



To: Paul R. Stanton

From: Yaneris Figueroa, Special Counsel for the City of Coral Gables

Approved: Craig Leen, City Attorney for the City of Coral Gables

A handwritten signature in black ink, appearing to be "CL", is written over the name "Craig Leen".

RE: Legal Opinion Regarding Short-Term Rentals Of Single-Family Dwellings Within Single-Family Residential District, The Authority Of The Special Masters In Issuing An Order Commanding Compliance With A Zoning Code Ordinance

Date: December 5, 2013

You asked me to determine whether: 1.) the City Attorney may advise the City's Special Masters; 2.) short-term rentals of residential property located within the Single Family Residential District ("SFRD") are permitted under the Coral Gables Zoning Code; and 3.) Special Masters have authority to order and ensure compliance with the City's Zoning and Municipal Codes.

In short, pursuant to Article VI, Section IOI-182(d) of the City's Municipal Code, the City Attorney shall act as General Counsel to the Special Masters, City of Coral Gables, Fla., Municipal Code § 101-182(d)(2006), Section 4-10(A) of the City Zoning Code precludes the short-term rentals of residential property located within the SFRD, City of Coral Gables, Fla., Zoning Code § 4-101(A), and finally, pursuant to Florida State Statute Section 162.03, Special Masters have authority to order and ensure compliance with the City Codes, Fla. Stat. § 162.03.

I. THE CITY ATTORNEY SHALL SERVE AS GENERAL COUNSEL TO THE SPECIAL MASTER

The City Attorney for the City of Coral Gables serves as general counsel to the City's Special Masters. City of Coral Gables, Fla., Municipal Code § 101-182(d)(2006). Indeed, Article VI, Section 101-182(d) of the City's Municipal Code states that "[t]he city attorney's office shall serve as general counsel to the hearing officers/special masters." *Id.* Thus, the City Attorney acts in an advisory capacity to the Special Master.

Moreover, in addition to the advisory powers under the City Code, the City Attorney is also tasked with the interpretation and implementation of the City's Zoning Code. Specifically, Section 2-702 of the City Zoning Code states that "[t]he City Attorney serves as the final

authority with regard to legal issues involving interpretation and implementation or [the Zoning Code] regulations." City of Coral Gables, Fla., Zoning Code § 2-702. Thus, the City Attorney has final authority regarding any interpretation issues arising out of the City Zoning Code.

II. SECTION 4-101(A) OF THE CITY ZONING CODE PRECLUDES TILE SHORT TERM RENTALS OF RESIDENTIAL PROPERTY LOCATED WITHIN THE SINGLE FAMILY RESIDENTIAL DISTRICT

Short-term rentals of residential property located within the SFRD are prohibited under the City's Zoning Code. City of Coral Gables, Fla., Zoning Code § 4-101(A). Section 4-101(A), specifically, states that "[t]he Single-Family Residential (SFR) District is intended to accommodate low density, single-family dwelling units with adequate yards and open space that characterize the residential neighborhoods of the City." *Id.* Additionally, § 4-101(A) states that in an SFR District, "no use other than [those] listed ... shall be permitted. No buildings or premises shall be used, nor shall any building or structure be erected, altered or enlarged which is arranged, intended or designed to be used for a use other than a single-family use as defined in this code." *Id.* Thus, within the SFR District, only the uses expressly stated in the Zoning Code are permitted - any use not expressly stated is, therefore, prohibited. *Id.*

In examining the permitted uses outlined in Sections 4-101(B) and 4-101(C), short-term rentals is notably absent. City of Coral Gables, Fla., Zoning Code §§ 4-101 (B) and (C). Indeed, the permitted uses are as follows: 1.) Accessory dwelling; 2.) Accessory uses, buildings, or structures; 3.) Family day care; 4.) Single-family dwellings; 5.) Utility infrastructure facilities; and, as a conditional use, requiring City approval, 6.) Private yacht basins. *Id.* Therefore, because only expressly stated uses are permitted and short-term rentals are not expressly permitted, short-term rentals are a prohibited use. Thus, any short-term rental of property located in an SFR District is a violation of the City Zoning Code.

Moreover, the longstanding principle of *expressio unius est exclusion alterius* – the mention of one thing implies the exclusion of another- implies that because the City Commission expressly permitted certain uses, all other uses are necessarily prohibited. See *Osborne v. Dumoulin*, 55 So. 3d 577, 587 (Fla. 2011); *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So. 2d 898, 900 (Fla. 1996); *Subirats v. Fidelity Nat. Property*, 106 So. 3d 997, 1000 (Fla. 3d DCA 2013). The Florida Supreme Court recently affirmed this principle. *Osborne*, 55 So. 3d 577 at 587. In *Osborne* the court held that the express limitations of the Homestead Exemption Benefits, as set forth in Florida State Statute § 222.25(4) necessarily excluded other constitutional and statutory tax exemptions related to an individual's Homestead. *Osborne*, 55 so. 3d. at 587. There, the court analyzed the tax benefits expressed in Section 222.25(4). The court explained:

Section 222.25(4) expressly states that the "benefits" are those of the homestead exemption of article X, section 4 of this state's constitution. As we have previously stated, with three express exceptions this constitutional homestead

exemption protects a person's homestead against forced sale and levy. Thus, the protection of the homestead from creditors constitutes the *only* "benefits" of the article X homestead exemption. The express limitation of "benefits" to this constitutional provision necessarily excludes other constitutional or statutory tax exemptions related to one's homestead.

