**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA.**

**HOMES NOT HOTELS, INC., A FLORIDA NOT FOR PROFIT CORPORATION,**

**CASE NO:**

**Plaintiff,**

**v.**

**CITY OF INDIAN ROCKS BEACH, FLORIDA, a Florida Governmental Entity.**

**Defendant.**

_____/

# COMPLAINT

COMES NOW, the Plaintiff, Homes Not Hotel, Inc., a Florida Not-For-Profit Corporation ("Plaintiff"), files this complaint against the City of Indian Rocks Beach, a Florida governmental entity ("Defendant"), files this action (the "Lawsuit" or "Complaint") seeking to invalidate the actions conducted by Defendant at an illegal meeting, and as grounds alleges:

## I. INTRODUCTION – BACKGROUND FLORIDA'S SUNSHINE LAWS

1. This lawsuit seeks relief against the Defendant for violations of Article 1, section 24(b) of the Florida Constitution, and Florida's Open Meeting Laws found in Chapter 286, Florida Statutes ("Florida's Sunshine Laws").

## II. JURISDICTION

2. This Court has subject matter jurisdiction over the claims presented in this complaint by Plaintiff, pursuant to the laws of the State of Florida, including issuing injunctions to enforce the purposes of Section 286.011, Florida Statutes. See Section 286.011(2), Florida Statutes.

3. This Court has personal jurisdiction over the parties in this case as the Defendant is a municipality incorporated and located within Pinellas County, Florida, with a primary business location listed on its website is: 1507 Bay Palm Blvd., Indian Rocks Beach, Florida 33785.

4. Venue is proper in Pinellas County pursuant to 47.011, Florida Statutes, because all facts giving rise to this action accrued in Pinellas County, Florida, wherein the Defendant is located.

5. The acts and omissions giving rise to this lawsuit occurred in Pinellas County, and the Court has the authority to exercise personal jurisdiction over the Defendant in accordance with the principles of due process under the laws of the State of Florida.

## III. PARTIES

6. Plaintiff is Homes Not Hotels, Inc., a Florida Not For Profit Corporation, with its principal place of business in Pinellas County, Florida.

7. Plaintiff has members who are residents of the City of Indian Rocks Beach. It was created to address the illegal actions and statutory violations committed by the Defendant as stated in this Complaint.

8. Plaintiff has standing to bring this lawsuit. Any member of the public can contest alleged statutory violations of Florida's Sunshine Laws committed by Defendant and its authorized agents (as further set forth below).

9. Defendant is the City of Indian Rocks Beach, Florida, a municipal corporation organized under the laws of the State of Florida, with its principal place of business in Pinellas County, Florida.

## IV. STATEMENT OF FACTS

### THE NOVEMBER 5th 2024 BERT HARRIS NOTICE

10. On November 5, 2024, AP 6 LLC ("AP 6") sent a written notice to the Defendant alleging a claim under Chapter 70, Florida Statutes, known as the Bert J. Harris, Jr., Private Rights Protection Act, pursuant to Florida Statute Section 70.001 (the "Bert Harris Claim"). A true and correct copy of the Bert Harris Claim is attached as Exhibit "A" and incorporated here.

11. At all times relevant to the allegations in this lawsuit, there was no lawsuit pending against Defendant related to AP 6's Bert Harris Claim.

12. On December 5, 2024, the Defendant published an Agenda and provided notice of a closed executive meeting to take place on December 11, 2024. The purpose of the closed executive meeting was specifically to discuss seven (7) pending Federal lawsuits to which Defendant is a party (the "Federal Lawsuits"). None of these Federal Lawsuits contain the Bert Harris Claim. A true and correct copy of the Defendant's published Agenda is attached as Exhibit "B" and incorporated here.

13. AP 6 is one of the Plaintiff's listed in the Federal Lawsuits.

14. The Amended Complaint filed by AP 6 in the Federal Lawsuits does not contain the Bert Harris Claim. A true and correct copy of Amended Complaint is attached as Exhibit "C" and incorporated here.

15. The December 11th closed executive meeting is what is referred to as a "shade meeting" and it was allegedly being conducted pursuant to Section 286.011(8), Florida Statutes (the "Illegal Shade Meeting").

