

IN THE CIRCUIT COURT OF THE 12<sup>th</sup> JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA

STEPHEN E. MILO; SARA MILO;  
DAMARIS MILO; VENICE SUNSHINE, LLC,  
A Florida Limited Liability Company; Case No.:  
ALAN EVANS; CECILIA R. EVANS;  
VENICE REAL ESTATE INVESTORS, LLC,  
A Florida Limited Liability Company; VENICE HSD, LLC,  
A Florida Limited Liability Company;  
VENICE BEACH INVESTORS, LLC,  
A Florida Limited Liability Company;  
DANIEL JAY COHEN, VACATION RENTAL  
PROS PROPERTY MANAGEMENT LLC,  
A Florida Limited Liability Company,

Petitioners/Plaintiffs,

v.

CITY OF VENICE, a Florida municipality;

Respondent/Defendant.

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**PETITION SEEKING WRIT OF CERTIORARI AND/OR  
DECLARATORY RELIEF, INJUNCTIVE RELIEF AND  
COMPLAINT FOR DAMAGES**

COMES NOW the Petitioners/Plaintiffs, STEPHEN P. MILO, SARA MILO, DAMARIS MILO, VENICE SUNSHINE, LLC, A Florida Limited Liability Company, ALAN EVANS, CECILIA R. EVANS, VENICE REAL ESTATE INVESTORS, LLC, A Florida Limited Liability Company, VENICE HSD, LLC, A Florida Limited Liability Company, VENICE BEACH INVESTORS, LLC, A Florida Limited Liability Company,

DANIEL JAY COHEN, and VACATION RENTAL PROS PROPERTY MANAGEMENT LLC, A Florida Limited Liability Company, by and through their undersigned counsel, and hereby file their Petition Seeking Writ of Certiorari, Declaratory Relief, Injunctive Relief (hereinafter “Petition”) and Complaint for Damages against Respondent/Defendant CITY OF VENICE, a Florida municipality, and allege as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Petitioners/Plaintiffs, STEPHEN MILO, an individual; SARA MILO, an individual; DAMARIS MILO, an individual; VENICE SUNSHINE, LLC, ALAN EVANS, an individual; CECILIA R. EVANS, an individual; VENICE REAL ESTATE INVESTORS, LLC, VENICE HSD, LLC, VENICE BEACH INVESTORS, LLC, and DANIEL JAY COHEN, an individual, (hereinafter “PETITIONERS) are owners of certain real property located in the City of Venice, Florida.

2. Plaintiff VACATION RENTAL PROS PROPERTY MANAGEMENT LLC, is a Florida limited liability company (hereinafter “VRP”).

3. Defendant, City of Venice (hereinafter, the “CITY”), at all times material, was and is a Florida municipality and subject to the jurisdiction of this Court.

4. Martin Black (hereinafter “BLACK”) is the City Manager of the CITY.

5. Tom Slaughter (hereinafter “SLAUGHTER”) is the Planning and Zoning Director for the CITY.

6. Robert Anderson (hereinafter “ANDERSON”) is the City Attorney for the CITY. Throughout the course of the events set forth in this Petition, ANDERSON assumed the following roles: City Attorney, representative of the Planning Commission for the May 1, 2007 Appeal, representative of the City Council for the December 11, 2007 Appeal and concurred with the August 2, 2006 Zoning Determination of SLAUGHTER.

7. Merle Graser is former mayor of the CITY and was a party to the December 11, 2007 Appeal to the City Council.

8. Marilyn Hollowell is a property owner in the City of Venice and was a party to the December 11, 2007 Appeal to the City Council.

9. Venue is proper in this court in that the real property at issue is located in Sarasota County, Florida, and the claims at issue arose in Sarasota County, Florida.

## **BACKGROUND**

10. PETITIONERS are filing herewith an Appendix in support of this Petition. Citations to this Appendix will be referred to as (Pet. App. §\_\_\_).

11. Plaintiffs/Petitioner STEPHEN MILO and SARA MILO at all times material were and are the owners of real property within the city limits of the City of Venice, Florida, as follows:

- a. the real property located at 100 Aurora Street West, Venice, Florida.
- b. the real property located at 301 Harbor Drive South, Venice, Florida.
- c. the real property located at 507 Sante Joseph Drive, Venice, Florida.

12. Plaintiffs/Petitioner STEPHEN MILO, SARA MILO and DAMARIS MILO at all times material were and are the owners of real property within the city limits of the City of Venice, Florida, located at 405 Villas Drive, Venice, Florida.

13. Plaintiffs/Petitioner VENICE SUNSHINE, LLC, a Florida Limited Liability Company, at all times material was and is the owner of

real property within the city limits of the City of Venice, Florida, as follows: the real property located at 312 Parkdale Drive, Venice, Florida.

14. Plaintiffs/Petitioner ALAN EVANS and CECILIA R. EVANS at all times material were and are the owners of real property within the city limits of the City of Venice, Florida, located at 328 Bayshore Drive, Venice, Florida.

15. Plaintiffs/Petitioner VENICE REAL ESTATE INVESTORS, LLC, Florida Limited Liability Company, at all times material was and is the owner of real property within the city limits of the City of Venice, Florida, located at 433 Baycrest Drive, Venice, Florida.

16. Plaintiffs/Petitioner VENICE HSD, LLC, Florida Limited Liability Company, at all times material was and is the owner of real property within the city limits of the City of Venice, Florida, as follows:

- a. the real property located at 938 Rialto Drive, Venice, Florida.
- b. the real property located at 604/606 Harbor Drive South, Venice, Florida.

17. Plaintiffs/Petitioner VENICE BEACH INVESTORS, LLC, Florida Limited Liability Company, at all times material was and is the

owner of real property within the city limits of the City of Venice, Florida,  
as follows:

- a. the real property located at 424 Baycrest Drive, Venice,  
Florida.
- b. the real property located at 707 Golden Beach Blvd.,  
Venice, Florida.

18. Plaintiffs/Petitioner DANIEL JAY COHEN at all times  
material was and is the owner of the real property within the city limits of  
the City of Venice, Florida, located at 601 Laguna Drive, Venice, Florida.

19. The PETITIONERS properties as identified in foregoing  
paragraphs will hereinafter be collectively referred to as the “Properties”.

20. Plaintiff VRP advertises and manages the Properties for rental  
and has entered into rental contracts on behalf of PETITIONERS for the  
rental of the Properties. VRP requires written contracts for the rental of the  
Properties, does not rent individual rooms and requires a four (4) night  
minimum stay. The contracts require that the use be for residential purposes  
and not for business or commercial purposes. (Pet.App.§20 (Exhibit 23)).

**a. The Properties**

21. The CITY has adopted a Land Development Code, Chapter 86. The Land Development Code of the City of Venice shall hereinafter be referred to as “CITY Ordinance”.

22. The Properties are residences properly located within the Residential, Single –Family (RSF) zoning district in the City of Venice, Florida. CITY Ordinance, Section 86-81.

23. PETITIONERS purchased the Properties with the reasonable investment backed expectation that they could rent the Properties without restriction on duration of rental.

