**IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA**

**MARY L. SYNK, M L SYNK, LLC, JOANN DEBARON KING, ENRICO RUTA, AND RUTA RESORTS, LLC, MICHAEL AND JUDITH DENIS, AND COLIN AND KRISTA GOODRICH,**

Plaintiffs,

Case No.: 2017-31231-CICI
Division 31

v.

**CITY OF DAYTONA BEACH, FLORIDA**

Defendant.
_____/

**FINAL SUMMARY JUDGMENT**

**THESE MATTERS** having come before the Court on the Plaintiff, **MARY L. SYNK, ET. AL.'S**, Motion for Summary Judgment, and Defendant, **CITY OF DAYTONA BEACH, FLORIDA'S**, Cross-Motion for Summary Judgment, and the Court having reviewed the Motions and the Exhibits attached thereto, the case law, and having heard oral argument of the parties on April 16, 2019, and the, Court being otherwise fully advised in the premises, makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF UNDISPUTED MATERIAL FACTS**

**A. Introduction**

1. This action was brought by the Plaintiffs, **MARY L. SYNK** ("Synk"), **M L SYNK, LLC** ("Synk LLC"), **JOANN DEBARON KING** ("King"), **ENRICO RUTA** ("Ruta"), **RUTA RESORTS, LLC**, ("Ruta LLC"), **MICHAEL AND JUDITH DENIS** ("Denis"), and **COLIN AND KRISTA GOODRICH** ("Goodrich") (collectively "Plaintiffs") against the

Defendant, **CITY OF DAYTONA BEACH, FLORIDA** ("City"). The Second Amended Complaint ("Complaint") for Declaratory and Injunctive Relief ("Complaint") (Doc.30) was filed on January 25, 2018.

2. Count I of the Complaint requests declaratory and injunctive relief for the Plaintiffs. Count II of the Complaint seeks declaratory and injunctive relief for Synk, Synk, LLC, King, Ruta, and Ruta, LLC, otherwise known as the "Rezoned Plaintiffs."

3. On July 19, 2018, the Plaintiffs filed a Motion for Preliminary Injunction (Doc.42). A hearing on the motion was heard on October 17, 2018 (Doc.43). The City filed two responses to the Motion for Preliminary Injunction (Doc.46, 48). On January 4, 2019, the Court (Dempsey, J.) entered an Order denying the Motion for Preliminary Injunction (Doc.52).

**B. Plaintiffs and their Properties**

4. Synk is the owner of the property located at 1225 Gamble Place, Daytona Beach, Florida ("Synk Property") (Synk Depo., P.5, L.23-25.) Synk purchased the Synk Property in approximately 2005 (Synk Depo., P.6, L.3-5), and has used the Synk Property for short term rentals (a period of less than six months) (Synk Depo., P.5, L.17-22; P.9, L.17-22). Synk stopped renting the Synk Property for short term rentals in May of 2016 when she received a notice of violation from the City (Synk Depo., P.10, L.2-22). In the Prior LDC, the Synk Property was zoned R1a and in the New LDC the Synk Property is zoned SFR-5 (Synk Property, Previous and Current Zoning Map). Synk never inquired as to the zoning for the Synk Property when it was purchased by Synk (Synk Depo., P.15, L.12-16).

5. King is the owner of the property located at 507 Jessamine Blvd., Daytona Beach, Florida ("King Property") (King Depo., P.5, L.12-13). King purchased the King Property on February 28, 2014 (King Depo., P.7, L.15-17) with the purpose of using it for short term rentals

(a period of less than six months) (King Depo., P.8, L.1-4; P.11, L.3-15). In the Prior LDC, the King Property was zoned R1a and in the New LDC the King Property is zoned SFR-5 (King Property, Previous and Current Zoning Map). King was told the King Property was in a "historical district," but was unaware of the King Property's zoning. (King Depo. P.12, L.3-6).