16. Section 286.011(8), Florida Statutes is a limited exemption to the mandate that the Defendant conduct all official business and take official actions at public noticed meetings.

17. Defendant misused the Illegal Shade Meeting intended to discuss only the Federal Lawsuits, and allowed its elected officials and the Defendant's City Attorney to illegally engage in discussions and take illegal actions regarding AP 6's Bert Harris Claim (the "Illegal Shade Discussions").

18. Plaintiff believes that the Defendant's Illegal Shade Meeting included the Illegal Shade Discussions about the Bert Harris Claim.

19. The Illegal Shade Meeting also resulted in the Defendant's elected officials giving the Defendant's City Attorney instructions to settle the Bert Harris Claim at the upcoming Defendant's January 14, 2025 City meeting.

20. At the Defendant's January 14, 2025 public meeting, the Defendant's City Attorney, Randy Mora, presented a Bert Harris Claim settlement letter that had already been drafted based on what he called prior "executive session guidance" (at the Illegal Shade Meeting). from the Defendant's Commission regarding the Bert Harris claim. A true and correct copy of this Bert Harris Claim Settlement Letter is attached as Exhibit "D" and incoporated here.

21. Plaintiff had a relevant portion of the Defendant Attorney's statement at the January 14th Meeting transcribed, wherein he stated:

> **"So, as it relates to the Bert Harris claim, there is a letter that has been drafted based on guidance this Commission already provided in executive session in terms of how they would like things presented, nothing being resolved yet, and to read specifically from the letter . . ."**

A true and correct copy of the transcript of Defendant's Attorney's comments is attached as Exhibit "E" and incorporated here.

22. Plaintiff alleges the statements made by Defendant's City Attorney Randy Mora is an admission that Defendant had engaged discussions about the Bert Harris Claim at the Illegal Shade Meeting.

23. As a result of these improper discussions, the Defendant took certain actions related to the Bert Harris Claim.

24. The improper discussions at the Illegal Shade Meeting related to the Bert Harris Claim were not authorized by Section 286.011(8), Florida Statutes, as the claim was not "Pending" and the Defendant was not a "Party" to the Bert Harris Claim.

25. As clearly noted in the Attorney General Opinion 2009-25, a governmental entity cannot conduct a shade meeting pursuant to Section 286.011(8), unless the litigation is active and they are a named party. AGO 09-25, is directly on point and states a governmental entity cannot conduct a Shade Meeting to discuss "pre-suit" settlements of a forthcoming Bert Harris claim they received notice of, even though the lawsuit was imminent. A true and correct copy of AGO 09-25 is attached as Exhibit "F" and incorporated here.

26. Likewise, AGO 2004- 35, states that Section 286.011(8), can only be used on "pending" litigation. This AGO states that the Section 286.011(8), Florida Statutes exemption:

> "does not apply when no lawsuit has been filed even though the parties involved believe litigation is inevitable."

27. In other words, Shade Meetings are improper on any pre-suit matters, until the lawsuit has been filed (it is pending) and the lawsuit names the governmental entity as a party. A true and correct copy of AGO 04-35 is attached as Exhibit "G" and incorporated here.

28. Even an accidental violation of the Sunshine Law nullifies any actions authorized by the Defendant during the Illegal Shade Meeting, including any strategies discussed and settlement guidance provided by its elected officials.

29. Thus, any actions and "guidance" given by the Defendant about the Bert Harris Claim are void ab initio.

30. Likewise, any subsequent actions taken by the Defendant in furtherance of the improper discussions at the Illegal Shade Meeting are void ab initio.

31. This includes the Defendant's vote on the proposed Bert Harris Settlement letter at the January 14, 2025 City Meeting.

32. Therefore the City's vote on the proposed Bert Harris Settlement Letter is void ab initio.

33. Defendant has not taken any action to cure the Illegal Shade Meeting and the Illegal City Actions that resulted from the illegal meeting.

## V. CAUSE OF ACTION

## VIOLATION OF CHAPTER 286, FLORIDA'S OPEN MEETING LAWS

34. Plaintiff incorporates all other paragraphs in this Complaint by reference as though fully written here.

35. This is an action against the Defendant for violations of Chapter 286.011, Florida Statutes.

36. Chapter 286 allows for the recovery of attorney's fees and costs for actions against Defendant for violations of its public meeting requirements.

