City of Fort Pierce
Regulation of Vacation Rentals

City Commission
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Susan L. Trevarthen, Esq. FAICP
James E. White, Esq., AICP
Weiss Serota Helfman Cole & Bierman, P.L.
Ft. Lauderdale, FL
www.wsh-law.com

State Regulation of Vacation Rentals

State Overview -Vacation Rentals Generally

- A vacation rental is classified as any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit, not a timeshare project, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, or advertised to the public as a place regularly rented to guests. (*See, Fla. Stat. § 509.242(1)(c)* and *509.013(4)(a)1.*)

State Regulation of Vacation Rentals

- The Division of Hotels and Restaurants within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of Chapter 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. The Department licenses vacation rentals within the state, and has the power to inspect a licensed vacation rental. (*See, Fla. Stat. § 509.241, F.S.*)
- DBPR requires each vacation rental to be readily available for inspection, but vacation rentals are not subject to the regular inspection requirements of other transient public lodging establishments, and the Division only inspects a vacation rental if there is a complaint. (*See Rule 61C-1.002(3), F.A.C; Fla. Stat. § 509.032(2)(a),(stating "[p]ublic lodging units classified as vacation rentals are not subject to this [inspection] requirement but shall be made available to the division upon request"*)

Local Authority to Regulate Prior to 2011

- Home Rule Authority Complete

- Prior to June 1, 2011, local governments regulated vacation rentals (also referred to as resort dwellings in many local laws) based on their classification as vacation rentals. Local governments could restrict or prohibit vacation rentals up to, and including, banning the use of residential properties as vacation rentals and setting minimum lengths of stay.

  - But see *Fla. Stat. § 509.032(7)(a)* – preempting inspections to the State, except for compliance with Florida Building Code and Fire Prevention Code

Is Short Term Rental a Residential Use?

- Many city zoning codes identify single family dwellings as permitted uses in residential zones, and discussed residential use without reference to the duration of occupancy or frequency of change-over.
- Many also use a permissive zoning scheme – anything that is not listed as permitted is considered prohibited, even if it is not called out as prohibited.
- As vacation rentals proliferated, many cities across the state started to argue that the short term rental of a single family home is a separate use from the long term rental or owner-occupied residential use of a home because it has different impacts on the neighborhood. They then concluded that, unless the zoning code specifically allowed short term rental use, it was implicitly prohibited.
- Sometimes they argued that the plain meaning of residential did not include it; other times, they argued that it violated the intent and purpose of the zoning district. Sometimes they argued it should be considered a business use.
- In every case that a court has been presented with this zoning interpretation, the city has lost.
- In contrast, specific regulations of short term rental uses have been upheld.

Rules Governing Interpretation of Zoning Regulation

- **Zoning regulation must be stated clearly and cannot be implied**.

"Courts and other governmental bodies are prohibited from inserting words or phrases into municipal ordinances to express intentions that do not appear." *Mandelstam v. City of South Miami*, 539 So. 2d 1139, 1140 (Fla. 3d DCA 1988) (citing *Rinker Materials*, supra).

- **Zoning regulation must be interpreted by its plain and obvious meaning**.

See *Belair v. City of Treasure Island*, 611 So. 2d 1285, 1289 (Fla. 2d DCA 1993) (buildings not directly regulated by code's rental restriction could not be interpreted to fall within its scope) (quoting *Ocean's Edge Dev. Corp. v. Town of Juno Beach*, 430 So. 2d 472, 475 (Fla. 4th DCA 1983) (quoting *Rinker Materials*, 286 So. 2d at 553).

Rules Governing Interpretation of Zoning Regulation

- **Zoning ordinances must be interpreted broadly in favor of the property owner, absent clear intent to the contrary.**

Thomas v. City of Crescent City, 503 So. 2d 1299, 1301 (Fla. 5th DCA 1987) ("because 'zoning regulations are in derogation of private rights of ownership, words used in a zoning ordinance should be given their broadest possible meaning where there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner,'" citing *Rinker Materials*, supra). *See also Ocean's Edge*, 430 So. 2d at 473*; and Stroemel v. Columbia Cnty.,* 930 So. 2d 742, 745 (Fla. 1st DCA 2006) (words used in zoning ordinances should be given their broadest meaning when there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner); *Mandelstam,* 539 So. 2d at 1140 (as a general rule, zoning ordinances are subject to strict construction in favor of right of property owner to unrestricted use of his property); *City of Hallandale v. Prospect Hall College, Inc*., 414 So. 2d 239, 240 (Fla. 4th DCA 1982) (zoning ordinances are to be construed broadly in favor of the property owner).

