IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

STEPHEN E. MILO, et al.

Petitioners,

v. **CASE NO.: 2008 CA 552 SC**

CITY OF VENICE,

Respondent.

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ORDER ON PETITION FOR WRIT OF CERTIORARI

This matter came on for consideration on the Petition for Writ of Certiorari, Declaratory Relief, Injunctive Relief and Complaint for Damages (the "Petition") filed by Stephen E. Milo; Sara Milo; Damaris Milo; Venice Sunshine, LLC; Alan Evans; Cecilia R. Evans; Venice Real Estate Investors, LLC; Venice HSD, LLC; Venice Beach Investors, LLC; Daniel Jay Cohen; and Vacation Rental Pros Property Management, LLC (collectively, the "Petitioners") and the Response (the "Response") thereto filed by the City of Venice (the "City"), as corrected on March 3, 2008. The Court has considered the Petition and the Response and has been otherwise advised in the premises.

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KAREN E. RUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

I.

Petitioners own real property in a residential single family zoning district ("RSF") in the City of Venice. They desire to rent their real properties for durations, and at frequencies, without limitation. The Petitioners have been licensed as "public lodging establishments" pursuant to Chapter 509 of the Florida Statutes.

On August 2, 2006, the City Planning and Zoning Director, Tom Slaughter ("Slaughter") issued a Zoning Determination (the "Zoning Determination") pursuant to section 86-22 of the

City of Venice Land Development Code (the "LDC"), in which he opined that, based on the Florida Statutes and the LDC's express intent of the RSF zoning districts, "the duration and frequency of rental of a single-family dwelling unit within the RSF is restricted to not more than three rentals in a calendar year for periods of less than 30 days or one calendar month, whichever is less." On August 14, 2006, the Petitioners filed an appeal of the Zoning Determination to the City Planning Commission pursuant to section 86-23 of the LDC.

On May 16, 2007, the Planning Commission issued its written decision reversing the Zoning Determination (the "Planning Commission's Decision"). The City appealed. On December 13, 2007, the Venice City Council entered its decision reversing the Planning Commission's Decision thereby reinstating the Zoning Determination (the "City Council's Decision"). Petitioners now seek a review of the City Counsel's Decision through certiorari to this Court.

II.

A.

In reviewing a Petition for Writ of Certiorari, the circuit courts must determine: whether the local government afforded the petitioner procedural due process; whether the essential requirements of the law have been observed by the local government; and whether the decision of the local government is supported by competent and substantial evidence. Fla. R. App. P. 9.030(c)(3). Florida courts have consistently held that the interpretation of a statute by the agency that is charged with its administration is entitled to great weight and that interpretation should not be overturned unless it is clearly erroneous. P.W. Ventures v. Nichols, 533 So. 2d 281 (Fla. 1958); Floridians for Responsible Utility Growth v. Beard, 621 So. 2d 410, 411 (Fla. 1993).

B.

After a careful examination of the statutory scheme in the LDC, including the definitions promulgated in section 86-570 of the LDC, and other applicable law, the Court finds that the City Council's Decision was clearly erroneous. The following are the relevant sections and definitions in the LDC.

First, Section 86-81(a) of the LDC provides the legislative intent of RSF zoning districts:

> [t]he RSF districts are intended to be single-family residential areas of low density. The nature of the use of property is the same in all districts. Variation among the RSF-1, RSF-2, RSF-3 and RSF-4 districts is in requirements for lot area, width and certain yards. Certain structures and uses designed to serve governmental, educational, religious, noncommercial recreational and other immediate needs of such areas are permitted or are permissible as special exceptions within such districts, subject to restrictions and requirements necessary to preserve and protect their single-family residential character.

The relevant terms are defined as follows in section 86-570 of the LDC. The term "density" means number of residential dwelling units permitted per gross acre. The term "residential" is not defined.[1] Section 86-570 however, provides a somewhat circular definition of "residential property" as "any property within the city that meets either of the following requirements: (1) The property is zoned RE, RSF-1, RSF-2, RSF-3, RSF-4, RMF-1, RMF-2, RMF-3, RMF-4, RMH, RTR, or PUD; or (2) the property is designated as "Residential" in the comprehensive plan." The term "use" means the purpose for which land or water or a structure thereon is designated, arranged or intended to be occupied or utilized, or for which it is occupied or maintained. The term "family" is defined as "one or more persons occupying a single dwelling unit... [it] shall not be construed to mean a fraternity, sorority, club, commune, monastery or

[1] Where a term is not defined, it is appropriate to give it its plain and ordinary meaning. Green v. State, 604 So. 2d 471 (Fla. 1992).

convent, or institutional group." A "[d]welling, one-family or single-family" is defined as "a building containing only one dwelling unit... [it] is not to be construed as including manufactured homes, travel trailers, housing mounted on motor vehicles, tents, houseboats, or other forms of temporary or portable housing." A "[d]welling, generally" is any building, or part thereof, occupied, in whole or in part, as the residence or living quarters of one or more persons, permanently or **temporarily**, continuously or transiently, with cooking and sanitary facilities." (Emphasis added.) The term "residence" is not defined in the LDC.[2]

The Court next turns to section 86-81(b), which addresses the permitted *principal*[3] uses and structures in the RSF zoning districts:

