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Milton City Council cleared of Sunshine Law violations

From staff reports, [pnj.com](#)

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The State Attorney's Office has closed its investigation into a possible Sunshine Law violation by the Milton City Council and has cleared the council of any wrongdoing.

After reviewing documents and video evidence and interviewing witnesses — including board members — prosecutors found there was insufficient evidence that a crime had been committed, according to a news release issued Friday afternoon by the State Attorney's Office.

No further action will be taken on the case.

(Photo: Kaycee Lagarde/[klagarde@pnj.com](#))

The State Attorney's Office in April [confirmed to the News Journal that it was investigating the council for possible Sunshine Law violations](#) (</story/news/crime/2018/04/04/milton-city-council-under-investigation-possible-sunshine-law-violation/483819002/>) after receiving a complaint.

More: [Milton City Council under investigation for possible Sunshine Law violation](#) (</story/news/crime/2018/04/04/milton-city-council-under-investigation-possible-sunshine-law-violation/483819002/>)

On Friday, the state released a letter sent by Chief Assistant State Attorney Greg Marcille to the people who filed that complaint, Jimmy and Theresa Messick, of Milton.

"While you have raised concerns about possible hallway conversations, there is no evidence that any pending matters were discussed," the letter reads. "Likewise, a reasonable explanation has been given as to why language used in a motion by council member, Heather Hathaway, was similar to that used by a different council member at a previous meeting."

Florida's Sunshine Law provides access to government proceedings at state and local levels. The laws also apply to gatherings of two or more members of the same board to discuss a matter that will foreseeably come before a board for action, according to Florida Attorney General Pam Bondi's website.



Judge: Susan Chapman did not break Sunshine Law

By Zach Murdock

Staff Writer

Posted Jul 8, 2016 at 11:51 AM

Updated Nov 18, 2016 at 1:52 PM

Sarasota city commissioner was part of a public records lawsuit.

A judge has found in favor of Susan Chapman in the years-long, controversial open government lawsuit against the Sarasota city commissioner.

The long-awaited court order issued on Friday found that public records advocacy group Citizens for Sunshine did not prove Chapman violated Florida's Government-in- the-Sunshine Law when she attended a private meeting during 2013 with business owners, city leaders and another commissioner concerning the homeless in downtown, Circuit Court Judge Brian Iten wrote in the order.

The ruling comes nearly two months after a two-day trial explored the case and the underlying disputes at the time about the city and Sarasota County's conflicting approaches to combating chronic homelessness.

Despite the legal ruling, Iten noted Chapman should have acted differently and left that meeting to avoid this fight entirely.

"This Court's ruling in this case should not be deemed an endorsement of Commissioner Chapman's decision to attend the October 10, 2013 gathering at Tsunami with full knowledge that another commissioner would be in attendance," Iten wrote at the conclusion of the ruling. "Those entrusted to hold public office should always endeavor to avoid even the appearance of impropriety ... the above-referenced Supreme Court admonition about leaving the meeting 'forthwith' would well serve all public officials who find themselves in situations similar to the one at issue here."

At the heart of the case is whether Chapman strictly listened to merchants' concerns that morning, or whether she also discussed city plans to combat homelessness.

Citizens for Sunshine attorney Andrea Mogensen has argued that the meeting was not advertised to the public and that Chapman should have known issues related to homelessness

would come before the Sarasota City Commission for formal votes. Among the Sunshine Law's restrictions is one that prohibits two or more elected officials from discussing a matter set to come before their government body for action unless it is at a meeting formally noticed and open to the public, Mogensen argued.

Iten largely agreed, finding that "there is no doubt" Chapman knew homelessness would come before the commission, that the meeting was not noticed and that another commissioner would be there.

But the gathering that morning did not technically qualify as a "meeting" among public officials trying to make a decision, as the Sunshine Law is designed to cover, Iten concluded.

"This Court finds that Chapman engaged in no 'deliberation' during her passive attendance at the October 10, 2013 assembly, a gathering sponsored by her constituents," Iten wrote. "The gathering was thus not a 'meeting' under either (state codes or the) Florida Constitution. "The opportunity for deliberation does not constitute deliberation," he continued. "To find otherwise would lead to an absurd result, which is what a court is compelled to avoid when applying the law."

'Common sense reading'

Chapman and her attorney Thomas Shults called the judgment a "common sense reading of the law" Friday afternoon.

"I'm feeling relief and gratitude for all the people who have supported me through this very trying time," Chapman said.

But the case is far from over, more than 2 ½ years after it began.