Rules Governing Interpretation of Zoning Regulation

- **Zoning must be applied as it actually reads, not as the City would like for it to read.**

Ocean's Edge Dev. Corp. v. Town of Juno Beach, 430 So. 2d 472, 474-75 (Fla. 4th DCA 1983). Where plain language in the Juno Beach zoning code did not anticipate or directly regulate time share use, the court would not enforce the town's subsequent moratorium on certificates of occupancy for such use:

> The error we perceive in the trial court's findings of inconsistency and substantial change of use lies in its deviation from the plain definitions with the plan and implementing zoning ordinance in favor of after-the-fact expert testimony as to legislative intent to fill the cracks. Government cannot function in such after-the-fact fashion; property owners are entitled to rely upon the clear and unequivocal language of municipal ordinances …. The effect of the trial court decision was to amend the ordinance as the town would have liked it to read, not as it read.

Cases: No Implied Regulation of Short Term Rentals

- *Milo v. City of Venice,* Case No. 2008 CA 552 SC (12th Judicial Circuit, Sarasota County, Appellate Division, March 14, 2008)
  - Property found in violation for using home as vacation rental.
  - Venice code identified "single-family dwelling" as a permitted use, prohibited all uses that were not enumerated, and lacked specific provisions prohibiting vacation rentals or defining the duration or frequency of rentals of single family residences.
  - Venice argued that short term rentals were inherently incompatible with the notion of residential use, and the Code should be read to infer a prohibition. Held – vacation rentals were not prohibited.
  - "Zoning regulations are in derogation of private ownership rights and should be construed broadly in favor of property owners absent a clear intent to the contrary." *Milo*, p. 5 (citing *Ocean's Edge, supra*). "Had the drafters [of the Venice code] intended to limit the duration and frequency of rentals, language to that effect could have been included." *Id*. at 5-6 (citing *Rose v. Town of Hillsboro Beach*, 216 So. 2d 258 (Fla. 4th DCA 1968)).
  - See also *City of Venice v. Gwynn*, 76 So. 3d 401 (Fla. 2d DCA 2011) (circuit court appellate division case, which held that the city's later amendment to the zoning code to prohibit short term rentals in residential areas, prior to legislative preemption of such regulation, was unconstitutionally applied to and worked a taking of Gwynn's property rights, was overturned).

Cases: No Implied Regulation of Short Term Rentals

- *Dal Bianco v. City of Fort Lauderdale*, Case No. 10-029369 (17th Judicial Circuit, Broward County, Appellate Division, May 9, 2012)
  - Code enforcement order deemed a property owner in violation of the zoning code because he used his single family home as a vacation rental.
  - Zoning code expressly permitted "a single-family dwelling," and defined it as a "unit designed for or occupied by one (1) family and includes standard, detached and attached dwellings." No reference to the form of ownership of the dwelling, or its duration of use.
  - Held: the definition speaks to configuration of the structure, but fails to address how an owner was entitled to make use of his home. Rental not prohibited.
  - Cited to *Ocean's Edge* for the proposition, "since zoning regulations are in derogation of private ownership rights, general zoning law provides that zoning ordinance [sic] are to be construed broadly in favor of the property owner absent a clear intent to the contrary." *Dal Bianco*, p. 5.

Cases: No Implied Regulation of Short Term Rentals

- *Town of Jupiter Inlet Colony v. Bondar*, Case No. 50 2009 CA 001377 (15th Judicial Circuit, Palm Beach County, January 26, 2011)
  - Property owners' transient rental of single family residence was a grandfathered use, since prior zoning regulations which allowed "single-family dwellings and accessory uses customarily incident to them" did not expressly prohibit vacation rentals.
  - Specific regulations of short terms rentals were not adopted until a year after the code violation. If they had been in place at the time, the code violation would have been upheld.

