

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY

CASE NO.: 502016CA001706XXXXMB AH

ALEX LARSON,
FANE LOZMAN,
Plaintiff,

v.

PALM BEACH COUNTY,
Defendant.

_____ /

**ORDER GRANTING DEFENDANT'S MOTION FOR FINAL SUMMARY
JUDGMENT, DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
JUDGMENT, AND ENTERING**

FINAL JUDGMENT FOR DEFENDANT, PALM BEACH COUNTY

I. INTRODUCTION

This case concerns the interpretation of Fla. Stat. § 286.0114, which is part of Florida's Sunshine Law. This particular statute, which has an effective date of October 1, 2013, provides members of the public, for the first time, with a "reasonable opportunity to be heard on a proposition before a board or commission." *See* Fla. Stat. § 286.0114(2). Subsection (4) of this statute authorizes the government to "[p]rovide guidelines regarding the amount of time an individual has to address the board or commission." Subsection (5) states that "[i]f a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity to be heard, the board or commission is deemed to be acting in compliance with this section." This is a case of first impression for the Court, as there is no binding case law interpreting the statute.

Palm Beach County ("County") is governed by its Board of County Commissioners ("Board") and is subject to this law. The Board conducts business each month at regularly scheduled public meetings. The Board conducts its business through an official agenda, which has a "consent" component as well as a "regular" component. There is a significant difference between the types of business conducted on these two agendas. For example, items on the

consent agenda are typically routine in nature, non-controversial, and do not deviate from past Board direction or policy. They are voted on as a group. For a governmental entity the size of the County, it would not be unusual for there to be in excess of fifty (50) items on any given consent agenda. The Board affords members of the public three (3) minutes to speak on all of the items on the consent agenda. Items on the regular agenda, on the other hand, typically require the Board to provide direction to staff, make a policy decision, are controversial in nature, or are of great significance necessitating separate action. Regular agenda items are voted on individually. The Board affords members of the public three (3) minutes to speak on each regular agenda item.

Plaintiffs contend that Fla. Stat. § 286.0114(2) requires the Board to provide them with an equal amount of time to speak on consent and regular agenda items. Thus, if there were seventy (70) non-ministerial propositions¹ on a particular consent agenda, and both Plaintiffs filled out comment cards and requested to speak on all of these items, they argue that they should be given three and a half (3 ½) hours apiece, or seven (7) hours total, to speak. The County disagrees and argues that the text of subsection (2) does not require an equal amount of time to speak on consent and regular agenda items. It points out that different business is conducted on these two agendas. Because of this, the volume of business it regularly conducts at public meetings, as well as the important governmental interest the Board has in conducting public business in an efficient, effective, and timely manner, the County argues that it is appropriate, indeed a necessity, to provide different amounts of time to be heard on consent versus regular agenda items. The County also argues that construing the statute as Plaintiffs' advocate would lead to an absurd result. Lastly, the County argues that the Board should be deemed to be acting in compliance with the statute because the Board adopted and followed its rules when providing Plaintiffs with an opportunity to be heard in this case, and there is no evidence in the record that the Board committed fraud or grossly abused its discretion with respect to adopting and following its rules.

The parties filed cross motions for summary judgment. The County also filed extensive summary judgment evidence supporting its motion, including the following:

1. August 9, 2019, affidavit of Jon Van Arnam with attachments;
2. The Board's Rules of Procedure;
3. Agenda for the December 15, 2015, Board meeting;
4. August 8, 2019, affidavit of Glendia Harvey with attachments;
5. Consent Agenda comment cards for the December 15, 2015, Board meeting;
6. Agenda Item Summaries and back up documentation for the following items on the Board's December 15, 2015, Consent Agenda: 3H3, 3H4, 3H6, 3H7, 3H9, 3L1, 3L2, 3L3, 3M2, and 3M3;
7. August 9, 2019, affidavit of Lester Williams with attachments;
8. Video of the December 15, 2015, Board meeting;
9. Partial transcript of the December 15, 2015, Board meeting;
10. Agenda for the May 17, 2016, Board meeting;
11. Consent Agenda comment cards for the May 17, 2016, Board meeting;
12. Agenda Item Summaries and back up documentation for the following items on the Board's May 17, 2016, Consent Agenda: 3A1, 3A3, 3B3, 3B4, 3C3, 3C10, 3C11, 3C12, 3C13, 3C14, 3G1, 3H1, 3H3, 3L3, 3M2, 3X5;
13. Video of the May 17, 2016, Board meeting;
14. Partial transcript of the May 17, 2016, Board meeting.