24. An outgrowth of the tourist industry has traditionally included private homes rented to tourists on a weekly or monthly basis. Many tourists desire a “home-like” atmosphere for their vacation destination. The rental of the single family residences provides an economic benefit to the CITY, including the payment of taxes to the CITY, the promotion of tourism which makes up a large part of the CITY’s economy and the providing of a revenue stream for local merchants. The rental of single family residences also allows people to travel and visit locations that they may not otherwise be able to visit.

25. At the time the PETITIONERS purchased the Properties, the CITY did not have any restrictions on the duration of rentals of a single family residence located in the RSF district. Since 2004, PETITIONERS have been legally renting the Properties. The rentals include weekly rentals and also include extended seasonal rentals.

26. PETITIONERS, from the time of the purchase of the Properties until the time of the issuance of the August 2, 2006 Zoning Determination, were peacefully and lawfully renting the Properties.

27. All taxes, including property and sales tax, have been paid by PETITIONERS for the Properties.

28. No code enforcement citations, police citations or reports have been issued by the CITY regarding any of the Properties.

29. PETITIONERS have obtained all necessary licenses to comply with the Florida Statutes and have obtained the necessary local licenses, including occupational licenses.

30. The State of Florida, pursuant to Chapter 509 of the Florida Statutes, requires that properties that are rented to guests for more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, be licensed. The licensure requirements of the State of Florida are simply to provide for the safety of guests and do not constitute a

change in use. Any person who rents a residential property on a monthly basis in the City of Venice would be required to have a state license, regardless of whether it was for a vacation rental or not.

31. Fla.Stat. § 509.013(4)(a) defines “Public lodging establishment” as “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. License classifications of public lodging establishments, and the definitions thereof, are set out in §509.242.”

32. Fla.Stat. §509.242(1)(g) defines “Resort dwelling” as “any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit which is rented more than three times in a calendar year for period of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

33. Fla.Stat. §509.241 requires that properties which qualify as resort dwellings obtain a license from the Department of Business and

34. The CITY has never adopted any of the definitions set forth in Fla.Stat. §509.013 or §509.242, nor are any of these definitions set forth in the CITY's comprehensive plan.

35. The CITY Ordinance, Section 86-570, contains the following definitions:

*Family* - one or more persons occupying a single dwelling unit. The term "family" shall not be construed to mean fraternity, sorority, club, commune, monastery or convent, or institutional group.

*Dwelling, general* – means any building, or part thereof, occupied, in whole or in part, as the residence, living quarters of one or more persons, permanently or temporarily, continuously or transiently, with cooking and sanitary facilities.

*Dwelling, one family or single family* means a building containing only one dwelling unit. For regulatory purposes, the term 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.

*Dwelling Unit* means a single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

36. The Properties meet the definitions set forth in paragraph 35.

37. There is no restriction forth in the CITY Ordinance for the duration of rental of a property located in the RSF district.

38. In December 2005, based on pressure from some members of the Golden Beach Homeowners Association, Inc., a voluntary homeowners association in the CITY, who complained at a public meeting to the CITY about duration rentals of residential property within the Golden Beach neighborhood, Planning and Zoning conducted a review of the methods of dealing with rental issues; differences between rental categories; examined zoning districts and permitted uses; obtained the input from proponents and opponents of restricting short-term rentals; reviewed the frequency of rentals, rental signage, commercial activities in residential districts and reviewed the CITY Ordinance. (Pet. App. § 1)

**b. The CITY Plans to Regulate the Duration of Rental**

39. In January 2006, BLACK advised the CITY that specific definitions needed to be added to the CITY Ordinance to regulate duration

of rentals. BLACK advised the CITY that SLAUGHTER would develop recommendations for presentation to the CITY. (Pet. App. § 2)

40. In February 2006, the CITY was researching options for regulation of rentals without affecting property rights. (Pet. App. § 3)

41. In May 2006, BLACK advised the CITY that any changes relating to duration of rentals would require an amendment to the CITY Ordinance. (Pet. App. § 4)

42. In July 2006, SLAUGHTER, advised BLACK that rentals in residential districts were currently an unregulated activity and that the Planning and Zoning staff was unaware of either the volume or frequency of rentals. (Pet. App. § 5)

43. In July 2006, SLAUGHTER, directed his staff to develop an ordinance which specifically restricted the duration of rentals of residential dwellings within single family residential zoning districts; confirm that public lodging establishments are a land use activity that is not appropriate for single-family residential districts; make property owners aware of state laws which require safety improvements and inspections to single family structures engaged in public lodging establishment activities and confirm the existing safeguards and restrictions provided by the CITY to enforce

community standards for healthy and safe single-family neighborhoods.

(Pet. App. §5)

44. In July 2006, SLAUGHTER directed his staff to prepare a rental ordinance which would restrict the rental of single family residences for a period of 30 consecutive days or less. (Pet. App. § 5)

45. On July 11, 2006, SLAUGHTER made a presentation to the CITY which included a model duration of rental restriction that included various zoning changes. In his presentation, SLAUGHTER recognized concerns with the adoption of his recommended restrictions because the restrictions could result in private property right challenges, the possibility of creation of non-conforming uses, new imposition of costly administrative procedures; and possible over-regulation of police code enforcement activity since there had been no reported incidents by staff. SLAUGHTER questioned whether a citywide restriction ordinance was even appropriate. (Pet. App. § 6)

46. In July 2006, BLACK advised that the CITY Ordinance did not presently regulate public lodging establishments as defined by the Florida Statutes. (Pet. App. § 7)

**c. The Targeting of PETITIONERS by the CITY**

47. The CITY Mayor, Fred Hammett, without any basis, decided that the duration of rentals was of critical public concern and requested that the CITY take action. (Pet. App. § 8)

48. In response to the directive issued by the Mayor, in the latter part of July, 2006 BLACK, directed the Building Official and Fire Marshal to review their inspections, directed that the Florida Division of Hotels and Restaurants be contacted to inspect all public lodging establishments within the CITY, directed the Building and Fire Marshal to take any lawful means necessary to ensure that the properties were not utilized as public lodging establishments until any deficiencies that may threaten public health, safety and welfare were corrected; and directed code enforcement officers to review all resort lodging rentals that have been identified to verify that they are in full compliance with all applicable provisions of the City Sign Regulation and Vehicle Parking Area. (Pet. App. § 9)

49. In these directions, BLACK prepared a list of properties for inspection. The list of properties provided by BLACK only contained the addresses of the PETITIONERS' Properties. Notwithstanding that he had received communications from other residents who had advised that they

were involved in rentals of their properties, including the current Mayor, as well as other persons well known to BLACK, he specifically targeted the PETITIONERS. (Pet. App. § 9)

50. Not surprising, that after the investigation by the CITY which was specifically targeted at PETITIONERS' property, it was revealed that none of the PETITIONERS properties had received any citations from the CITY regarding noise, trash or parking problems and that PETITIONERS were in compliance with the state licensing requirements set forth in the Chapter 509 and the local occupational licensing requirements.

**d. The Zoning Determination**

51. At the end of July 2006, SLAUGHTER issued a memorandum regarding his analysis of the duration of rentals in RSF districts and represented that "the Planning and Zoning Department was unable to provide a zoning determination as to the consistency of short-term rental activity as it relates to permitted uses with single-family districts." (Pet. App. § 10)

52. On July 24, 2006, after SLAUGHTER issued his July 2006 memorandum, advising that he was unable to issue a zoning determination, a meeting occurred with SLAUGHTER, ANDERSON and BLACK. The result of this meeting was that SLAUGHTER reversed the opinion of his

July 2006 memorandum and all previous opinions of BLACK and SLAUGHTER.