Cases: No Implied Regulation of Short Term Rentals

- *Belair v. City of Treasure Island*, 611 So. 2d 1285, 1289 (Fla. 2d DCA 1993) (buildings containing more than three dwelling units could not be interpreted to be "single family dwellings" so that the zoning code provision restricting rentals of single family dwellings would apply to them)
- City obtained an injunction preventing property owners from renting condominium units more than six times a year, but City's rental restrictions only addressed single family dwellings and did not address multi family.
- Appellate court reversed, based on plain meaning of Code:
  - Appellants argue that the trial court erred in holding that each condominium unit in Land's End is a single family dwelling. We agree. The plain definitions in the code provide that a multiple family dwelling is a building containing three or more dwelling units. There is no question that the buildings which make up Land's End contain more than three dwelling units. The City's own witnesses testified that Land's End is a multiple family dwelling under the Code. "A statute or ordinance must be given its plain and obvious meaning." *Ocean's Edge Development Corp. v Town of Juno Beach*, 430 So. 2d 472, 475 (Fla. 4th DCA), *review denied*, 436 So. 2d 101 (Fla. 1983) (quoting *Rinker Materials Corp. v. City of North Miami*, 286 So. 2d 552, 553 (Fla. 1973)). The trial court erred in holding that the condominium units were separate single family dwellings. This holding does not comport with the plain and obvious meaning of the definitions in the code. (emphasis added)

Cases: Specific Regulations of Short Term Rentals Permissible

Specific regulations of vacation rentals have generally been upheld.

- *Schwartz v. City of Treasure Island*, 544 F.3d 1201 (11th Cir. 2008) (holding that, under the Fair Housing Act, the city must provide for a reasonable accommodation process when tourist dwelling regulations are applied to uses for the disabled, unless doing so fundamentally alters the zoning scheme);
- *Neumont v. State of Florida and Monroe Cnty*., 967 So. 2d 822 (Fla. 2007) (answering a certified question and upholding a vacation rental regulation that specifically restricted rentals for fewer than 29 days);
- *Rollinson v. City of Key West*, 875 So. 2d 659 (Fla. 3d DCA 2004) (property used for weekly rentals less than 50% of the year by prior owner in accordance with established administrative policy was a legal nonconforming use, where code specifically defined transient use of residences as less than 29 days, but administrative interpretation created 50% rule for property that was "principally available" for transient use); and
- *Rathkamp v. DCA and Monroe County*, 740 So. 2d 1209 (Fla. 3d DCA 1999) (upholding specific vacation rental prohibition of rentals of 28 days or fewer as consistent with the Principles of Guiding Development for the Florida Keys area of critical state concern).

Summary: Local Power Before 2011

- Regulations cannot be implied. If the Code does not specifically regulate short term rentals in a residential zoning district, the City cannot shut them down or place restrictions on them by interpretation.

- If the Code directly regulates the duration, frequency and occupancy of, or even prohibits, short term rentals, the regulation can be enforced and will be upheld.

2011 Legislation

- In 2011, Chapter 2011-119, Laws of Florida, preempted vacation rental regulation to the state, and prevented local governments from enacting any new law, ordinance, or regulation that prohibited, restricted the use of, or regulated vacation rentals based on classification, use, or occupancy.

- The legislation exempted (grandfathered) any local law, ordinance, or regulation that was enacted by a local government on or prior to June 1, 2011. (*See Chapter 2011-119, Laws of Florida; codified in Fla. Stat. § 509.032(7)*)

2011 Short Term Vacation Rental Legislation And Effects

What did the 2011 Legislation do?

- No more restriction on use or prohibition of vacation rentals, and no more treatment of them based on their classification, use or occupancy.
- If a community wanted to regulate them, they would essentially have to fall under a program that regulated all types of rentals, e.g., landlord licensing programs.
- Allowed single-family homes to fall within the short term vacation rental preemption, along with two-family or four-family house or dwelling unit. (See, Fla. Stat. § 509.242(1)(c))
- No mandatory inspections of these homes by the Department of Business and Professional Regulation ("DBPR") for compliance with state regulatory requirements. (See, Fla. Stat. § 509.032(2))

2014 Revision To Legislation

- In 2014, Chapter 2014-71, Laws of Florida, narrowed the scope of the preemption by preventing local governments from prohibiting, or regulating the duration or frequency of, vacation rentals.

