

**IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CASE NO. 13-010801-CI-11**

**BRUCE WRIGHT,
Plaintiff,**

v.

**CITY OF ST. PETERSBURG,
Defendant.**

FINAL SUMMARY JUDGMENT

This Cause came to be heard before this Court on Defendant's Motion for Summary Judgment with the Parties present, through counsel, and this Court having reviewed the motion, the pleadings, the depositions, meeting transcripts and the law, having heard argument of counsel and finding no issue of disputed material fact and this Court being otherwise advised of the premises, it is hereby **Ordered and Adjudged** as follows,

1. Plaintiff sued Defendant for violation of Florida's Government in the Sunshine Law, pursuant to §286.011, Fla. Stat. and Article I, §24(b) of the Florida Constitution, and for violation of procedures for adoption of ordinances, pursuant to §166.041, Fla. Stat. and requests this Court enter an injunction and a declaratory judgment for violation of said statutes. Defendant denies violation of the Sunshine laws or notice provisions.

2. Specifically, Plaintiff requests this Court find the amendments to City Code Section 20-30, effective November 10, 2011, null and void *ab initio* as a result of the following alleged violations,

a. Violation of §286.011, Fla. Stat. and Article I, §24(b) of the Florida Constitution by failing to have a meeting to amend §20-30 that was open and noticed to the public;

b. Failure to provide proper notice of the reason for the closed attorney-client session, under §286.011(8), Fla. Stat., by noticing it as a meeting to discuss “settlement negotiations;”

c. Exceeding its statutory authority under §286.011(8), Fla. Stat. by deliberating over substantive amendments to §20-30 and reaching a decision to amend the ordinance at the closed attorney-client session;

d. Exceeding its statutory authority under §286.011(8), Fla. Stat. by discussing enforcement issues regarding trespass warnings issued under §20-30 at a meeting not opened to the public; and

e. Failing to adopt the ordinance amendment consistent with the requirements set forth in §166.041, Fla. Stat.

3. Plaintiff filed a Motion for Summary Judgment arguing this Court should declare Defendant in violation of the heretofore mentioned statutes and find the amendment to §20-30, effective November 10, 2011, void *ab initio* and to remove the amendments to §20-30 from its city code. The parties do not dispute the facts as set forth in the meeting transcripts and depositions filed in support of the Motion for Summary Judgment.

4. Section 286.011, Fla. Stat. (2011) states, in pertinent part, as follows,

(1) All meetings of any board or commission of any ... municipal corporation ... 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. The board or commission must provide reasonable notice of all such meetings.

...

(8) Notwithstanding the provisions of subsection (1), any board or commission of any ... municipal corporation ... may meet in private with the entity’s attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity’s attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

...

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of the persons who will be attending the session. ... At the conclusion of the attorney-client session the meeting shall be opened, and the person chairing the meeting shall announce the termination of the session.

5. Section 166.041, Fla. Stat. (2011) states, in pertinent part, as follows,

(1) As used in this section, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(a) "Ordinance" means an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law.

...

(3)(a) Except as provided in paragraph (c), a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of the proposed enactment shall state the date, time, and place of the meeting; the title or titles of the proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

6. As to the present matter, based on the undisputed facts, more fully set forth in the meeting transcripts and depositions filed in this case, Defendant met in private with the city attorneys to discuss pending litigation, pursuant to §286.011(8), Fla. Stat. The city attorneys met with the City Council for a strategy session related to litigation expenditures as permitted by §286.011(8), Fla. Stat. Upon reading the transcript of the meeting in its entirety, the undisputed facts reflect the City Council and the city attorneys stayed within the perimeters of the statute. The city attorney and the assistant city attorney discussed the strategy of amending the ordinance to address the concerns of the appellate court regarding due process in *Catron v. City of St. Petersburg, Case No. 8:09-CV-00923(M.D. Fla.)*. The strategy of amending the ordinance would potentially make the city the prevailing party in the litigation negating having to pay attorney's fees to the opposing party, especially in light of the fact that the city had prevailed on all the other issues in the litigation except this one concern raised by the appellate court. The discussion between the attorneys and the City Council essentially revolved around the Council members trying to understand the amendment and how the amendment would

