SUPREME COURT OF FLORIDA

CASE NO. SC10-1647

SARASOTA CITIZENS FOR RESPONSIBLE GOVERNMENT, and CITIZENS FOR SUNSHINE, INC.,

Appellants,

v.

CITY OF SARASOTA, BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, SHANNON STAUB, NORA PATTERSON, and JOE BARBETTA,

Appellees.
_____/

On Appeal from the
Twelfth Judicial Circuit
Case No. 2009-CA-021849-NC
Case No. 2010-CA-002766-NC
Case No. 2010-CA-003194-NC

ANSWER BRIEF OF APPELLEES, SARASOTA COUNTY, BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, SHANNON STAUB, NORA PATTERSON AND JOE BARBETTA

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STATEMENT OF THE CASE AND THE FACTS

I. Nature of the Case.

This is an appeal of a trial court decision in a bond validation action that relates to a deal to bring the Baltimore Orioles' spring training games to Sarasota. Under chapter 75 of the Florida Statutes, a bond validation action is expedited, in part by having the trial court's decision reviewed directly by this Court.

In a consolidated action resulting in a four day trial, Hon. Robert B. Bennett, Jr., of the Twelfth Judicial Circuit in this case rendered a Final Judgment on July 8, 2010, that: 1) validated bonds to be issued by the City of Sarasota, 2) validated bonds to be issued by Sarasota County, and 3) denied relief in a complaint filed by the Appellants that alleged, *inter alia*, various violations of article I, section 24(b) of the Florida Constitution and section 286.011, Florida Statutes (together "the Sunshine Law"). Appellants' Appendix Tab 1 [App. 1]. The Appellants also raised the Sunshine Law allegations as objections to the bond validation actions. It does not appear from their Initial Brief that the Appellants are still challenging any of the trial court's determinations as to the City of Sarasota's actions. They are no longer contesting any aspect of the County's bonds on any basis other than alleged Sunshine Law violations by the County prior to July 22, 2009, when the Board approved an Interlocal Agreement with the City and a Memorandum of Understanding ("MOU") with the Baltimore Orioles. This Court has jurisdiction

over all issues. *See Rowe v. Pinellas Sports Authority*, 461 So. 2d 72, 74 (Fla. 1984) (recognizing that Supreme Court jurisdiction over bond validation proceedings properly extends to issues in common that appear in related claims).

II. Parties.

Appellants Sarasota Citizens for Responsible Government, Inc. and Citizens for Sunshine, Inc., will be referred to as "Appellants." Amicus Curiae First Amendment Foundation, Inc., will be referred to as "the Foundation."

Appellee City of Sarasota, Florida will be referred to as "the City." Appellees Nora Patterson, Shannon Staub, Joe Barbetta, the Board of County Commissioners, and Sarasota County will be referred to collectively as "the County." The Board of County Commissioners, where appropriate, will be referred to as "the Board."

III. Record Excerpts.

The Appellants in this case have filed a three-volume Appendix that will be cited as "App. [Tab No.] at [page no.]" Although the record of that hearing was made part of the trial record by stipulation at trial, App. 5 at 45, the deposition transcript at App. 17 was not presented to the trial court in either proceeding. Filed simultaneously with this Answer Brief is a Supplemental Appendix containing other portions of the record that will be cited as "Supp. [Tab. No.] at [page no.]" Tabs 2 and 3 of the Supplemental Appendix (Supp. 2 and 3) contain excerpts of

testimony from the evidentiary hearing on the Appellants' Motion for Temporary Injunction.

IV. Statement of Facts.

The Appellants' statement of factual background is argumentative and omits significant facts. The County instead proposes the following Statement of Facts.

A. Events Preceding the Orioles Negotiations.

Sarasota has hosted spring training baseball games since the 1920s, App. 7 at 466; Supp. 27 at 241, most recently the Cincinnati Reds in Ed Smith Stadium, which is located within the City limits and formerly was owned by the City. App. 3 at 1; App. 7 at 466. After negotiations failed, the Reds decided to move their spring training to Arizona in 2008. In approximately May 2008, the Boston Red Sox began negotiations with the City and the County to relocate their spring training activities from Fort Myers to Sarasota. These negotiations ended when the Red Sox announced a new agreement to stay in Lee County in late October 2008.

B. The Orioles Negotiations.

When the Red Sox made their announcement, representatives of the Baltimore Orioles expressed interest in relocating their spring training games from Fort Lauderdale to Sarasota. On November 4, 2008, the Board of County Commissioners directed County staff to begin negotiations with the team. App. 14. After County Administrator Jim Ley assigned the task of conducting the

negotiations to Deputy County Administrator David Bullock, Mr. Bullock retained consultant Dan Barrett and attorney Paul Jacobs for their expertise, and also used County staff members as needed, including Chief Financial Officer Jeffrey Seward, Strategic Planning Coordinator Jenny Yarabek, and others. App. 6 at 167-70. He also met and consulted with County Attorney Stephen DeMarsh and others as needed, as well as with representatives of the Orioles. App. 6 at 163, 167-69; Supp. 2 at 11-14. These communications and discussions were not advertised or otherwise treated as public meetings. Supp. 2 at 9-10; App. 6 at 165. Sarasota County does not have a public economic development agency. App. 6 at 229-30. However, Mr. Bullock works on matters in some way related to economic development "virtually all of the time." App. 6 at 46, 165.

The negotiations with the Orioles took place intermittently over a series of months through many meetings, phone calls, and emailed documents involving different individuals, all as coordinated by Mr. Bullock. Supp. 2 at 77-78. Representatives of the Sarasota Chamber of Commerce, including John Cranor and Robert Messick, became involved to advocate for an agreement between the City, the County, and the Orioles in order bring the Orioles to Sarasota. App. 6 at 316, 476-77; App. 8 at 597, 612-13. The Chamber also funded a study of the economic impacts of spring training in Sarasota. Supp. 2 at 49. At one point, the Orioles invoked a confidentiality provision set forth in Section 288.075, Florida Statutes,

to keep certain information relating to the proposed transaction as confidential proprietary economic development information. App. 6 at 156-163.

Ultimately, these negotiations led to the presentation to the Board of an Interlocal Agreement between the City and the County, a Memorandum of Understanding (MOU) between the County and the Orioles, and several mechanisms to finance renovations to the stadium and other facilities, including an amendment to the Tourist Development Tax (TDT) ordinance, on July 22, 2009. Supp. 22 at 6-9.

C. Board Discussions Prior to July 22, 2009.

The staff discussions with the Baltimore Orioles took place alongside a concurrent series of discussions and directions by the Board of County Commissioners at its public meetings. These discussions included:

November 4, 2008: The Board approved a motion directing staff to open negotiations with the Orioles using one-half percent of Tourist Development Tax (TDT) revenue and possible City contributions. Supp. 4 at 87-93.

November 18, 2008: Deputy County Administrator David Bullock presented the Board a status report on two face-to-face meetings with the Orioles, the City, and the Sarasota Chamber of Commerce. Supp. 8 at 5-8. Specific topics discussed with the Board included the location of the proposed new spring training facility, the components of the facility

including practice fields, training area, clubhouses, and the seating capacity of the proposed facility. Supp. 8 at 9-15. The staff also presented to the Board information regarding capital costs of the project, which were estimated at approximately $65 million. *Id.* at 16. In addition, potential funding sources for the proposed facility were discussed, including the TDT, state spring training retention grants through the Office of Tourism Trade and Economic Development ("OTTED") grants to the City, and private business contributions thorough the Chamber of Commerce. *Id.* at 16-21. The Board discussion included specific components of the potential deal with the Orioles including payment of operation and maintenance costs, *id.* at 36-7, advertising and marketing benefits, *id.* at 50-60, and a proposed Cal Ripken youth baseball academy. *Id.* at 49. The County staff also presented the Board with a comparison of the proposed Orioles deal with prior deals proposed for the Cincinnati Reds and Boston Red Sox. *Id.* at 37-43. The economic impact of the proposed new stadium as well as the request for an additional independent economic analysis relating specifically to the Orioles was also discussed. *Id.* at 62-65.