37. Plaintiff represents that at present there is a bona fide, actual, present and practical need for this Court to find and declare that the Defendant violated Florida's Sunshine Laws by illegally discussing the Bert Harris Claim at the December 11, 2024, Illegal Shade Meeting.

38. Chapter 286.011, Florida Statutes, commonly known as the "Florida's Sunshine Law," requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public.

39. Florida's Sunshine Laws mandate that reasonable notice of such meetings be given and that minutes of the meetings be taken and promptly recorded.

40. The Illegal Shade Meeting was not open to the public, nor was notice provided to the public regarding this session as it relates to the Bert Harris Claim.

41. The Defendant's elected officials and City Attorney participated in the Illegal Shade Discussions about the "pre-suit" Bert Harris claim at the Illegal Shade Meeting.

42. During this executive session, strategies and the content of the Bert Harris Claim were discussed by the Defendant.

43. As a result of the Illegal Shade Meeting, the Defendant took the Illegal Shade Actions, including attempting to settle the Bert Harris Claim and authorizing the issuance of the Bert Harris Settlement Letter.

44. The nature of the discussions in the Illegal Shade Meeting about the Bert Harris Claim and related topics resulted in Illegal Official Actions taken by the Defendant, including those at the January 14th Meeting.

WHEREFORE, Plaintiff requests that the Court provide the following relief:

a. An Order finding and declaring that:
   i. The Defendant illegally discussed the Bert Harris Claim at the Illegal Shade Meeting;
   ii. The Defendant's actions violated Chapter 286.011, Florida Statutes, and
   iii. All of the Illegal Shade Actions taken as a result of such meeting be declared null and void ab initio, including but not limited to, any settlement with AP 6 on the Bert Harris Claim and the vote authorizing the issuance of the Bert Harris Settlement Letter at the January 14th Meeting.
b. Grant Plaintiff's demand for attorney's fees and costs pursuant to Section 286.011, Florida Statutes, against the Defendant; and
c. Award Plaintiff such other and further relief as the Court deems just and proper.

FILED THIS 7th DAY OF FEBRUARY 2025.

Conticello, P.A.

**/S/ Anthony L. Conticello**
**ANTHONY L. CONTICELLO**
Florida Bar No. 132550
2910 Kerry Forest Parkway
Suite D4-358
Tallahassee, FL 32309
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**COUNSEL FOR PLAINTIFF**

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA.**

**HOMES NOT HOTELS, INC., A FLORIDA NOT FOR PROFIT CORPORATION,**

**CASE NO:**

**Plaintiff,**

**v.**

**CITY OF INDIAN ROCKS BEACH, FLORIDA,**

**Defendant.**

_____/

**COMPLAINT EXHIBIT'S**

# EXHIBIT "A"

Phelps Dunbar LLP
100 South Ashley Drive
Suite 2000
Tampa, FL 33602
813 472 7550

November 5, 2024

Rhett Conlon Parker
rhett.parker@phelps.com
Direct: 813 472 7890

Evan P. Dahdah
evan.dahdah@phelps.com
Direct: 813 472 7666

**Via UPS Overnight Mail**:

City of Indian Rocks Beach, Florida
Attn: Mayor-Commissioner, Denise Houseberg
1507 Bay Palm Blvd
Indian Rocks Beach, FL 33785

**Re: Bert J. Harris Claim of AP 6 LLC pursuant to Chapter 70, Florida Statutes**

Dear Ms. Houseberg:

We represent AP 6, LLC ("AP 6") and write on its behalf relative to real property it owns located at 455 20th Ave., in Indian Rocks Beach, Florida ("Property"). Based on the facts and law set forth herein, the City of Indian Rocks Beach ("City") has inordinately burdened AP 6's private property rights with respect to the Property. Therefore, please allow this correspondence to serve as AP 6's written claim under the Bert J. Harris, Jr., Private Rights Protection Act, pursuant to Fla. Stat. § 70.001 (the "Act"), for monetary compensation from the City for the loss to the fair market value of the Property caused by the City's actions unduly burdening AP 6's private property rights, or for issuance of a variance, special exception, or any other extraordinary relief under the Act. **Enclosed is an appraisal supporting AP 6's claim and demonstrating the objective economic loss to the fair market value of the Property in the amount of $2,650,000.00, as a direct and proximate result of the City's enactment, and now enforcement of, Ordinance 2023-02 ("Ordinance").** The submission of this claim constitutes a separate and direct invocation of a remedy and cause of action under state law and does not constitute a waiver of AP 6's administrative, equitable, or legal rights under federal, state or local law, ordinance or rule, which AP 6 hereby reserves.

