

December 11, 2014

Via E-Mail Delivery

Mayor Dan Murphy
City Commission for the City of Anna Maria

Re: Opinion Letter from David Levin, Esq.

Dear Honorable Mayor and Commissioners:

On behalf of some of our clients in the City of Anna Maria, we write to discuss the opinion letter provided to the Commission by David Levin, Esq., dated December 2, 2014.

Respectfully, it should be noted that Mr. Levin was retained by the City based upon the direction of Commissioner Webb, who had extensive communications with Mr. Levin regarding this subject prior to recommending that he be engaged by the City. It should come as no surprise that the opinion letter supports Commissioner Webb's "reinterpretation" approach.

Suffice it to say that we do not agree with the legal conclusions reached in Mr. Levin's letter. For those interested in more legal analysis, I have attached a brief memorandum for your review. In it, you will find a number of cases in which the courts have consistently rejected cities' attempts to "reinterpret" their zoning code in order to prohibit a certain use because they wished it was not allowed. It does not take a law degree to understand why that is wrong.

Dispensing with all of the legal jargon, the primary guiding principle a court must use in interpreting a city ordinance is legislative intent. In this case, the court would review evidence to try and determine whether the City Commission which adopted the Zoning Code decades ago had intended to prohibit vacation rentals. When the court reviews this evidence, this is what they will find:

- Vacation rentals were prevalent in the City at the time the City's Zoning Code was adopted.
- Vacation rentals have been prevalent in the City for the decades since the City's Zoning Code was adopted.
- In 2011, the City was informed that the Legislature was adopting legislation to preempt the City's ability to regulate vacation rentals, and was given an opportunity to enact rental regulations. The City

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Commission made a policy decision not to do so, because it felt such regulations were unnecessary in the City.

- In 2013, Commissioner Webb produced a memo introducing his “reinterpretation” of the Code that would prohibit vacation rentals. This memo was adopted by the City Commission, and then rescinded by the City Commission a few days later.
- Since 2013, the Commission has stated openly on the record that they are looking for some way to circumvent the state vacation rental statute.
- In December 2014 David Levin, Esq., is brought in by Commissioner Webb and issues a different “reinterpretation” that would prohibit vacation rentals.
- The City Commission continues to state on the record that it has no intention of actually prohibiting vacation rentals, but that it could use this “reinterpretation” in order to circumvent the state statute.

So in essence, the City’s position would be that all of the City officials and staff of the last few decades were wrong in their reading of the Code, and only upon reading Mr. Levin’s letter was the true intent of the former City Commission discovered. Again, it does not take a law degree to see that this is wrong, and we are confident that a judge would be able to do so.

We do agree with Mr. Levin’s conclusions that the approach being suggested is likely to result in litigation, and that the ultimate enforcement of such interpretation is likely to be “problematic”. It is unclear why the City would elect to proceed under such a scenario.

It is our understanding that the City has recently made some significant progress in bringing the vacation rental community together with affected residents to work collaboratively towards solutions that could be supported by the community as a whole. Rather than taking a course that will result in litigation and further divide the community, we think the City would be best served by allowing these collaborative efforts to continue, to see if a joint resolution can be reached.

Sincerely,

Scott E. Rudacille