JEFFREY P. COLLINS

361 Mulberry Grove Rd, Royal Palm Beach, FL 33411 (561) 723-3225
Email: jeffcollins@collinsfls.com

OBJETIVE

To document my work history and credentials.

WORK EXPERIENCE

2018-Current Collins Fire Protection and Life Safety Solutions WPB, FL

Chief Executive Officer

Owner of a small veteran owned engineering company specializing in code interpretation, fire protection system design and installations, and life safety analysis. Projects include designing fire alarm systems, fire pump, and automatic fire sprinkler systems for all occupancies identified in the Florida Building Code and Florida Fire Prevention Code. Expertise in analyzing existing buildings for compliance with the Life Safety Code, NFPA 101. Expert witness project includes MW Horticulture quasi-judicial hearing in Ft. Myers, Florida.

1996-2018 Palm Beach County Fire Rescue Palm Beach County, FL

Fire Rescue Administrator (Ret.)

Oversaw the entire daily operations of a full time carreer department with an operating budget of approximately four hundred forty million dollars. Planned and budgeted for five year capitol projections along with annual budget submittals. Negotiated and administered a collective bargaining agreement on behalf of the Board of County Commissioners. Negotiated contracts with municipalities for continued fire rescue services. Oversaw the procurement process for the purchase of engines, trucks, rescues, brush trucks, and all associated equipment and uniforms associated with running a professional fire rescue agency. Guided the replacement of capital assets, building replacements, and renovations. Planned new fire station construction projects based on growth and call volumes. Oversaw the operations of a fire prevention bureau that included plans examination, inspections, investigations, community education and drowning prevention.

1993-1996 Raleigh Fire Department Raleigh, NC

Deputy Fire Marshal

Supervised and trained newly promoted Captains assigned to the Fire Prevention Bureau. Conducted highly technical inspections of all occupancies including manufacturing plants, hospitals, high rise buildings, and warehouses. Acted as the fire department liaison to the Building Official. Worked with Operations to develop a hazardous material operational plan. Attended LEPC meetings on behalf of the department.

1985-1989 United States Army Fort Polk, LA

Sergeant (E-5)

Worked as a Russian Linguist (MOS 98-G) for four years on active duty and was honorably discharged. Attained the rank of Sergeant and was assigned as a squad leader where I trained my soldiers in the event we were deployed to battle. Maintained Russian proficiency while operating as a Russian Intelligence Voice Interceptor.

EDUCACION

2006 ***Masters of Science in Organizational Leadership***

Palm Beach Atlantic University West Palm Beach, FL

1993 ***Bachelors of Science in Fire Protection Engineering***

University of Maryland College Park, MD

CERTIFICATIONS, MEMBERSHIPS, AND COMMUNITY INVOLVEMENT

Liscense and Certifications

Professional Engineer Liscence in the State of Florida
Certified Fire Fighter State of Florida

Memberships

National Fire Protection Association
National Society of Professoinal Engineers
Florida Engineering Society member
Metro Chief Section of the National Fire Protection Association
Fire Service Section of the National Fire Protection Association

Volunteering and Community Involvement

Past Chair for the Fire Code NFPA 1 1997 - 2018
St. Mary's Medical Center Board of Governors 2012 – 2018
United Way Campaign Coordinator for Palm Beach County employees
Unerwriter's Labatory Fire Council Past Member
Fire Marshals and Inspectors Association Past President

Filing # 72918663 E-Filed 05/31/2018 04:35:03 PM

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR ST. LUCIE COUNTY, FLORIDA

TED L. HOLLANDER, INDIVIDUALLY, AND AS CO-TRUSTEE OF THE HOLLANDER FAMILY TRUST DATED JANUARY 14, 2015, AND KRISTIN G. HOLLANDER, INDIVIDUALLY, AND AS CO-TRUSTEE OF THE HOLLANDER FAMILY TRUST DATED JANUARY 14, 2015,

Case No.: 562016CA000537

Plaintiffs,

vs.

CITY OF FORT PIERCE, FLORIDA

Defendant.
_____/

FINAL JUDGMENT IN FAVOR OF PLAINTIFFS

THIS CAUSE having come before this Court on April 30, 2018, for Plaintiffs', TED L. HOLLANDER, INDIVIDUALLY, AND AS CO-TRUSTEE OF THE HOLLANDER FAMILY TRUST DATED JANUARY 14, 2015, and KRISTIN G. HOLLANDER, INDIVIDUALLY, AND AS CO-TRUSTEE OF THE HOLLANDER FAMILY TRUST DATED JANUARY 14, 2015 (the "Plaintiffs"), Amended Cross-Motion for Final Summary Judgment and the City of Fort Pierce, Florida's ("Fort Pierce") Amended Motion for Summary Judgment. The court, having reviewed the file, the affidavits in support, and otherwise being fully advised in the premises, finds and orders as follows:

There is no genuine issue of material facts in dispute and Plaintiff is entitled to judgment as a matter of law.

A court shall enter judgment if there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fla. Rule Civ. P.

1.510. The non-moving party does not have an initial burden to disprove the movant's entitlement to summary judgment. *Holl v. Talcott*, 191 So.2d 40, 43 - 44 (Fla. 1966). However, the movant is not required "to exclude every possible inference from other evidence that may have been available." *Stepp v. State Farm Fire & Casualty Co.*, 656 So. 2d 494, 496 (Fla. 1st DCA 1995).

While summary judgments, "should be cautiously granted.... "it is never enough for the opposing party merely to assert that an issue does exist." *Fisel v. Wynns*, 667 So. 2d 761, 764 (Fla. 1996). To be sure, "if a party could simply allege their beliefs as evidence of events that give rise to a cause of action to sufficiently overcome summary judgment, summary judgment would be meaningless." *Cohen v. Arvin*, 878 So. 2d 403, 405 (Fla. 4th DCA 2004).

As the court held in *Capotosto v. Fifth Third Bank*, 230 So. 3d 891 (Fla. 4th DCA 2017):

> [O]nce the movant's initial burden is satisfied, "the opposing party must come forward with counterevidence sufficient to reveal a genuine issue." *Landers v. Milton*, 370 So. 2d 368, 370 (Fla. 1979).
>
> A litigant cannot avoid summary judgment by merely asserting a fact without any evidence to support it.
>
> Here, the facts are not in dispute.

Both the Florida Rules of Civil Procedure and the Federal Rules of Civil Procedure contain summary judgment provisions. The operative language of the two rules is essentially identical:

> USCS Fed Rules Civ. Proc. R. 56
>
> The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Fla. R. Civ. P. 1.510

> The judgment sought shall be rendered forthwith if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Despite similar language, the interpretations of the rules have diverged widely. The divergence has become most pronounced since the decision of the U.S. Supreme Court in *Celotex Corp. v. Catrell*, 477 U.S. 317 (1986). The foundation of the *Celotex* standard is the view that summary judgment, "is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the federal rules as a whole, which are designed 'to secure the just, speedy, and inexpensive determination of every action.'" *Celotex* at 477 U.S. 328. [1]

In Florida some might argue that summary judgment continues to be regarded as a "disfavored procedural shortcut". As it is put in Trawick's, *Florida Practice and Procedure* § 25-5:

> In summary judgment appeals every attempt will be made by the appellate court to reverse the summary judgment. The record is reviewed in the most favorable light toward whom the summary judgment was entered. Defenses not raised by the losing party and additional proof on a motion for rehearing are examples of the lengths to which appellate courts have gone to reverse summary judgment in defiance of well settled principles of appellate review.

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[1] In a series of opinions issued in 1986 known as the *Celotex* trilogy, the U.S. Supreme Court modernized the standard for reviewing motions for summary judgment in federal court. Although not bound by such federal procedural law, over 35 states have followed the Supreme Court's example because, in the words of the Supreme Court of Massachusetts, "we think it makes eminent good sense to do so." Thomas Logue and Javier Alberto Soto, *Florida Should Adopt the Celotex Standard for Summary Judgments*, 76 Fla. Bar J. 20 (Feb. 2002).

However, our own Fourth District Court of Appeal dispels this myth. The court explained in *Martin Petroleum Corp. v. Amerada Hess Corp.*, 769 So. 2d 1105, 1108 (Fla. 4th DCA 2000):

> Counsel's preoccupation with summary judgment cases probably stems from the popular misconception among the trial bar and bench that summary judgments are routinely reversed by appellate courts. Although it is true that, generally speaking, issues of negligence cannot be resolved on summary judgment, commercial litigation is another matter. Where a claim such as this one is filed, and after full discovery there is no evidence to support the allegations and there are thus no genuine issues of material fact, summary judgment should be granted. A party should not be put to the expense of going through a trial, where the only possible result will be a directed verdict.

The holding in *Martin Petroleum Corp. v. Amerada Hess* would seem particularly applicable in a declaratory relief action, when the facts are not in dispute and where the court is being asked to construe purely legal issues.

To summarize, §509.032(7)(b), Fla. Stat. provides that a, "local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011."

Ordinance L-295 was enacted and ***made effective*** on November 4, 2013, after June 1, 2011. The ordinance does not provide for retroactive application. *Middlebrooks v. Department of State, Div. of Licensing*, 565 So. 2d 727 (Fla. 1st DCA 1990)(absent a clear legislative expression requiring retroactive application, a law is presumed to operate prospectively, meaning that it will apply only to conduct occurring after the statute becomes effective); *Promontory Enters. v. Southern Eng'g & Contr., Inc.*, 864 So. 2d 479, 484 (Fla. 5th DCA 2004); *State of Fla., Dep't of Revenue v. Zuckerman-Vernon*

Corp., 354 So.2d 353, 358 (Fla. 1977)(legislature's inclusion of an effective date of a law "effectively rebuts any argument that retroactive application of the law was intended.").

Subsequently, Ordinance 16-018 was enacted and ***made effective*** on September 19, 2016. That ordinance was enacted to correct a scrivener's error in Ordinance L-295.

Ordinance 18-004 was enacted because the city recognized (and specifically cited) the *Middlebrooks v. Department of State, Div. of Licensing* problem in Ordinance 16-018, changing the effective date, nunc pro tunc, from September 19, 2016 to November 4, 2013. However, the same *Middlebrook* problem exists with regard to Ordinance L-295, which was enacted and made effective on November 4, 2013, after June 1, 2011. The court further finds and orders as follows:

1. Plaintiffs, TED L. HOLLANDER and KRISTIN G. HOLLANDER, own real property located at 1110 South Ocean Drive, Fort Pierce, Florida 34949, which is located in residential zoning district R-4 within the City of Fort Pierce, Florida. Plaintiffs, TED L. HOLLANDER and KRISTIN G. HOLLANDER, as Trustees of the Hollander Family Trust dated January 14, 2015, own the real property located at 2025 South Ocean Drive, Fort Pierce, Florida 34939, which is located in residential zoning district R-2 within the City of Fort Pierce, Florida.
2. Plaintiffs operate or desire to operate said properties as "vacation rentals," which are defined in §509.013, Fla. Stat., and §509.242(1)(c), Fla. Stat. (i.e. they rent or desire to rent to guests more than three times in a calendar year for periods of less than thirty (30) days or 1 calendar month, whichever is less).

3. Vacation rentals, which Section 22.3 of the Fort Pierce Code of Ordinances (the "Code") classifies as "dwelling rentals," are not a permitted use within any residential zoning district in the City of Fort Pierce.
4. Because the Plaintiffs operated vacation rentals in a residential zoning district, they received notices from Fort Pierce stating that they were in violation of the Code by operating a "dwelling rental" without a conditional use permit.
5. Plaintiffs filed an application for a conditional use permit with the Fort Pierce City Commission, which was ultimately denied.
6. At issue in this case is Fort Pierce's enactment of Ordinance L-295 on November 4, 2013, which, *inter alia*, listed dwelling rentals as a prohibited use in zoning districts E-2, E-3, R-3, R-4, R-4A, and R-5.
7. Plaintiff argues that an ordinance enacted after June 1, 2011, prohibiting vacation rentals or regulating the frequency or duration of rental of vacation rentals violates §509.032(7)(b), Fla. Stat.; therefore, Fort Pierce is preempted from banning vacation rentals or regulating the frequency or duration of rental of vacation rentals.
8. Fort Pierce contends that dwelling rentals were never intended to be a "prohibited use" in said zoning districts. Instead, this was a scrivener's error made in connection with converting the listed permitted, conditional, and prohibited uses into chart-format.
9. Fort Pierce contends that it remedied the scrivener's error in Ordinance No. 2016-018 and applied said ordinance retroactively to November 4, 2013, when it enacted Ordinance No. 2018-004.