## I. Facts Entitling AP 6 to Relief.

To begin, AP 6 purchased the Property on November 16, 2021, for the primary and exclusive purpose of being a continuous short term vacation rental. AP 6 manages short term vacation rentals at the Property, renting to 719 renters in 2022, and approximately 655 renters in 2023. The Property contains five bedrooms and is approximately 4,672 square feet. Approximately 50% of the Property's short term vacation rentals are for short term rental groups of more than ten overnight occupants. AP 6 has invested a substantial amount of time and money

into maintaining and keeping the Property as a short-term vacation rental, consistent with the City's historical regulations, practices, and procedures.

Importantly, on the date the Property was purchased by AP 6, Ordinance 2018-01 ("2018 Ordinance") was effective. The 2018 Ordinance did not include any maximum occupancy restrictions for short-term vacation rentals. In fact, the 2018 Ordinance did not regulate the short-term vacation rental industry in *any* respect. Additionally, on the date the Property was purchased, the 2016 Comprehensive Plan ("Plan") was effective. Like the 2018 Ordinance, the Plan did not include any restrictions on a short-term vacation rental owner's ability to rent its property for profit. Rather, the Plan included several sections which underpinned the City's intent to further progress and grow the short-term vacation rental market within the City, and deferred much of this market to property owners in the private sector (like AP 6). For example, the Plan states: "[s]ince the [City] is not directly involved in the building and maintenance of housing, the responsibility lies with the private sector for both owner-occupied and rental housing. By ordinance, the [City] has adopted the *Southern Standard Building Code* and *Housing Code . . . but beyond these guidelines, [the City's] role is limited. The private sector remains the main provider and preserver of the housing stock*." *See* Plan at 7 (emphasis added). Throughout the Plan, it expressly states that the City's intent for future land use was to protect private property rights and to encourage both owner and *rental opportunities for all types of housing*. *See* Plan at 12, 29 (emphasis added).

Prior to, and on the date the Property was purchased, neither the 2018 Ordinance nor the Plan included any notations, provisions, or even working notes/future ideas that expressly, or even implicitly, put AP 6 on notice that a change to the short-term vacation rental market could occur—or was even contemplated by the City. Thus, considering the 2018 Ordinance, the Plan, and the relevant building codes (which the Plan references, and which the City still presently adopts), the Property was purchased by AP 6 with the sole intent to rent to short term rental groups with more than twelve or ten overnight occupants. This intent is one that AP 6 maintains would be considered objectively reasonable in light of this Bert Harris claim, as even the City's own City Attorney advised the City Commissioners during an April 11, 2023, public workshop that the language of the Ordinance could interfere with "reasonable investment-back expectations."

Effective May 9, 2023, the Ordinance was enacted by the City. A copy of the Ordinance is attached as **Exhibit 1**. By public comment shortly after the Ordinance was enacted, the City expressed that it would not enforce its language against AP 6 or other similarly situated short-term vacation rental property owners. In the interim, however, AP 6, along with several other short-term vacation rental property owners, sued the City alleging various constitutional violations caused by the Ordinance. Such litigation remains ongoing in the Middle District of Florida. Thereafter, the City sought to enforce the Ordinance effective September 5, 2024, through its Press Release. *See* City Press Release, attached as **Exhibit 2**.

## II. Law Entitling AP 6 to Relief

The Act establishes a cause of action when a specific action of a governmental entity has inordinately burdened an existing use of real property, or a vested right to a specific use of real property without amounting to a taking. An "inordinate burden" is defined as government action limiting the use of real property, "such that the property is permanently unable to attain the reasonable, invested-backed expectation for the existing use of the real property or a vested right to a specific use" of the property, or "that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of

a burden imposed for the good of the public, which in fairness should be borne by the public at large." § 70.001(3)(e)(1). Clarifying this statutory definition, the Third District has held:

> Whether a property owner's "investment-backed expectation" in its property is "reasonable" is determined objectively by assessing whether a landowner's expectation was possible under the then-existing land use regulations governing the property, and the then-existing physical conditions of the specific property. That objective analysis indicates that a property is "inordinately burdened" as a matter of law where "nothing about the physical or regulatory aspects of the property *at the time of the government regulation* made the [the property owner's] expectations for the [its use] unreasonable.