December 9, 2008: The Board discussed a proposal by Commissioner Barbetta that involved $31.6 million financed with one-half percent of TDT money to renovate the existing Ed Smith stadium. Supp. 9 at 3-25.

December 17, 2008: Mr. Bullock presented an update on his meetings with Oriole representatives and outlined issues for the Board to consider. Supp. 10 at 8-9, Supp. 11 at 2-3. He requested guidance from the Board on acceptable parameters for a proposal to retain major league baseball. Supp. 10 at 9-13. Other issues discussed at the meeting included a conceptual overview of the project, Supp. 10 at 14-17, operations and maintenance costs, Supp. 10 at 17-19, Supp. 11 at 7, capital costs, Supp. 10 at 19-23, Supp. 11 at 8, advertising and promotion, Supp. 10 at 23-29, Supp. 11 at 9, economic impact, Supp. 10 at 30-41, youth facilities, Supp. 10 at 16-17, Supp. 11 at 6, key funding variables, Supp. 10 at 41-60, Supp. 11 at 11, and proposed capital funding, Supp. 10 at 78-87, Supp 11 at 12-14. *Id.* at 13-119. Both County staff and representatives of the Orioles made presentations. Supp. 10 at 94-120. More than twenty members of the public also spoke, Supp. 10 at 120-179, including Appellants' representative Cathy Antunes. *Id.* at 122-125. The Board discussed and rejected an Orioles' proposal for a $58 million spring training facility to be funded by an additional one quarter percent of TDT, Supp. 10 at 188-211, then approved a counter-offer in the amount of $28 million. *Id.* at 212-234

January 27, 2009: The Board discussed the negotiations and designated Commissioner Barbetta as the Board's contact person, but without any authority to "negotiate" on behalf of the Board. Supp. 12 at 11-15.

February 11, 2009: The Board discussed the Orioles negotiations including the costs of renovations, potential financing, and alternative uses for the stadium other than for spring training. Supp. 13 at 4, 7, 9-15.

March 17, 2009: The Board discussed the possibility of additional economic impact studies. Supp. 14 at 3-13. The Board directed the County Administrator to send correspondence signed by the Board Chair to the Orioles requesting a written counter offer with terms in the next thirty days. Supp. 14 at 13-20.

April 14, 2009: The Board discussed construction costs to renovate the stadium and potential funding, including contributions from the City. Commissioner Patterson presented a detailed twenty point proposed term sheet for the Orioles outlining funding for the proposed spring training facility and including provisions on the term of lease, advertising and promotion, the Cal Ripken youth facility, an interlocal agreement with the City, cash contribution from the Orioles, funding of a capital reserve fund, the cost of construction management, and the payment of property taxes. Supp. 15 at 10-23; Supp. 35. The Board discussed Commissioner

Patterson's proposal but then voted it down. Supp. 15 at 10- 56. Commissioner Barbetta then made a motion for an alternative proposal that also failed. *Id*. at 57-70.

April 21, 2009: The Board discussed the Orioles spring training proposal and a letter from the Orioles' attorney. Supp 16 at 3. The Board directed the County Administrator to send correspondence to the City requesting formal confirmation of the City's willingness to issue bonds for the Orioles stadium project. Supp. 16 at 12-17.

May 13, 2009: The Board discussed a resolution passed by the Sarasota City Commission setting forth the City's terms for use of Ed Smith Stadium. The City resolution called for the transfer of title of the stadium to the County contingent upon specific terms including successful negotiations between the County and the Orioles to use the Ed Smith complex for spring training. Supp. 18 at 2. Mr. Bullock advised the Board on discussions he had with the Orioles' attorney that afternoon. Supp. 17 at 3-7. He requested that the Board provide direction to staff on key policy issues including whether the Board wished to pursue a baseball agreement in light of the City's position, how much capital and operating expenses the Board was willing to commit to baseball and from what sources. *Id.* at 4-12; Supp. 18 at 1, 3. The Board discussed stadium costs and financing. Supp. 17 at 13-58;

Supp 18 at 5-10. It then directed the County Administrator to proceed with negotiations with the Orioles providing governmental funding in the amount of $28.2 million contingent upon specific terms relating to operations and maintenance, advertising, construction management, stadium uses, property taxes, term of occupancy, and the Cal Ripken youth facility. Supp. 17 at 59-81.

May 26, 2009: The Board discussed the Orioles' response to the County's written proposal dated May 15, 2009. Supp. 19 at 3-28. It also discussed funding sources for the renovation of the stadium and costs. Commissioner Patterson indicated she "could handle" another $3 million in addition to the prior $28.2 million offer. *Id*. at 11. Members of the public, including Appellants' representative Cathy Antunes, spoke regarding the proposed spring training facilities. *Id.* at 28 -42; Supp. 20 at 1-2.

D. Emails.

At various times after the start of negotiations with the Orioles in November 2008, emails from constituents or others to the Board on the subject of the Orioles, spring training, or related topics, would result in "Reply to All" copies of responses between Board members, and sometimes the emailed reactions from other Board members. In at least one case, an emailed comment was directly addressed to

another Board member. App. 35. The last of the emails between Board members produced at trial was sent on or about April 12, 2009. App. 34-36; Supp. 1 at 6-7.

E. Briefings.

Also at times during the negotiations, Deputy County Administrator Bullock briefed Board members individually about the status of the negotiations, in what the County staff and Board members refer to as "one-on-one" meetings. App. 7 at 401. On the Saturday and Sunday before the Board voted on the final MOU and related items on July 22, 2009, he also set up and conducted phone briefings with each of the five commissioners about the final document that had been approved by the Orioles for presentation to the Board. App. 39; App. 9 at 728. He did not share with any Board member what any other one had said. App. 9 at 728.

F. The Public Hearing of July 22, 2009.

The lengthy negotiations with the Orioles and the City resulted in Board action on July 22, 2009. On that date, the Board held a duly noticed four-plus hour public hearing and heard testimony and received other evidence from County staff and from approximately forty-five private citizens, Supp. 22 at 1-174, Supp. 26, including several representatives of the Appellants. Supp. 22 at 115-118, 125-136. Mr. Bullock and the County staff gave a lengthy presentation on the provisions of these proposed documents, interspersed with questions from the Board. Supp. 2 at 6-68. At the conclusion of that hearing, the Board modified and then adopted the

2009 Tourist Development Tax Ordinance (the "2009 TDT Ordinance"), Ordinance No. 2009-038. Supp. 22 at 248. The Commission also approved an Interlocal Agreement with the City that provided for transfer of Ed Smith Stadium and surrounding lands to the County, bonding of the City's OTTED funds to stadium finance improvements, and other joint actions to support bringing the Orioles to the County. App. 3; Supp. 22 at 253; Supp. 23.

Finally, at the end of the July 22, 2009, hearing the Board likewise approved a Memorandum of Understanding ("MOU") with the Orioles, wherein the County agreed to allow the Orioles to occupy and use the Ed Smith Stadium and the Buck O'Neil practice fields at Twin Lakes Park, and to fund a portion of the costs of the renovations of the facilities. Supp. 22 at 253-70; Supp. 23 at 1-6; App. 2 at 1, 2, 5-6, 12. The Orioles agreed to continue to conduct their minor league spring training and related activities in Sarasota County for an additional period of thirty years and to relocate their major league spring training and related activities and their spring training home games to Sarasota for a period of thirty years. App. 2 at 11.