53. BLACK then issued a memorandum to SLAUGHTER and ANDERSON requesting that they issue a zoning determination to clarify whether the certain uses defined in Section 509 of the Florida Statutes are permitted as principal special exception uses in RSF and RMF (multi-family, residential) zoning districts. (Pet. App. § 11)

54. During that same time, Mayor Hammett wanted to make sure that any rentals in the CITY were only rented to a “traditional family”. (Pet. App. § 12)

55. On August 2, 2006, the CITY, by and through SLAUGHTER, issued a Zoning Determination Letter pursuant to CITY Ordinance, Section 86-22, entitled “Zoning Analysis of Short-term Rental of Single-family Residences,” (hereinafter “ZONING DETERMINATION”), which reversed his July 2006 memorandum. (Pet. App. § 13) In the ZONING DETERMINATION, SLAUGHTER reached the following conclusions:

- a. The terms “single family dwelling” as described in the Venice Zoning Code, and “resort dwelling” as described in Florida Statutes, are not considered to be synonymous and are prescribed to have different meanings as it relates to

describing and defining “use” within the CITY’s regulatory scheme.

- b. Use of a single family dwelling unit for “resort dwelling” use, as defined in Florida Statutes under the Public Lodging Establishment definition, is not a permitted principal use within the Residential, Single-Family (RSF) zoning districts.
- c. The intent statement describing the single-family residential characteristics of the Residential, Single-Family (RSF) districts highlights its focus on low-density and low-intensity uses and when read in concert with the definition of one-family or two-family dwelling, clearly prohibits temporary housing.
- d. Pursuant to the definition of “resort dwellings” in Chapter 509, Florida Statute, resort dwellings are temporary uses of one-family, two-family, three-family or four-family dwelling units, and therefore, they are inconsistent with the intent statement of the Residential, Single-Family (RSF) and the specific limitations of the definition of permitted one-family and two-family dwelling units for temporary occupancy.

- e. Subject to the terms and conditions of the Florida Statutes and the CITY Ordinance, Resort Dwellings, are a permitted principal use by right or through special exception within the Commercial Mix-Use (CMU), Commercial, Business District (CBD), (CHI), Residential, Tourist Resort (RTR), and Venetian Urban Design (VUD), zoning districts.
- f. The duration and frequency of rental of a single-family dwelling unit within Residential, Single-Family (RSF) zoning districts 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.

56. Prior to the ZONING DETERMINATION, the consistent recommendation of the CITY was to amend the CITY Ordinance, because the existing CITY Ordinance did not regulate the duration of rentals of residences in the RSF district. It was only after the July 24, 2006 meeting and after the directive from the Mayor that the “new” ZONING DETERMINATION was issued.

57. The conclusion reached in the ZONING DETERMINATION is based on flawed reasoning that the duration of rental of a single family

residence and compliance with Chapter 509 of the Florida Statutes, impermissibly changed the zoning classification of the residence.

**e. PETITIONERS Appeal the ZONING DETERMINATION**

58. On August 14, 2006, pursuant to CITY Ordinance, Section 86-23(j), PETITIONERS filed an Appeal of the ZONING DETERMINATION to the Planning Commission. (Pet. App. § 15).

59. PETITIONERS also requested a stay pursuant to CITY Ordinance, Section 86-23(k), of any proceedings in furtherance of the enforcement of the ZONING DETERMINATION. (Pet. App. §15) The CITY stayed enforcement pending the appeal. The CITY has advised that they will no longer agree to a voluntary stay of enforcement.

60. On or about September 5, 2006, Merle Graser attempted to intervene in the Appeal. ANDERSON denied the request for intervention determining that only SLAUGHTER and PETITIONERS were the proper parties to the Appeal. (Pet. App. § 16)

61. On May 1, 2007, PETITIONERS' Appeal of the ZONING DETERMINATION was held before the Planning Commission. (Pet. App. §18) ANDERSON, on an *ad hoc* basis, created a procedure for the May 1, 2007 Appeal which was adopted by the Planning Commission. (Pet. App. § 17) SLAUGHTER made a presentation followed by a presentation by

PETITIONERS. The presentation of PETITIONERS included a presentation by PETITIONERS counsel, Daniel Mandelker, a professor of law and an authority on local government land use regulation and Richard W. Bass, a MAI real estate appraiser and real estate broker, who presented information to the CITY regarding the potential damages that would be sustained by PETITIONERS. SLAUGHTER was permitted to make a closing statement followed by a closing statement of PETITIONERS. SLAUGHTER submitted materials to the Planning Commission. (Pet. App. § 19). The PETITIONERS submitted a Position Statement and supporting Exhibits. (Pet. App. § 20) Public Comments were not permitted. (Pet. App. § 46)

62. Because the Planning Commission needed time to review the materials submitted by the PETITIONERS and SLAUGHTER, a second hearing was scheduled. On May 16, 2007, the Planning Commission, after consideration of the presentations made by SLAUGHTER and PETITIONERS, consideration of the materials submitted by SLAUGHTER and PETITIONERS, making inquiring to the parties and deliberations, unanimously overturned the ZONING DETERMINATION. (Pet. App. §21 and 47).

**f. The CITY Appeals the Planning Commission Decision**

63. On May 17, 2007, pursuant to CITY Ordinance, Section 86-21, the CITY, through BLACK, filed an Appeal of the Planning Commission Decision to the Venice City Council. (Pet. App. § 22)

64. Marilyn Hollowell, Golden Beach Associates, Inc. and Merle Grazer also appealed the decision of the Planning Commission. (Pet. App. § 23-25) Hollowell, Golden Beach Associates and Grazer were not parties to the May 1, 2007 Appeal before the Planning Commission nor did the CITY allow any party to intervene in the Appeal before the Planning Commission, despite Graser's attempts to intervene. (Pet. App. § 16)

65. PETITIONERS objected to the Appeals of Marilyn Hollowell, Golden Beach Associates and Merle Grazer on the grounds that they lacked standing to pursue an appeal before the City Council because they were not aggrieved persons. (Pet. App. § 26-28).

66. ANDERSON, in his role as City Attorney, requested that the parties submitted memorandum of law regarding the issue of standing. (Pet.Att. §29-30) ANDERSON then determined that Golden Beach Associates did not have standing to appeal the May 16, 2007 Decision of

Planning and Zoning but that Marilyn Hollowell and Merle Graser did have standing to appeal as they were aggrieved parties. (Pet. App. § 31)

67. On September 12, 2007, Plaintiffs filed a Request for Reconsideration of the Decision by ANDERSON that Merle Graser and Marilyn Hollowell had standing to Appeal. (Pet. App. § 32). The Request for Reconsideration was based on CITY Ordinance, Section 86-21(b)(1) which provided that “Any final decision rendered by a city board or commission in accordance with the land development code may be appealed by the City or any person aggrieved by the decision to the City Council as provided for herein.” (Emphasis added). Pursuant to CITY Ordinance, Section 86-21, either the City or any person aggrieved by the decision may appeal. PETITIONERS asserted that Graser and Hollowell were not aggrieved persons, but even if they were, CITY Ordinance, Section 86-21 does not provide for a situation wherein both the CITY and an aggrieved person appeal. (Pet. App. § 32)

68. PETITIONERS filed a request that ANDERSON conduct additional inquiries into possible conflicts of interest of the City Council. (Pet. App. § 33). Additional conflict checks were performed. However, ANDERSON never asked whether any council member was a past or present board member of Golden Beach Associates, Inc. (Pet. App. §42).