The County filed a response to Plaintiffs' undisputed statement of facts, which included a supplemental affidavit from Mr. Van Arnam. The County also filed a memorandum of law in opposition to Plaintiffs' motion for partial summary judgment. Plaintiffs filed a response to the County's motion for final summary judgement.

The Court has carefully reviewed all of the foregoing submissions, the summary judgment record evidence, the case law and statutes cited in the parties' briefs, as well as Plaintiffs' amended complaint and the County's answer and amended affirmative defenses. The Court conducted a lengthy hearing on this matter on September 9, 2019, and received the benefit of argument from counsel. The Court, being duly advised in the premises, makes the following findings of fact and conclusions of law.

II. UNDISPUTED MATERIAL FACTS

In accordance with Florida Rule of Civil Procedure 1.510 as well as the Court's Standing Order on Motions for Summary Judgment, the Court finds that the summary judgment record contains no disputed issues of material fact. Plaintiffs have not introduced any evidence disputing any of the facts set forth in, nor the exhibits attached to, Mr. Van Arnam's affidavits, nor the affidavits of Ms. Harvey or Mr. Williams. The Court sets forth the following undisputed material facts from the summary judgment record.

1. The County is a Home Rule Charter County.
2. The County is governed by a seven-member Board.
3. The County operates under a county manager form of government with separation of legislative and executive functions.
4. The County is large geographically with approximately 1.47 million people living in it as of July 2017.
5. The County has over thirty departments and offices, employs over 6,000 people, and has a budget of approximately \$4.7 billion.
6. The Board conducts numerous public meetings, including regular meetings approximately seventeen (17) times per year scheduled in two to three week intervals; workshop meetings scheduled monthly; zoning meetings/hearings scheduled monthly; comprehensive plan meetings/hearings scheduled quarterly; and various budget-related workshops and public hearings required by Florida Statutes.
7. The Board has adopted Rules of Procedure governing the opportunity to be heard at public meetings.
8. Section I of the Board's Rules of Procedure provides:

It is the policy of the Board of County Commissioners of Palm Beach County, Florida (hereinafter "the Board") that these Rules of Procedure shall govern all official meetings of the Board. The purpose of these rules is to provide for the efficient and orderly functioning of the business of the Board; to protect the rights of each individual; to protect the right of the majority to decide; to protect the right of the minority to be heard; and to preserve the spirit of harmony within the Board and those appearing before the Board. No other rules shall apply. ...

9. The Board has an official agenda for public meetings.

10. For purposes of the allegations raised in the amended complaint, the Board's agenda is divided into two parts: (A) consent agenda; and (B) regular agenda.

11. For items on the consent agenda, the Board casts one vote to approve all of these items.

12. For items on the regular agenda, the Board casts a separate vote, either for or against, each specific item listed.

13. The Rules of Procedure govern the amount of time a member of the public has to address the Board.

14. Section III of the Rules of Procedure explains the differences between a consent agenda item versus a regular agenda item.

G. Consent Agenda. Consent Agenda items are typically routine in nature, non-controversial, and do not deviate from past Board direction or policy. They usually do not require Board comment and are voted on as a group. Any item may be pulled by a Commissioner for discussion. Members of the public may speak to any consent item in accordance with Section VII. below.

H. Regular Agenda. Items appearing on the Regular Agenda require Board direction, a policy decision, or are otherwise of great significance necessitating separate attention and action. "Add-on" items, described in the following paragraph I, also appear on this agenda. Items will be addressed individually in the order presented on the Agenda, unless reordered upon approval by a majority of the Board. Items of great public interest that are assigned a time certain should not be considered until the designated time.