Between November 4, 2008, and the end of the July 22nd hearing, the Board conducted a total of almost sixteen hours of public hearings and discussions relating to spring training and the Orioles. Supp. 2 at 74; Supp. 30 at 343.

G. The Public Hearing of February 19, 2010

Just as Sarasota County was about to close on the sale of bonds for the renovations of the baseball facilities, the Appellants filed their suit against the City and the County on December 30, 2009, effectively blocking the bond sale. Supp. 2 at 63; Supp. 30 at 428. The Appellants' suit alleged that the City and the County had violated various charter provisions and statutes, including the Sunshine Law. The County then scheduled yet another public hearing for February 19, 2010, for the reconsideration and ratification of the Interlocal Agreement, the MOU, and related actions, as well as the adoption of a new resolution authorizing the sale of bonds to finance the County's portion of the facility renovations, a new TDT Ordinance amendment, and various other items related to spring training. Supp. 30 at 1-2. The advertisement for the February 19 meeting advised that: "The purpose of this meeting is to allow for public input on and Board consideration of all issues related to Spring Training Baseball, the Baltimore Orioles, Ed Smith Stadium, and related funding mechanisms and contracts." Supp. 30 at 493.

On February 19, the Board conducted a multi-hour public hearing on these items, stretching both morning and afternoon, and including both staff presentations as to each item and public testimony of more than forty speakers. Supp. 27, 28, 29, 30. At the end of this meeting, the Board separately approved each of the items on the agenda, and also approved a new County bond resolution

authorizing up to $20.325 million of borrowing. Supp. 1; Supp. 30 at 353, 355. In addition, the Board arranged for temporary construction financing from other sources to fund construction until bonds could be issued, and approved a construction contract on May 26, 2010. Supp. 2 at 67. Work is proceeding six days a week to reopen the stadium for the 2011 season. Supp. 3 at 19-23.

Resolution No. 2010-029, adopted on February 19, 2010, authorized three types of Bonds: 1) Capital Improvement Revenue Bonds, Series 2010A (Federally Taxable-Build America Bonds-Direct Subsidy), 2) Capital Improvement Revenue Bonds, Series 2010B (Federally Taxable-Build America Bonds-Recovery Zone Economic Development Bonds-Direct Subsidy), and 3) Capital Improvement Revenue Bonds, Series 2010C. Supp. 1 at 1; App. 5 at 9-11. Resolution 2010-029 also repealed the prior bond resolutions that had been adopted on December 8 and 16, 2009. Supp. 1 at 68; Supp. 30 at 353-54. The bonds authorized by Resolution 2010-029 are the bonds that the County is seeking to validate in this proceeding.

H. The Bond Validation Actions.

Sarasota County and the City of Sarasota each filed bond validation actions in the Twelfth Judicial Circuit under chapter 75, Florida Statutes. On motion and without objection, the circuit court consolidated these bond validation actions with the original suit filed by the Appellants for all purposes. Supp. 36. Less than two weeks before trial, on June 16, 2010, the trial court conducted a one-day

evidentiary hearing on the Appellants' Emergency Motion for Temporary Injunction that sought to stop any additional work on the stadium. The trial court denied the Motion. Supp. 37. There was no appeal of that denial. The consolidated actions went to a bench trial on June 28, 29, 30, and July 2, 2010. App. 5, 6, 7, 8, 9. The trial court rendered the Final Judgment at issue in this case on July 8, 2010. App. 1.

The sixteen-page Final Judgment evaluated the Appellants' claims as both challenges to the bond validations and as independent claims. App. 1 at 2 n.1. It rejected all of the Appellants claims and validated both the County and City bonds at issue in this proceeding. App. 1 at 10, 12, 16.

SUMMARY OF ARGUMENT

This is an appeal of a trial court's order validating County and City bonds after a trial. The Appellants' only arguments relate to alleged violations of the Sunshine Law that occurred prior to the County's approval of the Memorandum of Understanding (MOU) with the Baltimore Orioles on July 22, 2009. The Appellants do not challenge the County's authority to issue the bonds, the purpose of the bonds, or allege any failure to comply with chapter 75 or with any other law apart from the Sunshine Law. They do not even allege that the trial court failed to base any of its findings on competent, substantial evidence, and instead attempt to reargue the facts of the case.

The Appellants' and the Foundation's lead argument is that Deputy County Administrator David Bullock and the various County staff, attorneys, and experts that he consulted in negotiating a contract with the Orioles for presentation to the Board constituted a County "board or commission" subject to the Sunshine Law simply because they were working on a matter that related to economic development. Section 288.075, Florida Statutes, provides an exemption from the public records disclosure requirements for certain proprietary information submitted to public agencies for economic development purposes. However, this statute neither exempts such agencies from any existing open meetings obligations that may exist under the Sunshine Law, nor imposes Sunshine Law obligations where those obligations do not already exist. As the trial court found, nothing about the topic of economic development or this statute converts a group of County staff members or others into a "board or commission" for purposes of the Sunshine Law. The Appellants have not shown that the trial court erred in coming to that determination.

Second, the Appellants and the Foundation argue that Mr. Bullock and the other staff and consultants he used constituted a "board or commission" of County government that was subject to the Sunshine Law because it performed a "delegated" Board function. The Appellants fail to show that there was a lack of competent substantial evidence supporting the trial court's findings that these

individuals did not comprise a board or commission, and that instead they were performing administrative functions. The negotiation effort was led by Mr. Bullock, who was performing the County Administrator's power and duty under section 125.74(1)(m), Florida Statutes, to "negotiate contracts…subject to approval of the board…." Mr. Bullock at many times throughout the months of negotiations met with or called and discussed the proposed deal with his staff members, outside consultants, the County Attorney, and City of Sarasota personnel, in various combinations as needed for their expertise or as needed to communicate with the Orioles. The trial court found that nothing about Mr. Bullock's use of these individuals for their expertise indicates the creation of a board or commission subject to the Sunshine Law. This group, loosely labeled as the Negotiating Team, took no votes, created no joint products, reports, or recommendations, and otherwise in no way acted like an assemblage of equals that could be characterized as would rise to even an ad hoc board or commission of County government. Under the Appellants' theory, a Sunshine Law board or commission is convened every time two local government staff members meet or even communicate with each other about any issue that may come before a county or city commission.

Third, the Appellants and the Foundation contend that emails related to spring training and copied between some members of the Board constituted violations of the Sunshine Law, even if they were addressed to constituents. The

trial court did express concern about these emails, but, after reviewing them, found that they did not fatally infect the Board's final decision to approve the MOU with the Orioles because the emailed communications did not amount to the crystallization of any secret decisions. Thus, they constituted at most what Florida courts have referred to as technical violations that are cured by airing the decision at a properly noticed public meeting.

The Appellants also contend that a set of so-called one-on-one briefings between Mr. Bullock and individual Board members prior to the July 22nd meeting when the Board acted on the MOU also invalidated the agreement by violating the Sunshine Law. However, the trial court found no evidence that Mr. Bullock polled the Commissioners or communicated with any of them about what another Commissioner said. It also determined that this set of meetings did not rise to the level of a de facto meeting that was recognized in *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 1979). The Appellants have not shown that these findings were not based on competent substantial evidence.

