

IN THE TWELFTH JUDICIAL CIRCUIT COURT  
IN AND FOR SARASOTA COUNTY, FLORIDA

SITC INC,

Plaintiff,

v.

CASE NO. 2026 CA 002807 NC

MAJOR TRIAL DIVISION T

SARASOTA COUNTY FLORIDA,  
\ JOE NEUNDER AS  
COMMISSIONER,  
TOM KNIGHT AS COMMISSIONER,  
MARK SMITH AS COMMISSIONER,  
RON CUTSINGER AS  
COMMISSIONER,  
TERESA MAST AS  
COMMISSIONER,  
Defendant.

---

**ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANTS' MOTIONS TO DISMISS FIRST AMENDED COMPLAINT**

BEFORE THE COURT are (1) Defendants' Motion to Dismiss First Amended Complaint [DIN 50] filed by Defendants Sarasota County, Florida (the "County"), and Commissioners Joe Neunder, Tom Knight, Mark Smith, Ron Cutsinger, and Teresa Mast, in their personal and official capacities (collectively, "Defendants") (the "County Motion"); and (2) the separate Motion to Dismiss filed by Defendant Tom Knight First Amended Complaint [DIN 56] directed to the personal-capacity claims against him (the "Knight Motion"). The County Motion and the Knight Motion will be referred collectively as the "Motions." Plaintiff SITC, Inc. ("SITC" or "Plaintiff") filed its Omnibus Response in Opposition to Motions to Dismiss First Amended Complaint (the "Response") [DIN 79].

The Court, having reviewed the Motions, the Response, the Amended Complaint, having heard oral argument of counsel, and having considered the applicable legal authority and being fully advised, grants in part and denies in part the Motions as explained.

**BACKGROUND**

SITC owns approximately 43.42 acres located at 2000 Lorraine Road and adjoining parcels in Sarasota County (the "Property"), zoned Open Use Estate, one unit per five acres ("OUE-1"), with a Future Land Use designation of Rural. SITC seeks administrative approval under Florida's Live Local Act—section 125.01055(7), Florida Statutes (2025)—of a proposed 504-unit multifamily residential development on the Property. On December 4, 2025, SITC submitted a preliminary preapplication for a multifamily development on the property.

The Live Local Act requires a county to authorize multifamily and mixed-use residential development as an allowable use in any area “zoned for commercial, industrial, or mixed use,” provided the affordability conditions are met. § 125.01055(7)(a), Fla. Stat.

At public meetings held March 24, 2026, and April 7, 2026, the Sarasota Board of County Commissioners (the “Board”) considered whether OUE-1 and comparable zoning districts qualify for development under the Act and adopted a policy interpretation concluding that they do not. SITC’s six-count Complaint challenges that determination. The agendas for these meetings did not contain any reference that the Board intended to address this policy interpretation.

Alleging it was aggrieved by the Board’s action, SITC sued the County and the Commissioners. Counts 1-3 seek declaratory and injunctive relief against the County and the individual Commissioners in their official capacities concerning the applicability and requirements of the Act, an alleged unlawful moratorium, and an alleged violation of procedural due process. Counts 4-6 are asserted against the individual Commissioners in their personal capacities and allege, respectively, ultra vires conduct, tortious interference with prospective economic advantage, and a violation of section 286.011, Florida Statutes, more commonly known as Florida’s Government in the Sunshine Law.

Defendants contend that OUE-1 is not “zoned for commercial, industrial, or mixed use” within the meaning of the Live Local Act; that an amendment to the Live Local Act excludes open-use estate districts from its scope; that the individual Commissioners are improperly named and are immune from suit; that the Complaint is a shotgun pleading; that Defendants are entitled to absolute and/or qualified immunity; that the prayer for punitive damages is procedurally premature; and that the counts otherwise fail to state a claim. By his separate Motion, Defendant Knight contends that all conduct attributed to him was undertaken in his official capacity as a County Commissioner and is therefore barred by statutory and common-law immunity.

