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MEMORANDUM

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FROM: Scott E. Rudacille, Esq. SER 12/11/14

DATE: December 11, 2014

RE: Additional Legal Analysis Regarding Opinion Letter

The opinion letter provided to the City of Anna Maria from David Levin, Esq., dated December 2, 2014, explores some of the tenets of statutory construction but fails to address the rules of statutory construction specific to the zoning context, or to apply the relevant case law to the City's unique facts. In fact, Mr. Levin's letter fails to cite to a single case in which a court has upheld a municipality which "reinterpreted" its zoning code to try and prohibit a certain use.

The seminal Florida case on zoning interpretations is *Rinker Materials Corp. v. City of North Miami*, 286 So.2d 552 (Fla. 1973). In it, the Florida Supreme Court provides an overview of the rules of statutory construction, including some that are specific to zoning ordinances. One such rule, as stated by the Court, is that "[s]ince zoning regulations are in derogation of private rights of ownership, words used in a zoning ordinance should be given their broadest meaning when there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner." Thus, if there is any question as to what the City's intentions were, the court must construe the Code broadly and in favor of the property owner.

Another rule discussed by the Court in *Rinker Materials* is that "courts generally may not insert words or phrases in municipal ordinances in order to express intentions which do not appear, unless it is clear that the omission was inadvertent, and must give to a statute (or ordinance) the plain and ordinary meaning of the words employed by the legislative body (here the City Council)." This means that a city may not borrow language from other places (such as a state statute) in order to try to interpret a municipal ordinance. This would be especially true in this case, as the statutory language cited in Mr. Levin's letter did not even exist at the time the City's Zoning Code language was adopted and thus could not have been a consideration of the City Commission.

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The *Rinker Materials* case involved a concrete company which sought to construct a batch plant in an industrially-zoned area of the City. There were other batch plants existing in the area, and the City had previously interpreted the Code as allowing batch plants in the industrial zoning districts. After the concrete company purchased the property, there was a change in administration at the City. The new administration adopted a new interpretation of the zoning code which did not allow for this type of batch plant, and the City denied the permit application.

The Court struck down the City's actions, noting that the history and prior interpretation by the City demonstrated the "true intent" of the legislative body as to the intended zoning uses for the area. Similarly, we do not think a court will have difficulty discerning the "true intent" of the City of Anna Maria once presented with the City's lengthy history regarding vacation rentals.

In addition to the *Rinker Materials* case described above, this memorandum will discuss three other cases in which cities have attempted the "reinterpretation" approach and have failed. The facts should sound very familiar to what is currently being suggested to the City.

Ocean's Edge Development Corp. v. Town of Juno Beach, 430 So.2d 472 (Fla. 4th DCA 1983), involved a developer who constructed a multi-family project to be used as a timeshare. When the Town got word that the project was planned for a timeshare use as opposed to residential apartments, it declared a moratorium and then brought in an outside expert to testify that the existing zoning code and comprehensive plan provisions prohibited such use. At the center of the discussion were the Town's definitions of "dwelling", "dwelling unit", "hotel, motel" and "transient residential", none of which contained any specific prohibition of timeshare ownership. The court struck down the Town's interpretation, stating as follows:

> Government cannot function in such after-the-fact fashion; property owners are entitled to rely upon the clear and unequivocal language of municipal ordinances. This principle is not innovative, nor does it originate with this court.

The case of *Brown v. Sandy City Board of Adjustment*, 957 P.2d 207 (Utah Ct. App. 1998), has facts that are nearly identical to the position being considered by the City of Anna Maria. In 1995, the City began interpreting its Code so as to prohibit rental of any single-family dwelling for less than 30 days in

its residential districts. The City's Code was a "permissive zoning ordinance", as described in Mr. Levin's letter, in which any use which was not specifically allowed was prohibited. The City argued that because the Code does not specifically permit short-term leases of a dwelling unit, they are not allowed under the Code.

Again the court struck down the City's interpretation, noting that under such theory, the City could restrict any proposed use just by describing the use more specifically than the list of permitted uses. For example, as the court noted, the City could prohibit rentals of single-family dwellings altogether simply by noting that the ordinance does not specifically permit occupancy of a single-family dwelling under a long-term lease.

Lastly, the *Milo v. City of Venice*, Case No. 2008 CA 552 SC (Order on Petition for Writ of Certiorari dated March 14, 2008), is also almost factually identical to the position being considered by the City of Anna Maria. In 2006, the City Planner issued an interpretation that "based on the Florida Statutes and the LDC's express intent of the RSF zoning districts," single-family dwellings in the RSF zoning districts may not be used for vacation rentals.

The court in that case once again struck down the City's attempted reinterpretation, finding it to be "clearly erroneous". In the Order Judge Bennett went on to note that "[t]he City had to look outside the LDC, to the Florida Statutes, for support for the proposition that there were limitations on rental terms. Property owners are entitled to rely upon the clear and unequivocal language of municipal ordinances" (citing *Ocean's Edge*). Mr. Levin's letter suggests that the City take the same approach.

Mr. Levin's letter dismisses Judge Bennett's decision in the *Milo* case as being not "binding or particularly relevant". Judge Bennett is highly regarded, and the opinion is well-reasoned. While it may not be binding, it will certainly be persuasive to another judge within this same circuit.