Citizens for Sunshine will appeal the decision, said Mogensen and paralegal Michael Barfield, who initially discovered the meeting shortly after it happened and instigated the lawsuit.

"Those are all the elements of a Sunshine violation," Mogensen said, referencing Iten's findings of fact in the ruling. "While disappointing, we were going up on appeal anyway, and this is not a bad position to be in to challenge this decision."

Also outstanding in the case is a claim that the lawsuit was filed in bad faith and a brewing fight over who will be responsible for the hundreds of thousands of dollars in attorneys fees related to the case.

Chapman passed on an opportunity to settle the litigation in November 2013 when commissioner Suzanne Atwell, the other commissioner who attended the meeting, and the city settled with Citizens for Sunshine. That settlement included an admission from the city that a Sunshine Law violation occurred and an agreement to pay about \$17,000 in attorney fees for

the group.

Chapman has fought the case since and, to date, the city has spent about \$346,000 in legal fees defending her. That number will only grow during the appeals, but Chapman defended her decision to fight the claims Friday.

"I didn't pick this fight," she said. "I just felt an obligation to not expand the Sunshine Law beyond what is the common belief of what it is. I didn't pick the fight."



Appeals court sides with Susan Chapman in open-government lawsuit

By Zach Murdock

Staff Writer

Posted Apr 5, 2017 at 1:43 PM

Updated Apr 5, 2017 at 1:44 PM

Ruling leaves little room for Citizens for Sunshine to continue to appeal the case.

SARASOTA -- An appeals court on Wednesday upheld Sarasota City Commissioner Susan Chapman's victory last year in the years-long open government lawsuit against her.

Florida's Second District Court of Appeal issued a "per curiam affirmance," meaning the appellate court agreed to uphold Circuit Court Judge Brian Iten's ruling last summer in favor of Chapman without rendering an opinion of its own.

This type of ruling leaves little room for Citizens for Sunshine to further appeal the case nearly 3 1/2 years after the private meeting downtown that prompted the lawsuit.

"This is a good day for the First Amendment and the Sunshine Law," said attorney Thomas Shults, who represented Chapman in the case. "The Sunshine Law was never intended to interfere with the right of citizens to assemble and speak to their representatives."

The appellate court heard oral arguments in the case just two weeks ago, when Judge Anthony K. Black grilled Citizens for Sunshine Attorney Andrea Mogensen over her assertion that the state's public meetings laws would construe even a chance encounter of elected officials an improperly held public meeting.

Mogensen has argued that "interrupting" interactions between commissioners outside the public eye is exactly the purpose of the law.

The case stretches back to when Chapman attended an October 2013 meeting that was not noticed to the public with several other city leaders, downtown merchants and another commissioner to discuss the homeless situation in the city.

Mogensen argues the meeting was designed to encourage opposition to plans for a downtown homeless shelter --which was expected to be part of then-pending recommendations from consultant Robert Marbut -- but Chapman contends she was simply meeting with constituents, not conducting any formal city business.

Citizens for Sunshine plans to request the appeals court to go back and issue its own written opinion, which could revive the group's ability to appeal the decision to the Florida Supreme Court.

The lack of an opinion "means that the issue of whether these kind of meetings are subject to the Sunshine Law remains unresolved," the group said in a written statement. "We believe this issue is important to both parties, as well as to the city and taxpayers, and deserving of an opinion to provide clarity going forward. Without a written opinion there is no binding precedent and we could easily find ourselves in the same situation in the future."

Even if appeals end now, however, a large chunk of the case dealing with finances remains pending in Circuit Court.

Chapman and Shults have argued that Citizens for Sunshine should have to repay the city the almost \$400,000 it has spent defending Chapman because the group's lawsuit was initiated in "bad faith." That argument had been put on hold during the appeal.

The affirmation of Chapman's win comes weeks after she narrowly lost her re-election bid to the commission. She fell just 52 votes behind Martin Hyde, her most outspoken critic, for the third-place spot in a runoff May 9.

Chapman and outgoing commissioner Suzanne Atwell, who did not seek another term, will be replaced by two new commissioners in May.

Atwell also attended the 2013 meeting with Chapman and was originally part of the Citizens for Sunshine lawsuit. However, Atwell and the city settled with the group just a month later, with admission from the city that a Sunshine Law violation occurred and an agreement to pay about \$17,000 in attorney fees for the group.