15. Section VI.A. of the Rules of Procedure provides:

The Board recognizes the important right of all citizens to express their opinions on the operation of County government and encourages citizen participation in the local government process. The Board also recognizes the necessity for conducting orderly and efficient meetings so that County business may be completed efficiently, effectively, and timely. Members of the public wishing to speak at Board meetings shall comply with the procedures set forth below.

16. Members of the public desiring to address the Board on an item on either the consent agenda or the regular agenda must fill out a comment card as set forth in Section VI.C. of the Rules of Procedure. ("Any member of the public wishing to speak before the Board or who wants to make their position known but does not want to address the Board shall

complete a ‘comment card’ and present the card to staff in the Commission Chambers for forwarding to the Chair. Only those individuals who have submitted comment cards and who have been recognized by the Chair may address the Board.”).

17. Section VII. of the Rules of Procedure, titled “Consent Agenda,” sets forth the amount of time a member of the public has to address the Board on an item contained on the consent agenda. The amount of time is typically three (3) minutes total for all items the person fills out a comment card to speak on, subject to the Chair’s discretion to extend the amount of speaking time.

18. Section VII. provides:

Prior to Board approval of the Consent Agenda, public comment will be accepted. One comment card identifying all items of interest shall be submitted to County staff who will pass it on to the Chair. If more than one item is identified, the three-minute allotment may be extended at the Chair’s discretion.

19. Section VI.G. of the Rules of Procedure sets forth the amount of time a member of the public has to address the Board on an item contained on the regular agenda. The amount of time is typically three (3) minutes per item, subject to the Chair’s discretion to extend the amount of speaking time.

20. Section VI.G. provides:

Each member of the public shall be granted three minutes to speak. The Chair may extend the maximum speaking time. Allowing the use of a speaker’s time by another individual is within the Chair’s discretion. In the event more than twenty (20) people indicate their desire to speak on the same or a related subject, the Chair may establish a maximum time limit, not to exceed one hour, for public comments. The Chair may also assign time limits for proponents and opponents to address an item. In any event, the Chair shall have the discretion to adjust speaking time limits as he/she deems appropriate.

21. The process of placing an item on the Board’s agenda is typically initiated at the department level. The Board, as well as the County Administrator or her designee, may also initiate a Board item. The County Administrator, or her designee, makes a determination whether to place an item on the consent agenda or the regular agenda, consistent with County policy, for the Board’s consideration. It is understood that agendas are only advisory until formally adopted

with a motion and a vote of the Board. As indicated above, under Section III.G. of the Rules of Procedure, “[a]ny [consent agenda] item may be pulled by a Commissioner for discussion.”

22. Agenda items are typically submitted for initial review approximately thirty (30) days prior to the meeting date. They undergo a multi-level review and approval process prior to finalization. County Administration, the County Attorney’s Office and the Office of Financial Management and Budget must sign off on an agenda item prior to presentation to the Board. A preliminary agenda is typically prepared by the County’s agenda coordinator and presented for management review approximately two (2) weeks prior to the meeting date. Management review includes a page by page review of the agenda by the County Administrator and/or Deputy County Administrator, Assistant County Administrators, County Engineer, Office of Financial Management and Budget and County Attorney representatives, a representative of the Clerk and Comptroller’s Office, and the County Agenda Coordinator. The meeting is chaired by the County Administrator or Deputy County Administrator. The review includes questions and answers on agenda item motions and summaries, identification of typographical errors and language requiring clarification or expansion. Typically, at that meeting, the County Administrator or Deputy County Administrator will confirm or determine the initial order of the agenda and placement of items on the consent or regular agendas. The preliminary agenda is then revised and eventually finalized approximately one (1) week prior to the meeting date. Items may be added, deleted, or moved at any time prior to the meeting date at the discretion of the County Administrator.

23. The utilization of a consent agenda and a regular agenda within a regular meeting agenda is a common practice utilized by governmental entities. It provides for a practical and efficient mechanism to conduct a public meeting, time for thoughtful consideration of issues and actions to be voted on by the elected or appointed officials, and sufficient opportunity for public comment and input during the formal meeting process.

24. According to Board policy as set forth in Section III.H. of the Rules of Procedure, regular agenda items are items requiring Board direction to staff or policy decisions or

otherwise are “of great significance” necessitating separate attention and action. The County Administrator will also place items on the regular agenda where a staff presentation is deemed to be helpful to the Board and/or beneficial to the public. An item may also be placed on the regular agenda if it is unusual in subject matter or if it is believed to be controversial in nature.