69. PETITIONERS filed a request that the ANDERSON recuse himself from his representation of the City Council on the grounds that the ANDERSON was actively involved in the rental issue, had concurred with the ZONING DETERMINATION and had represented the Planning Commission for the May 1, 2007 Appeal of the ZONING DETERMINATION and was now representing the City Council for the Appeal of the Planning Commission Decision. (Pet. App. § 34).

70. On or about November 16, 2007, the ANDERSON denied the Request for Reconsideration and denied the Request for Recusal. (Pet. App. § 40)

71. On or about October 31, 2007, ANDERSON, for the first time, proposed a procedure for the Appeal to the City Council, as the CITY Ordinance did not provide for an appellate procedure or define *de novo* review. ANDERSON then submitted a revised proposed procedure. On or about December 3, 2007, ANDERSON submitted a final procedure for the Appeal to the City Council. (Pet. App. § 36).

72. PETITIONERS and the other parties to the Appeal submitted objections and/or comments to the proposed procedure of ANDERSON. (Pet. App. §37-39, 40)

**g. The Appeal before the City Council**

73. On December 11, 2007, the Appeal of the May 16, 2007 Decision of Planning Commission was heard by the City Council, sitting in its quasi-judicial capacity. (Pet. App. § 35) The CITY, at the hearing, adopted all of ANDERSON's previous rulings and his final proposed procedure. (Pet.App. §48)

74. Despite the CITY Ordinance providing for the review to be *de novo* and providing that there not be any material alteration to the petition below, the CITY allowed new material that was not before the Planning Commission. The CITY was permitted to introduce the report of an expert who came to the same conclusion as SLAUGHTER but reached the conclusion differently than SLAUGHTER. (Pet. App. § 44, 48) The CITY permitted one of the attorneys for the other parties to the Appeal to provide information to the CITY about rentals of PETITIONERS properties. (Pet. App. § 48)

75. Following the December 11, 2007 hearing, on December 13, 2007, the Mayor signed a Decision to overturn the May 16, 2007 Decision of Planning Commission and to uphold the ZONING DETERMINATION. (Pet. App. § 45). This Decision was filed with the City Clerk on or about December 21, 2007.

76. There has been a significant lack of procedures by the CITY to govern these types of appeals. The appellate procedures were created on an *ad hoc* basis by ANDERSON and it was not until the day of the appeal that the procedures that were used were actually adopted by the CITY. By not having proper procedures in place, the CITY did not conduct a *de novo* review of the Planning Commission Decision and improperly considered new material. PETITIONERS were not afforded procedural due process. Because of this lack of proper procedures and the consideration of new material, PETITIONERS were prejudiced and would be prejudiced if the Court determined that the matter be placed before the CITY with proper procedures in place.

77. PETITIONERS have exhausted any and all administrative remedies available to them with respect to all claims presented by this Petition.

78. All conditions precedent to each of the claims brought by PETITIONERS in this Petition have been satisfied or waived.

79. The claims pleaded in this Petition are also pleaded in the alternative.

## COUNT I

### **PETITION FOR WRIT OF CERTIORARI**

**(Appeal Pursuant to Florida Rule of Appellate Procedure §9.100 and §9.030(c)(3) and Florida Rules of Civil Procedure 1.630(b)).**

80. PETITIONERS incorporate by reference paragraphs 1 through 79 above as if fully set forth herein.

81. This is an action brought by PETITIONERS against CITY seeking a common law Writ of Certiorari pursuant to Florida Rules of Appellate Procedure §9.100 and §9.030(c)(3) and Fla.R.Civ.P. 1.630(b). An Appendix applicable to these proceedings is being filed simultaneously herewith and by reference is made a part hereof.

82. This Court has jurisdiction over this matter. PETITIONERS Petition for Writ of Certiorari must be granted because the CITY's December 13, 2007 Decision reversing the May 16, 2007 Decision of the Planning Commission and reinstating the erroneous ZONING DETERMINATION is in error and is a misapplication of the law. When a lower tribunal misapplies the law, a petition for writ of certiorari must be granted. See *Colonial Apartments, L.P. v. City of Deland*, 577 So.2d 593 (Fla. 5<sup>th</sup> DCA 1991); and *Quadrangle* 780 So.2d 994. See also *City of Tampa v. City National Bank of Florida*, 2007 Fla. App. LEXIS 7936.

83. The ZONING DETERMINATION deprives PETITIONERS of certain constitutional rights, constitutes an abuse of discretion and is neither supported by facts, laws or custom and practice.

84. Based on the clear language of the CITY Ordinance, the ZONING DETERMINATION is improper and in error. The ultimate effect of the ZONING DETERMINATION is to amend the CITY Ordinance as to how the CITY would like it to read, not how they actually read. This type of action has been disapproved by the Florida Courts. See *Ocean Edge Development Corp. v. Town of Juno Beach*, 430 So.2d 472, 475 (Fla. 4<sup>th</sup> DCA), *review denied*, 436 So.2d 101 (Fla. 1983), wherein the 4<sup>th</sup> District Court of Appeal overturned the trial court on the basis that: “The effect of the trial court’s decision was to amend the ordinance as the town would have liked it to read, not as it read.” *Id* at 475.

85. It is well established in Florida that a statute or ordinance must be given its plain and obvious meaning. See *Ocean’s Edge Development Corp. v. Town of Juno Beach*, 430 So.2d at 475 (Fla. 4<sup>th</sup> DCA), *review denied*, 436 So.2d 101 (Fla. 1983) (quoting *Rinker Materials Corp v. City of North Miami*, 286 So.2d 552, 553 (Fla. 1973)). The Fourth District Court of Appeal in *City of Hallandale v Prospect Hall College, Inc.*, 414 So.2d 239, 240 (Fla. 4<sup>th</sup> DCA 1982) found that: “Since zoning regulations are in

derogation of private ownership rights, general zoning law provides that zoning ordinances are to be construed broadly in favor of the property owner absent clear intent to the contrary. 7 Fla.Jur.2d *Building, Zoning and Land Controls* §59 (1978).” The premise espoused by the Fourth District Court of Appeal in *City of Hallandale* was followed by the court in *Ocean’s Edge Development Corp. v. Town of Juno Beach*, 430 So.2d 472: “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.”

86. Municipal Ordinances are subject to the same rules of construction as are state statutes. See *Rose v. Town of Hillsboro Beach*, 216 So.2s 258 (Fla.App.4<sup>th</sup> 1968); *Jacksonville v. Ledwith*, 26 Fla. 163, 7 So. 885 (Fla. 1890). *Rose* also stands for the substantive proposition 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. See also *Brooks v. Anastasia Mosquito Control District* 148 So.2d 64 (Fla.App.1<sup>st</sup> 1963).