*Karenza Apartments, LLP v. City of Miami*, 347 So. 3d 431, 435 (Fla. 3d DCA 2022) (emphasis added). A claimant under the Act need not prove that the local government acted nefariously, "only that the regulation inordinately burdened an existing use or vested right." *Id.* at 434.

In this district, writing the opinion for the court, Judge LaRose examined a Bert Harris claim made by a short-term vacation rental owner, Mojito Splash, LLC ("Mojito Splash"), against the City of Holmes Beach. *See Mojito Splash, LLC v. City of Holmes Beach*, 326 So. 3d 137, 140 (Fla. 2d DCA 2021).[1] Mojito Splash purchased an investment property in June 2013, with the intent to rent the property to an unregulated number of guests. *Id.* at 140. Mojito Splash began renting its property to an unregulated number of guests beginning in December 2013, generating significant rental income. *Id.* *Prior* to the date Mojito Splash purchased its rental property, in February 2009, the City of Holmes Beach adopted Ordinance 08-05, which amended the Holmes Beach's "Future Land Use Element of its Comprehensive Plan" and, critically, "restricted occupancy in such rentals to the greater of six persons or two persons per bedroom." *Id.* at 139. Several years later, the City of Holmes Beach enacted Ordinance 15-12 and 16-02, which codified the occupancy limits contained in Ordinance 08-05. Mojito Splash made a claim under the Act against the City of Holmes Beach, claiming that it had an "existing use" to rent its vacation rental to an unlimited number of occupants. *Id.*

The Second District disagreed. *Id.* at 141-42. Importantly – and distinct from AP 6's claim – the court held that because Holmes Beach's Comprehensive Plan regulated the maximum occupancy for guests, Mojito Splash "had no right to rent to an unlimited number of guests." *Id.* at 141. The opposite is true here—on the date AP 6 purchased the Property, there were *no* regulations in place by the City preventing AP 6's ability to rent the Property to more than ten overnight short-term rental guests. Thus, *Mojito Splash*'s holding is instructive and can be used to support that AP 6's use of the Property prior to the Ordinance would qualify as an "existing use" under the Act. *See id.* ("Mojito ignores the significance and effect of the City's Comprehensive Plan, as amended by Ordinance 08-05. 'A local comprehensive land use plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality.'") (citations omitted). Such existing use was undoubtedly burdened by the Ordinance's arbitrary occupancy and other related restrictions.

[1] Counsel for the City of Holmes Beach was the same law firm which currently represents the City, so we appreciate that the City Attorney is likely familiar with this case.

Finally, there is no requirement under the Act to exhaust one's administrative remedies. *See, e.g.*, *Ocean Concrete, Inc. v. Indian River Cty. Bd. of Cty. Commissioners*, 241 So. 3d 181, 189 (Fla. 4th DCA 2018) (stating that Act is separate and distinct from the law of takings).

## III. IRB Ordinance 2023-02 Inordinately Burdens the Property

The Property's fair market value has objectively decreased as a direct result of the City's action in enacting, and now enforcing through its September 5, 2024, press release, the Ordinance. The Ordinance has permanently and significantly reduced the Property's ability to utilize all its dwelling units for short term rental purposes, which results in an economic waste of the Property, and a decrease in rental revenue as compared to that which was realized before the Ordinance was enacted and enforced. Considering these impacts, the total economic loss caused by the Ordinance is $2,650,00.00 dollars, as determined by the bona fide written appraisal report. *See* **Exhibit 3**.

