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Reply to: Lakewood Ranch

MEMORANDUM

TO: Mayor Spoll and Town Commissioners

CC: Tom Harmer, Town Manager

FROM: Maggie D. Mooney, Esq., Town Attorney

DATE: May 22, 2019

RE: Authorization to Initiate Action Against Property Owner Violating the Town's Short Term Rental Ordinance

Equity Villa Fund, LP owns the real property located at 537 Schooner Lane (the "Property") on Longboat Key. The Property is zoned Single Family Medium Density Residential District (R-4SF). The Property consists of a single family home and is not homesteaded. Under the Town's Zoning Code, residential occupancy is "designed for and used for occupancy periods of not less than 30 days."

The owner and/or general partner (Equity Villa Fund, LP and/or Equity Residences LLC) advertises that the Property is owned by multiple owners that have a "fractional ownership" interest and right to use the Property. Over the past year, the Town became aware that one or more fractional owners were renting the Property for compensation on vacation rental websites for time periods less than thirty days. As the Property is not located in a tourism zoning district, the rental of such Property for less than 30 days for remuneration is strictly prohibited pursuant to Secs. 158.144 and 158.104 of the Town's Zoning Code.¹

¹ Ordinance 2018-24 was adopted on April 1, 2019, and recodified and renumbered the sections contained within the Town's Zoning Code of Ordinances. The applicable relevant sections of the Town's Zoning Code relating to residential and tourism use were not substantively amended.

Over the past year, the Town's Code Enforcement Officer issued more than a dozen citations to the Property owner and/or renters using the Property in violation of the Town's Zoning Code. The Property owner through legal counsel has asserted that the Town's short term rental restrictions as codified in the Town's Zoning Code are pre-empted by Florida Statutes 509.032. The Property owner has therefore disregarded or ignored the Town's short term rental requirements provided for within the Town's Zoning Code. There is no indication that the Property owner and operator will cease using the Property in violation of the Town's Zoning Code.

The Town's position relating to the pre-emption assertion is that the Town's short term rental restrictions (as codified in Sections 158.144 and 158.104 of the Zoning Code) are specifically grandfathered under Florida Statutes 509.032 as they pre-date the June 1, 2011 applicability of that law. As it is likely that any further enforcement actions (before the Code Enforcement Board or Special Magistrate) will ultimately lead to circuit court on this issue, we are recommending that a lawsuit be initiated to bring this matter before the Court for a determination.

Accordingly, for the foregoing reasons, it is my recommendation and the Town Manager's recommendation that the Town Manager and Town Attorney be provided authorization to engage the services of Arthur Hardy of the Matthews Eastmoore law firm to initiate litigation against the Property Owner and operator declaring them in violation of the Town's Zoning Code and ordering them from engaging in such violations.

Recommendation: Authorize the law firm of Matthews Eastmoore to serve as special litigation counsel the Town and to file a declaratory relief and injunctive relief action against Equity Villa Fund, LP and Equity Residences, LLC for violations of the Town's Zoning Code.

End of Agenda Item