87. The CITY, through the ZONING DETERMINATION, erroneously takes the position that Section 509.013(4)(a) of the Florida Statutes which defines “public lodging establishments” has some effect on the zoning classifications of the RSF neighborhoods. There is no definition of “public lodging establishment” within the CITY Ordinance or any definition of “resort dwelling” within the CITY Ordinance. Despite the lack of definition in the CITY Ordinance, the CITY, through the ZONING DETERMINATION, determined that the licensure requirements of the state changes the nature of the use of the single-family residence.

88. There is no legal support for the CITY’s position that duration of rental and compliance with safety regulations of Chapter 509, Florida Statutes, changes the classification of the residential property within the CITY Ordinance.

89. The Florida Department of Business and Professional Regulation acknowledged that the licensing requirements are fire safety and sanitation requirements and not zoning changes. (Pet.App.§ 14)

90. The CITY has concluded that “resort dwelling” and “single family dwelling” are not synonymous. The CITY can point to no provision of the CITY Ordinance that defines “resort dwelling” or anywhere in the City Ordinance in which the City of Venice adopted the Florida Statute

definition of “resort dwelling” or adopted any of the provisions of Chapter 509 as part of its Zoning Code. The CITY Ordinance is absent any definition of “public lodging establishment”. The CITY Ordinance is silent as to the frequency of rentals of single-family residential properties in the RSF district.

91. In order to prohibit the lawful use of a residential property, which were unregulated by the CITY Ordinance, and solely for the purpose of satisfying the complaints of a few property owners and a former mayor, the CITY “borrowed” the definition of “resort dwelling” and “public lodging establishment” from the licensing requirements under Chapter 509 of the Florida Statutes. Without such adoption, the CITY must look to the clear language of the CITY Ordinance to determine what is prohibited or provided for under the Ordinance.

92. The ZONING DETERMINATION improperly seeks to add definitions to the CITY Ordinance. It is clear by the actions of the CITY, that the CITY is also seeking a change in the definition of family through this ZONING DETERMINATION. Family is defined as one or more persons occupying a single dwelling unit. The term “family” shall not be construed to mean fraternity, sorority, club, commune, monastery or convent, or institutional group. See CITY Ordinance, Section 86-570. The

CITY's true motive in this process was to have only traditional families rent properties in the City of Venice. The real purpose of the ZONING DETERMINATION is to prevent certain people who rent on a short-term basis from renting the properties, even though those individuals would meet the definition of family, as currently defined, under the CITY Ordinance.

93. This action of the CITY has specifically been rejected by the Courts of the United States. In *Kirsch Holding Co. v. Borough of Manasquan*, 59 N.J. 241 (1971), the court invalidated ordinances in two shore communities that restrictively defined "family" and prohibited seasonal rentals by unrelated persons. The court held that the challenged ordinances "preclude so many harmless dwelling uses...that they must be held to be so sweepingly excessive, and therefore, legally unreasonable that they must fail in their entirety." *Id* at 251-252. In further notation, the *Kirsch* court, like here in the City of Venice, found that "until fairly recent years, summer dwelling occupancy had been largely by conventional family units who generally rented the accommodation for a month or the entire season" *Id* at 244. Some of the rentals by the PETITIONERS are for those seasons in addition to weekly rentals during the remainder time.

The New Jersey Supreme Court in *Borough of Glassboro v. Vallorosi*, 117 N.J. 421 (1990) noted that the courts in New Jersey have "consistently

invalidated zoning ordinances intended to “cure or prevent...anti-social conduct in dwelling situations.” *Kirsch Holding Co. v. Borough of Manasquan*, 59 N.J. 241, 253-54 (1971). We have insisted that the municipal power to adopt zoning regulations be reasonably exercised; they may be neither unreasonable, arbitrary nor capricious. The District Courts have consistently found that property rights cannot be arbitrarily taken away by the capricious actions of city government. *Rollison v. City of Key West*, 875 So.2d 659 (Fla. 3<sup>rd</sup> DCA 2004).

94. If the CITY desires a different meaning for the CITY Ordinance in the future, it may amend, modify, or change the same by Legislative process. See *Ocean’s Edge Development Corp. vs. Town of Juno Beach*, 430 So.2d 472 (Fla. 4<sup>th</sup> DCA 1983). See also *Belair and Provident Management Corp. v. the City of Treasure Island*, 611 So. 2d 1285 (Fla. 2<sup>nd</sup> DCA 1992).

95. The interpretation set forth in the ZONING DETERMINATION has been overturned by other courts. The Court of Appeals of Utah in *Brown v. Sandy City Board of Adjustment*, 957 P.2d 207 (1998), in dealing with a similar interpretation by Sandy City, overturned the City’s interpretation of city ordinances to prohibit rentals, because duration of use is not a proper zoning classification.

In *Sandy City*, as in this case, the city code never placed an express durational limit on the use of any property. Despite the lack of any express durational limit, Sandy City argued that: “despite the absence of a durational limitation on occupancy of single-family dwellings, short-term leases are prohibited because (1) the Code does not specifically permit short-term leases of property and (2) the short-term lease of residential property is inconsistent with the purposes of residential zoning.” *Brown v. Sandy City Board of Adjustment*, 957 P.2d at 211.

The Court did not accept Sandy City’s argument:

“We are not willing to import such a restriction. The Code does not limit the permitted use by referencing the type of estate the occupying family holds in the property or the duration of the occupancy. Thus, it is irrelevant what type of estate, if any estate at all, the occupying family has in the dwelling, i.e., whether the family holds a fee simple estate, a leasehold estate, a license, or no legal interest in the dwelling. It is equally irrelevant whether the occupying family stays for one year or ten days. The only relevant inquiry is whether the dwelling is being used for occupancy by a single family; if it is, the ordinance has not been violated.” *Brown v. Sandy City Board of Adjustment*, 957 P.2d at 211.

The Court went on to point out that: “Sandy’s argument, taken to its logical conclusion, would mean that the staff could restrict any use without limitation by simply arguing that the use was not one specifically mentioned

in the general permitted use provision.” *Brown v. Sandy City Board of Adjustment*, 957 P.2d at 211.

96. By adopting the ZONING DETERMINATION, the CITY violated Fla. Stat. §166.041(3)(c)(2) which provides that where an ordinance is an effort to change the permitted uses within a residential zoning category, a city is required to hold two advertised public hearings to consider its enactment. The notices under such section are mandated in order to protect interested persons, who are thus given the opportunity to learn of the proposed ordinances, given the time to study the proposals for any negative or positive affects they may have if enacted and give notice so they can attend the hearings and speak out to inform the City Commissions prior to the ordinance enactment. Noncompliance with such provision makes an ordinance invalid. *Coleman v. City of Key West*, 807, So.2d 84 (Fla 3rd DCA 2001). See further *Neumont, et al v. Monroe County, Florida*, 280 F.Supp.2d 1367 (U.S. Dist. So. Dist. 2003). *CF. Neumont v. Florida*, 451 F.3d.1284 (11<sup>th</sup> CIR. 2006).