6. Ruta is the owner of the property located at 319 Goodall Avenue, Daytona Beach, Florida ("Ruta Property") (Ruta Depo., P.5, L.3-5). Ruta purchased the Ruta Property in March of 2016 (Ruta Depo., P.5, L.18-19). The Ruta Property is used for short term rentals (a period of less than six months) (Ruta Depo., P.4, L.20-25; P.5, L.1-5). Ruta began using the Ruta Property for short term rentals in January of 2017 (Ruta Depo., P.6, L.1-5), and continues to do so (Ruta Depo., P.6, L.9-11). In the Prior LDC, the Ruta Property was zoned R1c and in the New LDC the Ruta Property is zoned SFR-5 (Ruta Property, Previous and Current Zoning Map). Ruta did not know the zoning for the Ruta Property when it was purchased (Ruta Depo., P.9, L.21-25; P.10, L.1-5).

7. Denis is the owner of the property located at 625 Lenox Avenue, Daytona Beach, Florida ("Denis Property") (Denis Depo., P.6, L.7-8). The Denis Property has been used for short term rentals (a period of less than six months) since 2011 or 2012 (Denis Depo., P.6, L.2-8; P.9, L.5-6). In the Prior LDC, the Denis Property was zoned R1c and in the New LDC the Denis Property is zoned SFR-5 (Denis Property, Previous and Current Zoning Map). When Denis purchased the Denis Property, Denis did not inquire as to the zoning (Denis Depo., P.15, L.24-25; P.16, L.1).

8. Goodrich is the owner of the property located at 1280 Bel Aire Drive, Daytona Beach, Florida ("Goodrich Property") (Goodrich Depo., P.6, L.4-8). The Goodrich Property was purchased in October of 2014 (Goodrich Depo., P.8, L.16-17), and used for short term rentals (a

period of less than six months) (Goodrich Depo., P.10, L.9-25; P.11, L.1-10). In the Prior LDC, the Goodrich Property was zoned R1a and in the New LDC the Goodrich Property is zoned SFR-5 (Goodrich Property, Previous and Current Zoning Map).

**C. The City Codes**

9. Prior to the enactment of § 509.032(7)(b), Fla. Stat., the City had a previously adopted a Land Development Code ("Prior LDC"). The Prior LDC established Residential Zoning Districts R-1a, R-1a1, R-1b, R-1c (Prior LDC, Article 9, Sec.2.1.; Mrozek Testimony,[1] P.130, L.12-22; P.131, L.1-12).

10. The Prior LDC specifically states that "[N]o use shall be established or maintained in any zoning district except as specifically permitted by the LDC." The Prior LDC is to be read as providing for Permitted Uses, and anything not designated as a permitted use in a zoning district is prohibited.

11. Under the Prior LDC, the only Permitted Use for the above referenced Residential Zoning Districts was "Single-family dwellings" (Prior LDC, Article 9, Sec.2.1.; Mrozek Testimony, P.132, L.4-14).

12. Under the Prior LDC, a "Single-family dwelling" was defined as "[A] building occupied and maintained exclusively as a residence for a single family" (Prior LDC, Article 2, Sec.3.1.; Mrozek Testimony, P.134, L.7-16).

13. The Prior LDC contained the following restriction: "[N]o use shall be established or maintained in any zoning district except as specifically permitted by the LDC" (Prior LDC, Article 1, Sec.4.3.(b)). Under the single family zoning district, the only permitted use was a single family dwelling defined as a residence for a single family (Mrozek Testimony, P.135, L.3-

[1] The "Mrozek Testimony" is from the Hearing on the Preliminary Injunction held on October 17, 2018.

17). Short term rentals were not permitted in the single family zoning districts (Mrozek Testimony, P.135, L.18-20).

14. The Prior LDC established Tourist Accommodation Districts T-1, T-2, T-2a, T-3, and T-4 (Prior LDC, Article 10, Sec.2.1.).

15. One of the Permitted Uses for the above Tourist Districts was "Accommodations" as well as other uses relating to tourists. The Prior LDC defined "Accommodations," in part, as "[A] hotel, motel, tourist court, rooming house, or rental unit intended to be used by transient persons or tourists for overnight or short term lodging (Prior LDC, Article 2, Sec. 2.1.). Short term rentals were permitted in the Tourist Districts.