> Permitted principal uses and structures in the RSF district are:
> (1) One single-family dwelling per lot.
> (2) Public elementary and high schools with conventional academic curriculums, and private elementary and high schools with conventional academic curriculums similar to those in public elementary and high schools.
> (3) Parks, playgrounds, playfields and city buildings in keeping with the character and requirements of the district, and public libraries.
> (4) Essential services.
> (5) Existing railroad rights-of-way.
> (6) Community residential homes having six or fewer residents

Section 86-81(c) addresses the *accessory*[4] uses and structures:

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[2] See Note 1. The Court notes that the LDC defines a "bed and breakfast inn" as a "temporary residence."
[3] The term "principal use" is not defined in the LDC.
[4] The term "accessory use" is defined in the LDC as:

> a use or structure of a nature customarily incidental and subordinate to the principal use or structure and, unless otherwise provided, on the same premises. On the same premises, with respect to accessory uses and structures, shall be construed as meaning on the same lot or on a contiguous lot in the same ownership. Where a building is attached to the principal building, it shall be considered a part thereof, and not an accessory building. A facility for the service of malt, vinous or other alcoholic beverages shall be deemed an accessory use for a motel, hotel, boat, private club, country club, yacht club or golf club provided all other applicable requirements of state law and city regulations are met.

> Permitted accessory uses and structures in the RSF district are uses and structures which:
> (1) Are customarily accessory and clearly incidental and subordinate to permitted or permissible uses and structures.
> (2) Do not involve the conduct of business on the premises, provided that accessory home occupations shall be allowed.
> (3) Are located on the same lot as the permitted or permissible principal use or structure, or on a contiguous lot in the same ownership.
> (4) Are not of a nature likely to attract visitors in larger numbers than would normally be expected in a residential neighborhood.
> (5) Do not involve operations or structures not in keeping with the character of single-family, residential estate development.

The term "business" is not defined in the LDC. The term "home occupation" is defined as "any activity carried out for gain on residentially zoned property."

Section 86-81(d) provides that "[a]ny use or structure not specifically, provisionally or by reasonable implication permitted in this section, or permissible by special exception, is prohibited."

C.

The Court finds that temporary rentals, without limitations on frequency or duration, of dwellings in the RSF zoning district is a permitted principal use pursuant to 86-81(b). The drafters intended that homes in RSF zoning districts could be used on a temporary basis and there is no indication that the drafters limited duration or frequency. Zoning regulations are in derogation of private ownership rights and should be construed broadly in favor of property owners absent a clear intent to the contrary. Ocean's Edge Dev. Co. v. Town of Juno Beach, 430 So. 2d 472 (Fla. 4th DCA 1983) (reversing the circuit court's dismissal of a property owner's complaint against a municipality because it deviated from the plain definitions within the zoning plan and instead relied on after-the-fact testimony as to legislative intent). Had the drafters intended to limit the duration and frequency of rentals, language to that effect could have

included. Rose v. Town of Hillsboro Beach, 216 So. 2d 258 (Fla. 4th DCA 1968). See also Neumont v. Monroe County, 280 F.Supp. 2d 1367 (S.D. Fla. 2003) (City's Code specifically provided that tenancies could not be changed more than six times per year in certain zoning districts); Schwartz v. City of Treasure Island, 2006 WL 2521399 (M.D. Fla. 2006). The Court finds it improper to interpret the LDC as placing limitations on the duration or frequency of rentals in the RSF zoning district.

The City contends that frequent rentals of short durations are more like a "business", which is non-permitted accessory use under 86-81(c)(2). The Court cannot accept this proposition. Indeed many rental properties, regardless of the duration of the rental term, are for-profit ventures and could therefore be characterized as "businesses." Further, 86-81(a) expressly permits temporary residences and includes no limitations. The 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. Ocean's Edge, 430 So. 2d at 472. It is not possible for a property owner to anticipate that, for purposes of the LDC, it would be necessary to look under Chapter 509 of the Florida Statutes, a chapter dealing with licensing and inspection of public lodging establishments, especially because there is no cross reference to the Florida Statutes in the LDC. Therefore, it was clearly erroneous for the City to graft definitions onto the LDC from Chapter 509 of the Florida Statutes.

The City, relying on Neumont, 280 F.Supp. 2d at 1367 and Schwartz, 2006 WL 2521399, argues that Florida law clearly allows for zoning restrictions on short-term rentals. In both Neumont and Schwartz, the municipality had adopted specific ordinances limiting the duration

and frequency of rentals. The issue here is not whether, if such ordinance existed, it would be enforceable. The LDC contains no such ordinance; therefore this argument is rejected.

III.

Upon due consideration of the record provided, the Court finds that the City Council's Decision entered on December 13, 2007 is clearly erroneous. The City went outside of the essential requirements of the law by reversing the Planning Commission's Decision and placing limitations on the duration and frequency of the rental of Petitioners' real property in the RSF Zoning District. As result of this decision, it is not necessary to reach the merits of the other arguments. Accordingly, the Petition for Certiorari is **GRANTED** and the City Counsel's Decision is **QUASHED**.

DONE and **ORDERED** in Chambers in Venice, Sarasota County, this 14 day of March, 2008.

Robert B. Bennett, Jr., Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order on Petition for Writ of Certiorari** has been forwarded this 14 day of MARCH, 2008 via U.S. Mail to:

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