- As a result, current law **allows** local governments to regulate vacation rentals, provided those regulations do not prohibit, or regulate the duration or frequency of, the vacation rental. The grandfather provision for pre-2011 regulations is maintained. (*See Chapter 2014-71, Laws of Florida; codified in Fla. Stat. § 509.032(7)(b)*)

2014 Revision To Legislation

- Florida Statute § 509.032(7)(b):

"A local law, ordinance, or regulation may not ~~restrict the use of vacation rentals,~~ prohibit vacation rentals~~,~~ or regulate the duration or frequency of rental of vacation rentals ~~based solely on their classification, use, or occupancy~~. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011."

- Senate Bill originally restored full home rule. House of Representatives greatly watered it down.

- Legislative history supports intent to restore power to regulate, but not power to prohibit.

2014 Legislation Still Preempts

- The definition of a vacation rental, sometimes called short term vacation rental or a resort dwelling, did not change. (*See, Fla. Stat. § 509.013(4)(a)(1) and 509.242(1)(c)*)
  - Rented to guests **more than three times in a calendar year** for periods of **less than 30 days** or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

- DBPR standards did not change.

- Cannot establish a minimum length of stay. Cannot prohibit. Cannot limit the number of times it can be rented.

2014 Legislation Permits Adoption Of Some Local Government Regulations

Limited To Implementation Of Various Public Health, Safety And Welfare Concerns

- Safety – fire, carbon dioxide, pool, evacuation, communication
- Impacts of incompatibility – noise, trash, parking, changing character of neighborhood
- Accountability – local registration, contact, inspections, enforcement, fines and suspensions, tenant notification, tax payments
- Although local governments are permitted to enact regulations to accomplish such legitimate goals, regulations may not conflict with a controlling provision of state law.

What about Spacing Requirements or Caps?

- The Attorney General released an opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance in light of the preemption regarding vacation rentals. (See AGO 2016-12, Municipalities -- Vacation Rentals – Zoning October 5, 2016)

- The Attorney General opined that the preemption allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the Attorney General noted that *a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.*

2016 Attorney General Opinion: No

Take Away Lesson:

- An ordinance requiring certain distances between vacation rentals or limiting their numbers in areas within the City could result in a prohibition against using eligible units as vacation rentals when other existing units have already satisfied the spacing or percentage formula.

- *"Although the proposed ordinance would not absolutely forbid vacation rentals in the City, a distance separation requirement and a numerical or percentage limitation have the express purpose of prohibiting units above a certain threshold from being used as vacation rentals, which is contrary to Section 509.032(7)(b), Florida Statutes."*

City Regulations

- Enacted Prior to June 1, 2011

- Dwelling Rentals of less than 6 months (including Short Term Dwelling/Vacation Rentals) are permitted in all residential zoning districts pursuant to a **Conditional Use Permit.**

- City Code Section 22-76 "Procedure for the review and approval of conditional uses"

Section 22-76(3) – *"In permitting a conditional use or the modification of an existing conditional use, the city commission may impose, in addition to those standards and requirements expressly specified in this chapter, any condition which it finds to be* ***necessary to protect the best interest of the surrounding property*** *of the city."*

Limitation On Conditions

- Conditions imposed or placed upon Conditional Use Permits approving Vacation Rentals are limited pursuant to scope of state preemption under *Fla. Stat. § 509.032(7)(b).*

- Conditions must be reasonable and rationally related to mitigation of public health, safety and welfare concerns (negative secondary effects).