16. Pursuant to City Ordinance, the City enacted a new Land Development Code that became effective on March 1, 2015 (New LDC; City Ordinance 15-23).

17. One of the relevant provisions in the New LDC was that the four former Residential Zoning Districts were now placed into one Single Family Residential Zoning District ("SFR-5") (New LDC; Exhibit 7; Mrozek Testimony, P.137, L.12-25; P.138, L.1-5). The designation change was done to simplify the New LDC, and make it more user friendly, but was certainly not changed to allow for short term rentals in single family residential housing. The New LDC does not prohibit short term rentals in districts where they were previously permitted.

18. The newly designated SFR-5 Zoning District in the New LDC still allows only for single family residences. Nowhere in the SFR-5 Zoning District are short term rentals permitted (Mrozek Testimony, P.138, L.12-25; P.141, L.1-11).

19. The New LDC continues to provide for zoning districts referred to as Tourist Districts (Mrozek Testimony, P.141, L.12-21).

20. Under the New LDC, "Other Accommodations" are permitted uses in Tourist Districts only, not the Residential District SFR-5 (New LDC; Zoning Table).

21. A footnote in the New LDC discusses Other Accommodations and states as follows (New LDC, Zoning Table; Mrozek Testimony, P.142, L.1-25; P.143, L.1-10):

> "The "other accommodations" use includes all uses regulated by the prior LDC as "accommodations" other hotels, motels, rooming houses, bed and breakfast facilities, or RV parks – i.e., "rental units intended to be used by transient persons or tourists for overnight or short term lodging." **This use thus included and continues to include vacation rentals as defined in F.S. 509.242 and grandfathered from the 2011 amendment to F.S. 509.032(7) that preempts local government regulation of vacation rentals in accordance with the provisions of that statute.**" (Emphasis added)

## CONCLUSIONS OF LAW

22. This Court has jurisdiction over the parties and the subject matter of this litigation.

23. Rule 1.510(c), Florida Rules of Civil Procedure, provides, in part, that summary judgment "shall be rendered forthwith if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Summary judgment is designed to test the sufficiency of the evidence to determine if there is sufficient evidence at issue to justify a trial on the issues raised in the pleadings. Summary judgment is appropriate where, as a matter of law, it is apparent from the pleadings, depositions, affidavits, or other evidence that there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law. *The Florida Bar v. Greene*, 926 So.2d 1195, 1200 (Fla. 2006). A party moving for summary judgment must show conclusively the absence of any genuine issue of material fact, and the court must draw every possible inference in favor of the non-moving party. *Maleki, P.A. v. Hajianpour, M.D., P.A.*, 771 So.2d 628, 630 (Fla. 4th DCA 2000).

24. Section 509.032(7)(b), Fla. Stat., provides as follows:

> A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

25. The City's prior land development code ("Prior LDC") established residential zoning districts R-1a, R-1a1, R-1b, R-1c that were limited to a single family dwelling. By definition, a single family dwelling was a building occupied and maintained exclusively as a residence for a single family. No other use was permitted in the residential zoning districts.

26. The Plaintiffs contend that in reading the Prior LDC, if a use is not prohibited, then it must be permitted, and therefore short term rentals were allowed in the residential zoning districts. This is an improper reading of the Prior LDC in light of the specific language in Article 1, Sec. 4.3.(b) of the Prior LDC that states: "[N]o use shall be established or maintained in any zoning district **except as specifically permitted** by the LDC" (emphasis added).

27. The Prior LDC additionally contained tourist zoning districts. One of the permitted uses in the tourist zoning districts was "Accommodations." By definition in Sec. 3.1 of the Prior LDC, "Accommodations" was defined as "A hotel, motel, tourist court, roominghouse, or rental unit intended to be used by transient persons or tourists for overnight or shortterm lodging."

28. Contrary to the Plaintiffs' position, then, the City limited short term rentals to only the designated tourist zoning districts, and did not permit short term rentals in the residential zoning districts.