## IV. Demand for Relief

For the reasons discussed above, the City of Indian Rocks Beach, through Ordinance 2023-02, has deprived AP 6 of its reasonable investment backed expectations in the Property and inordinately burdened its use of the Property. Therefore, pursuant to Fla. Stat. § 70.001(4)(a), AP 6 presents this Bert Harris claim along with a bona fide valid written appraisal report, which supports its claim and demonstrates the fair market value of the Property significantly decreased as a direct result of the Ordinance's enactment, and now, enforcement. AP 6 seeks all relief afforded to it under the Act, including compensation for the diminution in fair market value of the Property resulting from the City' enactment and enforcement of the Ordinance, or alternatively, a variance, special exception, or any other "extraordinary relief" as set forth in § 70.011(4)(c)(9). Moreover, while not specifically demanded *at this time*, the City must be mindful that § 70.001(6)(c) entitles AP 6 to recover its reasonable attorney's fees.

AP 6 hereby demands that the City make a written settlement offer within 90 days of this claim and otherwise comply with § 70.001's requirements. We look forward to working with the City to resolve this Bert Harris claim without necessitating court intervention.

Respectfully submitted,

**PHELPS DUNBAR LLP**
Counsel for AP 6 LLC

Rhett C. Parker

Enclosures
cc: Randy Mora, City Attorney
cc: Carlos Kelly, Counsel for the City

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA.**

**HOMES NOT HOTELS, INC., A FLORIDA NOT FOR PROFIT CORPORATION,**

**CASE NO:**

**Plaintiff,**

**v.**

**CITY OF INDIAN ROCKS BEACH, FLORIDA,**

**Defendant.**

_____/

**COMPLAINT EXHIBIT'S**

# EXHIBIT "B"


# AGENDA
# ATTORNEY-CLIENT SESSION

**Holiday Inn Harborside**
**Pelican Sandpiper Room**
**401 2nd Street**
**Indian Rocks Beach, Florida 33785**

**Wednesday, December 11, 2024, 4:00 P.M.**

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1. **Call Public Meeting to Order**
2. **Pledge of Allegiance & Moment of Silence**
3. **Roll Call**
4. **Closed Litigation Shade Meeting**
5. **Re-Open Public Meeting**
6. **Adjournment.**

Posted: December 5, 2024

**LEGAL NOTICE**

# NOTICE OF CLOSED EXECUTIVE SESSION OF THE CITY OF INDIAN ROCKS BEACH COMMISSION AND LITIGATION COUNSEL

NOTICE IS HEREBY GIVEN that on **Wednesday, December 11, 2024,** at **4:00 P.M.**, the City Commission of the City of Indian Rocks Beach, Pinellas County, Florida, will hold a closed executive session at the Holiday Inn Harborside-Pelican Sandpiper Room, located **at 401 2nd Street, Indian Rocks Beach, Florida 33785**.

This meeting may be attended by: Mayor/Commissioner Denise Houseberg, Vice-Mayor/Commissioner Janet Wilson, Commissioner John Bigelow, Commissioner Jude Bond, Commissioner Hope Wyant, City Attorney Randy Mora, Litigation Counsel Carlos Kelly, and a certified court reporter whose attendance shall be coordinated by the City.

This session will constitute a closed executive session concerning pending litigation to which the City is presently a party before a court, to wit:

1. *715 Gulf, LLC v City of Indian Rocks Beach*, M.D. Fla. Case No. 2023cv02087; and
2. *AP 6, LLC v. City of Indian Rocks Beach*, M.D. Fla. Case No. 8:2023cv01986; and
3. *Florida Dreamscape Vacation Rentals, LLC v. City of Indian Rocks Beach*, M.D. Fla. Case No. 8:2023cv02131; and
4. *Harbor Vista Ventures, LLC v. City of Indian Rocks Beach*, M.D. Fla. Case No. 8:2023cv02137; and
5. *IRB Connect*, *LLC v. City of Indian Rocks Beach*, M.D. Fla. Case No. 8:2023cv02030; and
6. *Peak Ventures, LLC v. City of Indian Rocks Beach*, M.D. Fla. Case No. 8:2023cv02223; and
7. *Shearer v. City of Indian Rocks Beach*, M.D. Fla. Case No. 8:2023cv02089.

During this session, the Commission's discussion shall be confined to settlement negotiations and strategy sessions related to litigation expenditures, as authorized by Section 286.011 (8), Florida Statutes.

The estimated length of the attorney-client session is two (2) hours.