- Imposing unreasonable conditions or conditions having the effect of prohibiting a statutorily-eligible housing unit from being used as a vacation rental would likely exceed the regulatory authority granted in *Fla. Stat. § 509.032(7)(b).*

Exceeding Scope Of Regulatory Authority- Potential Liability For City

- Current case law is highly volatile at this time
- Area of law is continuing to evolve due to litigation from competing interest (home rule powers vs. investment property and ownership rights vs. homesteaded property rights)
- Takings
- Bert J Harris Act Claims

Proposed 2018 Legislation That Failed: SB 1400

Florida Vacation Rental Act (53 pages)

(**Total Local Government Preemption plus grandfathering**)

- **SB 1400** (Steube), titled the *"Florida Vacation Rental Act,"* **preempts all regulation of vacation rentals to the state and nullifies any local regulations,.** Instead, it licenses them through the state, and allows multiple properties to obtain a single state license. License fees capped at no more than $1,000 per license for Hospitality Education Program. No increase to state resources for enforcement.
- Revenue from fines for noncompliance to the Hotel and Restaurant Trust Fund. May not be used to pay contractors to perform required inspections, and may be used to support division programs.
- Grandfathered regulations can be maintained and can be amended to be less restrictive.

Proposed 2018 Legislation That Failed: SB 1400

- Allows DBPR to fine, suspend or revoke the license of any vacation rental for certain offenses, such as using the space for unauthorized gambling purposes, prostitution or illegally dealing in controlled substances.
- Inspections of vacation rentals are preempted to the state, with DBPR having sole jurisdiction to conduct them, but inspections are not mandatory unless they are in response to an emergency or epidemiological condition.
- DBPR cannot regulate design, construction, erection, alteration, modification or repair of any vacation rental.
- Maximum occupancy of the lesser of 4, plus 2 per bedroom, or 1 per 150 sq ft of finished area
- Local governments can regulate only in a manner uniformly applicable to all rental and ownership residential properties. Cannot prohibit or regulate duration or frequency of rentals.

Proposed 2018 Legislation That Failed: HB 773

Vacation Rentals

(Local Government Preemption with Grandfathering)

- **HB 773** (La Rosa) similarly prohibits cities from establishing ordinances specific to short-term vacation rentals. Instead, the law would require that all residential properties be treated the same, regardless of whether the property is being used as a rental or not.
- Not comprehensive in establishing state regulation like SB 1400 (3 pages).
- Allows cities with vacation rental ordinances in place prior to June 1, 2011, to amend their ordinance, as long as the amendment makes the regulation of vacation rentals less restrictive.

Proposed 2018 Legislation That Failed: SB 1640

Vacation Rental Requirements – some local regulation possible

- SB 1640 (Simmons) is a comprehensive proposal providing more state oversight over short-term rentals, with additional local regulation in certain circumstances. No regulation of duration or frequency.
- Requires licensing with the state and that certain licensing information be included in any advertisements or listings. Penalties for failing to display this information. Registration fee of no more than $1,000.
- "Commercial vacation rental" is a property managed by one licensed agent under a single license for 5+ vacation rental units or is part of 5+ vacation rental units under common ownership, control or management. Higher state regulatory standards apply to commercial vacation rentals, such as biannual inspections
- "Hosting platform," requires platforms to be licensed by the state, establishes requirements, record-keeping, and reporting for platforms, and deems a unit advertising on the platform to be a vacation rental
- One time 2018 amnesty for unpaid rental taxes

Proposed 2018 Legislation That Failed: SB 1640

SB 1640 - What local regulation is allowed?

- Preserves ordinances in place prior to June 1, 2011, and allows for these ordinances to be amended if the amendment is less restrictive.
- Allows regulation if uniform to all residential uses (rentals or not).
- Allows regulations specific to vacation rentals that are in single-family residences, where the owner is not personally occupying at least a portion of the residence where vacation rental activities are occurring.
- Vacation rental license, a copy of the certificate of registration with the Department of Revenue, and the owner's emergency contact information must be submitted to city. City cannot charge a fee for the submission of this information, and can only use it for informational purposes.

Proposed 2018 Legislation That Failed: HB 789

Listings for Vacation Rental Property

- **HB 789** (Stevenson) requires each person operating a short-term vacation rental to display a valid state certificate of registration number in each rental listing or advertisement. The bill establishes a $50 per day fine for first-time violators. Repeat offenders are subject to a $100 per day fine for noncompliance.

Regulation Of Vacation Rentals

Discussion and Questions

WEISS SEROTA HELFMAN
COLE & BIERMAN
AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW