LEWIS LONGMAN & WALKER | P.A.
ATTORNEYS AT LAW

20 years

Reply To: Tampa Bay

December 11, 2014

Via Electronic Mail to: larry@islandreal.com

Mr. Larry Chatt, President
Mr. Mike Brinson, Secretary/Treasurer
Ms. Darcie Duncan, Board Member
Mr. Jason Sato, Board Member
Anna Maria Island Vacation Property Association
6101 Marina Drive
Holmes Beach, FL 34217

RE: Anna Maria Island Vacation Property Association
(LLW Matter No. 5328-001)

Dear Board Members:

The Anna Maria Island Vacation Property Association has retained this firm to, among other tasks, evaluate the December 2, 2014 Legal Opinion by David M. Levin, Esquire regarding "Prohibition Against Transient Public Lodging Establishments in Single-Family Residential Zoning Districts." We have drafted this letter knowing that it will be submitted to the City and will become a public record.

In Mr. Levin's letter, he presents and answers the following question:

> Did the City of Anna Maria's Zoning Code prohibit the short-term rental ("vacation rental") of single-family detached dwellings within its residential neighborhoods on or before June 1, 2011?

After an 11 page analysis, Mr. Levin answered that question in the affirmative. Having just been retained, we understandably have not been able to perform a complete critique of legal points raised by Mr. Levin in his letter to the City Commission, however, because of this firm's legislative and legal involvement with vacation rental issues on behalf of the industry over the past four (4) years, including the creation of Section 509.032 (7) (b), Florida Statutes, and our involvement with the 2013 Attorney General Opinion issued to Flagler County cited in Mr. Levin's opinion, we are able to state that we are not in agreement with Mr. Levin's conclusion.

In his lengthy analysis, Mr. Levin dismisses, without any explanation, the October 2013 Attorney General Opinion (AGO) to Flagler County that dealt with this ***identical*** question and came to precisely the opposite conclusion. I have attached the AGO for easy reference. It is important to note that neither the definition of "vacation rental" in chapter 509 nor the grandfathering language in Section 509.032(7) (b), Florida Statutes, has changed since the creation of Section 509.032(7) (b), Florida Statutes, in 2011. Thus, the 2013 Attorney General Opinion to Flagler County interprets language that is identical to the language Mr. Levin was asked to review and opine upon.

In that Opinion, Attorney General Bondi was asked by Flagler County if the existence of a residential zoning category, in and of itself, is sufficient to serve as a pre-existing prohibition of vacation rentals and qualified to be grandfathered under Section 509.032(7) (b), Florida Statutes. Going through a statutory interpretation analysis similar to Mr. Levin, the Attorney General concluded 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."

Mr. Levin also ignores a second AGO dated November 13, 2014, this time to the City of Wilton Manors. Like the 2013 AGO, this opinion is also directly on point. In this opinion, Wilton Manors asked the Attorney General if Section 509.032(7) (b), Florida Statutes, permits the city to regulate the location of vacation rentals through zoning. The Attorney General concluded that "zoning may not be used to prohibit vacation rentals in a particular area where residential use is otherwise allowed."

These two AGOs, alone, are sufficient grounds for us to be concerned with Mr. Levin's Legal Opinion. However, a quick review of his letter should also give a reader pause for other obvious reasons. Mr. Levin devotes most of his letter to setting forth a detailed analysis of zoning and statutory interpretation law and how it might apply to the language in Section 509.032(7) (b), Florida Statutes, and the City's zoning code. He then bases his conclusion almost solely on the fact that the legislature, in essence, had no idea what it meant when it defined vacation rentals as including single-family dwelling units. (Note, that this is contrary to the fundamental premise in all statutory interpretation that the Legislature is ***presumed*** to know the definitions of the terms it uses and the state of the law at the time it enacts any legislation.)

Mr. Levin never mentions that, prior to 2011, vacation rentals were referred to as "resort dwellings" and "resort condominiums;" that single family dwellings were included in those definitions; and that they were considered transient public lodging. In other words, from the beginning, the legislature always intended short term rentals to be dwelling units that included single family homes. To suggest that when they merged the two concepts of "resort dwelling" and "resort condominium" into one concept now called "vacation rental" but changed nothing else, the

legislature suddenly did not understand the "plain meaning" of the term 'single-family detached dwelling,'" defies logic and runs counter to the law regarding statutory interpretation.

Mr. Levin also relies heavily on the placement of the phrase "that is also a transient public lodging establishment" after the term "single family dwelling unit" to bolster his conclusion that the legislature did not understand the plain meaning of the term single family dwelling unit. He muses that if the plain meaning of the phrase single family dwelling unit included the use of such dwellings as a "transient public lodging establishment," it would not have been necessary for the Legislature to include the phrase "that is also a transient public lodging establishment."

Unfortunately for Mr. Levin, there is a better explanation; the legislature wanted to make it clear that a single family dwelling unit falls under the auspices of chapter 509 (Public Lodging Establishments) when it meets the definition of a public lodging establishment. Chapter 509 is a regulatory construct that applies to more than just vacation rentals. It was necessary for the legislature to ensure that it was clear exactly under what circumstances chapter 509 and its attendant Department of Business and Professional Regulations rules apply.

While we would need more time to prepare a more extensively researched and detailed legal opinion complete with supporting citations and quotations to statutes, rules and case law, our experience with Chapter 509 and its application to vacation rentals allows us to state at this time that the City Commission would be ill advised to rely on Mr. Levin's opinion letter to justify taking action which even he acknowledges will lead to costly and unsuccessful litigation for the City.

Sincerely,

LEWIS, LONGMAN & WALKER, P.A.

Kevin S. Hennessy

KSH/jmd

cc: Lori Killinger, Esq.