25. Common definitions of controversial or controversy suggest that controversial topics or persons are typically the subject of intense public argument, disagreement, or disapproval (Collins English Dictionary). An English Language Learners Definition provided by Merriam-Webster describes controversy as an argument that involves many people who strongly disagree about something or a strong disagreement about something among a large group of people. Oxford Learner’s Dictionary includes a similar definition identifying a controversial topic as one that causes a lot of angry public discussion and disagreement. Common themes in these definitions include strong or intense disagreements or differences of opinion among large groups of individuals. If these themes are not present or made known in some way, a topic will in most cases be considered by County Administration as non-controversial.

26. The universe of individuals potentially affected by, or interested in, decisions of the Board include County residents, tourists, seasonal visitors, affected businesses and organizations, and just about any person or entity with an opinion on a County issue or topic. They make their opinions known through a variety of mechanisms including, but not limited to: comments at public meetings and workshops; contacts with individual commissioner’s offices through phone calls, letters, emails, text messages, or social media postings; contacts with department staff or County Administration; and petitions.

County Administration is advised by departmental staff of interest in specific agenda items and comments received and considers that information in identifying potentially controversial items and topics. County commissioners as well as their respective staffs routinely share public opinion and contact information with County Administration, identifying issues or items where they have received multiple inquiries or contacts. If the County Administrator or Deputy County Administrator becomes aware of a proposed

agenda item that is controversial in nature in accordance with the criteria and definitions set forth above, the item will be placed on the regular agenda to allow more time for a staff presentation, Board discussion and public comment. There are certain subjects or topics that many local governments recognize nationally to be controversial. Examples include the siting or location of certain types of government facilities (such as the proposed location of a fire station, a homeless shelter, or large scale transportation compounds), creation of needle exchange programs for intravenous drug users, development on or near environmentally sensitive lands, golf course conversions into residential development, and gun control to name but a few. These types of issues if presented to the Board would be presumed to be controversial and would be placed on the regular agenda for that reason and/or the fact that they involved a new program or a policy decision if so applicable. Otherwise, local issues are typically categorized as controversial or non-controversial based on the presence or absence of strong or intense disagreements or differences of opinion among large groups of individuals.

A. December 15, 2015, Board Meeting

27. The Board conducted a public meeting on December 15, 2015, and published an official agenda for that meeting, which included a consent agenda and a regular agenda.

28. There were seventy-eight (78) items on the consent agenda.

29. Plaintiff Alex Larson filled out comment cards for the following ten (10) consent agenda items: 3H3, 3H4, 3H6, 3H7, 3H9, 3L1, 3L2, 3M2, 3M3, and 3AA5.

30. Item 3AA5 was deleted from the agenda. Two of the items she requested to speak on, 3M2 and 3M3, are receive and files which are ministerial in nature under Fla. Stat. § 286.0114(3)(b). Consequently, for purposes of this meeting, Larson requested to speak on seven (7) non-ministerial propositions on the consent agenda.

31. Consistent with its Rules of Procedure, Larson was given three (3) minutes to speak on these consent items, subject to the Mayor's discretion.

32. Larson spoke on consent agenda items for approximately three minutes and fifty-

five seconds.

33. Plaintiff Fane Lozman filled out comment cards to speak on two (2) consent agenda items, 3L2 and 3L3.

34. Consistent with its Rules of Procedure, Lozman was given three (3) minutes to speak on these consent items, subject to the Mayor's discretion.

35. Lozman spoke on consent agenda items for approximately three (3) minutes.

36. The summary judgment record contains extensive documentation and sworn testimony presented by the County concerning the above referenced consent agenda items that Larson and Lozman filled out comment cards to speak on. The County's position, that all of these items were non-controversial in nature, as defined above, is undisputed and supported by the record evidence. So too is the County's position that these items are routine County business, no policy issues were involved that needed to be addressed by the Board, and there was no need for the Board to provide item specific direction to staff.

B. May 17, 2016, Board Meeting

37. The Board conducted a public meeting on May 17, 2016, and published an official agenda for that meeting, which included a consent agenda and a regular agenda.