10. Fort Pierce concludes that because "dwelling rentals" were listed as a conditional use during the safe-harbor period set forth in §509.032(7)(b), Fla. Stat., the enactment of Ordinance No. L-295 does not create a prohibition on vacation rentals or regulate the frequency or duration of rental of vacation rentals once it was corrected by subsequent legislative acts.

COUNT I: DECLARATORY JUDGMENT THAT FORT PIERCE IS PREEMPTED FROM BANNING VACATION RENTALS OR REGULATING THE FREQUENCY OR DURATION OF RENTAL OF VACATION RENTALS

11. Count I of Plaintiffs' Complaint seeks a declaratory judgment that Fort Pierce is preempted from prohibiting vacation rentals, or regulating the frequency or duration of rental of vacation rentals.

12. This Court's analysis, however, should not begin with whether Plaintiffs are entitled to declaration in their favor, instead this Court must analyze whether the Plaintiffs are entitled to a declaration at all. *See Keen v. Fla. Sheriffs' Self-Insurance Fund*, 854 So. 2d 844, 845 (Fla. 4th DCA 2003) (reversing order granting motion to dismiss where court interpreted contract in granting motion); *Effort Enter. of Fla., Inc. v. Lexington Ins. Co.*, 666 So. 2d 930, 931–32 (Fla. 4th DCA 1995).

13. In order to obtain declaratory relief, a party must show that: (1) "there is a bona fide, actual, present practical need for the declaration"; (2) "the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts"; (3) "some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts"; (4) "there is some person or persons who have, or reasonably may have an

actual, present, adverse and antagonistic interest in the subject matter, either in fact or law"; (5) "the antagonistic and adverse interest are all before the court by proper process or class representation"; and (6) "the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity." *Santa Rosa County v. Admin. Comm'N, Div. of Admin. Hearings*, 661 So. 2d 1190, 1193 (Fla. 1995) (*quoting May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952)).

14. The undisputed material facts establish that Plaintiffs are entitled to a declaratory relief: (1) they operate or desire to operate vacation rentals within the City of Fort Pierce, which has subjected them to Fort Pierce Code enforcement action; (2) there is a question of whether the Fort Pierce's code enforcement action is permissible in light of §509.032(7)(b), Fla. Stat., which prohibits a local ordinance from banning vacation rentals or regulating the frequency or duration of rental of vacation rentals unless said ordinance was enacted prior to June 1, 2011; and (3) Plaintiffs' property interests are directly affected by Fort Pierce's ability to enforce the ordinance prohibiting or regulating vacation rentals.

15. The question turns to whether Fort Pierce is preempted from prohibiting vacation rental or regulating the frequency or duration of rental of vacation rentals.

16. §509.032(7)(b), Fla. Stat., states that "[a] local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011."

17. It is undisputed that Ordinance L-295 was enacted after the safe-harbor period indicated §509.032(7)(b), Fla. Stat.

18. It is also undisputed that prior to the enactment of Ordinance L-295, vacation rentals were listed as a conditional use since the enactment of Ordinance K-148 on April 16, 2002.

19. Fort Pierce urges this Court to interpret Ordinance No. L-295, Ordinance No. 2016-018, and Ordinance No. 2018-004 *in pari materia*, which, according to Fort Pierce, would render Fort Pierce's regulations on vacation rentals within the statutory safe-harbor period contained in §509.032(7)(b), Fla. Stat.

20. Fort Pierce's argument, however, is without merit.

21. Even if this Court interprets the ordinances *in pari materia*, the requirement for a conditional use permit set forth in Ordinance No. L-295 is effective beginning November 4, 2013, and thereafter. *See* Ordinance No. 18-004 ("This Ordinance is and the same shall become effective immediately upon final passage retroactive to September 19, 2016, nunc pro tunc."). "Absent a clear legislative expression requiring retroactive application, a law is presumed to operate prospectively, meaning that it will apply only to conduct occurring after the statute becomes effective." *Middlebrooks v. Department of State, Div. of Licensing*, 565 So. 2d 727, 728 (Fla. 1st DCA 1990).

22. Ordinance No. L-295 imposes a requirement that a landowner apply for a conditional use permit prior to operating a vacation rental.

23. The Fort Pierce City Commission has the ability to: (1) deny the conditional use application or (2) as a condition to approval, require a shorter/longer period of time or limit the number of times a landowner can rent his/her property.

24. Therefore, Ordinance L-295 empowers Fort Pierce with the ability to ban vacation rentals or regulate the duration or frequency of rental of vacation rentals.

25. Interpreting Ordinance No. L-295, Ordinance No. 2016-018, and Ordinance No. 2018-004 *in pari material*, the effective date of November 4, 2013, does not place the restrictions set forth Ordinance L-295 within the safe-harbor period contained in §509.032(7)(b), Fla. Stat.

26. Section 25 of Ordinance No. L-295 expressly states that "[a]ll ordinances or parts of ordinances in conflict herewith are and the same shall be repealed and shall be of no further force or effect whatsoever."

27. This Court is bound by the unambiguous language contained in Fort Pierce's ordinances. *See, e.g., Rinker Materials Corp. v. City of North Miami*, 286 So.2d 552, 554 (Fla. 1973); *Ocean's Edge Dev. Corp. v. Town of Juno Beach*, 430 So. 2d 472 (Fla. 4th DCA 1983).

Therefore, it is

ORDERED AND ADJUDGED that:

A. Final Judgment is hereby entered in favor of the Plaintiffs and against Defendant as to the Complaint, and any amendments thereto, filed by Plaintiffs.

B. Defendant, CITY OF FORT PIERCE, FLORIDA, is preempted from prohibiting vacation rentals or regulating the duration or frequency of rental of vacation

rentals as such term is defined by §509.013, Fla. Stat., and §509.242(1)(c), Fla. Stat.

C. The Court reserves jurisdiction for all equitable purposes.

DONE AND ORDERED this 30 day of May 2018, in Fort Pierce, St. Lucie County, Florida.

ROBERT BELANGER
CIRCUIT JUDGE

Copies furnished to:

D. Johnathan Rhodeback, Attorneys@RooneyAndRooneyLaw.com

Robert V. Schwerer, James T. Walker, schwererlaw@aol.com, jimw@jimwalkerlaw.com, mperegrin@city-ftpierce.com

By: Jaime M. Viera
Judicial Assistant

CHAPTER 2014-71

Senate Bill No. 356

An act relating to the regulation of public lodging establishments and public food service establishments; amending s. 509.032, F.S.; revising the permitted scope of local laws, ordinances, and regulations regarding vacation rentals; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(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.

(c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

Section 2. This act shall take effect July 1, 2014.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.

From: Nick & Michelle sliceofparadiseflorida@gmail.com
Subject: Property Owner Bill of Rights
Date: Sep 26, 2019 at 7:08:40 PM
To: Sliceofparadiseflorida@gmail.com

In 2019 the Florida Legislature passed CS/HB 1159 regarding Private Property Rights. As per section 70.002 Property Owner Bill of Rights, each county property appraiser shall provide the Property Owner Bill of Rights on their website to educate property owners as to the purpose of the bill and to identify certain existing rights afforded to property owners.

PROPERTY OWNER BILL OF RIGHTS

This Bill of Rights does not represent all of your rights under Florida law regarding your property and should not be viewed as a comprehensive guide to property rights. This document does not create a civil cause of action and neither expands nor limits any rights or remedies provided under any other law. This document does not replace the need to seek legal advice in matters relating to property law. Laws relating to your rights are found in the State Constitution, Florida Statutes, local ordinances, and court decisions. Your rights and protections include:

The right to acquire, possess, and protect your property.

The right to use and enjoy your property.

The right to exclude others from your property.

The right to dispose of your property.

The right to due process.

The right to just compensation for property taken for a public purpose.

The right to relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity unfairly affects your property.

THE SUNRISE CITY
FORT PIERCE
BUILDING DEPARTMENT Florida

Re: 715 S. Ocean Drive Unit D

To whom it may concern:

At the Technical Review Committee meeting dated August 15, 2019 the owner expressed her intention to utilize the dwelling unit at 715 S. Ocean Drive Unit D for short term rentals (less than 31 days). The occupancy (per section310.4 the Florida Building Code) is a **Residential Group R-2**, "where the occupants are permanent in nature." Your desire to utilize the property for short term rentals changes the use and occupancy classification from **R-2 to R-3** "Boarding House (Transient)," (FBC 310.5). This change triggers the requirement to legally change the use and occupancy classification of this dwelling unit from R-2 to R-3 per section 202 of the FBC Existing Building Code. The process for changing the use and occupancy classification begins by having a qualified design professional, that is licensed in the State of Florida, prepare a signed and sealed drawing that accommodates all of the code requirements for the new R-3 use and occupancy classification, to include:

- **Life Safety Plan** (FBC 1001.1)
- **Fire Requirements**
  - Fire Sprinklers are required (per FBC 903.2.8.1)
  - Review and approval by the SLC Fire Prevention Dept. to assure compliance with the National Fire Prevention Code.
- **Accessibility**
  - Means of Egress (FBC 1001)
  - Accessible Route
  - Handicap Parking Space
  - Accessible bathroom
  - Egress windows in sleeping rooms.

Upon completion of this plan the design professional or contractor may apply for a change of use and occupancy permit through the Building Department. Upon approval by all pertinent agencies, issuance of the permit, completion of all required work and approved final inspections, a new certificate of occupancy will be issued documenting that the occupancy was legally changed from R-2 to R-3.

Thank you for referencing the guidelines from the Department of Hotels and Restaurants. Please be informed that only the Building Official is authorized by the Florida Building Commission to enforce the Florida Building Code, thus the Department of Hotels and Restaurants has no jurisdiction over administering or interpreting the Florida Building Code. If you feel that there is a conflict between the Florida Building Code and the Department of Hotels and Restaurants' rules for licensing, contact the Florida Building Commission for clarification. If you disagree with my interpretation of the Florida Building Code, you may appeal my interpretation to the Florida Building Commission pursuant to Florida State Statute 553.775.

Since you have been provided with my official position and the appropriate recourse for appealing my interpretation, I am no longer amenable to discuss this issue with you further unless it involves changing the use and occupancy of this unit. Thank you for your inquiry.

Sincerely,

Paul Thomas, CBO, CFM
Building Official

PT/km

cc: Nicholas Mimms, P.E., City Manager
Linda Cox, City Clerk
Ed Roseberry, Deputy Building Official
Jennifer Hofmeister, Planning Director

PAM BONDI
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Opinions Section

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October 22, 2013

Mr. Albert J. Hadeed
Flagler County Attorney
1769 East Moody Boulevard, Building 2
Bunnell, Florida 32110

Dear Mr. Hadeed:

Thank you for contacting this office for assistance in determining whether Flagler County may intercede and stop vacation rental operations, as defined in Chapter 509, Florida Statutes, in private homes that were zoned, prior to June 1, 2011, for single-family residential use. Due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood. You state that Flagler County has no regulations governing vacation rentals which predate the 2011 legislation.

In sum, absent the existence of a local ordinance on or before June 1, 2011, regulating the rental of vacation homes in Flagler County, section 509.032(7), Florida Statutes, preempts local regulation of lodging establishments and public food establishments to the state and precludes a local ordinance or regulation enacted after June 1, 2011, restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.

A number of county residents have argued that transient vacation rentals are a commercial activity which is a non-conforming use of a house constructed under a permit for a single-family residence and located in an area zoned for single-family residences. The county has considered this argument and concluded that a residential zoning category, in and of itself, is not sufficient to serve as a pre-existing prohibition of vacation rentals in private homes.

Section 509.032(7)(a), Florida Statutes, preempts the regulation of lodging establishments and public food establishments to the state. Subsection (b) of the statute states:

> A local law, ordinance, or regulation *may not restrict* the use of vacation rentals, prohibit vacation rentals, or regulate 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.[1] (e.s.)