Id. at 586-87(citations omitted) (emphasis added). Therefore, when a governmental entity expressly provides for one thing, all others must be excluded. Thus, because the City Commission provided permitted uses in an SFR District, any use not expressed is necessarily excluded. Therefore, short-term rentals are not permitted uses.

Lastly, short-term rentals are expressly permitted in other Zoning districts. City of Coral Gables, Fla., Zoning Code Article IV, Table No. 1. Specifically, overnight accommodations and bed & breakfasts are expressly, and exclusively, permitted in Mixed-Use, Industrial, and Commercial districts. *Id.* When analyzing overnight accommodations and bed & breakfasts it becomes evident that these are short-term rentals.

Indeed, overnight accommodations are defined by the Zoning Code as "a building or portion thereof designed and used primarily to provide sleeping accommodations for *transient guests for a daily or weekly rental charge* and including interval ownership and such office, meeting, restaurant facilities as are integral to the primary function of the use." City of Coral Gables, Fla., Zoning Code Article VIII (emphasis added). Similarly, a bed & breakfast accommodation is defined by Article VIII as "a transient lodging establishment, primarily engaged in providing *overnight accommodations* for the general public." *Id.* (emphasis added). Thus, both overnight accommodations and bed & breakfast are contemplated as temporary, short-term rentals. Therefore, given that the City's Zoning Code expressly permits short-term rentals in Mixed-Use, Industrial, and Commercial districts, while omitting short-term rentals from SFR Districts, it follows that short-term rentals are prohibited uses in an SFR District.

III. SPECIAL MASTERS ARE AUTHORIZED TO ORDER AND ENSURE COMPLIANCE WITH ALL CITY CODES

Special Masters are authorized to order, and ensure, compliance with all City Codes pursuant to the City's Municipal Code and Florida Statutes. Under the Article VI, section 101-186(n) of the Coral Gables Code of Ordinances, the Special Masters are tasked with administering and conducting code violation hearings. City of Coral Gables, Municipal Code, Chapter 101, Article VI, § 101-186(n). Specifically, Section 101-186(n) states that the Special Master has the power to:

- (1) Adopt procedures for the conduct of hearings;
- (2) Subpoena alleged violators and witnesses for hearings; subpoenas may be served by the police department or by the staff of the hearing officer;
- (3) Subpoena evidence;
- (4) Take testimony under oath; and
- (5) Assess and order the payment of civil penalties as provided herein.

Id. The Special Masters' authority, furthermore, is expanded pursuant to Florida Statute §162.03. Expressly, the Special Masters have the same authority as a Code Enforcement Board member. Fla. Stat. § 162.03. Indeed,

A charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. *A special magistrate shall have the same status as an enforcement board under this chapter.*

The City's Code Enforcement Board has express authority to require compliance with the City Code's. City of Coral Gables, Municipal Code, Chapter 101, Article VI, Section 101-162(5). Pursuant to Article VI, section 101-162(5) of the City Code, "the code enforcement board shall have the power to... issue orders having the force of law *commanding whatever steps are necessary to bring a violation into compliance.*" *Id.* (emphasis added). Therefore, because the Special Masters have the same authority as the Code Enforcement Board, and the Code Enforcement Board has the power to order compliance with all City Codes, the Special Masters have the same authority to order compliance.

IV. SECTION 4-101 OF THE CITY ZONING CODE IS EXCLUDED FROM FLORIDA STATUTES SECTION 509.032(7)(b)

The Florida Legislature enacted Florida Statute Section 509.032 in 2013 relating to the local regulation of vacation rental properties. Specifically, § 509.032(7)(b) states that 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." Fla. Stat. § 509.032(7)(b). The City, however, is not governed by this Statute.

Indeed, Section 509.032(7)(b) goes on to state that, "[t]his paragraph *does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.*" *Id.* (emphasis added). The Coral Gables Single-Family District Ordinance was initially created on January 1, 2006. Moreover, the latest amendment to the Single-Family District Ordinance was June 1, 2010. Therefore, since the ordinance was adopted before June 1, 2011, the City's provision is expressly exempt from § 509.032(7)(b).

CONCLUSION

As explained above, pursuant to Article VI, Section 101-182(d) of the City's Municipal Code, the City Attorney shall act as General Counsel to the Special Masters, City of Coral Gables, Fla., Municipal Code § 101-182(d)(2006), Section 4-101(A) of the City Zoning Code precludes the short-term rentals of residential property located within the SFRD, City of Coral Gables, Fla., Zoning Code § 4-101 (A), finally, pursuant to Florida State Statute Section 162.03, Special Masters have authority to order and ensure compliance with the City Codes, Fla. Stat. § 162.03. If you have any questions and/or concerns, please feel free to contact me.

MEMORANDUM

To: Paul R. Stanton, Special Master

From: Yaneris Figueroa, Special Counsel (with assistance from Moises Saltiel, Legal Intern)

Date: December 5, 2013

Re: Short-term rentals of single-family dwellings within the Single-Family Residential District, and the authority of the Special Masters in issuing an order commanding compliance with a zoning code ordinance.

Approved and Adopted by: Craig E. Leen, City Attorney and Bridgette N. Thornton, Deputy City Attorney

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