IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
CIVIL DIVISION

BYRON H. KEESLER and
LEROY BOYD,

Plaintiffs,

Case Number 2008 CA 003593
Division "B"

vs.

COMMUNITY MARITIME PARK
ASSOCIATES, INC.,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court on Plaintiffs' Motion for Summary Judgment and Defendant's Motion for Summary Judgment and Motion for Dismissal for Failure to State a Cause of Action. The attorneys of record and the parties have stipulated on the record that the material facts are undisputed and the only legal issue is:

> *Does the "Government, in the Sunshine Law", give the public the right to participate by "speaking to the issues" during the public meeting?*

The Court makes the following findings:

1. The controlling legal authority on this issue is the Florida Supreme Court case of Wood v. Marston, 442 So. 2d 934 (Fla 1983). The Florida Supreme Court said the "Sunshine Law" was enacted in the public interest to protect the public from closed door policies. The Florida Supreme Court also held that "the public has a right under the "Sunshine Law" to first hand access

to the decision-making process. The Florida Supreme Court also held that the "Sunshine Law" gives the public the opportunity to publicly scrutinize the acts of the committee that is subject to the "Sunshine Law".

2. The Florida Supreme Court in Wood v. Marston, 442 So. 2d 934 (Fla 1983), also held the public has no authority under the "Sunshine Law" to participate in or interfere with the decision-making process of state agencies subject to the "Sunshine Law". The Florida Supreme Court held that the "Sunshine Law" gives the public the right to be spectators and no more.

3. The "Sunshine Law" Florida Statute 286.011, as written, does not give the public the right to "speak". The "Sunshine Law" requires that the meeting be open to the public.

4. The Plaintiffs' attorney has asked this Court to interpret the "Sunshine Law" to include the "right to participate and speak" at public meeting. The Florida Supreme Court has in the case of Wood v. Marston, 442 So. 2d 934 (Fla 1983), interpreted this Florida Statute. In reality and fact this would not be an interpretation of the statute, but it would "amend" a Florida Statute passed by the Legislature of Florida. The Plaintiffs are asking the Court to cross the line of the separation of power of the three branches of government. Judicial restraint should be exercised.

5. Both the Plaintiffs' attorney and the Defense attorney agree that this cause of action is not a U. S. Constitution "Freedom of Speech" issue and it is not a "Freedom of Speech" issue under the Florida Constitution.

6. Notwithstanding the above, the "Sunshine Law" does not prohibit the public from speaking at public hearings with consent or permission from the committee. This has been allowed through custom and tradition at many public hearings. Of course, the committee would have the right to establish reasonable procedures to allow the "public to speak to the issues". The

reasonable procedures could allow the public to speak without interfering with the efficiency of the decision-making process.

7. The only legal remedy available to the Plaintiffs is through the legislative process.

Based upon the Florida Supreme Court case of Wood v. Marston the Court DENIES the Plaintiffs' Motion for Summary Judgment.

Based upon the Florida Supreme Court case of Wood v. Marston the Court GRANTS the Defendant's Motion for Summary Judgment.

The Court DENIES the Plaintiffs' Motion to Dismiss for Failure to State a Cause of Action. The Motion to Dismiss is somewhat moot based upon the parties stipulation regarding the undisputed material facts of the two Summary Judgment Motions.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida this the 2nd day of March, 2009.

FRANK L. BELL
CIRCUIT JUDGE

Copies furnished to:

Edward Fleming, Esquire
Sharon L. Barnett, Esquire