38. There were fifty-nine (59) items on the consent agenda.

39. Larson filled out comment cards for the following sixteen (16) consent agenda items:

3A1, 3A3, 3B4, 3C3, 3C10, 3C11, 3C12, 3C13, 3C14, 3F2, 3G1, 3H1, 3H3, 3L2, 3M2, and 3X5.

40. Items 3F2 and 3L2 were deleted from the agenda. Items 3B4, 3C3, and 3C13 were receive and files which are ministerial in nature under Fla. Stat. § 286.0114(3)(b).

Consequently, for purposes of this meeting, Larson requested to speak on eleven (11) non-ministerial propositions on the consent agenda.

41. Consistent with its Rules of Procedure, Larson was given three (3) minutes to speak on these consent items, subject to the Mayor's discretion.

42. Larson spoke on consent agenda items for approximately three minutes and thirty

seconds.

43. The summary judgment record contains extensive documentation and sworn testimony presented by the County concerning the above referenced consent agenda items that Larson filled out comment cards to speak on. The County's position that all of these items were non-controversial in nature, as defined above, is undisputed and supported by the record evidence. So too is the County's position that these items are routine County business, no policy issues were involved that needed to be addressed by the Board, and there was no need for the Board to provide item specific direction to staff.

C. Additional facts demonstrated by the record evidence filed by the County and no record evidence filed to dispute by Plaintiffs.

44. For both the December 15, 2015, and May 17, 2016, Board meetings, the summary judgment record is devoid of any evidence that the Board or its employees intentionally utilized evasive devices, i.e., committed fraud, to deliberately dilute the right of members of the public under Fla. Stat. § 286.0114 from being heard by flooding the consent agenda with controversial non-ministerial propositions. There is absolutely no evidence of fraud, gross abuse of discretion, or bad faith in this record on the part of the Board or its employees.

45. The County, through its Board, adopted Rules of Procedure which govern the opportunity of members of the public to be heard at public meetings.

46. The County, through its Board and its employees exercised good faith with respect to the two meetings at issue in this lawsuit when the determinations were made regarding what items of business would be appropriate to be heard on the consent agenda versus the regular agenda.

47. The County, through its Board followed its Rules of Procedure at these two meetings when it provided Larson and Lozman with an opportunity to be heard on the consent agenda.

III. LEGAL ANALYSIS

The Court is tasked with interpreting Fla. Stat. § 286.0114. Case law provides guidance

on how this is to be accomplished. As the Florida Supreme Court explained in *Hardee County v. FINR II, Inc.*, 221 So.3d 1162 (Fla. 2017):

The goal of statutory interpretation is to identify the Legislature's intent. To do so, this Court first consults the plain meaning of the statute's text. When the statute is clear and unambiguous, this Court uses the plain language and avoids rules of statutory construction. This Court endeavors to give effect to every word of a statute so that no word is construed as mere surplusage.

Id. at 1165 (citations and internal quotation marks omitted). "All parts of the statute must be given effect, and the Court should avoid a reading of the statute that renders any part meaningless."

Searcy, Denney, Scarola, Barnhardt & Shipley v. State, 209 So.3d 1181, 1189 (Fla. 2017).

"Moreover, 'all parts of a statute must be read together in order to achieve a consistent whole.'" *Id.* (citations omitted). "We are not at liberty to add words to statutes that were not placed there by the Legislature." *Hayes v. State*, 750 So.2d 1, 4 (Fla. 1999). Courts are "without power to construe an unambiguous statute in a way which would extend, modify, or limit its express terms or its reasonable and obvious implications." *State v. Peraza*, 259 So.3d 728, 730 (Fla. 2018) (citation omitted). Lastly, "[a] basic tenant of statutory construction compels a court to interpret a statute so as to avoid a construction that would result in unreasonable, harsh, or absurd consequences." *State of Florida v. Atkinson*, 831 So.2d 172, 174 (Fla. 2002).

With these principals in mind, the Court turns to the relevant provisions of the statute. Section 286.0114(2) provides that

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. 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).

Subsection (4) provides that

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 choose; or

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

Lastly, subsection (5) provides that

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.