Finally, the Appellants argue that the Board's airing of the MOU and the related items, in a four and a half hour public hearing on July 22, 2009, did not cure the Sunshine Law violations they allege that the County staff and the Board committed prior to that date. However, the Florida courts have repeatedly recognized that a full public airing of the item to be acted upon cures prior

violations of the Sunshine Law, except in those cases where the deliberative body has reached a full decision in secret and thereafter seeks only to perfunctorily crystallize that secret decision in public. In this case, the Appellants have shown absolutely no evidence that the Board reached any decision in secret. The trial court found that the subject of the Orioles negotiations was "fully vetted" in multiple public Board meetings between November 2008 and July 2009, and that the hearing on July 22 and the prior Board discussions of the same topics fully cured all of the Sunshine Law violations alleged by the Appellants. The Appellants have not shown that the trial court's determination that the deal with the Orioles was "fully vetted" in public meetings was unsupported by competent substantial evidence. Therefore, under the standard of review set forth by this Court in *Strand v. Escambia County*, 992 So. 2d 150, 154 (Fla. 2008), the trial court's decision in this case must stand.

THE STANDARD OF REVIEW

In a bond validation action, this Court reviews: "1) whether the public body has the authority to issue the bonds, 2) whether the purpose of the obligation is legal, and 3) whether the bond issuance complies with the requirements of the law." *Turner v. City of Clearwater*, 789 So. 2d 273, 276 (Fla. 2001). "The final judgment of validation comes with the presumption of correctness. " *Strand v. Escambia County*, 992 So. 2d 150, 154 (Fla. 2008). "This Court reviews the 'trial

court's findings of fact for competent substantial evidence and its conclusions of law de novo.'" *Id*. (*quoting City of Gainesville v. State*, 992 So. 2d 138, 143 (Fla. 2003)). "The Appellant has the burden of demonstrating that the record and evidence fail to support the lower court's decision." *Turner* at 276-77.

ARGUMENT

I. The Trial Court Properly Concluded that the County's Staff Negotiators Did Not Constitute a Board or Commission Subject to the Sunshine Law.

The Appellants' Arguments I and II and the Foundation's Argument I are related and will be addressed together. They all contend that the trial court should have found that the County staff, consultants, attorneys, and others consulted by Deputy County Administrator David Bullock in negotiating the MOU with the Orioles constituted a "board or commission" of County government and therefore should have communicated with each other only in public meetings. The Appellants first base this conclusion on the contention that any work on economic development issues subjects County staff members to the Sunshine Law. Their second argument is that Mr. Bullock and those he consulted were acting in a delegation of the Board's role and therefore became a board or commission themselves. This response will address the trial court's actual findings and then address the Appellants' and the Foundation's arguments in turn.

A. The Trial Court's Findings.

In its Final Judgment, the trial court analyzed the role of the County Administrator in negotiating agreements for the Board's consideration. App. 1 at 2-3. The trial court cited to Section 2.6A of the Sarasota County Charter, Supp. 31 at 11, which prescribes the specific duties of the County Administrator, but also incorporates other "duties as set forth in the General Laws of the State of Florida." The trial court then noted that section 125.74(1)(m), Florida Statutes, provides that one of a county administrator's powers and duties is to: "negotiate leases, contracts, and other agreements…subject to approval of the board…." App. 1 at 4. Accordingly, the trial court found that not only was the negotiation within the role of the Deputy Administrator, but that he in no way exercised the decision-making authority of the Board. *Id.* at 4-5. Likewise, the trial court found that he and his "Negotiating Team" did not act like a board or commission either:

> In this instance, the people and entities Bullock met with, albeit in frequent and unpublicized meetings, operated in the roles of advisor, consultant and facilitator, to assist him in the performance of his duty to negotiate with the Orioles. They did not deliberate with, or without him. Bullock retained the ultimate authority to negotiate the terms of the MOU that would be submitted to the [Board] for consideration. He had no authority, and did not seek, to bind the County contractually.

Id. at 4-5. Accordingly, the trial court concluded that Deputy County Administrator Bullock, and those who assisted him, did not form a board or commission subject to the Sunshine Law.

As for the economic development function, the trial court recognized that the Orioles had invoked the confidentiality provisions of section 288.075, Florida Statutes, as to certain information that the team had submitted. *Id*. at 3. However, it also found that the receipt of this information did "not convert [Mr. Bullock] into a one man collegial body." *Id.* Accordingly, the court determined that he and those he consulted were not subject to the Sunshine Law under section 286.011, Florida Statutes.

B. Applicability of the Sunshine Law to Staff and Consultants.

Section 286.011, Florida Statutes, requires that any meeting of any "board or commission" of county government be open to the public. The later constitutional form of the Sunshine Law, which is "virtually identical," *Zorc v. City of Vero Beach*, 722 So. 2d 891, 896 (Fla. 4th DCA 1998), similarly applies this requirement to "any collegial public body." Art. I, § 24(b), Fla. Const. Thus, a threshold question is whether a particular group constitutes a board or commission as defined in the Sunshine Law. The Appellants and the Foundation argue that the County staff members and consultants involved in the negotiations with the Orioles became a board or commission so as to subject their communications to the open

meeting requirements. Although some staff committees have been determined by Florida courts to constitute "boards or commissions" that are themselves subject to the Sunshine Law, *see Dascott v. Palm Beach County*, 877 So. 2d 8 (Fla. 4th DCA 2004) (where administrator delegated decision-making authority to a staff committee, it became a "board or commission") and *Evergreen Tree Treasurers of Charlotte County, Inc. v. Charlotte County BCC*, 810 So. 2d 526, 531-532 (Fla. 2d DCA 2002) (staff committee that was authorized to conducted hearings and approve or disapprove development proposals became subject to Sunshine Law), where the staff members at issue neither vote nor otherwise take any collective *actions*, aside from making their own individual comments, they are not functionally a board or commission. *Cf. Jordan v. Jenne*, 938 So. 2d 526, 530 (Fla. 4th DCA 2006) (distinguishing *Dascott* on the basis that a staff committee that provides recommendations but does not deliberate with the administrative decision maker is not a board or commission for purposes of the Sunshine Law); s*ee McDougall v. Culver*, 3 So. 3d 391, 392-393 (Fla. 3d DCA 2009)("meetings between an executive officer and his consultants, advisors, staff or personnel, which are held for the purpose of fact-finding to help him in the execution of his duties are not meetings as contemplated by the Sunshine Law"), citing *Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976); *see also Knox v. District School Board of Brevard*, 821 So. 2d 311, 315 (Fla. 5th DCA 2002) ("A sunshine

violation does not occur when a governmental executive uses staff for a fact-finding and advisory function in fulfilling his or her duties.")

In *McDougall*, a group of staff members reviewed information, provided recommendations, but submitted all information to the final decision maker *who made the final decision alone*. *See McDougall* at 394. This activity was deemed to be merely fact-finding and not subject to the Sunshine Law. *Id*. The Second District also came to a similar conclusion in *Godheim v. City of Tampa*, 426 So. 2d 1084 (Fla. 2d DCA 1983), concluding that no Sunshine Law violation occurred in negotiation meetings conducted by city staff members and competing vendors where no elected official took part in the meetings, although the mayor, a single executive official, exercised supervision over the negotiation team, with the ultimate decisions concerning the procedures to follow and the award of the contract were made by the city council in open meetings. *See Godheim* at 1088; *see also Occidental Chem. Co. v. Mayo*, 351 So. 2d 336, 342 (Fla. 1977), *receded from on other grounds* in *Citizens of State of Florida v. Beard*, 613 So. 2d 403 (1992). Thus, County staff members performing their respective job assignments on a project do not automatically become a "board or commission" unless they act as a unified body.