Lorin Kornijtschuk, City Clerk

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA.**

**HOMES NOT HOTELS, INC., A FLORIDA NOT FOR PROFIT CORPORATION,**

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**CITY OF INDIAN ROCKS BEACH, FLORIDA,**

**Defendant.**

_____/

**COMPLAINT EXHIBIT'S**

# EXHIBIT "C"

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**TAMPA DIVISION**

AP 6 LLC,

Plaintiff,

v. CASE NO.: 8:23-cv-01986-SDM-CPT

CITY OF INDIAN ROCKS BEACH,

Defendant.
_____/

**AMENDED COMPLAINT FOR DECLARATORY RELIEF**

Plaintiff, AP 6 LLC ("Plaintiff"), by and through its undersigned counsel, pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, hereby files this Amended Complaint against the Defendant, CITY OF INDIAN ROCKS BEACH, a municipality of the State of Florida (the "City"),[1] and in support, alleges that the City's recently enacted Ordinance 2023-02 violates the United States and Florida Constitutions and is preempted by applicable Florida Statutes, and in support of the same Plaintiff states as follows:

[1] Plaintiff filed a Complaint on August 1, 2023, in the Sixth Circuit Court for Pinellas County, Florida. On September 5, 2023, the City removed the Complaint to this Court, and on September 12, 2023, the City filed a Motion to Dismiss and Motion to Strike Plaintiff's Complaint under Fed. R. Civ. P. 12(b)(6) and 12(f).

## JURISDICTIONAL ALLEGATIONS

1. This is an action for declaratory relief based upon the City's adoption of Ordinance No. 2023-02 (the "Ordinance"), in which the City attempts to regulate vacation rentals. A copy of the Ordinance is attached hereto as **Exhibit "A"**.

2. Plaintiff is a Delaware limited liability company with its principal place of business in located at 600 N. Broad Street, Suite 5 #1113, Middletown, DE 19709, authorized to do business in Florida, and is in the business of managing short term vacation rentals within the City.

3. Plaintiff manages short term rentals within the City and has rented to more than 1,500 renters since 2022.

4. This case was originally filed on August 1, 2023, in the Sixth Circuit Court in and for Pinellas County, Florida. That court had jurisdiction in this matter pursuant to Art. V(5)(b), Fla. Const., and Sections 26.012(2)(c), (3), and 86.011(b), Florida Statutes, as this is a claim seeking declaratory relief and raises claims otherwise not cognizable by the county courts.

5. Venue was proper in Pinellas County pursuant to Section 47.011, Fla. Stat., as the actions and facts giving rise to the complaint occurred in Pinellas County, the real property owned and operated by the Plaintiff and otherwise impacted by the actions of the City is located within the City at 455 20th Ave., Indian Rocks Beach, Florida 33785 (the "Property"), in Pinellas County, and the City maintains its headquarters and principal place of business and is otherwise located in Pinellas County.

6. On September 5, 2023, the City removed the case to this Court. *See* Defendant's Notice of Removal (Doc. 1). This Court has federal question jurisdiction under 28 U.S.C. § 1331 because four of the claims seek relief for alleged violations of the United States Constitution. Venue is proper in this Court since this Court's jurisdiction encompasses that of the Sixth Judicial Circuit Court in and for Pinellas County, Florida.

7. As there is an actual controversy between the parties, the Court can declare the rights and other legal relations between the parties pursuant to 28 U.S.C. § 2201.

**PARTIES**

8. The City is a state-chartered municipality in the State of Florida. The City is responsible for adopting, administering, and enforcing land development regulations for real property within the incorporated areas of the City.

9. Plaintiff is a foreign limited liability company created and existing under Delaware law. Plaintiff maintains its principal office at 600 N. Broad Street, Suite 5 #1113, Middleton, Delaware, and is in the business of managing short term vacation rentals in the City.

10. Plaintiff purchased the Property on November 16, 2021.

11. Plaintiff manages its vacation rentals at the Property. Plaintiff rented to 719 renters in 2022 and 655 renters in 2023 (to present date). The Property contains five (5) bedrooms and is approximately 4,672 square feet.

12. Plaintiff advertises the Property for short-term rentals and handles contracts including for the short-term rental of the Property. Approximately 46.97% of the Property's short term vacation rentals are for short-term rental groups of ten or more overnight occupants.

13. Plaintiff has invested substantial amounts of time and money into maintaining and keeping the Property as a short-term vacation rental consistent with the City's historical regulations, practices, and procedures.