97. Instead of approaching the duration of rental issue with equality; and conducting research and investigation into rentals on a citywide basis without regard to specific ownership of the property; the CITY, bolstered by a few residents and motivated by political gain, engaged

in a spiteful effort to harm PETITIONERS unrelated to any legitimate objective of the CITY. Where a court is convinced that the legislative decision was made solely to appease neighborhood residents, the decision may be found to be invalid. See Jemison v. City of Kenner, 277 So.2d 728 (LA. Ct. App.), cert. denied, 281 So. 2d 753 (LA. 1973) (where denial of rezoning by the Board of Alderman was substantially based on objections voiced by some of the voters residing in the area and despite recommendations in favor of the rezoning by the city zoning director, the denial was unreasonable, capricious, and arbitrary). See also *Neuman v. Mayor of Baltimore*, 23 Md. App.13, 325 A.2d 146, 148 (1974) ("[z]oning should never be allowed or disallowed on the basis of a plebiscite of the neighborhood"). See also *DeSena v. Gulde*, 24 A.D.2d 165, 265 N.Y.S.2d 239 (1965) (statements by the mayor in the record of the public hearing on the matter indicated that zoning action was taken because of fear of disorder arising from the threat of picketing and demonstrations and resulting economic loss; accordingly, the amendment was invalid because it sought to accomplish a purpose extraneous to those permitted by the zoning enabling act).

98. The CITY has failed to accord procedural due process to PETITIONERS throughout the appellate process with the CITY. The CITY

permitted parties to appeal to the CITY, when it was not permitted by the CITY Ordinances. The CITY failed to adopt proper procedures for its appeal, and instead, chose to adopt the procedures on an *ad hoc* basis and failed to adopt such *ad hoc* procedures until the hearing. The failure of the CITY to have proper procedures resulted in the adopted of procedures which violated the *de novo* standard of review required by the CITY Ordinances. The CITY allowed parties to the appeal to present new materials and considered new materials, which were not before the Planning Commission, in violation of both the CITY Ordinances and the *de novo* standard of review.

99. As a result of the above and because there exists no other adequate remedy, PETITIONERS are entitled to a Writ of Certiorari from this Court finding the ZONING DETERMINATION to be in error, reversing the December 13, 2007 Decision of the CITY and reinstating the May 16, 2007 Decision of the Planning Commission.

WHEREFORE, PETITIONERS respectfully request that this Court grant PETITIONERS the following relief:

(a) Issuance of a Writ of Certiorari that the ZONING DETERMINATION is erroneous;

(b) Issuance of a Writ of Certiorari (with specific instructions to CITY) reversing the CITY's December 13, 2007 Decision and reinstating the May 16, 2007 Decision of the Planning Commission which reversed the ZONING DETERMINATION; and

(c) such further and additional relief as this Court deems just and proper.

## COUNT II

### **PETITION SEEKING DECLARATORY AND INJUNCTIVE RELIEF** **(Based on Facial Invalidity of the ZONING DETERMINATION)**

100. This is an action brought by PETITIONERS against CITY seeking declaratory and injunctive relief pursuant to Fla.Stat. §86.011, et seq.

101. PETITIONERS incorporate by reference paragraphs 1 through 79 above as if fully set forth herein.

102. PETITIONERS contend that:

a. The ZONING DETERMINATION is in error, improper and is not supported by law or fact.

b. There is no restriction in the CITY Ordinance relating to the duration of rental of a single family residence in the RSF district.

c. Compliance with Florida Statutes, Chapter 509, as required, does not constitute a change the use of a residential property or a change in zoning classification.

d. PETITIONERS are lawfully entitled to rent their Property without restriction on duration.

e. The enforcement of the ZONING DETERMINATION violates due process and equal protection under the law. The PETITIONERS were specifically targeted by the CITY. When the CITY conducted an investigation of rentals, only the Properties were investigated, despite the existence of other rental properties within the CITY. Instead of approaching the rental issue with equality and conducting research and investigation into rentals on a citywide basis without regard for who owned the properties, the CITY engaged in an effort to harm PETITIONERS unrelated to any legitimate objective of the CITY.

f. The CITY, by not having proper procedures in place for the appellate process, violated procedural due process.

g. The ZONING DETERMINATION constitutes a taking of the Property; is unconstitutional, void and cannot be applied to PETITIONERS Properties pursuant to the Fifth and Fourteenth

Amendments to the United States Constitution, Article I, Section 2 of the Florida Constitution, and Article I, Section 9 of the Florida Constitution.

h. The procedures adopted by the CITY on an *ad hoc* basis did not comply with the CITY Ordinances, in that they did not comply with the *de novo* standard of review. CITY Ordinance, Section 86-21(b)(4) provides that “The appeal conducted by the city council shall be a *de novo* review. No party may advance at the *de novo* review any material alteration to the application or petition that was ruled upon by the city board or commission below.” The CITY improperly allowed the CITY to introduce an expert report which was not before the Planning Commission and improperly allowed the CITY and other parties to present other materials, including information related the PETITIONERS Properties, that were not before the Planning Commission.

i. the CITY improperly permitted certain parties to participate in the appeal to the CITY who did not have standing to appeal.

103. The CITY contends that it has the lawful right, under the CITY Ordinance, to restrict the rental the duration and frequency of rental of a single-family dwelling unit within Residential, Single-Family (RSF) zoning districts to not more than three rentals in a calendar year for periods of less than 30 days or one calendar month, whichever is less. Any residence that is

rented for more than three times in a calendar year for a period of less than 30 days or one calendar month, whichever is less, is in violation of the CITY Ordinance.

104. As a result of the above dispute, PETITIONERS are in doubt and are uncertain as to their rights regarding the rental of their properties in the CITY. PETITIONERS are entitled to have such doubt and uncertainty removed.

105. Pursuant to Fla.Stat. §86.061, upon a declaration from this Court confirming that PETITIONERS legal position as referenced above is the correct legal position, PETITIONERS will have no adequate remedy at law and are therefore entitled to supplemental relief in the form of a permanent injunction requiring the CITY to cease enforcement of the ZONING DETERMINATION until such time as a determination has been made as to whether the ZONING DETERMINATION is proper.

WHEREFORE, PETITIONERS respectfully request that this Court grant the following relief:

(a) Issuance of a declaratory judgment as follows:

i. declaring that the ZONING DETERMINATION ZONING DETERMINATION is erroneous, void and unenforceable.

ii. declaring that the May 16, 2007 Planning Commission Decision is correct.

iii. declaring that PETITIONERS have the right to rent their Properties without restriction as to duration of rental.

(b) Issuance of a permanent injunction in favor of PETITIONERS and against CITY requiring CITY to cease any enforcement of the ZONING DETERMINATION and to allow PETITIONERS to rent their Properties without any restrictions on duration.

(c) such further and additional relief as this Court deems just and proper.

### **COUNT III**

#### **PETITION SEEKING DECLARATORY AND INJUNCTIVE RELIEF**

106. PETITIONERS incorporate by reference paragraphs 1 through 79 above as if fully set forth herein.

107. This is an action brought by Plaintiff VRP and PETITIONERS against the CITY seeking declaratory judgment pursuant to Florida Statutes §86-011, et seq.

108. PETITIONERS and Plaintiff have entered into rental contracts with certain individuals for the rental of the Properties. The contracts were

entered into before the December 13, 2007 Decision of the CITY upholding the erroneous ZONING DETERMINATION.

109. The contracts that PETITIONERS and Plaintiff VRP have entered into with certain individuals are for rental periods after the December 13, 2007 Decision. However, at the time the contracts were entered into, such rentals were permitted by the CITY.

110. The ZONING DETERMINATION is erroneous and there is no basis in the CITY Ordinance for the CITY to restrict the duration of rental of a residence in the RSF district.