The Appellants cite this Court's decision in *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), and the case of *News-Press Publishing Co. v. Carlson*, 410 So. 2d

546 (Fla. 2d DCA 1982). In *Wood*, university staff members were appointed to a search-and-screen committee that was formally delegated a decision-making role in the selection of a new dean. *See Wood* at 938-939. This Court concluded that this committee was subject to the Sunshine Law. *Id*. at 939. In *Carlson*, the chief executive and four vice presidents of a public hospital board were appointed to an ad hoc "internal budget committee," which was effectively given decision-making authority to prepare a proposed budget that ultimately was adopted by the hospital board with little or no public discussion. *See Carlson* at 547. The Second District concluded that this committee was subject to the Sunshine Law. *Id*. at 548-549. Specifically, the Second District found that the appointment of staff to the internal budget committee that was delegated authority normally held by the governing body caused those staff members to no longer function as staff but instead to stand in the shoes of the governing body. *Id*. at 547-548. Thus, when staff "put on their committee 'hat' and acted as a board governed by the [Sunshine Law] and discuss, deliberate, decide, and take action to formulate a proposed budget, or to adjust hospital budget charges during the fiscal year covered by that budget, these meetings constitute official acts which are an indispensable requisite to formal action," and are also governed by the Sunshine Law. *Id*. at 549. In both *Carlson* and *Wood*, the governing bodies bestowed upon specified groups of staff members

the roles of acting as part of a body of equals rather than as individual staff members or professionals.

C. The Economic Development Agency.

The Appellants' and the Foundations' lead argument is that the County staff and consultants working under Mr. Bullock in negotiating the deal with the Orioles were necessarily subject to the Sunshine Law because they were working on an issue relating to economic development. They base this argument on Section 288.075(2), Florida Statutes, which obligates local economic development personnel to keep certain proprietary information about prospective private businesses confidential, and exempts this information from disclosure under the Public Records Law (chapter 119, Florida Statutes). Under the Appellants' theory, any discussions of the Orioles or spring training between County staff members that did not take place in advertised public meetings would have been unlawful and would have voided the MOU and also the bonds at issue in this proceeding. The trial court rejected this argument by recognizing that Mr. Bullock's receipt of proprietary information from the Orioles did not "convert him into a one man collegial body." App. 1 at 3.

Section 288.075, Florida Statutes, creates a temporary exemption from the public records disclosure requirements of Section 119.07, Florida Statutes for certain proprietary information received by an "economic development agency"

from businesses seeking to "locate, relocate, or expand" in Florida. The term "economic development agency" is defined to include, *inter alia*, a public city or county agency performing that role, or, if there is no such public agency, "the county or municipal officers or employees assigned" such duties as "to promote the general business interests" of that jurisdiction. § 288.075(1)(a)4, Fla. Stat. Once a business submits such proprietary information and invokes the privilege, agency personnel may not disclose it, or else they risk criminal penalties.

The Appellants and the Foundation both point out that the confidentiality provisions of section 288.075 do not incorporate an exemption from the requirements of the Sunshine Law. The County agrees. However, nothing in section 288.075 makes any economic development agency or its employees into a board or commission that would fall under the ambit of section 286.011, if they are not such a board or commission already. If the Sunshine Law does not apply in the first place, then there is no need to determine whether an exemption excuses compliance with it. This argument fails as a matter of law.

The language that addresses the situation where there is no public economic development agency, and in those cases extends the confidentiality obligations to the county or municipal officers and employees assigned to work on economic development activities, was not added to section 288.075 until 2007. *See* Ch. 2007-203 § 1, 2007 Fla. Laws 1859. Until that amendment, local governments that

did not have formal public economic development agencies could not keep such information confidential. The obvious purpose of the amendment was to put all local governments on an equal footing with respect to their negotiations with prospective businesses, not to prevent their staff members from discussing the confidential proprietary information with anyone, even the prospect, outside of a public meeting.

The Appellants concede that the Orioles lawfully invoked the confidentiality provisions of section 288.075, and that the County staff members who received that information properly abided by the exemption from the Public Records Law. Initial Brief at 25, 29. Instead, the Appellants contend that the receipt of confidential information from the Orioles automatically converted the County staff into an economic development agency for purposes of section 288.075, and then, by some unexplained extension, into a County "board or commission" for purposes of section 286.011 (the Sunshine Law). Sarasota County agrees that the County staff working on the Orioles negotiations became such an economic development agency under the definition set forth in section 288.075, and thereby became obligated to maintain the confidentiality of the information submitted by the Orioles. However, as the trial court determined, there is no basis for the Appellants' leap of logic in connecting these two statutes.

The Appellants argue that Attorney General Opinion 80-78 (1980) supports their argument on this point. However, nothing in that AGO or any other authority they cite concludes that work on any function related to economic development automatically converts a government employee into a member of a "board or commission" governed by the Sunshine Law. AGO 80-78 does not even address the question, but instead addresses whether an existing board or commission may close part of its meeting so it can discuss economic development activity in private. If a local government official or staff member is not already a member of a government board or commission governed by the Sunshine Law, nothing about working on economic development projects or receiving proprietary information converts him or her into one.

Applying the Appellants' and the Foundation's argument in an example illustrates its fallacy. If Mr. Bullock and his staff actually held positions in a designated County "Department of Economic Development," they would qualify as an "economic development agency" under the definitions set forth in section 288.075(1)(a)4 as the "public economic development agency of a county…." Under the Appellants' and the Foundation's legal theory, that department's status as an economic development agency would automatically subject the entire staff, from the director to the receptionist, to the requirements of the Sunshine Law. Accordingly, any communications between any of these staff members and anyone

outside the agency, or even any communications between the staff members themselves, would have to take place in an advertised public meeting, whether they were part of a board or commission or not.

The result would be equally absurd in the case of Sarasota County, where there is no formal public economic development agency, but where employees sometimes are called upon to work on matters pertaining to economic development. In that case, the employees are not members of an economic development agency until assigned to work on an economic development project, because then they would be "county…employees assigned the duty to promote the general business interests of the …county" under section 288.075(1)(a)4. Under the Appellants' and the Foundation's argument, once so assigned, the employees would be unable to talk with each other or to anyone else about the project unless they first ran an advertisement in the newspaper. In Florida, a statute should not even be read literally to produce absurd results. *See Maddox v. State*, 923 So. 2d 442, 448 (Fla. 2006) (holding that courts should not apply a literal interpretation of a statute when the results are absurd). Given the stretch needed to transpose the term "economic development agency" in section 288.075 into the term "board or commission" in section 286.011, creating an absurdity by equating these disparate terms is even less warranted under Florida law.

Nothing about working in a particular subject area, or about having confidential information about private entities, automatically results in the creation of a government board or commission. Likewise, the scale or import of that project also has nothing to do with whether the Sunshine Law applies. *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 868 (Fla. 3d DCA1994). The Appellants fail to show that the trial court committed an error of either law or fact.

D. The Delegation Argument.

The Appellants also reargue that Mr. Bullock and the County staff constituted a board or commission under the Sunshine Law because they exercised a "delegated" Board function by winnowing and shaping the terms of the MOU that ultimately was considered and approved by the Board. However, they do not dispute that the Sarasota County Charter and section 125.74(1)(m), Florida Statutes, properly authorize and obligate the County Administrator to negotiate contracts for consideration by the Board, or that the Board actually approved the MOU that Mr. Bullock negotiated. If negotiating contracts is a statutory function of the County administration under section 125.74(1)(m), then that function necessarily involves winnowing out a myriad of terms from every contract. Thus, negotiating contracts is not a "delegated" Board function, but instead an inherent function of the Administrator's job. The Appellants' Brief fails to even mention

this statute or to assert any flaw in the trial court's holding that it applies and negates their argument. Their argument fails at first as a matter of law and undisputed fact, even under the *de novo* standard of review set forth in *Strand v. Escambia County*, 992 So. 2d 150, 154 (Fla. 2008).

