

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
ALACHUA COUNTY, FLORIDA

GAINESVILLE CITIZENS
CARE, INC.

Plaintiff,

Case No.: 012012CA001346

Division: J

vs.

CITY OF GAINESVILLE
d/b/a
GAINESVILLE REGIONAL UTILITIES

Defendant

&

GAINESVILLE RENEWABLE
ENERGY CENTER, LLC.

Intervenor.

**PLAINTIFF'S MOTION TO STRIKE AFFIRMATIVE DEFENSE AND
DEMAND FOR ATTORNEY'S FEES**

Plaintiff, GAINESVILLE CITIZENS CARE INC., by and through
undersigned counsel, pursuant to Rule 1.140(f), Fla. R. Civ. Pro. respectfully moves
this Court for an order striking the affirmative defense of laches and claim for

attorney's fees from the Defendant CITY OF GAINESVILLE's answer to the complaint in this matter, and in support thereof states:

1. The Defendant has asserted laches as an affirmative defense to allegations that a power purchase agreement between the Defendant and Intervenor is void because the agreement was negotiated in violation of the Florida Government-in-the-Sunshine Law.

2. The Defendant has failed to plead facts that if true would establish a claim for laches, and therefore the defense must be stricken.

3. Fla. R. Civ. Pro. 1.140(b) requires "[t]he grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion."

4. In order to validly assert the defense of laches, the Defendant must plead facts that demonstrate: 1) conduct on the Defendant's part giving rise to the situation upon which the complaint was based; 2) failure of the Plaintiff, having had notice of the Defendant's conduct, to assert its rights by suit; 3) lack of knowledge on the part of the Defendant that Plaintiff would assert the right upon which the suit is based; and 4) injury or prejudice to the City if the requested relief is granted. *See Nelson v. City of Sneads*, 921 So.

2d 760 (Fla. 1st DCA 2006); Lennar Homes, Inc. v. Dorta-Duque, 972 So. 2d 872 (Fla. 3rd DCA 2007).

5. Defendant fails to allege that it lacked knowledge that Plaintiff would assert its rights under the sunshine law, and fails to identify any injury or articulate any prejudice that would be suffered by Defendant if the requested relief is granted. Given that the Defendant may cure a sunshine violation by holding a full open hearing, *see* Monroe County v. Pigeon Key Historical Park, Inc., 647 So. 2d 857, 860-861 (Fla. 4th DCA 1982), it is hard to imagine how the Defendant would be prejudiced.

6. Defendant has also asserted entitlement to attorney's fees under Section 286.011(4) Fla. Stat., which allows assessment of attorney's fees against a Sunshine Law plaintiff only if the court finds the action was filed in bad faith or was frivolous. Defendant has not alleged that this action has been filed in bad faith or that it is frivolous, and accordingly has no basis whatsoever to claim entitlement to an award of attorney's fees.

WHEREFORE, Plaintiff respectfully moves this Honorable Court for an order striking the affirmative defense of laches and the claim for attorney's fees from the Defendant's Answer.

Respectfully submitted this 13th day of June, 2012.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished by U.S. Mail to Elizabeth Waratuke, Office of the City Attorney, PO Box 490, Station 46, Gainesville, FL 32627 and David Dee and John Lavia, Young Van Assenderp, PO Box 1833 Tallahassee, FL 32302-1833 on this 13th day of June 2012.

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By _____-S-_____
MARCY LAHART/FB 0967009