## **LEGAL ANALYSIS**

A motion to dismiss tests only the legal sufficiency of the complaint; it does not resolve disputed issues of fact and does not determine the merits. Hussey v. Collier County, 158 So. 3d 661, 664 (Fla. 2d DCA 2014). The Court is confined to the four corners of the Complaint and must accept all well-pled factual allegations as true. Id. “The court’s task is to decide whether, under the asserted facts, the plaintiff could obtain relief.” Id.

### **A.**

#### **Counts 1-3**

Many of the County’s arguments for dismissal of Counts 1-3 are based on the merits of the interpretation of the Act and the declaration sought by SITC. The parties advance competing constructions of the Live Local Act, and the County Attorney’s own memorandum acknowledged “two competing, non-frivolous” interpretations of whether OUE and RE districts qualify. The question is genuinely disputed, and the Court is electing not to resolve the merits question on a motion to dismiss, instead desiring complete framing of the issues by the pleadings

before resolving the issue. Ribaya v. Bd. of Trustees of City Pension Fund for Firefighters & Police Officers in City of Tampa, 162 So. 3d 348, 352 (Fla. 2d DCA 2015). The Court hastens to note, though, that the County may continue with these same arguments at later stages in this case.

Furthermore, the County's argument that Counts 1-3 improperly seek injunctive relief in the guise of declaratory relief goes to the scope of the ultimate remedy, not to the sufficiency of the declaratory claims. Ancillary injunctive relief is available in aid of a declaratory judgment under section 86.061, Florida Statutes, even if granting the injunctive relief is dependent on the declaratory judgment. Alvarez-Sowles v. Pasco County, 386 So. 3d 224, 233 (Fla. 2d DCA 2024).

The Court, however, finds that the Commissioners should be dismissed in their official capacities from Counts 1-3. Section 125.15, Florida Statutes, provides that "[t]he county commissioners shall sue and be sued in the name of the county of which they are commissioners." An official-capacity claim against an individual commissioner is, in substance, a claim against the County itself, and is therefore redundant. See Strickland v. Pinellas County, 261 So. 3d 700, 703 n.1 (Fla. 2d DCA 2018) (applying section 125.15 to hold the county, rather than the board of commissioners, the proper defendant). To the extent Counts 1-3 also purport to name the Commissioners in their individual capacities, no separate individual-capacity claim is stated within those counts. Accordingly, Counts 1-3 shall proceed against the County alone. The Commissioners named in their personal and official capacities are dismissed from Counts 1-3 with prejudice.

## **B.** **Counts 4-6**

Counts 4-6 are asserted against the individual Commissioners in their personal capacities. Defendants advance the same immunity grounds, and the following analysis applies equally to the County's Motion and Knight's Motion.

Count 4, which seeks declaratory relief premised on ultra vires conduct, fails because it is brought against the wrong parties. The challenged act is the Board's April 7, 2026, unanimous adoption of a countywide policy, a collective legislative act attributable to the Board, not to any commissioner individually. This challenge must be brought against the County pursuant to section 125.15, Florida Statutes. See Erickson v. Bd. of Cnty. Comm'rs of Sarasota Cnty., 212 So.2d 340 (Fla. 2d DCA 1968).

More, the Live Local Act supplies the same vehicle and likewise points to the County, framing the cause of action as "any civil action filed against a ***county*** for a violation of this subsection." Section 125.01055(7)(l), Fla. Stat. (bolded, italicized emphasis added). Even accepting as true SITC's allegations that the Commissioner Defendants' votes on April 7, 2026, adopting the County's policy and interpretation of the Live Local Act exceeded the authority granted to the County or the Board, see [Am. Compl., DIN 33, ¶¶ 163, 165-69], the legal effect is a determination that sovereign immunity does not bar such a claim against the sovereign—here, the County. Sarasota Doctors Hospital, Inc. v. Sarasota County, 396 So. 3d 648, 657 (Fla. 2d

DCA 2024). It does not authorize claims against the Commissioner Defendants in their personal capacity.

