, 2016 at 4:30 pm.

28. The agenda for the Special Workshop listed item 3 as “Discussion on board of commissioner’s ballot and selection of candidate for District 4 vacancy.” (**Exhibit 5**)

29. At the Special Workshop, the City Manager confirmed that the method by which the Commission voted to fill the Vacancy was as set forth above.

30. The regular Commission meeting was set for 6:00 pm on July 12, 2016, immediately after the conclusion of the Special Workshop.

31. The first item on the agenda for the regular Commission meeting listed, under Consent Agenda (**Exhibit 6**) the following:

**1. BOARD OF COMMISSIONERS DISTRICT 4 APPOINTMENT**

*CITY CHARTER, ARTICLE II, SECTION 2.2 (3) FILLING OF VACANCIES. ...A VACANCY OF THE OFFICE OF DISTRICT COMMISSIONER ... SHALL BE FILLED WITHIN 30 DAYS OF ITS OCCURRENCE BY A MAJORITY VOTE OF THE REMAINING MEMBERS OF THE BOARD OF COMMISSIONERS...ANY PERSON SELECTED TO FILL SUCH A VACANCY SHALL POSSESS ALL THE QUALIFICATIONS REQUIRED OF A COMMISSION MEMBER BY THIS CHARTER AND BY LAW...THE PERSON SELECTED TO FILL A VACANCY IN THE OFFICE OF DISTRICT COMMISSIONER SHALL SERVE THE UNEXPIRED TERM OF THE OFFICE.*

**COMMISSIONER DISTRICT 4  
HOUSH GHOVAEE**

32. At that regular Commission meeting on July 12, 2016, after preliminary discussion about the process for filling the Vacancy, GHOVAEE was appointed by PALLADENO, LISTER, and HODGES.

33. Poe dissented from the appointment.

34. The Plaintiffs seek a determination that the CITY, PALLADENO, LISTER and HODGES violated § 286.011 Fla. Stat., known as The Sunshine Law by taking formal action to

appoint GHOVAEE to fill the Vacancy by secret ballot without a public meeting.

35. The Sunshine Law requires that all meetings at which the Commission takes official action be open to the public and in the “Sunshine”.

36. If the Commission takes action outside of a public meeting, any such action is invalid and void *ab initio*.

All meetings of any board or commission 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 commission, 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.** §286.011(1) Fla. Stat. (Emphasis supplied)

37. Despite the fact that GHOVAEE was the only candidate who failed to fill out or even sign the financial disclosure statement known as Form 1, which was left blank PALLADENO, LISTER and HODGES chose him to fill the Vacancy.

38. Since the CITY, PALLADENO, LISTER, and HODGES took action outside of a public meeting to appoint GHOVAEE, they violated the Sunshine Law.

39. The appointment of GHOVAEE to fill the Vacancy was action taken outside of a public meeting by the CITY, PALLADENO, LISTER, and HODGES, his appointment is invalid and void *ab initio*.

40. PLAINTIFFS are entitled to be reimbursed their reasonable attorneys’ fees pursuant to Section 286.011(4) Fla. Stat.

**WHEREFORE**, PLAINTIFFS, respectfully request 1) that the Court determine that the CITY, PALLADENO, LISTER, and HODGES have violated the Florida Sunshine Law as set forth herein, 2) that the Court determine that the appointment of GHOVAEE to fill the vacancy

in District 4 of the CITY is invalid and void *ab initio*; and 3) that the Court order the CITY, PALLADENO, LISTER and HODGES to reimburse the Plaintiffs for reasonable attorneys' fees as set forth in The Sunshine Law, including §286.011(4) Fla. Stat. as well as costs of this action.

**COUNT 2**  
**VIOLATION OF PUBLIC RECORDS LAW:**  
**REFUSAL TO PROVIDE PUBLIC RECORDS**

41. PLAINTIFFS incorporate paragraphs 1 through 8 as though fully set forth herein.

42. Ethics complaints (the "Ethics Complaints") were filed by citizens of the CITY against the CITY's elected officials and employees with the Florida Commission on Ethics (the "Ethics Commission").

43. Initially, the Ethics Complaints were delivered only to the persons charged in the complaints, PAT SHONTZ ("SHONTZ"), FRANK DE SANTIS ("DESANTIS"), CHERYL MCGRADY ("MCGRADY"), and SHANE CRAWFORD ("CRAWFORD").

44. Each of their respective Ethics Complaints were subsequently delivered to the City and the City Attorney by SHONTZ, CRAWFORD, MCGRADY, and DESANTIS.

45. The CITY filed a claim with its insurance carrier regarding the Ethics Complaints and other matters. The carrier sent coverage letters (the "Coverage Letters") to the CITY indicating that the carrier would assume the defense of the Ethics Complaints as well as certain legal actions filed against the CITY and its elected officials and employees. The Coverage Letters included matters other than the Ethics Complaints.

46. On July 28, 2016, the City Attorney, THOMAS J. TRASK, ESQ., prepared a memo (the "Memo") entitled Complaints Filed With Commission on Ethics Regarding City of Madeira

Beach Officials (the “Ethics Complaints”). (**Exhibit 7**)

47. The Memo stated that the Florida Commission on Ethics had determined that the Ethics Complaints were deemed to be “sufficient for investigation”. The Memo named SHONTZ, DE SANTIS, MCGRADY, and CRAWFORD as the Madeira Beach employees against whom the Ethics Complaints were filed. In addition, the Memo indicated that a complaint had also been filed against the mayor, TRAVIS PALLADENO<sup>2</sup> and Commissioner Poe<sup>3</sup>.

48. According to the Memo, the Coverage Letters contained a “reservation of rights” provision which the City Attorney advised the Commission could mean that the insurance coverage could cease at any time “should the circumstances warrant”. Furthermore, the Memo warned that the insurance coverage contained “deductibles” of \$5000 per claim and was limited to an aggregate \$100,000 which could be exhausted under the limitations set out in the insurance policy and in the numerous Coverage Letters. Thus, the conclusion of the Memo was that the CITY would have to pay at least \$5000 a claim or \$25,000 of taxpayer dollars to defend the Ethics Complaints and, in addition, would be responsible for any legal fees in excess of \$100,000 paid by the insurance carrier and may be liable for even more fees and costs if the insurance carrier terminated coverage.

49. The Memo was initially distributed to the Mayor, the Commissioners, CRAWFORD and the Assistant City Manager/Finance Director, VINCENT TENAGLIA.

50. On August 8, 2016, the memo was also included in the August 9, 2016 Commission agenda packet (the “Agenda Packet”). The purpose of including the Memo was that, on the

---

<sup>2</sup> The Memo indicated that there was a complaint filed against PALLADENO, and, to the extent that PALLADENO transmitted the complaint or is entitled to be reimbursed pursuant to the decision the CITY, his claim, ethics complaint, and coverage letter are included in the allegations set forth throughout.

<sup>3</sup> The Memo did not disclose how the City Attorney obtained complaints filed against PALLADENO or Poe or how he became aware of the complaints.