A "vacation rental" is defined as "any unit or group of units in a condominium, cooperative, or time-share plan or *any* individual or collectively owned *single-family*, two-family, three-family, or four-family *house or dwelling* unit that is *also a transient public lodging establishment.*"[2] (e.s.) Thus, the plain language of the statute recognizes that a single-family house or dwelling may be a "vacation rental" which is used as a transient public lodging establishment subject to regulation by the state. As this office has previously recognized, with the enactment of section 509.032(7)(b), Florida Statutes, the ability of a local government to regulate vacation rentals by enactment of an ordinance after June 1, 2011, has been preempted to the state.[3] While you have premised your question on the existence of a single-family zoning regulation in existence prior to June 1, 2011, you have also indicated that no county regulations of vacation rentals existed on that date.

This office agrees with the county's conclusion that a local zoning ordinance for single-family homes existing on or before June 1, 2011, that did not restrict the rental of such property as a vacation rental, cannot now be interpreted to do so. The clear

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[1] Section 509.032(7)(c), Fla. Stat., provides:

> Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

[2] Section 509.242(1)(c), Fla. Stat. *See* s. 509.013(4), Fla. Stat., defining "[p]ublic lodging establishment" for purposes of Ch. 509, Fla. Stat.:

> (4)(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.
> 1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is 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.

[3] Informal Op. to Marino, dated August 3, 2012. *Cf. City of Venice v. Gwynn*, 76 So. 3d 401 (Fla. 2d DCA 2011), in which a city's code prohibited owners of single-family dwellings in residential neighborhoods from renting their property for short periods of times; the court affirmed the city's administrative determination that owner's non-conforming use of property as a vacation rental violated city's ordinance regarding short-term rentals.

language in section 509.032(7), Florida Statutes, prohibits any local regulation on or after June 1, 2011, based upon the use of a residence as a vacation rental.

Sincerely,

Lagran Saunders
Attorney General

ALS/tsrh

CHAPTER 1
SCOPE AND ADMINISTRATION

PART 1—SCOPE AND APPLICATION

SECTION 101
GENERAL

[A] 101.1 Title. These regulations shall be known as the *Florida Building Code,* hereinafter referred to as "this code."

[A] 101.2 Scope. The provisions of this code shall apply to the construction, *alteration*, relocation, enlargement, replacement, *repair*, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exceptions:

1. Detached one- and two-family *dwellings* and multiple single-family *dwellings (townhouses)* not more than three *stories above grade plane* in height with a separate *means of egress*, and their accessory structures not more than three *stories above grade plane* in height, shall comply with the *Florida Building Code, Residential.*
2. Code requirements that address snow loads and earthquake protection are pervasive; they are left in place but shall not be utilized or enforced because Florida has no snow load or earthquake threat.

[A] 101.2.1 Appendices. Provisions in the appendices shall not apply unless specifically adopted.

[A] 101.3 Intent. The purpose of this code is to establish the minimum requirements to provide a reasonable level of safety, public health and general welfare through structural strength, *means of egress* facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations.

[A] 101.4 Referenced codes. The other codes listed in Sections 101.4.1 through 101.4.9 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

[A] 101.4.1 Gas. The provisions of the *Florida Building Code, Fuel Gas* shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.

[A] 101.4.2 Mechanical. The provisions of the *Florida Building Code, Mechanical* shall apply to the installation, *alterations*, *repairs* and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

[A] 101.4.3 Plumbing. The provisions of the *Florida Building Code, Plumbing* shall apply to the installation, *alteration*, *repair* and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system.

[A] 101.4.4 Property maintenance. Reserved.

[A] 101.4.5 Fire prevention. For provisions related to fire prevention, refer to the *Florida Fire Prevention Code.* The *Florida Fire Prevention Code* shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, *repair, alteration* or removal of fire suppression, and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.

[A] 101.4.6 Energy. The provisions of the *Florida Building Code, Energy Conservation* shall apply to all matters governing the design and construction of buildings for energy efficiency.

[A] 101.4.7 Existing buildings. The provisions of the *Florida Building Code, Existing Building* shall apply to matters governing the *repair*, *alteration*, change of occupancy, *addition* to and relocation of existing buildings.

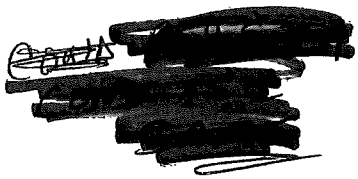
101.4.8 Accessibility. For provisions related to accessibility, refer to the *Florida Building Code, Accessibility.*

101.4.9 Manufactured buildings. For additional administrative and special code requirements, see Section 458, *Florida Building Code, Building*, and Rule 61-41 F.A.C.

SECTION 102
APPLICABILITY

[A] 102.1 General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

102.1.1 *The Florida Building Code* does not apply to, and no code enforcement action shall be brought with respect to, zoning requirements, land use requirements and owner specifications or programmatic requirements which do not pertain to and govern the design, construction, erection,



SECTION 310
RESIDENTIAL GROUP R

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the *Florida Building Code, Residential.*

310.2 Definitions. The following terms are defined in Chapter 2:

BOARDING HOUSE.

CONGREGATE LIVING FACILITIES.

DORMITORY.

GROUP HOME.

GUEST ROOM.

LODGING HOUSE.

PERSONAL CARE SERVICE.

TRANSIENT.

310.3 Residential Group R-1. Residential Group R-1 occupancies containing *sleeping units* where the occupants are primarily *transient* in nature, including:

Boarding houses (*transient*) with more than 10 occupants
Congregate living facilities (*transient*) with more than 10 occupants
Hotels (*transient*)
Motels (*transient*)

310.4 Residential Group R-2. Residential Group R-2 occupancies containing *sleeping units* or more than two *dwelling units* where the occupants are primarily permanent in nature, including:

Apartment houses
Boarding houses (nontransient) with more than 16 occupants
Congregate living facilities (nontransient) with more than 16 occupants
Convents
Dormitories
Fraternities and sororities
Hotels (nontransient)
Live/work units
Monasteries
Motels (nontransient)
Vacation timeshare properties

310.5 Residential Group R-3. Residential Group R-3 occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including:

Buildings that do not contain more than two *dwelling units*
Boarding houses (nontransient) with 16 or fewer occupants
Boarding houses (*transient*) with 10 or fewer occupants
Care facilities that provide accommodations for five or fewer persons receiving care
Congregate living facilities (nontransient) with 16 or fewer occupants
Congregate living facilities (*transient*) with 10 or fewer occupants
Lodging houses with five or fewer *guest rooms*

310.5.1 Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the *Florida Building Code, Residential* provided an *automatic sprinkler system* is installed in accordance with Section 903.3.1.3 or Section P2904 of the *Florida Building Code, Residential.*

310.5.2 Lodging houses. Owner-occupied *lodging houses* with five or fewer *guest rooms* shall be permitted to be constructed in accordance with the *Florida Building Code, Residential.*

310.6 Residential Group R-4. Residential Group R-4 occupancy shall include buildings, structures or portions thereof for more than five but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised residential environment and receive *custodial care.* Buildings of Group R-4 shall be classified as one of the occupancy conditions specified in Section 310.6.1 or 310.6.2. This group shall include, but not be limited to, the following:

Alcohol and drug centers
Assisted living facilities
Congregate care facilities
Group homes
Halfway houses
Residential board and *custodial* care facilities
Social rehabilitation facilities

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code or shall comply with the *Florida Building Code, Residential* provided the building is protected by an automatic sprinkler system installed in accordance with Section 903.2.8.

310.6.1 Condition 1. This occupancy condition shall include buildings in which all persons receiving custodial care, without any assistance, are capable of responding to an emergency situation to complete building evacuation.

310.6.2 Condition 2. This occupancy condition shall include buildings in which there are any persons receiving custodial care who require limited verbal or physical assistance while responding to an emergency situation to complete building evacuation.

SECTION 311
STORAGE GROUP S

311.1 Storage Group S. Storage Group S occupancy includes, among others, the use of a building or structure, or a portion thereof, for storage that is not classified as a hazardous occupancy.

311.1.1 Accessory storage spaces. A room or space used for storage purposes that is less than 100 square feet (9.3 m^2) in area and accessory to another occupancy shall be classified as part of that occupancy. The aggregate area of such rooms or spaces shall not exceed the allowable area limits of Section 508.2.

tial portion of the *live/work unit* shall be limited to 10 percent of the space dedicated to nonresidential activities.

419.3 Means of egress. Except as modified by this section, the *means of egress* components for a *live/work unit* shall be designed in accordance with Chapter 10 for the function served.

419.3.1 Egress capacity. The egress capacity for each element of the *live/work unit* shall be based on the occupant load for the function served in accordance with Table 1004.1.2.

419.3.2 Spiral stairways. *Spiral stairways* that conform to the requirements of Section 1011.10 shall be permitted.

419.4 Vertical openings. Floor openings between floor levels of a *live/work unit* are permitted without enclosure.

[F] 419.5 Fire protection. The *live/work unit* shall be provided with a monitored *fire alarm* system where required by Section 907.2.9 and an *automatic sprinkler system* in accordance with Section 903.2.8.

419.6 Structural. Floors within a *live/work unit* shall be designed for the live loads in Table 1607.1, based on the function within the space.

419.7 Accessibility. Accessibility shall be designed in accordance with Chapter 11 for the function served.

419.8 Ventilation. The applicable *ventilation* requirements of the *Florida Building Code, Mechanical* shall apply to each area within the *live/work unit* for the function within that space.

419.9 Plumbing facilities. The nonresidential area of the *live/work unit* shall be provided with minimum plumbing facilities as specified by Chapter 29, based on the function of the nonresidential area. Where the nonresidential area of the *live/work unit* is required to be *accessible* by the *Florida Building Code, Accessibility,* the plumbing fixtures specified by Chapter 29 shall be *accessible.*

SECTION 420
GROUPS I-1, R-1, R-2, R-3 AND R-4

420.1 General. Occupancies in Groups I-1, R-1, R-2, R-3 and R-4 shall comply with the provisions of Sections 420.1 through 420.6 and other applicable provisions of this code.

420.2 Separation walls. Walls separating *dwelling units* in the same building, walls separating *sleeping units* in the same building and walls separating *dwelling* or *sleeping units* from other occupancies contiguous to them in the same building shall be constructed as *fire partitions* in accordance with Section 708.

420.3 Horizontal separation. Floor assemblies separating *dwelling units* in the same buildings, floor assemblies separating *sleeping units* in the same building and floor assemblies separating *dwelling* or *sleeping units* from other occupancies contiguous to them in the same building shall be constructed as *horizontal assemblies* in accordance with Section 711.

420.4 Smoke barriers in Group I-1, Condition 2. Smoke barriers shall be provided in Group I-1, Condition 2, to subdivide every story used by persons receiving care, treatment or sleeping and to provide other stories with an occupant load of 50 or more persons, into no fewer than two smoke compartments. Such stories shall be divided into smoke compartments with an area of not more than 22,500 square feet (2092 m^2) and the distance of travel from any point in a smoke compartment to a smoke barrier door shall not exceed 200 feet (60 960 mm). The smoke barrier shall be in accordance with Section 709.

420.4.1 Refuge area. Refuge areas shall be provided within each smoke compartment. The size of the refuge area shall accommodate the occupants and care recipients from the adjoining smoke compartment. Where a smoke compartment is adjoined by two or more smoke compartments, the minimum area of the refuge area shall accommodate the largest occupant load of the adjoining compartments. The size of the refuge area shall provide the following:

1. Not less than 15 net square feet (1.4 m^2) for each care recipient.
2. Not less than 6 net square feet (0.56 m^2) for other occupants.

Areas or spaces permitted to be included in the calculation of the refuge area are corridors, lounge or dining areas and other low-hazard areas.

[F] 420.5 Automatic sprinkler system. Group R occupancies shall be equipped throughout with an *automatic sprinkler system* in accordance with Section 903.2.8. Group I-1 occupancies shall be equipped throughout with an *automatic sprinkler system* in accordance with Section 903.2.6. Quick-response or residential automatic sprinklers shall be installed in accordance with Section 903.3.2.

[F] 420.6 Fire alarm systems and smoke alarms. Fire alarm systems and smoke alarms shall be provided in Group I-1, R-1, R-2 and R-4 occupancies in accordance with Sections 907.2.6, 907.2.8, 907.2.9 and 907.2.10, respectively. Single- or multiple- station smoke alarms shall be provided in Groups I-1, R-2, R-3 and R-4 in accordance with Section 907.2.11.

SECTION 421
HYDROGEN FUEL GAS ROOMS

[F] 421.1 General. Where required by the *Florida Fire Prevention Code*, hydrogen fuel gas rooms shall be designed and constructed in accordance with Sections 421.1 through 421.7.