Plaintiff challenges the action taken by the Commissioner Defendants in their individual capacity as members of the Board, see [Am. Compl. DIN 33, ¶162], and the remedy for an ultra vires action is to void the County's policy. Braden Woods Homeowners Assoc., Inc. v. Mavard Trading, Ltd., 277 So. 3d 664, 673 (Fla. 2d DCA 2019). As discussed above, because the Defendants here are County Commissioners, any action for an ultra vires act must be against the County, not the individual commissioners. Accordingly, Count 4 is dismissed with prejudice, and the Court does not reach Defendants' claims of immunity.

Count 5 (tortious interference) fails to identify any specific, identifiable business relationship, Commissioners' knowledge of such a relationship, or allege conduct directed at a third-party. A tortious interference claim "requires a business relationship evidenced by an actual and identifiable understanding or agreement which in all probability would have been completed if the defendant had not interfered." Ethan Allen, Inc. v. Georgetown Manor, Inc., 647 So. 2d 812, 814 (Fla. 1994). A claim is legally insufficient and subject to dismissal where it "does not identify the customers who were the subject of the alleged interference." Sarkis v. Pafford Oil Co., 697 So. 2d 524, 526 (Fla. 1st DCA 1997). SITC's allegations fail to state a cause of action under these standards.

To the extent Count 5 rests on SITC's "prospective relationships with an identified customer pool in Sarasota County," Florida does not recognize a cause of action "for tortious interference with a business's relationship to the community at large." Ethan Allen, 647 So. 2d at 815. More, a tortious interference claim requires the Defendant's actual knowledge of the specific relationship interfered with. *Id.* The Complaint pleads knowledge only by conclusory inference.

Finally, the interference must be directed at the third party to the relationship, not merely incidental to conduct aimed elsewhere. Lawler v. Eugene Wuesthoff Mem'l Hosp. Ass'n, 497 So. 2d 1261, 1263 (Fla. 5th DCA 1986) (interference must be "both direct and intentional," and is insufficient where it is "only an indirect consequence" of conduct aimed elsewhere). The sole conduct attributed to the Commissioners is their adoption of the LLA Policy interpreting the Live Local Act, together with public statements about that policy. The Complaint does not allege that any Commissioner contacted, communicated with, or directed any act at any consultant, investor, partner, buyer, or customer of SITC. Accordingly, Count V is dismissed with leave to amend. The Court does not reach Defendants' claims of immunity.

Count 6 (Sunshine Law) is brought pursuant to section 286.011, and this claim fails in the following two ways. *First*, it fails to allege that the April 7 meeting itself was unnoticed; SITC merely alleges the topic was not on the agenda. Florida courts hold that reasonable notice of a public meeting is mandatory but reject any requirement under section 286.011 that specific subject-matter items be listed on an agenda. See Law & Info. Servs., Inc. v. City of Riviera Beach, 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996) (holding "if a meeting itself is properly noticed, there is no requirement ... that a governmental body give notice of potential deviation from a previously announced agenda."); Hough v. Stembridge, 278 So. 2d 288, 291 (Fla. 3d DCA

1973) (holding that Government in the Sunshine Law does not prohibit a board or commission from acting on a matter which has not been placed on an agenda). To the extent Count 6 claims a Sunshine Law violation based on lack of notice, it is dismissed with prejudice. There is no basis for amendment on that theory.

*Second*, Count 6 also fails to allege with the required specificity that any Commissioner participated in a communication concerning official action outside a noticed public meeting. The Complaint's bare allegation based "upon information and belief" that "two or more Commissioners" coordinated outside the Sunshine is conclusory and insufficient. Accordingly, to the extent Count 6 is based on two or more commissioners meeting outside a notice meeting, it is dismissed with leave to amend as to that theory. The Court does not reach Defendants' claims of immunity.