29. In 2011, the Florida Legislature passed and the Governor signed into law § 509.032(7)(b), Fla. Stat. The intent of the statute was to pre-empt to the state any local law,

ordinance, or regulation prohibiting short term rentals (vacation rentals) regarding their duration or frequency.

30. However, the statute also makes it clear that any local law, ordinance, or regulation adopted on or before June 1, 2011, was not pre-empted by the state, and remained in full force and effect.

31. In March of 2015, the City adopted a new land development code ("New LDC"). One of the purposes of the New LDC, as testified to by Dennis Mrozek, the City's Planning Director, was to make the New LDC more "user friendly."

32. The Plaintiffs contend that by simply adopting the New LDC and repealing the Prior LDC, the City now falls within the purview of § 509.032(7)(b), Fla. Stat., and therefore the City cannot prohibit short term rentals or regulate the duration or frequency of short term rentals.[2]

33. The City counters this argument by reference to the footnote in Section 5.2 of the New LDC found in the Principal Use Table for Residential, Business, Industrial, Tourist, and Specialty Districts. The footnote provides:

> "The "other accommodations" use includes all uses regulated by the prior LDC as "accommodations" other hotels, motels, rooming houses, bed and breakfast facilities, or RV parks – i.e., "rental units intended to be used by transient persons or tourists for overnight or short term lodging." This use thus included and continues to include vacation rentals as defined in F.S. 509.242 and grandfathered from the 2011 amendment to F.S. 509.032(7) that preempts local government regulation of vacation rentals in accordance with the provisions of that statute."

[2] In the New LDC, the City re-named the residential zoning districts formerly found in the Prior LDC into one designated district, SFR-5. The Court finds that the mere change in nomenclature for the residential districts from R-1a, R-1a1, R-1b, R-1c into the newly named SFR-5 is a mere technical change, and does not abrogate the City's prohibition of short term rentals in residential districts.

34. Mr. Mrozek testified, and the Court finds that in the New LDC, the City acknowledged § 509.032(7)(b), Fla. Stat., but demonstrated that it intended to "grandfather" in the prohibition of short term rentals in residential zoning districts as it had in the Prior LDC.

35. The Court finds that by the inclusion of the footnote in the New LDC, the City clearly intended to maintain its restriction against short term rentals in residential zoning districts, and limit short term rentals to the tourist zoning districts only. The City has not enacted a new local law, ordinance, or regulation with respect to prohibiting short term rentals, but has continued forward its previous prohibition from the Prior LDC to the New LDC. The continuation of the prohibition does not violate § 509.032(7)(b), Fla. Stat.

36. A municipality is vested with the right to zone the property within its jurisdiction. *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68 (1981) ("[T]he power of local governments to zone and control land use is undoubtedly broad and its proper exercise is an essential aspect of achieving a satisfactory quality of life in both urban and rural communities...").

37. Based on all of the foregoing, there exists no genuine issue as to any material fact, and the City of Daytona Beach, Florida, is entitled to a judgment as a matter of law.

**NOW, THEREFORE**, it is **ORDERED AND ADJUDGED** that:

a) Plaintiffs' Motion for Summary Judgment shall be, and the same is hereby denied;

b) Defendant's Motion for Final Summary Judgment shall be, and the same is hereby granted; and

c) Summary Final Judgment is hereby entered in favor of the Defendant, **CITY OF DAYTONA BEACH, FLORIDA,** and against Plaintiffs, **MARY L. SYNK; M L SYNK,**

**LLC; JOANN DEBARON KING; ENRICO RUTA; RUTA RESORTS, LLC; MICHAEL AND JUDITH DENIS; AND COLIN AND KRISTA GOODRICH.** Plaintiffs shall take nothing by this action, and Defendant shall go hence without day.

d) Jurisdiction is reserved to award Defendant its taxable costs, upon timely motion made pursuant to Fla. R. Civ. P. 1.525.

**DONE and ORDERED** in Chambers, Volusia County, Florida, this 14 day of May, 2019.

**HON. LEAH CASE**
**Circuit Court Judge**

Copies to:
Counsel of record