[F] 421.2 Definitions. The following terms are defined in Chapter 2:

GASEOUS HYDROGEN SYSTEM.

HYDROGEN FUEL GAS ROOM.

[F] 421.3 Location. Hydrogen fuel gas rooms shall not be located below grade.

[F] 421.4 Design and construction. Hydrogen fuel gas rooms not classified as Group H shall be separated from other areas of the building in accordance with Section 509.1.

[F] 421.4.1 Pressure control. Hydrogen fuel gas rooms shall be provided with a ventilation system designed to

Short-Term Rentals

PRIORITY STATEMENT:

The Florida League of Cities **SUPPORTS** legislation that restores local zoning authority with respect to short-term rental properties, thereby preserving the integrity of Florida's residential neighborhoods and communities. The Florida League of Cities **OPPOSES** legislation that preempts municipal authority as it relates to the regulation of short-term rental properties.

BACKGROUND:

In 2011, the Florida Legislature prohibited cities from regulating short-term vacation rentals. A short-term vacation rental is defined as a property that is rented more than three times a year for less than 30 days at a time. The legislation passed in 2011 included a provision that "grandfathered" any ordinance regulating short-term rentals prior to June 1, 2011. Since that time, a number of cities, both "grandfathered" cities and those that did not have an ordinance in place, have experienced problems with these properties. The effect of the 2011 law is that two separate classes of cities were created respective to short-term rentals, those with Home Rule authority and those without.

In 2014, the Legislature passed SB 356 (Thrasher), which diminished the preemption on short-term rentals. The 2014 law allows local governments to adopt ordinances specific to these rentals so that they can address some of the noise, parking, trash and life-safety issues created by their proliferation in residential neighborhoods. Unfor-

ILLUSTRATIONS: GETTY.COM

ILLUSTRATION © GETTY.COM

Only 3% of Floridians use some form of public transit — virtually unchanged since 2013.

Source: Florida Department of Transportation.

To compound the problem, the federal gas tax was last increased in 1997, the state gas tax in 1943, the county gas tax in 1941 and the municipal gas tax in 1971. The Fuel Sales Tax and the State Comprehensive Enhanced Transportation System Tax, which are the State of Florida's portion of the motor fuel tax rates, are adjusted once a year to account for inflation. A major portion of transportation funding flows to municipalities through county, state and federal taxes on gasoline. Allowing municipalities the ability to index their local motor fuel tax rates is one way to provide greater flexibility to fund their unique transportation needs.

While the federal, state and county governments have a variety of tools available to address transportation funding, municipalities have limited revenue options for funding transportation projects. For example, charter counties may currently hold a referendum on whether to impose up to a 1 percent sales tax to fund transportation infrastructure projects. Recently, voters in Hillsborough County passed such a tax that will be in effect for 30 years and raise about $9 billon over that time period. Giving municipalities the same transportation revenue options would create a new funding mechanism.

Transportation projects are often the catalyst for economic development and the result of growth within a community. As municipalities lack options to increase revenue and continue to struggle to fund local transportation projects, increased and alternative funding sources at the state level are a necessity. ■

tunately, SB 356 left in place existing statutory language stating that cities cannot "prohibit" short-term rentals or regulate the duration or frequency of the rental.

Those cities fortunate enough to have had an ordinance in place prior to the 2011 preemption are still allowed to regulate short-term rentals, but the question remains whether these ordinances will continue to be valid if amended. Some city attorneys believe these ordinances are "frozen" and any future amendments would cause a loss of the "grandfather." The problem with this is twofold. First, with the rise of popular rental websites like Vacation Rental by Owner (VRBO) and AirBnB making it easier to advertise and rent these properties, the number of properties used as short-term rentals in Florida has exponentially increased in the last four years. Second, as a result of this enormous growth in the rental market, the scope of the problem has changed and ordinances adopted before 2011 may no longer be effective.

It is important to note that many of Florida's larger cities (with a larger professional staff) fell into the grandfathered category. They have retained the ability to regulate these properties through zoning and may have duration and frequency requirements. Some of these cities may want to amend their ordinances to adjust to a changing problem. They are reluctant to do so out of fear of losing their existing ordinance and with it their Home Rule authority relating to short-term rentals. Recognizing that the ordinances on the books are no longer effective, cities want the ability to come up with solutions that work for their respective community, but because of the potential loss of the "grandfather," they are unable to do so. It is important to note that any potential amendments to existing ordinances would be vetted through numerous public hearings that allow neighboring homeowners, short-term rental owners, property managers and local businesses to weigh in on proposed legislation.

Cities without short-term rental regulations in place prior to June 1, 2011, have had their zoning authority stripped and are now seeing these rentals completely overtaking residential neighborhoods. Long-time residents are moving out as a result, and the residential character of traditional neighborhoods is slowly being destroyed.

The impacts of problematic short-term rentals on neighboring residents are felt in a number of ways:

The Hotel Next Door – Commercial Activity in Residential Neighborhoods

Houses that sleep 26 people are now present in what were once traditional neighborhoods. Because of the inability to regulate the duration of a renter's stay, these houses could experience weekly, daily or even hourly turnover. Obviously, the constant turnover of renters creates a number of issues for cities and neighboring property owners. Prior to the preemption, local governments were able to regulate this activity through zoning. Short-term rentals have become increasingly popular in the last five years. Because a city cannot "prohibit" these properties, they are powerless to exclude them from residential neighborhoods. As a result, investors, many of whom are located out of state or even in a different country, have purchased or built single-family homes with the sole intent of turning them into short-term rentals.

Cities use zoning as a tool to prepare for their future growth and also use it to control where commercial and residential properties are located. Hotels have different infrastructure needs than single-family residential properties. As residential neighborhoods are developed, the infrastructure installed is designed for the future use of the properties. Many neighborhoods have infrastructure in place with capacity for up to eight people per house. Now there are houses in these very same neighborhoods that sleep more people than the number originally planned

THE BERT J. HARRIS, JR., PRIVATE PROPERTY RIGHTS PROTECTION ACT: AN OVERVIEW, RECENT DEVELOPMENTS, AND WHAT THE FUTURE MAY HOLD

Vol. 89, No. 8 September/October 2015 Pg 49 Amber L. Ketterer and Rafael E. Suarez-Rivas

City, County and Local Government

Florida is a state that provides relief to private landowners when a law, regulation, or ordinance inordinately burdens, restricts, or limits private property without amounting to a taking under the U.S Constitution.[1] The State of Florida enacted the Bert J. Harris, Jr., Private Property Rights Protection Act in 1995, which provides a specific process for landowners to seek relief when their property is unfairly affected by government action. Under the act, a claim exists if a governmental entity *inordinately burdens* an *existing use* of real property or a *vested right to a specific use* of real property.[2] The act was subsequently amended in 2008 and 2011. The amendments were principally done to expedite the claims process and clarify the application of the act. The amendments also appeared on their face to extend protection, making it less stringent to landowners. In 2009, the First District Court of Appeal in *City of Jacksonville v. Coffield* 18 So. 3d 589 (Fla. 1st DCA 2009), said "[w]e have found no case in which an appellate court has affirmed relief granted pursuant to the [a]ct." While the courts extended protection since then, cases continue to indicate that the courts conservatively construe the act so as not to expose local government to a massive amount of liability. There is new legislation and recent court cases that will have a significant effect on the way Harris Act claims are handled in the judicial system.

In addition, despite the amendments and various court opinions regarding the act, there appears to be a great deal of ambiguity as to what is protected under the act, how it should be applied, and what exactly constitutes a vested right, an existing use, or an inordinate burden. While the cases and the act itself provide some guidance, it is simply not clear at this time. The new legislation that attempts to further clarify the application of the act and the recent case of *City of Jacksonville v. Smith*, 2015 WL 798154 (Fla. 1st DCA 2015), that certified a major Bert J. Harris Act issue to the Florida Supreme Court evidences such.[3] As for now, the trend in the appellate courts appears to be conservative and results in favorable rulings for local government entities, cautioning landowners. The new legislation and recent court cases may change that trend to some degree.

Timing and the "As-Applied" Issue

Attorneys should be mindful of the strict procedural prerequisites of the act, and aware of the courts' evolving interpretations regarding how they apply. The first requirement to keep in mind is the initial requirement for a timely claim and subsequent lawsuit. The act provides that a claim (versus a lawsuit) must be presented to the governmental agency within one year from the time the law or regulation is *first applied* by the governmental entity to the property at issue.[4] The 2011 amendment further provides that the one-year statute of limitations not only accrues once the law or regulation is first applied, but also when notice is provided by mail to the property owner informing him or her that the regulation may impact the landowner's property rights and that the landowner may only have one year from receipt of the notice to pursue any rights .[5] Otherwise, the clock starts to tick when there is a formal denial of a written request for development or variance, although there is some ambiguity as to when the denial takes effect .[6]

Generally, a regulation is first applied to a property when the impact of that regulation is readily ascertainable to the property owner.[7] If the impact of a new law or regulation is readily ascertainable to the property owner when the regulation is implemented, a claim under the act must be submitted within one year of that new regulation's enactment.[8] Further, the timeline for submitting a claim and the four-year statute of limitations is also tolled if the landowner seeks relief from the government action via administrative or judicial proceedings.[9]

However, there are some instances when the impact of a governmental regulation cannot be determined prior to the submission of an actual development permit.[10] The definition of what constitutes a development permit is provided in the Community Planning Act.[11] For example, in *Wendler v. City of St. Augustine*, 108 So. 3d 1141 (Fla. 5th DCA 2013), the city amended an ordinance, authorizing the Historical Architectural Review Board to deny demolition or relocation requests for certain structures, including those on the plaintiff landowner's property. The court ruled that the amendment was not readily ascertainable to the Wendlers as the amendment was general and only potentially applied to the Wendlers' property. As the city retained significant discretion to grant or deny a permit, the amendment was not reasonably ascertainable to property owners at the time of enactment. As such, the court found that the impact of the ordinance was not readily ascertainable until the Wendlers' permit applications were denied. Thus, because they filed their claim within one year after their permit application was denied, their claim was timely.[12]

The Second District also recently discussed the "as-applied" issue in *P.I.E., LLC v. Desoto County*, 133 So. 3d 577 (Fla. 2d DCA 2014). In *P.I.E*, the trial court dismissed the Harris Act action because it was filed more than one year after the board's vote to deny the development permit. The appellate court reversed the dismissal and remanded with instruction to determine what date the board's denial of the permit took effect, whether it took effect the day the commission voted or the day the denial was reduced to writing. It was a factual determination for the trial court to make. It is suggested that the Third District Court of Appeal would rely on its decision in the case of *5220 Biscayne Boulevard LLC and City of Miami v. Stebbins, et al.*, 937 So. 2d 1189 (Fla. 3d DCA 2006), in which the court held that in a non-Harris Act case, for purposes of an appeal, a development order was effective when the city clerk received the written development order approved by the city commission. In *Stebbins*, the date of rendition was held to be when the order is finalized and filed of record, by analogy to a final order of a court.