The Appellants' argument also fails because the trial court's findings that Mr. Bullock acted within his role as an administrator are supported by competent substantial evidence. In particular, the court found that he is an administrative officer of the County, that he negotiated the contract, and that it was presented to and approved by the Board. App. 1 at 3-4. "The decision to approve the MOU, and become contractually bound, was exercised solely by the [Board]." *Id.* at 5. Further, the court found that: "The public participated, or had the opportunity to participate, at all of the public meetings. Importantly, over the course of the negotiations, the [Board], at public meetings, reviewed and rejected proposals, authorized proposals of its own, and discussed in detail financial details that it would and would not approve." App. 1 at 5. "The decision to approve the MOU, and become contractually bound, was exercised solely by the [Board.]" *Id*. Finally, the trial court made the factual finding that the Board did not delegate its deliberative role to its staff: "In addition, the evidence does not support the conclusion that the [Board] had improperly delegated its decision-making responsibility to the County Administrator, or that it merely "rubber-stamped"

decisions made by Bullock." App. 1 at 5. If these findings are supported by competent substantial evidence, they must not be disturbed. *Strand v. Escambia County*, 992 So. 2d 150, 154 (Fla. 2008).

Mr. Bullock testified that it was the County's practice for the staff to negotiate contracts for the Board's consideration. In 2009 alone, the Board approved 330 contracts that had been negotiated by the County staff. Supp. 2 at 5-6. Sometimes the Board approves those contracts, and sometimes it rejects them. *Id.* at 8-9. After the County Administrator assigned him to the task in November 2008, Mr. Bullock began consulting County staff, attorneys, consultants, and others needed for their expertise. Supp. 2 at 10, 12-13; App. 14 at 9. They were not a collegial body with equal responsibilities with respect to making decisions. *Id.* at 13-14. They did not take votes as to what went into the MOU. *Id*. at 13. Instead, all decisions as to what terms to present to the board were made by Mr. Bullock. *Id.* at 12-13. Mr. Bullock did not recall ever convening the group as a whole, but instead consulted them in groups and sometimes individually as needed. *Id.* Mr. Bullock also testified that he took direction from the Board's various discussions of the subject in public meetings during the negotiation process. *Id*. at 47-50; 53-55; 56-62. The trial court also had access to the transcripts of twelve public meeting discussions of the deal with the Orioles between November 2008 and July 22, 2009, along with Powerpoint slides of the staff presentations and cards

for each public speaker. Supp. 4-26. This testimony and documentary evidence is competent substantial evidence supporting the trial court's determinations. Thus, the trial court properly rejected the Appellants' arguments that the Administrator and his staff were subject to the Sunshine Law.

The Appellants also suggest that the incidental involvement of Commissioner Staub and Barbetta at times in different meetings with the Orioles affects the characterization of these negotiations. Initial Brief at 38-39. However, there is no evidence that any two county commissioners ever attended the same nonpublic meeting, or that they were granted or exercised any authority over any such meetings. Likewise, the Appellants repeatedly cite to an email that Chamber of Commerce representative John Cranor wrote in which he referred to meeting somewhere "in a dark back room." The meeting he referred to was a meeting with the County and City staff, which did not need to be an advertised public meeting. App. 8 at 634. Although at trial Mr. Cranor admitted to a "flippant" choice of words, *id.* at 636, there is nothing sinister or inappropriate about a meeting between representatives of the Chamber of Commerce and City or County staff in a nonpublic meeting.

Under the argument advanced by the Appellants, all local government staff meetings on those matters that are to be presented to a board or commission must themselves take place only in public meetings, because each of these meetings

would be a "step in the decision-making process…", quoting *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969). If that proposition is correct, then those same staff members would not even be allowed to talk with each other about their work on those matters except in public meetings, or else they would be committing crimes. It is not difficult to imagine the resulting governmental paralysis. But the Appellants clearly misconstrue *Williams*—the quoted language instead applies to deliberations by the members of boards or commissions between themselves, not to the staff members who research, consult, negotiate, draft, discuss, or otherwise prepare items for those collegial bodies to consider at public meetings. The trial court in this case properly determined that the staff members and consultants working together to draft a contract with the Baltimore Orioles for the Board's consideration were not such a board or commission, and instead were just doing the jobs they were hired to do.

II. The Trial Court Correctly Determined that the Emails Between Board Members and the Staff Briefings Did Not Affect the Validity of the Board's Actions Because They Did Not Result in Secret Decisions.

The Appellants' next argument is that the email communications between Board members and staff briefings of Board members prior to the approval of the MOU on July 22, 2009, were violations of the Sunshine Law that invalidate the MOU. They misread the trial court's rejection of their argument as being based

solely on a determination that any violations were not intentional. Instead, the trial court actually determined that the "one-on-one" briefings of commissioners by Mr. Bullock were not conducted in such a manner as to violate the Sunshine Law at all. As for the emails, the trial court, after considering the emails proffered by the Appellants, found that they appear to be violations, but did not result in secret decisions that invalidated the ultimate decisions. App. 1 at 8. As discussed in Section III below, the trial court also held that the issues relating to the MOU were "fully vetted" in public meetings. Accordingly, the trial court was not required to determine whether violations of the Sunshine Law actually occurred in order to reject the Appellants' arguments and validate the bonds, because the Board's actions in the extensive public meeting and hearing conducted on the day it approved the MOU would have cured any such violations.

A. One-on-One Briefings.

The Sunshine Law does not preclude individual local government commissioners from meeting or communicating with the city or county staff, *Occidental Chemical Company v. Mayo*, 351 So. 2d 336, 341 (Fla. 1977), *receded from on other grounds* in *Citizens of State of Florida v. Beard*, 613 So. 2d 403 (1992), unless those meetings are being conducted in such a way as to circumvent the commission's own obligation to conduct its meetings in public. In *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979), for

example, the court recognized that a school board had circumvented the requirements of the Sunshine Law by arranging for six "rapid-fire" sets of seriatim meetings between the superintendent and the six individual school board members in trying to resolve a redistricting issue. In light of the extreme circumstances of thirty-six one-on-one meetings between the superintendent and board members in a two-week period on a single issue, the school board had circumvented the Sunshine Law. However, the court in *Blackford*, like the trial court in this case, recognized that meetings between individual commissioners and staff otherwise are not required to be held in public. App. 1 at 5-6; *Blackford*, 375 So. 2d at 580 (*citing Occidental)*.

> In this case, the trial court found the following facts:
>
> > Over a two or three day period immediately prior to the [Board] meeting of July 22, 2009, Bullock, individually and assisted by other members of County staff, held one-on one meetings with each of the five individual commissioners. There is no evidence that any individual was polled with regard to his or her position with regard to the MOU, or any provision of the MOU. There is no evidence that Bullock or any other person disclosed to any commissioner the position of any other commissioner with regard to the MOU or any provision of the MOU.

App. 1 at 6. After citing to *Blackford* and restating the rule that meetings between staff and individual commissioners are not subject to the Sunshine Law unless they are "conducted in such a way as to constitute de facto meetings of one or more

members of the [Board] at which official action is taken," the trial court then found the following facts:

> Nothing in the record before this court suggest that these one-on-one meetings were de facto meetings between two or more members of the [Board], or that any official action resulted from the meetings. [The Appellants] point out that following his one-on-one meetings, Bullock responded to an email from Thomas Tryon, Opinion Editor of the Sarasota Herald Tribune, that he thought Tryon's team had won. [The Appellants] believe[s] this is evidence of polling. Viewed in the context with the other evidence, this comment appears more likely an expression of Bullock's thoughts on the prospects for approval of the MOU following his one-on-one meetings. There is no evidence that any commissioner committed himself or herself to approval of the MOU during any of the one-on-one meetings.