### **C.** **Shotgun Pleading**

The Complaint does not exhibit the classic shotgun defect. Each count reincorporates only the common factual background rather than cascading the preceding counts. This is precisely the practice the Second District endorsed in Pratus v. City of Naples, 807 So. 2d 795, 797 (Fla. 2d DCA 2002) (holding Rule 1.130(b) "permit[s] the pleader to identify concisely factual allegations common to multiple counts and theories" by reference).

### **D.** **Punitive Damages**

The prayer for punitive damages under Count 5 is premature under section 768.72, Florida Statutes, and is therefore stricken.

It is, therefore, ORDERED that:

1. As to Counts 1, 2, and 3, the County's Motion is denied to the extent it seeks dismissal of those claims against the County. The County's motion is granted as to Commissioners named in their personal and official capacities. The Commissioners are dismissed with prejudice from Counts 1-3; those counts will proceed solely against the County.
2. As to Counts 4, 5, and 6, the County's Motion is granted as follows:
  - a. Count 4 is dismissed with prejudice;
  - b. Count 5 is dismissed without prejudice with leave to amend; and,
  - c. Count 6 is dismissed with prejudice in relation to claims of lack of notice, and dismissed without prejudice with leave to amend as to claims that Commissioners conducted official business outside of a duly noticed meeting.

3. Tom Knight's Motion is granted to the same extent as the County's Motion with respect to the personal-capacity claims against him which are dismissed as set forth in decretal paragraphs 1 and 2 above.
4. The County's Motion is denied to the extent it contends that the Complaint constitutes an improper shotgun pleading.
5. The prayer for punitive damages under Count 5 is stricken without prejudice to Plaintiff's right to seek leave to amend under section 768.72, Florida Statutes.
6. Plaintiff is granted leave to file an amended complaint, consistent with this Order, within twenty (20) days of the date of this Order.
7. If Plaintiff either fails to amend within 20 days or files a notice that it does not intend to amend, then Defendant Sarasota County will answer 20 days after the earlier of the expiration of Plaintiff's 20 days or the date Plaintiff filed a notice that it does not intend to amend.

DONE AND ORDERED in Sarasota, Sarasota County, Florida, on September 17, 2026.

  
9/17/2026 9:04 AM 2026 CA  
002807 NC  
e-Signed 9/17/2026 9:04 AM 2026 CA 002807 NC

**HUNTER W CARROLL**  
Circuit Judge

### **SERVICE CERTIFICATE**

On September 17, 2026, the Court caused the foregoing document to be served via the Clerk of Court's case management system, which served the following individuals via email (where indicated). On the same date, the Court also served a copy of the foregoing document via First Class U.S. Mail on the individuals who do not have an email address on file with the Clerk of Court.

BENTLEY, MORGAN R  
OPRISON, CHRISTOPHER GEORGE ESQ  
OPRISON, CHRISTOPHER GEORGE ESQ  
PEARCE, DAVID MICHAEL  
BENTLEY, MORGAN R  
BURNS, JENNIFER  
BENTLEY, MORGAN R

CBREJ@BGK.LAW  
CHRIS.OPRISON@DLAPIPER.COM  
docketingchicago@us.dlapiper.com  
DPEARCE@SCGOV.NET  
ESERVE@BGK.LAW  
JBURNS@SCGOV.NET  
MBENTLEY@BGK.LAW

BURNS, JENNIFER  
PEARCE, DAVID MICHAEL  
OPRISON, CHRISTOPHER GEORGE ESQ  
SHAW, STEPHEN J  
Jody Stafford Fernandez  
Daniel J DeLeo  
Daniel J DeLeo  
Daniel J DeLeo  
Andrew Oppenheim  
Andrew Oppenheim  
Raven K. Peters

MEBISHOP@SCGOV.NET  
RCARR@SCGOV.NET  
sheila.hall@dlapiper.com  
SSHAW@SCGOV.NET  
jody.stafford@us.dlapiper.com  
ddeleo@shumaker.com  
mpack@shumaker.com  
smcclellan@shumaker.com  
aoppenheim@shumaker.com  
kgrotz@shumaker.com  
rpeters@shumaker.com