The most recent case to discuss yet another issue involving the "as-applied" language is *Smith*, which certifies a question to the Florida Supreme Court. In *Smith*, the plaintiffs claimed that the establishment of a fire station for the City of Jacksonville inordinately burdened their property, as the city-owned property originally contained a deed restriction limiting the use of the property to leisure and recreation for employees of the county. Jacksonville then obtained a deed cancellation and re-zoned the property to allow for a fire station. The Smiths intended to market their property as a luxury home site. In this case, no new law, regulation, or ordinance was *directly* applied to the Smiths' property. However, Jacksonville passed an ordinance allowing for new or different use of an adjacent property, which the Smiths contended was the specific action that inordinately burdened their property. While ruling in favor of Jacksonville and holding that the Harris Act was not intended to capture so broadly government action, the court certified the question: "May a property owner maintain an action pursuant to the Harris Act if that owner has not had a law, regulation, or ordinance directly applied to the owner's property which restricts or limits the use of the property?"[13]

The First District's opinion in *Smith* is 31 pages long and consists of lengthy, clear, and logical analysis from each side, a majority, and dissent. The majority in *Smith* maintains that "[t]he [a]ct contains no language to indicate that it intends to create a whole new class of takings to claimants who do not have to demonstrate that a governmental law, rule, or regulation had been applied to their property...."[14] The majority references the language of the act and an attorney general opinion. The act specifies that the government action must be *directly applied* to the claimant's property in order to maintain an action.[15] Further, it explicitly states that the government action must

directly restrict or limit the use of the property.[16] The attorney general declared that the legislative intent and the plain language of the act require the regulation at issue be directly applied to the subject property.[17] Thus, due to the clear and specific language used in the statute, it does not appear that the legislature contemplated extending the protection to real property that may be incidentally affected by a governmental action directed at a separate, specific property.[18] Allowing such protection would severely affect the functioning of government action and has the potential to open the floodgates for claims under the act.[19] The court leaves it to the legislature to expand the scope of the act to include such claims.[20]

The dissent interprets the "as applied" and "directly restricted" language of the act more broadly. The dissent is of the opinion that these phrases simply mean causation, specifically, whether the government action immediately and detrimentally affected the value of the property without any other contributing factors.[21] Thus, it would follow that the landowners in *Smith* would be entitled to relief under the act because their property was directly and adversely affected by the governmental action.[22] The second dissent interprets the word "affects" as a broad concept and indicates that the act does not provide any limited definition. Thus, the city's actions in this case affected the Smiths' property, resulting in loss, and the act applies.[23]

It would probably be surprising to many, especially government entities, if the Florida Supreme Court strayed from the First District's majority reasoning and ruling in *Smith*.[24] In the event that it answers this question in the affirmative, it would mean potentially broadening the Harris Act protection exponentially. Government entities would be forced to look back at all of the regulations implemented in at least the past year and defend Harris Act cases they thought could never have existed. It would also force them to tediously opine on how every single piece of property could possibly be affected by any regulation implemented. While the legislature surely wanted to have the government be mindful of their regulations and how they would affect real property, the type of burden that ruling would create is probably beyond their intent. However, the *Smith* court provides both sides with clear and logical reasoning to back it up. Before the Florida Supreme Court has the opportunity to opine on this important issue regarding the "as-applied" language that was ironically added in the 2011 amendment for clarification purposes, it appears the new legislation may have answered the question for them.

One of the few bills to make it out of the 2015 legislative session was an amendment to the act. One of the amendments to the act specifically addresses the issue discussed in *Smith* — which property owner can maintain a cause of action against the government action at issue. The Florida Legislature has amended the definition of "property owner" and "real property" for the purposes of the act. Property owner was amended to include, "the real property that is *the subject of and directly impacted by* the action of a governmental entity . "[25] Additionally, "real property" as defined in the act was amended to include, "only parcels that are the *subject of and directly impacted* by the act of the governmental entity."[26] Such language now clarifies that a property owner adjacent to the alleged government action could not maintain a cause of action pursuant to the act. Similar to the property owners in *Smith,* a property owner affected incidentally to the government action would not maintain a cause of action, as the Smiths were not the owners of the property that were the *subject of* the government action .

Vested Right and Existing Use

Another issue that exists in Harris Act claims are the definitions of "vested right" and "existing use." While the act defines the terms, it also provides that the circuit court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed. Thus, it gives some guidance, but recognizes that the determination is made on a case-by-case basis and is in the hands of the courts. According to the act, a vested right is determined by applying principles of equitable estoppel or Florida statutory law. Under the principles of equitable estoppel, a property owner has a vested right if he or she 1) in good faith; 2) upon some act or omission of the government; and 3) has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right he acquired.[27] In *Citrus County v. Halls River Dev., Inc.* 8 So. 3d 413 (Fla. 5th DCA 2009), the Fifth District reversed the trial court and ruled that there is no vested right to intended use of the property based on equitable estoppel, despite the county's erroneous advice about the property's permitted uses, as the doctrine of estoppel does not apply to transactions that are forbidden by law or contrary to public policy.[28] The governmental agency would need to reasonably lead the landowner to believe he or she had the right, and that may be difficult to prove. The Fifth District recently ruled in *Town of Ponce Inlet v. Pacetta, LLC.*, 120 So. 3d 27 (Fla. 5th DCA 2013), that there was no equitable estoppel when claimant attempted to develop 16 acres that would require changes to the Comprehensive Land-Use Program, and when there were four years of communications and representations between the planning department, citizens, and its council to approve, but the town did not make the changes.[29]

An "existing use" is defined by the act as:

> *An actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use; or activity or such reasonably foreseeable, non-speculative land uses which are suitable for the subject real property, and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.*

A time-limited permit cannot create a reasonable expectation that the specially permitted use will be allowed to continue indefinitely.[30] If government entity and landowner were both mistaken about the use of the property and the use was actually not legal, then there was no existing use.[31] The use needs to be one that is reasonably foreseeable and nonspeculative.[32]

Inordinate Burden

According to the Harris Act, an inordinate burden occurs when a governmental action directly restricts or limits the use of real property such that the owner is unable to attain the reasonable, investment-backed expectation for the existing use or vested right to a specific use; temporary burdens or those impacts caused by governmental action to remediate a public nuisance are not included. The express language of the act indicates that it only applies to as-applied challenges, which brings us back to the above discussion. Until a development plan is submitted, a court cannot determine whether government action has inordinately burdened the property. Thus, a property owner cannot bring a claim until he has applied for a development permit approval and the approval is denied.[33] In addition, the act does not apply to government actions dealing with the general police power needs of its citizens, as that would severely limit the willingness of local government to act.[34] Lastly, an ordinance could expressly exempt a property, but the exemption does not in and of itself inordinately burden property.[35]

Procedural Requirements

Before a lawsuit is filed for a Harris Act claim, certain prerequisites are required under the statute. The claim itself must be submitted not less than 150 days prior to filing a lawsuit under the act and accompanied by a bona fide valid appraisal that supports the claim and demonstrates the loss.[36] T he government entity must then make a written settlement offer or state that the city will take no action. If no settlement is reached during the 150-day notice period, the government entity must issue a written statement of allowable uses identifying the allowable uses.

Failure to follow the procedures will result in a dismissal of the Harris Act claim. For example, the court in *Osceola County v. Best Diversified, Inc.*, 936 So. 2d 55 (Fla. 5th DCA 2006), denied a claim under the act because the claimants failed to submit the bona fide valid appraisal supporting the claim, which cannot be cured by filing an appraisal during the litigation.[37] A recent example is in *State v. Basford,* 119 So. 3d 478 (Fla. 5th DCA 2013), in which the court denied the Harris Act claim because the claimants did not submit the pre-suit notice as required. Despite some ambiguities in the act, the courts strictly construe the procedural requirements. The pre-suit notice requirements may be viewed in the same manner as those required in order to institute tort suits against a local government under F.S. §768.28.

Remedies

Another aspect of the act is encouragement for the parties to resolve claims by using alternative remedies. During the 150-day notice period, unless extended by agreement of the parties, the government entity must make a written settlement offer that can include adjustment of land development; increase in density, intensity, or use; transfer of developmental rights; land swaps or exchanges; mitigation, including payments in lieu of onsite mitigation; location on the least sensitive portion of the property; conditioning the amount of development or use permitted; etc.[38] Any settlement must protect the public interest served by the regulations at issue. As such, if a settlement is reached that contravenes the statute, the parties must file an action for the court to approve the settlement agreement.[39]

Once a lawsuit is filed, the court is limited to remedy *monetary* damages only.[40] However, the new legislation appears to change that ruling. In *Hussey v. Collier County*, 2014 WL 5900018 (Fla. 2d DCA 2014), the Second District held that if parties do not settle during the required pre-suit period under the act, the property owner could only bring suit for compensation. At the point of filing a lawsuit after no settlement, the only issue was whether the property owner is entitled to compensation, and, if so, how much. Thus, the remedies available under the act, including transfer of developmental rights and those remedies that would contravene statutes, were only available during the pre-suit period. This limitation is detrimental to both local governments and property owners. Local governments would be forced to use taxpayer funds when other remedies could resolve the matter and landowners may rather have the alternate remedy than monetary compensation.

The 2015 amendment to the act makes a few changes concerning remedies and settlement agreements with the local government entity. Now, it is clarified that settlement agreements pursuant to the act may take place during the 90-day notice period or after the filing of the action in court, as long as the settlement resolves all claims; thus, government entities may avoid or end litigation. Further, the 2015 amendment provides an exception to government action taken to adopt a Flood Insurance Rate Map pursuant to the Federal Emergency Management Agency. While limiting claims pursuant to the act, with said exemption, the 2015 amendment added §70.45, titled "government exactions." The added section opens entire new causes of action pursuant to the act for "conditions imposed by a governmental entity on a property owner's proposed use of real property that lacks a nexus to a legitimate public purpose."[41] It will be interesting to see which claims are brought under the new section and how the courts will interpret "legitimate public purpose" along with "conditions imposed by governmental entity."

Conclusion

The implementation of the Harris Act and the subsequent amendments clearly evidence the Florida Legislature's desire to recognize landowners' rights. However, despite the amendments' clarifications, the courts continue to struggle with the extent to which the protection extends. The courts certainly need some additional clarification from the legislature, and hopefully the new legislation will provide some. Thus far, the judiciary has made rulings to protect both landowners and local government, carrying out the assumed intent of the legislature. While the judicial system has come a long way from *Coffield*,[42] it also has to keep checks and balances so as not to expose local government to massive amounts of claims that would drain taxpayer dollars. Should the Florida Supreme Court agree with the dissent in *Smith*, it may have this effect among many others.[43]

[1] Fla. Stat. §70.001, *et seq.*, Bert J. Harris, Jr., Private Property Rights Protection Act.

[2] Emphasis added.

[3] *Smith*, 2015 WL 798154 (holding that the plaintiffs were not entitled to relief under the Harris Act because the plaintiffs' property was not itself subject to the governmental action, the case certified the following question: May a property owner maintain an action pursuant to the Harris Act if that owner has not had a law, regulation, or ordinance directly applied to the owner's property that restricts or limits the use of the property?).

[4] Fla. Stat. §70.001(11) (emphasis added); *see Citrus County v. Halls River Development, Inc.*, 8 So. 3d 413 (Fla. 5th DCA 2009) (holding, inter alia, that the claim was untimely despite plaintiff's assertion that a 2002 ordinance directly restricted its use of the property by applying the first time a 1996 amendment as to fall in within the one year statute of limitation; the court disagrees, indicating that the inordinate burden, if one exists, was created by the 1996 amendment and not by the ordinance passed in 2002).

[5] Fla. Stat. §70.001(11)(a)(1).

[6] Fla. Stat. §70.001(11)(a)(2); *see Wendler v. City of St. Augustine*, 108 So. 3d 1141 (Fla. 5th DCA 2013) (holding that the one-year period commenced on the date that a permit was denied, and that the lawsuit needed to be filed within four years of the date of denial); *see also P.I.E., LLC v. Desoto County*, 133 So. 3d 577 (Fla. 2d DCA 2014).

[7] *See Halls*, 8 So. 3d at 413.

[8] *Wendler*, 108 So. 3d at 1141 *(* citing *Halls*, 8 So. 3d at 413).

[9] Fla. Stat. §70.001(11); *Hussey v. Collier County*, 2014 WL 5900018 (Fla. 2d DCA 2014) (holding that the tolling provision applies to both the one-year and the four-year statute of limitations that applies to Harris Act claims).

[10] *Id.*

[11] Fla. Stat. §163.3164(16).

[12] *Wendler*, 108 So. 3d at 1141.

[13] *Smith*, 2015 WL 798154.

[14] *Id.*

[15] *Id.* (citing Fla. Stat. §70.001(1) (emphasis added)).

[16] *Id.* (citing Fla. Stat. §70.001(3)(e)1 (emphasis added)).

[17] *Id.* (citing AGO Fla. 95-78 (1995)).

[18] *Id.* (emphasis added).

[19] *Smith*, 2015 WL 798154.

ATTORNEY GENERAL
ASHLEY MOODY
FLORIDA OFFICE OF THE ATTORNEY GENERAL

Advisory Legal Opinion - AGO 2018-06

Print Version

Number: AGO 2018-06
Date: December 21, 2018
Subject: Municipalities - vacation rentals - dwelling unit

Mr. Nicholas Beninate
City Attorney, City of Mexico Beach
Hand Arendall Harrison Sale LLC
16901 Panama City Beach Parkway
Suite 300
Panama City Beach, Florida 32413

RE: DWELLING UNIT – VACATION RENTALS – MUNICIPALITIES –
§ 509.032(7) does not prohibit a municipality from allowing an accessory building to be used only as a sleeping facility, because such building does not constitute a "dwelling unit," which is a building where people can live and can thus be used as a vacation rental. Accordingly, an ordinance allowing an accessory structure located on the premises of a house or dwelling unit to be used for sleeping, but prohibiting it from being independently rented out, would not be barred by § 509.032(7), Fla. Stat. (2018), because that provision bars local laws that prohibit "vacation rentals." §§ 509.032(7) and 509.242(1)(c), Fla. Stat. (2018).