Sunshine lawsuit depositions continue

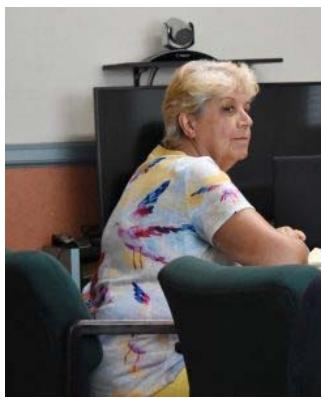
By Joe Hendricks - June 11, 2018



Conducted by attorney Robert Watrous, with assistance from paralegal Michael Barfield, Patty Shay's deposition was attended by some of the co-defendants and their attorneys and co-plaintiff Jack Clarke. - Joe Hendricks / Sun

BRADENTON BEACH – Former Planning and Zoning Board member Patty Shay is now the third Sunshine lawsuit defendant deposed by attorney Robert Watrous.

Shay was deposed Tuesday, June 5, at a court reporting office in Bradenton.



Assisted by paralegal Michael Barfield, Watrous represents the city of Bradenton Beach and resident Jack Clarke as co-plaintiffs in a lawsuit filed last August. The lawsuit alleges four planning board members and two Scenic WAVES Committee members violated the Florida Sunshine Law by discussing past and potential board and committee business at Concerned Neighbors of Bradenton Beach (CNOBB) meetings and in private emails.

Lawsuit defendant Patty Shay was deposed by attorney Robert Watrous on June 5. - Joe Hendricks / Sun

Watrous referenced the Sunshine Law training required of all Bradenton Beach commission, committee and board members. He asked Shay if she referred to that training regarding CNOBB discussion topics. She said she did not.

Watrous reviewed in detail the April 12 and April 19 Planning and Zoning Board meetings that included the board's review of an updated Community Redevelopment Agency (CRA) plan that referenced the possibility of a CRA-funded parking garage.

Watrous used meeting transcripts, agendas and other documents to establish that Shay participated in discussions about a parking garage in her official capacity as a board member.

"If a parking garage was to be built, the proposal would have to come before the P&Z, correct?" Watrous said.

"That is correct, but remember we were an advisory board. We did not make decisions," Shay said of her planning board duties.

As part of the Sunshine Law, Florida Statute 286.011 says, "Any public officer who violates any provision of this section is guilty of a noncriminal infraction."

The definition of a public officer in Florida Statute 112.313 includes "any person serving on an advisory body."

*"I don't need people seeking to coach the witness."
Robert Watrous, Attorney*

At one point, Watrous said it was brought to his attention that some in the room, including at least one co-defendant, were nodding their heads yes or no in response to his questions. Watrous and Barfield said they heard some in the room saying yes or no in response to Watrous' questions. Watrous said he would bring these concerns to the judge if the behavior continued.

"I don't need people seeking to coach the witness," he said.

"I am under oath and no one has done anything to suggest that I answer in a certain way," Shay said.

Vincent email

Watrous produced a copy of a June 14 email co-defendant Bill Vincent sent Shay, Reed Mapes and John Metz when they were all planning board members. The email pertained to CNOBB's upcoming inaugural meeting. It was obtained from Shay in response to a records request Barfield made.

Watrous noted Vincent, Metz and Mapes did not include that email in their records request responses.

"I would not know why they would not have done that," Shay said.

Vincent's email said, "There is no intent whatsoever to violate Sunshine Laws. In my opening comments it will be made clear that no discussion or conversation on the comp plan, LDC (land development code) or charter or pending issues will be permitted."

During a July 25 CNOBB meeting that was recorded and posted at the group's website, then-planning board member Mapes proposed a citywide prohibition on parking garages. The recording is referenced in the lawsuit complaint that seeks a judge's ruling on whether Sunshine violations occurred.

"When issues discussed in the April 12 and April 19 P&Z meetings did start being discussed at a CNOBB meeting, didn't that alert you to the fact that you should say something or do something because this was a Sunshine Law violation?" he said.

"I did not consider it a violation of Sunshine Law," Shay said.

"No budget, no date and the fact that it was not in agreement with the comprehensive plan. I didn't see it as something that would be in the foreseeable future," Shay said regarding the potential construction of a parking garage.

Shay's statement about parking garages not being in agreement with the comp plan is contrasted by current comp plan language that allows parking garages in some land use categories.

Last month, the Planning and Zoning Board reviewed two City Commission-requested ordinances that would amend the comp plan and the LDC and prohibit parking garages citywide.

Joe Hendricks

http://www.amisun.com

Sun staff writer/photographer Joe Hendricks covers Anna Maria and Bradenton Beach. [Email](#)

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