App. 1 at 7. These findings are supported by the testimony of Mr. Bullock, staff member Jenny Yarabek, and Commissioner Staub. App. 6 at 197-203, 217, 287-293 (Yarabek); App. 8 at 513-18 (Staub); Supp. 2 at 87-89 (Bullock).

Rather than attempting to show or even arguing that these factual findings are not supported by competent substantial evidence, the Appellants' Brief instead reargues the inferences from emails from Mr. Bullock and Commissioner Staub just prior to the July 22nd meeting suggesting that prospects for approval of the agreement looked favorable, while ignoring the testimony of the individuals involved. The Appellants have not shown that the trial court's findings were unsupported by competent substantial evidence. Therefore, the trial court's finding

that the briefings of commissioners did not violate the Sunshine Law should not be disturbed. *Strand v. Escambia County*, 992 So. 2d 150, 154 (Fla. 2008).

B. Emails.

The Appellants also contend that the trial court erred by not finding that email communications that were copied between Board members constituted Sunshine Law violations that invalidated the MOU and the County bonds. The Foundation even demands civil sanctions against them personally, on the argument that all infractions must be punished through that particular remedy, Foundation's Brief at 19, but without finding any fault with the trial court's conclusion that the Board itself had cured any Sunshine Law violations through its extensive public hearings and discussions. The County does not dispute the authenticity of these emails or that some of them related to the potential approval of a deal with the Orioles. The trial court's Final Judgment examined several of these chains, App. 1 at 6-9, and did find that they related to a subject then pending before the Board. However, it also concluded that these emails, most of which were multiple "Reply to All" responses to various groups of constituents that were simply copied to other board members, did not result from any deliberate intent to violate the Sunshine Law. It also evaluated the effect of these communications in light of the concurrent and subsequent public discussions held prior to approval of the MOU.

> While it thus appears that the referenced email exchanges e-mail exchanges violated the Government in the Sunshine Law as the

> application of that law is currently interpreted in Florida, the evidence shows that the members of the [Board] participating in the exchanges did so believing that they were in compliance with the law. There was clearly no attempt to subvert the law by avoiding public debate. In short, if in fact violations occurred, the violations were not egregious or intentional. The evidence clearly demonstrates that the [Board] met multiple times between November 2008 and July, 2009 and that the subject of the Orioles negotiations [was] fully vetted. The decision of the [Board] was "not merely a ceremonial acceptance of secret actions and not merely a perfunctory ratification of secret decisions at a later meeting open to the public." *Tolar v. School Board of Liberty County*, 398 So. 2d 427 (Fla. 1981); and *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008).

App. 1 at 8-9. Considering the extensive public airing of the deal with the Orioles before and on July 22, 2009, the trial court found that these emails did not invalidate the Board's final actions. The Appellants and the Foundation claim that the trial court improperly imported an element of intent into a Sunshine Law violation, and then excused violations because it found no intent to violate. However, as this portion of the Final Judgment demonstrates, the Board members' intent was relevant to whether they were actually making decisions outside of a public meeting. The trial court also took this intent into consideration in determining that no sanctions were warranted against the individual commissioners. App. 1 at 10.

Although emails copied to other commissioners are not physical "meetings of a board or commission," it is undisputed that the Sunshine Law is to be

construed to "frustrate all evasive devices." *See Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974). The Attorney General has opined that a one-way transmission of information or a position from a commissioner to another would not violate the Sunshine Law, but that an email "discussion" between two commission members may. Op. Att'y Gen Fla. 2001-20 (2001). Here, the medium in question, unlike a live conversation, does at least result in a perfect transcription in the form of a record that is readily available to every member of the public. The Appellants do not contend here that they or anyone else have been refused these records. Given the extensive public airing of the transaction with the Orioles in a public meeting just prior to approval, the question here is whether the cited emails have the effect of invalidating the Board actions in question, or, in other words, rendered these public actions as being merely ceremonial ratifications of decisions that actually were made in secret.

The Appellants cite several email chains, and refer to others. All of them in some way dealt with the topic of spring training. However, none of them show that any of the other actions being challenged were not the result of independent action taken at public meetings or even public hearings. In fact, the evidence shows that the Board conducted extensive public discussions of these topics in the nine months prior to approving these actions, including the four-plus hour public

hearing it conducted on July 22, 2009. For the reasons set forth in Argument III, below, and as held by the trial court, these discussions cured any prior violations.

Although the Appellants characterize the cited emails as "substantive discussions," nothing about them indicates anything resembling a secret agreement on a vote. Not one of them reflects even bargaining for votes. In fact, the majority of the emails in question actually were addressed and widely distributed to constituents and such other interested parties as members of the press, and were only incidentally copied to other commissioners, along with a host of others, including newspaper personnel. They are posted on a public access website. App. 8 at 496-97, 503. They were public records and hardly secret.

The emails in question also are chronologically and factually remote from the actions being challenged. The vast majority of them occurred months before the Board even acted on the deals with the City and the Orioles on July 22, 2009. In those months, the proposed deal changed considerably. The last emails copied between Board members that the Appellants produced at trial dated to April 12, 2009, or three months before the Board acted. After those emails, the Board conducted four more public discussions about the negotiations with the Orioles on April 14, April 21, May 13, and May 26, before holding its four-plus hour public hearing and approving the MOU on July 22, 2009. Thus, as the trial court found, "the subject of the Orioles negotiations" was "fully vetted" in public. App. 1 at 9.

In the words of Sarasota's daily newspaper:

> We do know that both the city and county commissions held hours and hours of public hearings on the stadium-renovation proposal and the agreement with the Orioles. Commissioners received countless communications from constituents and conflicting reports on baseball's impacts. The public debates were long and contentious, and several proposals were rejected. Proponents and opponents—including some of the [Appellants]—had the opportunity to express their views.

Disputing the Call, Editorial, Sarasota Herald-Trib., February 19, 2010, at A8. Supp. 30 at 427, 429, 483.

In short, the Appellants were not able to show at trial that the Board's actions resulted from anything less than full, independent action by the Board taken at a duly advertised public meeting, as the trial court found. This meeting was preceded by a series of approximately thirteen other discussions of these same issues at public meetings between November 2008 and June 2009, prior to the extensive public hearings of July 22, 2009 and February 19, 2010. Any possible improprieties in the earlier emails would have been fully cured by these extensive discussions in public meetings.

III. The Trial Court Properly Determined that the Extensive Public Discussions and Hearings Cured Any Prior Violations of the Sunshine Law Alleged by the Appellants.

The Appellants' last argument is that the trial court erred by finding that any Sunshine Law violations committed by the Board or the County staff as alleged in

this case were cured by airing at the public discussions and hearing before the Board prior to the adoption of the MOU and related documents. For the reasons set forth in Section I above, there was no staff violation of the Sunshine Law and therefore no need to "cure" one. The Appellants barely acknowledge that the Board conducted an advertised public hearing about the spring training issues on July 22, 2009, but fail to mention that the hearing lasted for more than four hours, or that several of their own representatives even appeared at the hearing and spoke their piece. As the trial court recognized, that public hearing alone resolved all of the Sunshine Law claims that they raised four months later in their lawsuit.

The trial court expressly found that the County had committed no Sunshine Law violations, with the exception of the Board emails. Even for the emails, it found that the public meeting discussions, including the one on July 22, 2009, would have cured any violations shown.

> The court finds that if violations of the Government in the Sunshine Law were committed as outlined in this judgment, they were cured. The cure was the result not only of the public hearing of July 22, 2009, but by the aggregate of all the public hearings which preceded it. The court does not address the purported cure of February 19, 2010, basically because the court has determined that no cure was necessary on that date.

App. 1 at 9-10. Although the Appellants do not dispute that Florida law allows for cure of prior Sunshine Law violations by public discussion, they argue that no cure could be effective unless every detail of every violating communication was

rehashed in the public meeting. However, Florida law is clear that where a board or commission does not merely perfunctorily ratify or ceremoniously accept at a later open meeting those *decisions that were made at an earlier secret meeting*, but rather takes independent final action in a public meeting, the decision of the board or commission will not be disturbed. *See, e.g.*, *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981); *see also Finch v. Seminole County School Board*, 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008) (holding that an open meeting cured a violation of Sunshine Law). Although the requirement that all meetings of governmental bodies be "open and noticed to the public" was incorporated into the Florida Constitution in 1992, *see* article I, § 24(b), Fla. Const., this amendment did not purport to modify this Court's decision in *Tolar* or the remedy of a cure, and has not diminished the body of case law on curative meetings that developed since *Tolar*. The Final Judgment expressly followed the directives of *Tolar* and *Finch*. App. 1 at 9.

Thus, any analysis of whether a Sunshine Law violation has been sufficiently cured necessarily begins with determining whether any decisions were made earlier in secret. *See BMZ Corp. v. City of Oakland Park*, 415 So. 2d 735, 738 (Fla. 4th DCA 1982) (finding that where there is no evidence of "any decision having been reached in private," there could have been no secret decision that was perfunctorily ratified later). Likewise, in *Yarbrough v. Young*, 462 So. 2d 515,

517-518 (Fla. 1st DCA 1985), despite finding that the city council had discussed a matter at a secret meeting several days prior to taking formal action in public, the court found no evidence that the city council had taken any official action or reached a final decision at the secret meeting. *Id.* at 517. "Without evidence that the formal actions taken at the October 28 [secret] meeting were a 'perfunctory ratification of secret decisions' *Tolar*, 398 So. 2d at 429, we cannot sustain the invalidation of the Council's actions." *Yarbrough* at 517-18. In addition, the First District noted favorably that the city council even had reviewed the same issue several times in public meetings before the secret one. Therefore, the court concluded that the final action taken at the subsequent public meeting would not be nullified based on a prior "technical violation." *Id*. at 517-518. In this case, the trial court specifically found that the emails in question did not rise to the level of "secret decisions," App. 1 at 9, and that the Board had discussed the issues relating to the Orioles at a string of public meetings that occurred both before and after these emails. As the Board made no decision on the MOU or the related actions prior to July 22, 2009, its actions on that date could not be classified or invalidated as only perfunctory ratifications of decisions made beforehand in secret meetings or communications.

The distinction between curing a secretly made decision and curing a "technical violation" was examined again in *Bruckner v. City of Dania Beach*, 823

So. 2d 167 (Fla. 4th DCA 2002). In *Bruckner*, litigation settlement discussions between city commissioners and their attorney included discussions about whether modifying an existing ordinance would help settle a pending lawsuit. *See Bruckner* at 170-171. The city commissioners did not vote or take official action to amend the legislation and did not formally decide to settle the suit; it merely considered whether certain amendments would settle the suit and benefit the city without adopting them. *Id*. The Fourth District noted that the discussions "clearly had no formal final effect," i.e. that no secret decision was made, and thus, did not establish a Sunshine Law violation. *Id*. at 171. To remedy the situation, the city commission in *Bruckner* nonetheless held a duly noticed, open public meeting in "an abundance of caution, and in order to cure any possible Sunshine Law defect." *Id*. Despite concluding there was no underlying violation, the Fourth District nonetheless determined that even had there been "any possible defect," the re-adoption meeting would have cured it. *Id*.

In this case, the Appellants alleged several purported Sunshine Law violations, but have not shown that the Board made any decision in secret about the MOU, the bond resolution, or the other documents. The MOU, for example, was not adopted privately by the Board, nor was the authority to adopt it delegated to anyone else. Mr. Bullock's statutory role as negotiator was not to usurp the Board's sole authority to adopt the MOU; it was to present proposals and counter-

proposals to the Board for its consideration, which was done in every instance at open, public meetings. The fact the Mr. Bullock relied on the expertise of staff, consultants and counsel in discharging his statutory duty as negotiator did not turn his negotiations into a private adoption of the MOU.

Moreover, the Appellants have not shown that any discussion among staff, or between staff and individual commissioners, or e-mails by individual commissioners had the "formal final effect" of being a secretly made decision or final action. Thus, absent a prior decision made in secret, *BMZ Corp*., *Yarbrough* and *Bruckner* provide that there was nothing to perfunctorily ratify later, and accordingly, nothing to be "cured."

The Appellants assert that the standard for a cure is instead set forth in *Monroe County v. Pigeon Key Historical Park, Inc*., 647 So. 2d 857, 859-861 (Fla. 3d DCA 1994). They claim that factors present in *Pigeon Key* represent a standard for determining whether a Sunshine Law violation has been cured. In *Pigeon Key*, the county commission had received a recommendation on a proposed lease of a county-owned island from a county advisory board that had conducted two conducted two of its three meetings without public notice. The court noted that: 1) the county commission had held its own public hearings on the issue, 2) it attempted to read into the record the minutes of the errant advisory board meetings, 3) the county commission had substantially changed the lease, and 4) most of the

lease negotiations were conducted after the advisory board meeting anyway. *Id.* at 860-61. However, a careful reading of *Pigeon Key* and other cure cases shows that the four steps urged by the Appellants are not the elements needed to establish a cure, but rather describe indicia that one particular commission followed this Court's decision in *Tolar* by taking independent final action in a public meeting. No subsequent decisions have cited the factors present in *Pigeon Key* as constituting any sort of test.

The *Pigeon Key* decision actually supports the County's argument. The Fourth District expressly noted that it was bound by *Tolar* in both its initial opinion and its opinion denying rehearing and certification, and that the incorporation of the Sunshine Law into the Florida Constitution did not change that result. *Pigeon Key* at 868. In *Tolar*, the Florida Supreme Court found that even though a school board itself "held a private meeting and permitted discussion" in violation of the Sunshine Law, its final actions would not be voided because the board took "independent, final action in the sunshine." *See Tolar* at 429. The other "cure" cases cited by the Appellants, *Finch* and *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979), detail how one successful cure was done after *Tolar* (*Finch*) and could have been done before *Tolar* (*Blackford*), but do not establish what the Appellants argue are elements that must be established in every cure case. Both *Finch* and *Pigeon Key* acknowledge that *Tolar* sets the

standard of what is a sufficient cure. *See Finch* at 1073 and *Pigeon Key* at 861, 868.

In this case, the Board not only held the long public hearing of July 22nd, 2009, and fully aired the matters being adopted, but also advertised and conducted yet another omnibus hearing on all of the spring training related issues again on February 19, 2010, "in an abundance of caution, and in order to cure any possible Sunshine Law defect," *Bruckner*, 823 So. 2d at 171. In that February meeting, the Board reconsidered and ratified the MOU and a number of related actions in an all-day meeting. Although the trial court found this abundance of caution unnecessary, the second meeting and full airing in February would have cured any defects that were not already cured by the July proceeding. After conducting two extensive public hearings on the matter, the Board needs to do nothing more. The Appellants have failed to meet their burden of showing that the trial court's findings that any prior Sunshine Law violations were cured were not based upon competent substantial evidence. Accordingly, these findings should not be disturbed. *Strand v. Escambia County*, 992 So. 2d 150, 154 (Fla. 2008).

CONCLUSION

WHEREFORE, Appellee Sarasota County requests that the trial court's decision validating the City and County bonds be affirmed.

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