Dear Mr. Beninate:

We have received your letter on behalf of the City Council of the City of Mexico Beach, requesting an opinion on the following questions:

1. Does a structure where people are permitted to sleep that is not a "dwelling unit" or "house" pursuant to local law, meet the definition of a "vacation rental" under state law, entitling it to a vacation-rental license?

2. If the answer is "no," and if a vacation-rental license has been granted for a house or dwelling unit, is it permissible under that license to conduct transient rentals of an accessory structure independent from the house or dwelling unit?

In sum:

A "sleeping facility" is not a "house or dwelling unit," and thus is not a "vacation rental" under section 509.242(1)(c), Florida Statutes (2018). Accordingly, an ordinance allowing an accessory structure located on the premises of a

house or dwelling unit to be used for sleeping, but prohibiting it from being independently rented out, would not be barred by section 509.032(7), Florida Statutes (2018), because that provision bars local laws that prohibit "vacation rentals."

Factual Background:

In the Land Development Regulations for Mexico Beach, section 2.04.00 regulates "the installation, configuration, and use of accessory structures" on property, "to ensure that they are not harmful either aesthetically or physically to residents and surrounding areas." The principal structure on a lot is "the dwelling unit, house, or commercial use located on the lot," and an "accessory structure" on the same lot is "of a nature customarily incidental and subordinate to the principal structure."[1] In residential areas, allowable accessory structures include buildings used as toolsheds, garages, storage sheds, gazebos, doghouses, bathhouses, etc.

You report that the City is considering changing the ordinances to allow accessory structures that include plumbing but prohibit kitchen facilities to be used as bedrooms or sleeping quarters. The City is not certain whether such sleeping quarters would be classified as "vacation rentals," which are regulated under chapter 509, Florida Statutes. More specifically, the City questions whether it could enact an ordinance "that would allow [an] accessory structure to be used for sleeping quarters but prohibit that accessory structure from being a stand-alone rental unit." An answer will enable the City to make an informed policy decision as to whether to change the local law.

Applicable Statutes:

Under section 509.241(1), Florida Statutes (2018), each public lodging establishment must be licensed by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. The regulation of public lodging establishments has been preempted to the state since 1993 under section 509.032(7), Florida Statutes.[2] A public lodging establishment is classified and defined within section 509.242, as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, and timeshare project. Your concern is whether an accessory structure used as sleeping quarters could be classified as a "vacation rental."

Until 2011, residential properties rented typically to tourists on vacation were classified as "resort condominiums" and "resort dwellings," defined in section 509.242(1)(c) and (g), Florida Statutes (1993) as follows:

"*Resort condominium.* – A resort condominium is any unit or group of units in a condominium, cooperative, or time-share plan which is rented 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 for periods of less than 30 days or 1 calendar month, whichever is less.

* * *

Resort dwelling.—A resort dwelling is any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit which is rented 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 for periods of less than 30 days or 1 calendar month, whichever is less."

Before June 1, 2011, local governments were enacting local laws and ordinances that restricted or prohibited the rental of residential properties as resort dwellings.[3] In Chapter 2011-119, the Legislature did two things that are pertinent to this discussion. First, they combined the terms and definitions of "resort condominium" and "resort

In these cases,[18] a dwelling is a place where people could live semi-permanently, rather than a room that people stay in temporarily. A "house or dwelling unit" is complete unto itself as a habitation and thus is suited to be rented out to guests as a vacation rental, unlike sleeping quarters.[19] Separate sleeping quarters, standing alone, may enhance the value of the principal dwelling to either a homeowner or a renter by increasing the occupancy capacity of the principal dwelling, but without more, such as a permanent area for food preparation, sleeping quarters are not a "dwelling unit" sufficient to constitute an independent "vacation rental" under section 509.242(1)(c).

It is therefore my opinion that the City of Mexico Beach may enact an ordinance allowing an accessory structure to be used as sleeping quarters but not rented out independently, without violating the preemption provision of section 509.032(7).

Question 2:

You also inquire whether the license that permits a primary dwelling to be rented out as a vacation rental could be applied instead to permit rental of an accessory sleeping structure. The language of the licensing provision, section 509.241(1), Florida Statutes (2018), and implementing rule 61C-1.002, authorize licensing of a dwelling, which as shown above, cannot be a stand-alone sleeping facility.

Section 509.241(1), provides, in pertinent part: "Each public lodging establishment ... shall obtain a license from the division. Such license may not be transferred from one place or individual to another."

Florida Administrative Code rule 61C-1.002, Licensing and Inspection Requirements, provides, in pertinent part:

"(4) Public lodging establishments as defined in section 509.013(4), F.S., are licensed in accordance with the classifications in section 509.242, F.S., and:
(a) Transient establishments – are licensed as hotels, motels, transient apartments, bed and breakfast inns, vacation rentals and timeshare projects. Vacation rentals are further classified as condominiums or dwellings. A vacation rental condominium license will be issued for a unit or group of units in a condominium or cooperative. *A vacation rental dwelling license will be issued for a single-family house*, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less units collectively." (Emphasis added.)

Accordingly, when the Division of Hotels and Restaurants licenses a house or dwelling unit as a vacation rental, an accessory structure that only provides sleeping quarters may be included with the principal dwelling, but the dwelling license cannot be used to independently rent the accessory structure.

Sincerely,

Pam Bondi
Attorney General

PB/tebg

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[1] City of Mexico Beach, Land Development Regulations, amended Aug. 12, 2014, section 2.04.00, at 34-36. An attached structure is considered part of the principal structure rather than an accessory structure.

[2] Ch. 93-53, §1, Laws of Fla. (1993). Until 2011, the provision stated, with regard to preemption of lodging regulation: "The regulation and inspection of public lodging establishments and public food service establishments ... are preempted to the state."

[3] *See* House of Representatives Final Bill Analysis, Local & Federal Affairs Committee, CS/HB 307, p. 2, dated June 19, 2014.
[4] *See* House of Representatives Final Bill Analysis, CS/CS/CS/HB 883, pp. 3 and 5, dated June 28, 2011 ("Vacation rentals are properties generally designed for residential purposes, such as single- and -multi-family homes which are rented out to tourists on vacation. In Florida, they are divided into two main categories: resort condominiums and resort dwellings and are regulated as transient public lodging establishments. ... The bill reclassifies resort condominiums and resort dwellings as 'vacation rentals,' a new classification combining the two previous classes.").

[5] *See* House of Representatives Final Bill Analysis, Local & Federal Affairs Committee, CS/HB 307, p. 3, dated June 19, 2014.

[6] *See* Op. Att'y Gen. Fla. 16-12 (2016) (an ordinance that "could have the effect of prohibiting a statutorily eligible housing unit from being used as a vacation rental" would exceed the municipality's regulatory authority).

[7] *See, e.g., Reform Party of Fla. v. Black*, 885 So. 2d 303, 312 (Fla. 2004); *JPG Enters., Inc. v. McLellan*, 31 So. 3d 821, 824 (Fla. 4th DCA 2010).

[8] *State ex rel. Lacedonia v. Harvey*, 68 So. 2d 817, 818 (Fla. 1953) (citing *Michaels v. Township Comm. of Pemberton Tp.*, 67 A.2d 324, 327 (N.J. Sup. Ct.) ("The term 'dwelling' is one of multiple meanings. It does not always have the same sense in all cases, for it may mean one thing under an indictment for burglary or arson, another under the homestead law, another under the pauper law and another in a contract or devise.")).

[9] *Black's Law Dictionary* (10th ed. 2014). "Habitation," in turn, is defined as "[a] dwelling place; a domicile."

[10] *State ex rel. Lacedonia v. Harvey*, 68 So. 2d 817 (Fla. 1953).

[11] *Id.* at 818.

[12] 13 So. 3d 115 (Fla. 1st DCA 2009).

[13] *Id.* at 119.

[14] *Id.* at 119-20.

[15] 641 So. 2d 467 (Fla. 3d DCA 1994).

[16] *Id.* at 469.

[17] *Id.*

[18] *See also Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1214-15 (11th Cir. 2008) (concluding that a drug- and alcohol-treatment halfway house was a "dwelling" and thus covered by the Fair Housing Act, wherein the

The term "dwelling house" or "dwelling" in the civil context is defined in *Black's Law Dictionary* as: "1. The house or other structure in which one or more people live; a residence or abode. 2. Real estate. The house and all buildings attached to or connected with the house."[9]

Mexico Beach Code

The Land Development Regulations of the City of Mexico Beach, section 2.00.01, define "dwelling unit" as: "A single housing unit providing complete, independent living facilities for one housekeeping unit, including permanent provisions for living, sleeping, eating, cooking, and sanitation."

Case Law

Florida courts have addressed the meaning of "dwelling" or "dwelling unit" in a limited number of cases. In *State ex rel. Lacedonia v. Harvey*,[10] the Florida Supreme Court was asked to decide an appeal in which a property owner argued that an addition to her apartment house was not a dwelling required to have a five-foot setback pursuant to a zoning ordinance, because the addition would be used for a business. Observing that the ordinary dictionary definition of "dwelling" was "a building used for human habitation," the Court concluded that it was plain that the municipal authorities intended that the term "should apply to all buildings 'used for human habitation' or living quarters, without regard to the number or nature of units in a particular structure, including apartment houses[.]"[11] The Court concluded that the setback requirement applied to the apartment building addition.

In *Bay County v. Harrison*,[12] Bay County approved a resort condominium development that would consist of 279 living/rental units on two acres. A nearby resident challenged the approval as violative of the Comprehensive Plan, which limited density in the area to only 15 "dwelling units" per acre. The circuit court found for the plaintiff, but the First District reversed, concluding that the density restriction for dwelling units in the Comprehensive Plan did not apply to a resort condominium. The court observed that "resort condominium" was defined in the 2007 version of section 509.242(1)(c) as a unit or group of units in a condominium rented to members of the public more than three times per year for a month or less. Based upon this definition, as well as evidence in the case, the court stated that the resort condominium was "the substantial equivalent" of a hotel, which, unlike a residence or dwelling, which one lives in, is a "permanent structure that accommodates temporary visitors."[13]

The court concluded that the density limitation of 15 dwelling units per acre was a "housing" restriction, that resort condominium units were not "dwelling units," and thus the density restriction did not apply.

"The term 'housing' carries a dimension of permanence: 'housing' is 'shelter; lodging; dwellings provided for people.' *Webster's New Collegiate Dictionary* 550 (5th ed. 1973). 'Dwelling' is 'a building or other shelter in which people live: house.' *Id.* at 352.... Both the terms 'dwelling' and 'housing' in the Plan evoke a sense of permanency – they are places where 'people live' – that could not reasonably be ascribed to a class of temporary or transient accommodations...secured by tourists on their Gulf beach vacations."[14]

In *Miami County Day School v. Bakst*,[15] the circuit court concluded, and the Third District agreed, that the houseboat of a couple who owed tuition to a school, constituted a "dwelling house," and thus was a homestead, and therefore exempt from forced sale to pay the debt. The court characterized houseboats as "self-contained living environments, designed for use as residences rather than transportation."[16] This particular houseboat was the owner's exclusive residence, had four bedrooms and three bathrooms, and was "fully equipped for occupancy and supplied with utilities via dock connections," including water and electric hookups.[17]

dwelling" under the new term "vacation rental."[4] Section 509.242(1)(c) now provides:

"A vacation rental is 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 that is also a transient public lodging establishment but that is not a timeshare project."

"Transient public lodging establishment" is defined in section 509.013(4)(a)1. as "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is 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."

Second, the Legislature expanded the preemption provision of section 509.032(7) by adding subsection (7)(b), which provided:

"A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate 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."