affect the litigation and payment of attorney's fees. The discussion did not exceed the statutory authority under §286.011(8), Fla. Stat. At one point, one of the Council members moved to approve the amendment, but the city attorney quickly advised him that he could not do so in this meeting and quickly brought the meeting back to the strategy session. (P. 17, Oct. 13, 2011 transcript of attorney-client session). Thus, based on the transcript of the meeting, this Court finds that the Defendant did not violate Florida's Government in the Sunshine Law as it relates to the attorney-client strategy session.

Plaintiff also claims that the City Council failed to provide proper notice of the reason for its closed attorney-client session by stating it was for "settlement negotiations" related to the *Catron* litigation, but the council never discussed "settlement negotiations." This argument is without merit. The Council agenda clearly stated "an attorney-client session, pursuant to Florida Statute §286.011(8), will be held in conjunction with the lawsuit styled *Anthony Catron, et.al. vs. City of St. Petersburg, Case No. 8:09CV923-T-17EAJ.*" It further listed the Council members and the city attorneys attending the meeting and stated the session would be confined to settlement negotiations. In actuality, the meeting was confined to a strategy session related to litigation expenditures regarding the *Catron* case. Section 286.011(8), Fla. Stat. permits a closed attorney-client session for either settlement negotiations or a strategy session related to litigation expenditures. The notice clearly stated the session was an attorney-client session pursuant to §286.011(8), Fla. Stat. This Court finds that Defendant did not improperly notice the attorney-client session as the session was within the purview of §286.011(8), Fla. Stat.

However, as the session concluded, on October 13, 2011, the Council was advised that it could vote on the amendment after it moved out of the private meeting and into the public meeting. This was incorrect and violated §286.011(1) and §166.041(3)(a), Fla. Stat. as it pertains to the notice provisions. Section 286.011(1), Fla. Stat. requires all official acts to be performed in the public and the Council must provide reasonable notice of the meeting. Section 166.041(3), Fla. Stat. sets forth the procedures for the reading of a new ordinance, or an amendment thereto, and the notice requirements of the date, time and place of the meetings and place for which the public may inspect the ordinance, or the amendment thereto. By conducting the first reading and voting for its approval directly after the closed attorney-client session, without having it on the Council agenda and without providing prior notice for the inspection of the amendment to the ordinance and prior notice of the reading and Council vote, the public did not have an opportunity to review the amendment, appear at the hearing and make comment before the vote thereon. Therefore, this Court **DECLARES** Defendant violated Florida's Government in the Sunshine Law by violating the notice provisions of §286.011(1) and §166.041(3)(a), Fla. Stat. (2011).

Section 286.011(1), Fla. Stat. states that no resolution, rule or formal action shall be considered binding except as taken or made at the public meeting with proper notice. §286.011(1), Fla. Stat. (2011). As such, the amendment to §20-30 that is reflected in the meeting transcript as "an ordinance creating a new section 20-30(i); providing for appeals to the issuance of trespass warnings in certain situations; providing for hearing masters and procedures for appeals; clarifying and formalizing the process for an appeal of a trespass warning; amending section 20-30(e) to provide that trespass warnings shall

identify the right to appeal of a trespass warning; and providing an effective date” is not binding. As held, in *Anderson v. City of St. Pete Beach*, 161 So. 3d 548, 553-554 (Fla. 2d DCA 2014), the amendment to §20-30 is voided based on this Court finding that the amendment was not adopted pursuant to the notice provisions of §286.011(1) and §166.041(3)(a), Fla. Stat. (2011).

This Court reserves jurisdiction to address any issues of attorney’s fees and costs.

Done and Ordered in St. Petersburg, Pinellas County, Florida, this 24th day of June, 2016.

Original Signed
JUN 24 2016
KATHLEEN T. HESSINGER
County Judge

KATHLEEN T. HESSINGER
COUNTY COURT JUDGE

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