The Court finds that these provisions of the statute are clear and unambiguous. Neither party alleged in their pleadings, nor argued in their summary judgment briefs or during the hearing, that any of these provisions are ambiguous.

The text of the statute does not specify how much time a member of the public has to be heard on a non-ministerial proposition before a board of commission. Nor does the text require that an equal amount of time to be heard be given on all non-ministerial propositions, no matter how routine or non-controversial the item may be. Nor does the text require that an equal amount of time to be heard be given on all non-ministerial propositions on a board or commission's consent and regular agendas. As Mr. Van Arnam stated in his affidavit, "[t]he utilization of a consent agenda and a regular agenda within a regular meeting agenda is a common practice utilized by governmental entities." The Legislature is presumed to know this.

Rather, in subsection (4) of the statute the Legislature delegated to the various governmental entities tasked with complying with the statute the authority to adopt "guidelines regarding the amount of time an individual has to address the board or commission." Had the Legislature intended to require a board or commission to provide an equal amount of time for members of the public to be heard on all non-ministerial propositions, whether contained on a consent agenda or a regular agenda, it could have easily said so in this statute by the use of clear

and unambiguous text. It did not do so. And the Court is not authorized to add text to a statute purposely omitted by the Legislature. Consequently, the Court concludes that Fla. Stat. § 286.0114 does not require the Board to provide members of the public with an equal amount of time to be heard on all non-ministerial propositions contained on its consent and regular agendas. If the Legislature did not intend this result, it is free to amend the statute. *Department of Revenue v. Graczyk*, 206 So.3d 157, 161 – 162 (Fla. 1st DCA 2016).

It is not the role of the Court to substitute its own opinion or determination for that of the Board regarding what is a reasonable amount of time for a member of public to be heard on consent agenda as opposed to regular agenda items. As set forth above, the text of subsection (4) of the statute demonstrates the Legislature’s intent to delegate this authority to the Board to develop and use rules tailored to meets its specific needs. In addition to being supported by the text, which is the Court’s primary tool for construing this statute, this conclusion is also supported by the statute’s legislative history, which provides in relevant part that “each state or local board or commission is authorized to create its own rules or policies governing the right to speak. Allowing each state board or commission to create its own rules allows it to tailor its rules to its needs ...” *See* Bill: CS/CS/SB 50, The Florida Senate Bill Analysis And Fiscal Impact Statement, March 8, 2013, pg. 7. Similarly, a prior version of section 4(a) of the bill “relating to specifying a limit on the time an individual has to address a board or commission” was rephrased “to provide more flexibility by instead specifying that a board or commission may provide guidelines relating to the time an individual may speak.” *Id.* at 8.

The question for the Court to decide is whether or not the Board’s Rules of Procedure relating to the amount of time a member of the public has to be heard on consent versus regular agenda items is reasonable. Based upon the undisputed evidence in this record, the answer is yes. The statute recognizes two important, albeit competing, interests members of the public and government officials have. They are the right of members of the public to be heard, *see* Fla. Stat. § 286.0114(2), versus the legitimate public purpose boards and commissions have in conducting government business in an efficient, effectively, and timely manner, *see* Fla. Stat. §§ 286.0114(4)(a) – (d). The Board’s Rules of Procedure, Section VI.A., recognize these

competing interests.

The Board recognizes the important right of all citizens to express their opinions on the operation of County government and encourages citizen participation in the local government process. The Board also recognizes the necessity for conducting orderly and efficient meetings so that County business may be completed efficiently, effectively, and timely. ...

The Board's policy decision to treat consent agenda items differently than regular agenda items in terms of the amount of time for public comment is reasonable and supported by the undisputed evidence in this case, which establishes clear and substantial differences in the types of business the Board conducts on these two agendas. In his affidavit, Mr. Van Arnam explained in painstaking detail the careful and deliberate process the County undertakes when determining which items of business will be presented to the Board through its consent and regular agendas.