The Legislature subsequently determined that this provision was inhibiting local governments from amending existing regulations on vacation rentals for fear of invalidating them altogether. The Legislature therefore amended section 509.032(7)(b), in Chapter 2014-71, so that it now provides:

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

The Staff Analysis indicates that under this provision as amended, local regulations or ordinances enacted prior to June 1, 2011, that prohibited or restricted vacation rentals would continue to be enforced, but that after that date, new ordinances may only address regulatory matters, such as "noise, parking, registration, and signage requirements for vacation rentals," but cannot prohibit vacation rentals or restrict the duration or frequency of such rentals.[5]

Question 1:

Because an accessory structure used only for sleeping is neither a "unit or group of units in a condominium or cooperative," nor a "single-family, two-family, three-family, or four-family house," the question is whether sleeping quarters could be considered a "dwelling unit" under section 509.242(1)(c). If so, an accessory structure used only for sleeping would constitute a "vacation rental," and the City would be barred from prohibiting a property owner from renting the structure out to guests as a house or dwelling unit independent from the principal structure on the property.[6]

There is no separate definition of "dwelling unit" as used in the definition of "vacation rental." When the meaning of a statutory term is uncertain, it should be given its plain and ordinary meaning, based upon construction of the term found in other statutory provisions, case law, and dictionary definitions.[7] As has been observed, "[t]he meaning of the word 'dwelling' may vary with the context of its usage."[8]

Dictionary

pertinent statute defined "dwelling" as "a residence," observing that "the more occupants treat a building like their home – e.g., cook their own meals, clean their own rooms and maintain the premises, do their own laundry, and spend free time together in common areas – the more likely it is a 'dwelling.'"); *Cochran v. Bentley*, 251 S.W.3d 253, 260-61 (Ark. 2007) (concluding that a two-story building, which was heated and cooled and contained an office with a telephone line, two restrooms, and a hot-water heater, was not a "dwelling," which is "a place to live in." The structure did not contain "a kitchen, shower, or living area of some sort," and thus could not "serve as a place in which to live." Instead, the owner lived in a home on the adjacent lot. The structure was therefore barred by the subdivision's restrictive covenant that allowed one dwelling per lot plus a garage and outbuildings that are "incidental to residential use of the lot.").

[19] An Internet search for short-term vacation rentals shows that there is a market for "sleeping-room only" rentals, such as a studio with a full bathroom and no kitchen. As discussed in this opinion, however, such units are not encompassed by Florida's existing definition of "vacation rental."

- Potable water shall be supplied and adequate sanitary facilities for guests. E.g., showers, handwash sinks and toilets that are connected to approved plumbing.
- Water from a nonpublic system (e.g., well) shall be sampled and tested at least annually and as required by state water quality regulations.
- The most recent sample report for the nonpublic water system shall be available upon request.
- The kitchen sink is required to have hot and cold running water under pressure.
- Ice making machines must use water from an approved source and shall be constructed, located, installed, operated, and maintained to prevent contamination of the ice.
- Ice machines for customer self-service shall be protected from contamination and equipped so the ice can be automatically dispensed.
- Units must be kept free of vermin.
- If provided:
  - Bedding and linens, sheets and pillowcases, and bedding items (e.g., mattresses, comforters and pillows) must be kept clean and in good condition.
  - Soap must be available either individually wrapped or from a dispenser.
  - Ice buckets shall be cleaned and sanitized between each guest or be provided with a sanitary single-service food-grade liner that is changed daily.

Safety

- A current Certificate of Balcony Inspection (DBPR HR 7020) must be filed with the division every three years, unless exterior balconies and stairwells are "common" elements of a condominium. (For exemption to this requirement, the licensee must provide proof to the division that these areas are common elements.) The balcony certificate is available from the Division of Hotels and Restaurants website at **http://www.myfloridalicense.com/;** by e-mail request submitted at http://www.myfloridalicense.com/contactus/; or by phone request to 850.487.1395.
- Railings shall be installed on all stairways and around all porches and steps.
- Heating and ventilation must be kept in good repair or installed to maintain a minimum of 68 degrees Fahrenheit throughout the building.
- Boiler Certificate required, if needed. (Not required if boiler is located in common area.) A water heating device is considered a boiler if it exceeds any one of the following limits: maximum heat input of 400,000 BTUH; water temperature of 210 degrees Fahrenheit; water capacity of 120 gallons.
- High hazard areas like boiler rooms and laundry rooms shall be kept clean and free of debris and flammables.
- At least one (1) approved locking device is required that cannot be opened by a non-master guest room key on all outside and connecting doors. (Cannot be a sliding chain or hook and eye type of locking device.)
- Smoke alarms must be installed in every living unit.
- Electrical wiring must be in good repair.
- A fire extinguisher must be present, properly charged and accessible.
- If present, fire alarm panel must have power and be maintained.
- Automatic fire sprinklers may be required in Vacation Rental condominiums if the majority of the rental units are located within a single building of three stories or more or greater than 75 feet in height. (If 50% or fewer of the units within the building are rented transiently, a fire sprinkler system is not required.)
- Specialized smoke alarms for the hearing impaired shall be available at a rate of one per every fifty rental units with a maximum of five required.
- Specialized smoke alarms for the hearing impaired shall be available upon request without charge.
- Must meet all local fire authority requirements.

General

- License must be current and renewed annually.
- License shall be conspicuously displayed in the office or lobby (if available) or made available upon request.
- Any change in the number of units must be reported to the division.
- License is not transferrable from one place or individual to another.
- If provided, baby cribs must meet safety standards established by the Consumer Products Safety Commission.

GUIDE TO

Vacation Rentals and Timeshare Projects

For Florida's Public Lodging Establishments

Division of Hotels and Restaurants

Florida Department of Business & Professional Regulation

www.MyFloridaLicense.com/dbpr/hr

Vacation Rentals & Timeshare Projects

The Division of Hotels and Restaurants is responsible for regulating public lodging establishments in Florida.

Florida law defines a "Public lodging establishment" as transient public lodging establishments and non-transient public lodging establishments. [Section 509.013(4), FS]

Transient public lodging establishment means "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is 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."

Vacation Rental: Vacation rentals are transient public lodging establishments defined in s. 509.242(1)(c), FS, 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 that is also a transient public lodging establishment, but that is not a timeshare project.

Timeshare Project: A timeshare property (as defined in Chapter 721, F.S.) that is located in Florida and is also a transient public lodging establishment. (E.g., a timeshare property that rents by the week to guests outside the timeshare community.) (509.242(1)(g), F.S.)

License Classifications

Vacation rentals and timeshare project licenses have three different classifications (61C-1.002(4)(a), F.A.C.):

- **Single License**: May include one single home or townhome, or a unit or group of units within a single building that are operated by the owner.
- **Group License**: Covers all units within a building or group of buildings in a single complex that are licensed to a licensed agent. (Multiple group licenses may be issued to different licensed agents for units located on the same property.)
- **Collective License**: Issued to a group of houses or units found in separate locations that are represented by the same licensed agent. (A collective license may have a maximum of 75 houses or units per license and is restricted to counties within one district.)

If you operate both vacation rental condominiums and vacation rental dwellings, you may not combine them on the same license in any of the three licensing categories.

Licensed Agent

A licensed agent is someone that the property owner has authorized, through a rental agreement or contract, to hold out the property for rent on a transient basis. The licensed agent does not have to hold a license from the Division of Real Estate.

Only a licensed agent can hold a group or collective license. A licensed agent may not hold a single license. The licensed agent is responsible for all violations cited during an inspection if the violations occurred while the unit or dwelling was listed under the licensed agent (or if the division records list the property under the licensed agent).

Licensing

To obtain a Vacation Rental or Timeshare Project license you need to fill out an Application for Vacation Rental or Timeshare Project License. The application packet is available at https://www.myfloridalicense.com/intentions2.asp?chBoard=true&boardid=200&SID.

The Application for License must be submitted along with the following items:

- A list of all units or houses to be licensed.
- A completed DBPR HR-7020, Certificate of Balcony Inspection if the units or houses are 3 or more stories in height and the railings, stairwells and/or balconies are not in common areas.
- Appropriate Fees: Fees are based on the number of units to be licensed. An automated fee calculator and fee tables are provided on our website at **our lodging license fee page**. You also can contact the Customer Contact Center at 850.487.1395 to obtain the correct license fee. In addition to the license fee, there is a one-time application processing fee of $50.

Licensing Exclusions

Renting a single room or rooms other than the whole unit is not classified as a public lodging and would not require a license from the Division of Hotels and Restaurants.

Also the definition of a public lodging establishment does not include (509.013(4)(b), F.S.):

- Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.
- Any facility certified or licensed and regulated by the Agency for Health Care Administration (AHCA) or the Department of Children and Families (DCF) or other similar place regulated under s. 381.0072, F.S. E.g., hospitals, nursing homes, assisted living facilities, sanitariums and day care centers.
- Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.
- Any vacation rental or timeshare project that is rented for periods of at least 30 days or 1 calendar month, whichever is less; AND is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.
- Any migrant labor camp or residential migrant housing permitted by the Department of Health (DOH); under Chapters 381.008-381.00895, F.S. or any mobile home park inspected by the Department of Health (DOH) and regulated under Chapter 513, F.S.
- Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.
- Any apartment building inspected by the U.S. Department of Housing and Urban Development (HUD) that is designated primarily as housing for persons at least 62 years of age. This exclusion applies to individual buildings, not entire complexes (unless every building in the complex fits the criteria).
- Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, apartment, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242, F.S.

Sanitation

- Halls, entrances, hall/stair runners and stairways (unless common) shall be clean, ventilated, and well-lighted day and night.
- Kitchen appliances and refrigeration equipment shall be kept clean, free from odors and in good repair.
- If dishes and glassware are provided, you must sanitize them between guests. (Proper warewashing requires a three-compartment sink or commercial dishmachine; OR the operator must post a notice informing guests that the dishes and glassware have not been sanitized according to public food service establishment standards. The notice must include the specific language on the notice available from the division website at http://www.myfloridalicense.com/DBPR/hotels-restaurants/forms-publications/.)
- Toxic items must be properly stored and labeled.

Edward Roseberry

From: Edward Roseberry
Sent: Monday, August 19, 2019 5:15 PM
To: Edward Roseberry
Subject: Short term rentals

What we don't know about all those barrier island rentals, is the nature of the rental. Weekly? Monthly? Etc. Over the years...many, many years...they were seasonal rentals. Which would preclude considering them anything but 'long term', and thus, impacting the occupancy by both zoning (which evolves just like the building codes) and the building codes.

However, in fairly recent years, what with time-share, Air B&B, and other 'short term' rental options becoming more prevalent, the new problem, which we are discussing, comes into play. Short term rentals of single family homes...less than a month (30 days +/-).
As I've stated, THAT changes the use, thus the occupancy, thus the code compliance criteria.

There is a simple...relatively...fix. Homes must be rented for at least a month, to avoid the occupancy change that triggers higher code compliance items. If a home is built with the intent (which no one will acknowledge) as short term rentals, then it is clear, and requires a higher standard.

All these thousands of 'island' homes...the owners have changed the intended use, even of the zoning, by changing the time periods they rent them for. A week versus the month, or the season.

The basis of higher standards for short term rentals is that transients aren't as familiar with a residence, and thus need better protection. This applies to hotels, motels, time share, etc. Otherwise, why not just lower those standards as well? And I'm talking about the occupancy of the unit, not the number of units in the building, for this discussion.

Life safety is the concern. And although we have improved...elevated...the life safety requirements for single family over time, they still are not on the same level as required for short term rentals.

I do not feel sorry for all those island home owners that you speak of. The owners don't live there. I own investment property. Especially if the primary purpose is to rent the home.

Air B&B type rentals, with home owners living there is a bit different. And I'd accept those conditions as single family.

If the owner changes the use, thus the occupancy, as in any other modification of use...the expectation should be to protect the public, and modify the units to a higher code compliance.

To me it's simple. If the owner lives there, single family. If the owner doesn't, and rents short term, it's essentially commercial.