111. It is the legal position of the PETITIONERS and Plaintiff VRP that since the contracts were entered into before the December 13, 2007 Decision, the contracts are valid, and that PETITIONERS and Plaintiff VRP are required to honor the contracts.

112. If this Court does not prohibit the CITY from enforcing the ZONING DETERMINATION, it will create irreparable harm and injury to the reputation of Plaintiff VRP who entered into the contracts on behalf of PETITIONERS, besides disrupting the plans of persons who have lawfully entered into contracts to rent the Properties. It will create harm to Plaintiff VRP's ability to continue to rent property, including those of

PETITIONERS, and harm the ability of PETITIONERS to meet their reasonable investment backed expectations.

113. It is the CITY's contention that PETITIONERS and Plaintiff VRP are in violation of the CITY Ordinance if they rent the Properties pursuant to these contracts.

114. As a result of the above dispute, PETITIONERS and Plaintiff VRP are in doubt and are uncertain as to their right to rent their Properties pursuant to the pre-existing contracts.

115. As a result of the above dispute, PETITIONERS and Plaintiff VRP are in doubt and uncertain as to their right to enter into any future contracts for the rental of the Properties.

116. PETITIONERS and Plaintiff VRP are entitled to have such doubt and uncertainty removed regarding the rental of their Properties.

WHEREFORE, PETITIONERS respectfully request that this Court grant the PETITIONERS and Plaintiff VRP the following relief:

(a) Declaring that the CITY may not interfere with contracts entered into prior to the December 13, 2007 Decision by taking actions against PETITIONERS and Plaintiff VRP's based on the ZONING DETERMINATION.

(b) Enjoining the CITY from interfering with contracts entered into before the December 13, 2007 Decision on the basis that the ZONING DETERMINATION is erroneous and unenforceable;

(c) Enjoining the CITY from interfering with contracts entered into after the December 13, 2007 Decision on the basis that the ZONING DETERMINATION is erroneous and unenforceable; and

(d) such further and additional relief as this Court deems just and proper.

#### COUNT IV

**PETITION SEEKING DECLARATORY RELIEF**  
**(Based on CITY's violation of PETITIONERS Substantive Due Process Rights)**

117. PETITIONERS incorporate by reference paragraphs 1 through 79 above as if fully set forth herein.

118. This is an action brought by PETITIONERS against the CITY seeking declaratory judgment pursuant to Florida Statutes § 86-011 et seq.

119. At all times relevant to the claims set forth herein, PETITIONERS maintained an interest protected by Article I, Section 9 of the Florida Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution.

120. PETITIONERS contend that:

(a) the ZONING DETERMINATION and the CITY's upholding of the ZONING DETERMINATION constitutes an arbitrary and capricious exercise of power which violates PETITIONERS substantive due process rights as they relate to the PETITIONERS use of their real property; and

(b) The ZONING DETERMINATION and the CITY's upholding of the ZONING DETERMINATION is unfair, arbitrary, without rational basis, and violates PETITIONERS substantive due process rights concerning PETITIONERS use of their real property.

121. The CITY contends that the ZONING DETERMINATION is in conformance with proper zoning regulations.

122. As a result of the above dispute, PETITIONERS are in doubt and are uncertain as to their rights regarding the rental of their Properties. PETITIONERS are entitled to have such doubt and uncertainty removed.

WHEREFORE, PETITIONERS respectfully requests that this Court grant PETITIONERS the following relief:

i. declaration that the ZONING DETERMINATION is unconstitutional and constitutes a violation of PETITIONERS due process rights protected by Article I, Section 9 of the Florida Constitution as well as

by the Fifth and Fourteenth Amendments to the United States Constitution;  
and,

ii. such further and additional relief as this Court deems just and proper.

## **COUNT V**

### **PETITION SEEKING DECLARATORY RELIEF**

**(Based on CITY's Violation of PETITIONERS Constitutional Guarantee of Equal Protection)**

123. PETITIONERS and Plaintiff VRP incorporate by reference paragraphs 1 through 79 above as if fully set forth herein.

124. This is an action brought by PETITIONERS and Plaintiff VRP against CITY seeking declaratory judgment pursuant to Florida Statutes §86-011, et seq.

125. At all times relevant to the claims set forth herein PETITIONERS maintained an interest protected by Article I, Section 2 of the Florida Constitution, and the Fourteenth Amendment to the United States Constitution.

126. Because PETITIONERS complied with Chapter 509, Florida Statutes, through the use of Plaintiff VRP's license, as required by Florida Law, and others who rent for similar period of time within the CITY have not so complied, the CITY targeted only the PETITIONERS Properties.

From the beginning, when the CITY first began to examine the duration of rental issue, in response to neighborhood complaints about the lawful rental of a single family residence within the RSF district, the CITY specifically targeted the only the Properties of the PETITIONERS for enforcement.

127. With respect to other property owners similarly situated who rented their properties, with or without compliance with Chapter 509, Florida Statutes, the CITY failed to conduct any investigation into their rentals or their licensing.

128. The selective enforcement against PETITIONERS and Plaintiff VRP constituted a discriminatory exercise of power thereby treating PETITIONERS differently than others similarly situated, without any reasonable basis for such disparate treatment.

129. The CITY acted with discriminatory intent in violation of PETITIONERS constitutional guarantee of equal protection under the laws as articulated in Article I, Section 2 of the Florida Constitution, and the Fourteenth Amendment to the United States Constitution.

130. The CITY contends that PETITIONERS were not treated differently and the CITY did not violate the constitutional guarantee of equal protection.

131. As a result of the above dispute, PETITIONERS are in doubt and are uncertain as to their right to operate the Properties without being specifically targeted by CITY. Petitioners are entitled to have such doubt and uncertainty removed.

WHEREFORE, PETITIONERS respectfully request this Court grant PETITIONERS the following relief:

(a) Issuance of a declaratory judgment declaring that the targeting of the PETITIONERS and Plaintiff VRP and selective enforcement by the CITY constitutes a violation of PETITIONERS constitutional guarantee of equal protection under the law as articulated in Article I, Section 2 of the Florida Constitution, and in the Fourteenth Amendment to the United States Constitution.

(b) Such further and additional relief as this Court deems just and proper.

## **COUNT VI**

### **COMPLAINT FOR DAMAGES**

**(Based Upon CITY's violation of PETITIONERS Rights Guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution)**

132. PETITIONERS incorporate by referenced paragraphs 1 through 79 above as if fully set forth herein.

133. This is an action brought by PETITIONERS against CITY seeking damages pursuant to 42 USC §1983 *et seq.*

134. In issuing and upholding the ZONING DETERMINATION, the CITY acted under color of State law.

135. At all times relevant to the claims set forth herein, PETITIONERS maintained an interest protected by the Fifth and Fourteenth Amendments to the United States Constitution.

136. The ZONING DETERMINATION is facially unconstitutional and denies PETITIONERS of their rights and privileges secured by the Fifth and Fourteenth Amendments to the United States Constitution.

137. The ZONING DETERMINATION is not supported by case law, statutory law or the CITY Ordinance.

138. When the CITY, after investigation revealed that PETITIONERS Properties were properly licensed and had not received any code enforcement violations or police reports, the CITY simply reinterpreted, without any basis, the CITY Ordinance to restrict the duration of rentals.