The undisputed evidence establishes that the items Plaintiffs challenged in this case were all appropriately placed on the consent agenda for the December 15, 2015, and May 17, 2016, meetings. There is no record evidence that the Board or its employees intentionally flooded these two consent agendas with controversial items to dilute the rights of Plaintiffs, or other members of the public, from being heard. Moreover, the Court specifically finds that there is a complete absence of record evidence that the Board engaged in fraud or grossly abused its discretion in terms of adopting its Rules of Procedure, placing the items at issue in this lawsuit on the consent agendas, and in applying its Rules of Procedure to Plaintiffs' right to be heard in the instant case.³ The Court further finds that there is a real and legitimate public purpose being served by the Board conducting business through its consent agenda. That purpose, as reflected in Section VI.A. of the Board's Rules of Procedure, is to conduct important County business in an efficient, effective, orderly, and timely manner. Lastly, the Court is convinced by the County's evidence and arguments that if it were to construe the statute as advocated by Plaintiffs, the result would indeed be absurd.⁴

In conclusion, the Court finds that the Board adopted and followed its Rules of Procedure in accordance with Fla. Stat. §§ 286.0114(4) and (5) when it provided Plaintiffs with an opportunity to be heard during the December 15, 2015, and May 17, 2016, meetings at issue in this lawsuit. In accordance with subsection (5) of the statute, the Board "is deemed to be

acting in compliance with this section.”

Based upon the foregoing analysis, it is

ORDERED AND ADJUDGED that

1. The Court GRANTS the County’s motion for final summary judgment dated August 9, 2019.

2. The Court DENIES Plaintiffs’ motion for partial summary judgment dated October 31, 2017.

3. Accordingly, the Court enters FINAL JUDGMENT in favor of the County. Plaintiffs, Alex Larson and Fane Lozman, shall take nothing by this action, and the County shall go hence without day.

4. The Court reserves jurisdiction to hear any motions for attorney’s fees under Fla. Stat. § 286.0114(7), and taxable costs.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida.

50-2016-CA-001706-XXXX-MB 09/26/2019
Lisa S. Small Lisa S. Small Judge
50-2016-CA-001706-XXXX-MB 09/26/2019
Lisa S. Small
Judge

FINAL DISPOSITION FORM
(Fla.R.Civ.P. Form 1.998)
THE CLERK IS DIRECTED TO CLOSE THIS FILE
MEANS OF FINAL DISPOSITION
Disposed by Judge

Copies Furnished:

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1 Fla. Stat. § 286.0114(3)(b).

2 See *Davis v. Keen*, 140 Fla. 764, 767 – 768 (Fla. 1939) (“This Court is committed to the rule, in the absence of fraud or the abuse of discretion clearly shown, that an action taken or had by a majority of a Board of County Commissioners on any subject within the authority given by statute is not subject to review by the courts.”);

Broward County Rubbish Contractors Ass'n v. Broward County, 112 So.2d 898, 903 – 904 (Fla. 3d DCA 1959) (“In the absence of fraud or gross abuse of discretion, equity will not interfere with or restrain public officers or agencies in the exercise of power vested in them, and will not attempt by injunction to substitute its own discretion for that of such officials in matters belonging to their proper jurisdiction. In other words, the injunctive remedy cannot normally be invoked to control the actions of public officers.”); 12 Fla. Jur. 2d Counties, Etc. § 189.

3 The Court similarly finds no evidence of fraud or a gross abuse of discretion in the judgements of County Administration in placing the contested items at issue in this lawsuit on the Board’s consent agendas.

4 The December 15, 2015, consent agenda contained seventy-eight (78) items. Under Plaintiffs’ interpretation of the statute, a member of the public desiring to speak on each of these items should be given two hundred and thirty-four (234) minutes to be heard, which is six (6) minutes shy of four (4) hours. Mr. Van Arnam testified that this “would severely obstruct and unnecessarily prolong the Board’s meetings; would negatively impact the Board’s ability to conduct important and voluminous public business in an efficient, effective, and timely manner; and would discourage and interfere with the rights of members of the public to be heard in a timely fashion.” It bears repeating that “[a] basic tenant of statutory construction compels a court to interpret a statute so as to avoid a construction that would result in unreasonable, harsh, or absurd consequences.” *State of Florida v. Atkinson*, 831 So.2d 172, 174 (Fla. 2002). Plaintiffs’ interpretation of the statute would lead to unreasonable, harsh, or absurd consequences.