Thank You,

From: PLangel@slcfd.org
Subject: Re: Requesting expedited position of Building Official in writing
Date: Sep 18, 2019 at 2:08:36 PM
To: Nick & Michelle sliceofparadiseflorida@gmail.com

Nick & Michelle,

As I have mentioned to you in the past. If the building official deems your occupancy with a need to review the plans the Fire District will conduct a fire plan review. Please take a look at the Florida State Statues regarding minimum fire standards in existing buildings:

(5) With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Florida Fire Prevention Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety. Before applying the minimum firesafety code to an existing building, the local fire official shall determine whether a threat to lifesafety or property exists. If a threat to lifesafety or property exists, the fire official shall apply the applicable firesafety code for existing buildings to the extent practical to ensure a reasonable degree of lifesafety and safety of property or shall fashion a reasonable alternative that affords an equivalent degree of lifesafety and safety of property. The local fire official may consider the fire safety evaluation systems found in NFPA 101A: Guide on Alternative Approaches to Life Safety, adopted by the State Fire Marshal, as acceptable systems for the identification of low-cost, reasonable alternatives. It is acceptable to use the Fire Safety Evaluation System for Board and Care Facilities using prompt evacuation capabilities parameter values on existing residential high-rise buildings. The decision of the local fire official may be appealed to the local administrative board described in s. 553.73.

This is only pertaining to Florida Fire Prevention Codes. The Florida Building Codes have a complete different set of codes to follow. Let me know if you need anything.

Captain Paul Langel C.F.E.I.
Fire Marshal
Community Risk Reduction Bureau
St. Lucie County Fire District
Office: 772-621-3322|Mobile: 772-519-2112
5160 NW Milner Drive
Port St. Lucie, FL 34983

From: "Nick & Michelle" <sliceofparadiseflorida@gmail.com>

To: "Paul Thomas" <plthomas@cityoffortpierce.com>, plangel@slcfd.org, ndanaluk@gmail.com

Cc: "Nick Mimms" <nmimms@cityoffortpierce.com>

Date: 09/18/2019 08:13 AM

Subject: Re: Requesting expedited position of Building Official in writing

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Mr. Thomas & Captain Langel,

I need your opine in writing why you feel that this EXCEPTION does not apply to 715 South Ocean Drive, Unit D.

The Vacation Rentals and Timeshare Projects, division of Hotel & Restaurants printed by the Florida Department if Business Professional Regulations. Under

Safety, bullet point 11 it states verbatim," Automatic fire sprinklers may be required in Vacation Rental condominiums if the majority of rentals units are located within a single building of three stories or more or greater that 75 feet in height, (If 50% or fewer of the hits within the building are renters transiently, a fire sprinkler is not required.).

The planning board admitted that a city representative visited 715 South Ocean Drive, Unit D, in September 17, 2019 on the record. Clearly the city can assess that this a TWO story building. In addition, we are the ONLY ONE that has filed for the transient permit which constitutes .07682308%. Both of these FACTS eliminate the need for sprinklers in 715 South Ocean Unit D, Fort Pierce, FL 34949, within accordance with the Florida Department of Business & Professional Regulation.

Regards,
Michelle Longarzo
561-332-6718

Sent from my iPad

On Sep 17, 2019, at 3:46 PM, Paul Thomas <pthomas@cityoffortpierce.com> wrote:

Good afternoon Ms. Longarzo:

Per our discussion just now, we will see you tomorrow morning for payment of the $6.63 for the records research listed below. It may take a couple of days to gather the information.

Kind Regards,

Karen Murphy | Executive Assistant | City of Fort Pierce
Building Department - 100 N. US Highway 1, Ste. 205 Ft. Pierce FL 34950
Phone: 772.467.3188 Fax: 772.467.3849
kmurphy@cityoffortpierce.com

Website | Facebook | Survey

"To provide community leadership, quality public service, and a safe environment for all citizens, by an empowered team of employees motivated by pride in themselves and their work."
Tell us how we are doing! Customer Service is a Priority for the City of Fort Pierce. Please take a moment to complete our customer service survey by following this link: http://www.cityoffortpierce.com/FormCenter/Building-6/Building-Department-Customer-Service-Fee-73

-----Original Message-----
From: Nick & Michelle <sliceofparadiseflorida@gmail.com>
Sent: Tuesday, September 17, 2019 3:12 PM
To: Paul Thomas <pthomas@cityoffortpierce.com>; Nick Mimms <nmimms@cityoffortpierce.com>
Subject: Requesting expedited position of Building Official in writing

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests

for sensitive information to IT immediately.

Mr. Thomas,

Per our lengthy discussion fat 11:07 am (22 min) today I am requesting the following:

1) The original Certificate of Occupancy for Boardwalk Condominiums 715 South Ocean Drive.

2) Copies of all permits and approval of permits for previous short term rentals at 715 South Ocean Drive from date of CO to current. As discussed, this property was previously a daily rental.

3) Provide all state, local and city regulations and laws that support your position from changing 715 South Ocean Drive Unit D, (1 of 11 attached on a single building on one communal water meter) from a residential single family home to a commercial use. Please in writing send your position as the Building Official for each one of your recommendations from the TRC Review.

Please expedite this request. Thank you for you assistance in this matter.

Rewards,
Michelle Longarzo
561-332-6718

Sent from my iPad

CITY OF FORT PIERCE, FLORIDA

№ 002875

ZONE ______

CERTIFICATE OF OCCUPANCY

12-29 19 77
(date issued)

The requirements of the Building Code and Zoning Ordinances of the City of Fort Pierce having been complied with in the ______ of the building located at No. 715
(construction-alteration)

S. OCEAN DR on the land described as follows: LOT 8, 11, 12.
(street)

BLK E 2401-503-0080-000/5

OCEANVIEW S/D.

this Certificate of Occupancy is issued to K. M. BROOKS and authority is hereby
(name)

granted for the occupancy of said building as a 10 UNIT APARTMENT BLDG. and for no other purpose
(type of occupancy)

Building Permit No. 30241.

Construction Cost $ 185,000.00

Dimensions of completed building 120'-8" X 35'-0"

I hereby agree to apply for the above certificate of occupancy when the work is completed.

Signed X ______
(Owner or Owner's Representative)

DATE 8/2 19 77

CITY OF FORT PIERCE

______
Building Official

OPINE OF PAM BONDI -

PAM BONDI
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Opinions Section

PL-01 The Capitol
Tallahassee, FL 32399-1050
Phone (850) 245-0158 Fax (850) 922-3969
http://www.myfloridalegal.com

October 22, 2013

Mr. Albert J. Hadeed
Flagler County Attorney
1769 East Moody Boulevard, Building 2
Bunnell, Florida 32110

Dear Mr. Hadeed:

Thank you for contacting this office for assistance in determining whether Flagler County may intercede and stop vacation rental operations, as defined in Chapter 509, Florida Statutes, in private homes that were zoned, prior to June 1, 2011, for single-family residential use. Due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood. You state that Flagler County has no regulations governing vacation rentals which predate the 2011 legislation.

In sum, absent the existence of a local ordinance on or before June 1, 2011, regulating the rental of vacation homes in Flagler County, section 509.032(7), Florida Statutes, preempts local regulation of lodging establishments and public food establishments to the state and precludes a local ordinance or regulation enacted after June 1, 2011, restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.

A number of county residents have argued that transient vacation rentals are a commercial activity which is a non-conforming use of a house constructed under a permit for a single-family residence and located in an area zoned for single-family residences. The county has considered this argument and concluded that a residential zoning category, in and of itself, is not sufficient to serve as a pre-existing prohibition of vacation rentals in private homes.

Section 509.032(7)(a), Florida Statutes, preempts the regulation of lodging establishments and public food establishments to the state. Subsection (b) of the statute states:

> A local law, ordinance, or regulation *may not restrict* the use of vacation rentals, prohibit vacation rentals, or regulate 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.[1] (e.s.)

A "vacation rental" is defined as "any unit or group of units in a condominium, cooperative, or time-share plan or *any* individual or collectively owned *single-family*, two-family, three-family, or four-family *house or dwelling* unit that is *also a transient public lodging establishment*."[2] (e.s.) Thus, the plain language of the statute recognizes that a single-family house or dwelling may be a "vacation rental" which is used as a transient public lodging establishment subject to regulation by the state. As this office has previously recognized, with the enactment of section 509.032(7)(b), Florida Statutes, the ability of a local government to regulate vacation rentals by enactment of an ordinance after June 1, 2011, has been preempted to the state.[3] While you have premised your question on the existence of a single-family zoning regulation in existence prior to June 1, 2011, you have also indicated that no county regulations of vacation rentals existed on that date.

This office agrees with the county's conclusion that a local zoning ordinance for single-family homes existing on or before June 1, 2011, that did not restrict the rental of such property as a vacation rental, cannot now be interpreted to do so. The clear

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[1] Section 509.032(7)(c), Fla. Stat., provides:

> Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

[2] Section 509.242(1)(c), Fla. Stat. *See* s. 509.013(4), Fla. Stat., defining "[p]ublic lodging establishment" for purposes of Ch. 509, Fla. Stat.:

> (4)(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.
> 1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is 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.

[3] Informal Op. to Marino, dated August 3, 2012. *Cf. City of Venice v. Gwynn*, 76 So. 3d 401 (Fla. 2d DCA 2011), in which a city's code prohibited owners of single-family dwellings in residential neighborhoods from renting their property for short periods of times; the court affirmed the city's administrative determination that owner's non-conforming use of property as a vacation rental violated city's ordinance regarding short-term rentals.

language in section 509.032(7), Florida Statutes, prohibits any local regulation on or after June 1, 2011, based upon the use of a residence as a vacation rental.

Sincerely,

Lagran Saunders
Attorney General

ALS/tsrh

☆ 715 S. OCEAN DRIVE OWNERS

	Property ID	Parcel ID	Situs	Owner	Mailing Address	City	State	Zip Code	Sale Price	Sale Date	Area (sq ft)	Bedrooms	Baths
1	15008	2401-504-0001-000-1	715 S OCEAN DR A	**Ortiz Marie**	**715 S Ocean DR, Unit Apt A**	Fort Pierce	FL	34949-3217	$110,000	03/18/2019	680	1	
2	15009	2401-504-0002-000-8	715 S OCEAN DR B	Ross Judith	3531 Eleven Mile RD	Fort Pierce	FL	34945-2502	$100	03/17/2017	680	1	
3	15010	2401-504-0003-000-5	715 S OCEAN DR C	**Bradley Kenneth L**	**715 S Ocean DR, Unit Apt C**	Fort Pierce	FL	34949-3217	$100	03/13/2015	680	1	
4	15011	2401-504-0004-000-2	715 S OCEAN DR D	Danaluk Jr Nicholas Alex	1425 SW Edinburgh DR	Port St Lucie	FL	34953-6531	$0	03/22/2019	680	1	
5	15012	2401-504-0005-000-9	715 S OCEAN DR E	Lees Linda	1927 Cypress AVE	Fort Pierce	FL	34949-3408	$86,500	02/11/2019	680	1	
6	15013	2401-504-0006-000-6	715 S OCEAN DR F	Fort Jr Augustus B	49 Woodland DR, Unit Apt 201	Vero Beach	FL	32962-3785	$92,000	07/09/2015	680	1	
7	15014	2401-504-0007-000-3	715 S OCEAN DR G	Hohlfeld Siegrun	69 Sharon Mountain RD	Sharon	CT	06069-2405	$105,000	03/01/1988	680	1	
8	15015	2401-504-0008-000-0	715 S OCEAN DR H	Hites Sr Roger J	7515 Twin Buttes DR, Unit # D-10	Pueblo	CO	81004-9761	$107,500	01/09/2018	680	1	
9	15016	2401-504-0009-000-7	715 S OCEAN DR I	Fort Jr Augustus B	2740 Night Hawk CT	Longwood	FL	32779-4845	$85,000	04/10/2015	680	1	
10	15017	2401-504-0010-000-7	715 S OCEAN DR J	Keller Deborah	5036 State Road 52	Jeffersonville	NY	12748	$65,000	04/12/2010	680	1	
11	15018	2401-504-0011-000-4	715 S OCEAN DR K	**Ehrhart Christopher E**	**715 S Ocean DR, Unit Apt K**	Fort Pierce	FL	34949-3217	$170,000	07/21/2005	680	1	
12	15019	2401-504-0012-000-1	715 S OCEAN DR L	Quintero Roberto	1404 19th Ave N	Lake Worth	FL	33460	$156,000	11/10/2003	865	2	
13	15020	2401-504-0013-000-8	715 S OCEAN DR M	Chess Margarita D	4180 N A1A Unit 401B	Fort Pierce	FL	34949	$60,800	08/30/2012	865	2	

It appears only 10 of the 13 units are owner occupied.....that means 77% are investors. They should want to support your permit.

HIGHLIGHTED ARE THE ONLY OWNERS THAT LIVE THERE.