139. The action of the CITY in simply issuing and upholding a ZONING INTERPRETATION also circumvented the procedural due process owed to its citizens, including PETITIONERS, when a CITY seeks

to enact new ordinances. With the ZONING DETERMINATION, the CITY bypassed the requirement for public hearing and other procedural safeguards.

140. The actions of the CITY constitute an arbitrary and capricious exercise of power which deprived PETITIONERS of their substantive due process rights and privileges secured by the Fifth and Fourteenth Amendments to the United States Constitution.

141. In issuing and upholding the ZONING DETERMINATION, the CITY acted with discriminatory intent and treated PETITIONERS differently than others similarly situated without any reasonable basis for such disparate treatment. The CITY's action constituted a discriminatory and unfair exercise of power which deprived PETITIONERS of their constitutional guarantee of equal protection secured by the Fourteenth Amendment to the United States Constitution.

142. As a result of the CITY's deprivation of PETITIONERS rights and privileges secured by the Fifth and Fourteenth Amendments to the United States Constitution as stated above, PETITIONERS have suffered damages in excess of \$15,000, exclusive of interests and costs. PETITIONERS damages include, but are not limited to, the loss of rental/use of the Properties, costs and fees associated with challenging the

143. As a result of CITY's deprivation of PETITIONERS rights and privileges secured by the Fifth and Fourteenth Amendments to the United States Constitution as stated above, PETITIONERS have been required to retain the services of the undersigned counsel for the purpose of prosecuting this action and have agreed to pay counsel a reasonable fee. Pursuant to 42 U.S.C. §1988 *et seq.*, CITY is liable for the attorneys fees incurred by PETITIONERS in prosecuting this action.

WHEREFORE, PETITIONERS respectfully request that this Court grant PETITIONERS the following relief:

(a) an award of compensatory damages sufficient to compensate PETITIONERS for their loss occasioned by CITY's violation of PETITIONERS rights and privileges secured by the Fifth and Fourteenth Amendments to the United States Constitution.

(b) an award of reasonable attorneys fees, court costs and expenses, including paralegal fees and the costs/fees of prosecuting this action and the underlying actions/appeals, incurred by PETITIONERS in the prosecution of this action, and

(c) such further and additional relief as this Court deems just and proper.

## **COUNT VII.**

### **COMPLAINT FOR DAMAGES**

#### **(Violation of Fifth and Fourteenth Amendment to the United States Constitution – Inverse Condemnation/Taking)**

144. PETITIONERS incorporate by reference paragraphs 1 through 79 above as if fully set forth herein.

145. At all times relevant to the claims set forth herein, PETITIONERS maintained an interest protected by the Fifth and Fourteenth Amendments to the United States Constitution.

146. The ZONING DETERMINATION does not substantially advance a legitimate state interest. The record evidence shows that the ZONING DETERMINATION was not for the purpose of advancing a legitimate state interest, but was instead issued because of pressure on the CITY by a former mayor and a few residents.

147. The ZONING DETERMINATION deprives PETITIONERS of their vested property rights, including the right to rent their Properties.

148. PETITIONERS, when they purchased their Properties, had the reasonable investment based expectation that they would be able to rent their Properties without any durational rental restriction by the CITY.

149. The ZONING DETERMINATION deprives PETITIONERS their vested right to make reasonable use of their Properties and to rent their Properties without just compensation and deprives them of the justice and fairness guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

150. The ZONING DETERMINATION, constitutes a taking of PETITIONERS Properties without compensation, in violation of the Fifth and Fourteen Amendments to the United States Constitution. As a result of such taking, PETITIONERS have suffered damages in excess of \$15,000, exclusive of interest and costs.

151. As a result of the CITY's deprivation of PETITIONERS rights and privileges secured by the Fifth and Fourteenth Amendments to the United States Constitution as stated above, PETITIONERS have been required to retain the services of the undersigned counsel for the purpose of prosecuting this action and agreed to pay a reasonable fee. Pursuant to 42 U.S.C. §1988 *et seq.*, CITY is liable for the attorneys fees incurred by PETITIONERS in prosecuting this action.

WHEREFORE, PETITIONERS request this Court enter judgment in favor of PETITIONERS and against the CITY for:

(a) an award of compensatory damages sufficient to compensate PETITIONERS for their loss occasioned by CITY's violation of PETITIONERS rights and privileges secured by the Fifth and Fourteenth Amendments to the United States Constitution.

(b) an award of reasonable attorneys fees, court costs and expenses, including paralegal fees and the costs/fees of prosecuting this action and the underlying actions/appeals, incurred by PETITIONERS in the prosecution of this action, and

(c) such further and additional relief as this Court deems just and proper.

## **COUNT VIII**

### **COMPLAINT FOR DAMAGES**

#### **(Violation of Article I, Section 9 and Article X, Section 6, Florida Constitution – Inverse Condemnation/Taking)**

152. PETITIONERS incorporate by reference paragraphs 1 through 79 above as if fully set forth herein.

153. At all times relevant to the claims set forth herein, PETITIONERS maintained an interest protected by the Article I, Section 9 and Article X, Section 6, Florida Constitution.

154. The ZONING DETERMINATION deprives PETITIONERS of their vested property rights, including the right to rent the Properties.

155. PETITIONERS, when they purchased their Properties, had the reasonable investment backed expectation that they would be able to rent their Properties without any duration rental restriction by the CITY.

156. The ZONING DETERMINATION deprives PETITIONERS of the reasonable economic use of their Properties. The ZONING DETERMINATION does not advance a legitimate governmental purpose.

157. PETITIONERS have a reasonable investment backed expectation that they will be able to rent their Properties without undue restriction on duration by the CITY.

158. At no time did CITY attempt to exercise the power of eminent domain. Instead, the CITY issued the ZONING DETERMINATION, thereby depriving PETITIONERS of their vested right to make reasonable use of their Properties without just compensation.

159. Accordingly, the ZONING DETERMINATION constitutes a taking, without compensation, in violation of Article I, Section 9 and Article X, Section 6 of the Florida Constitution. As a result of such taking by CITY, PETITIONERS have suffered damages in excess of \$15,000, exclusive of interest and costs.

160. As a result of the CITY's deprivation of PETITIONERS rights and privileges, PETITIONERS have been required to retain the services of

the undersigned counsel for the purpose of prosecuting this action and agreed to pay a reasonable fee.

WHEREFORE, PETITIONERS request this Court enter judgment in favor of PETITIONERS and against the CITY for:

(a) an award of compensatory damages sufficient to compensate PETITIONERS for their loss occasioned by CITY's violation of PETITIONERS rights and privileges secured by the Fifth and Fourteenth Amendments to the United States Constitution.

(b) an award of reasonable attorneys fees, court costs and expenses, including paralegal fees and the costs/fees of prosecuting this action and the underlying actions/appeals, incurred by PETITIONERS in the prosecution of this action, and

(c) such further and additional relief as this Court deems just and proper.

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**DEMAND FOR JURY TRIAL**

PETITIONERS and Plaintiff VRP demand a trial by jury on all issues so triable.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the PETITION for Writ of Certiorari contained herein is in compliance with Rule 9.100 (1), Florida Rules of Appellate Procedure, and is in the required font of Times New Roman 14.

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Attorney