## GENERAL ALLEGATIONS

14. On May 9, 2023, the City adopted the Ordinance on the second and final reading.

15. Pursuant to Sec. 5, the Ordinance took effect "immediately upon adoption."

16. Pursuant to Sec. 1, 18-201, the Ordinance applies "to all structures used as vacation rentals within the single family ("S"), medium density ("RM 2"), medium density duplex residential ("RM 1"), and the high-density commercial tourist ("CT") zoning districts," including the Property.

17. The Property is zoned within a "Single Family" district of the City.

18. Pursuant to its findings of fact, the Ordinance engages in the "regulation of vacation rentals," including "short term vacation rentals."

19. The Ordinance defines "Occupant" as "any person who occupies a vacation rental. There is a rebuttal presumption that, when the dwelling unit occupied

is not the primary residence of the guest, the occupancy is transient." *See* Section 18-200.

20. The Ordinance defines "Transient public lodging establishments" as

> [A]ny unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three (3) times in a calendar year for periods of less than thirty (30) days or one (1) calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

*Id.*

21. The Ordinance defines "Vacation rental" as "a vacation rental as defined by Florida Statutes § 509.242(1)(c)." *Id.*

22. The Ordinance prohibits the number of occupants allowed in a vacation rental from exceeding a prescribed limit. Per the Ordinance, non "Owner Occupied" single-family-zoned subject vacation rental properties – which include the Property – "shall not exceed a maximum number of ten (10) overnight occupants" after two (2) years from date of the Ordinance's enactment and a maximum of twelve (12) occupants in between that time." Section 18-216.

23. Additionally, pursuant to Section 18-204, of the Ordinance, the Property is required to receive a Vacation Rental Registration as provided in the Ordinance, which is defined as "the licensure or certification issued by the City of Indian Rocks Beach to a property owner authorizing the lawful operation of a transient public lodging establishment as a vacation rental within the City." Section 18-200. The Vacation Rental Registration scheme in the Ordinance includes a series of

requirements to provide a "responsible person" information, the number of bedrooms and location of parking spaces, a detailed exterior site plan, a detailed interior structural plan, ongoing compliance acknowledgments, a listing of the occupancy limit, a narrative parking plan, a copy of conduct rules that the owner privately adopts for the respective property, and a narrative statement setting forth how each owner "will ensure each guest is provided a copy of, and made to acknowledge, the city rules which must be disclosed to each guest." Section 18-206.

24. The Ordinance also contains advertising prohibitions for vacation rentals, including prohibitions against the use of properties subject to the Ordinance "as an event venue for gatherings such as weddings, corporate retreats, or film productions, which are likely or intended to draw attendance in excess of the permissible occupancy," or parking in excess of what is permitted under the Ordinance. *See* Section 18-214(a).

25. The Ordinance also requires vacation rental advertisements to include the statement:

> *You are vacationing in a residential area. Please be a good neighbor by keeping the noise to a respectful level during the day and night. Excessive and unreasonable noise can deprive neighbors of the peaceful enjoyment of their private property.*

(emphasis in the original). Section 18-214(b).

26. The Ordinance also targets vacation rental units in imposing noise and quiet hours limitations, minimum required parking, permissible parking locations, solid waste, and temporary storage requirements. *See* Secs. 1, 18-217 and 18-218.

27. The Ordinance also requires that a vacation rental owner that does not directly manage a vacation rental it owns, to designate "no more than two (2) designated responsible persons for each rentable unit" that must adhere to a series of requirements under the Ordinance, including the following:

> **Availability of Designated Responsible Person.** The responsible person(s) shall be available twenty-four (24) hours per day, seven (7) days a week, including holidays, for the purpose of promptly responding to complaints from city personnel, officers, or authorized agents regarding conduct or behavior of vacation rental occupants or alleged violations of these regulations, as well as communications from the sheriff's department, fire department, other emergency personnel, or by any other regulatory personnel of the city. This person must have authority to immediately address and take affirmative action, within one (1) hour of notice from the city or other relevant governmental agency, on violations concerning life-safety, noise, violent confrontations, trespassing, capacity limit violations, and parking violations. A record shall be kept by the city of the complaint and the responsible person's response.
>
> A rebuttable presumption of a violation of this article shall be established as against the owner and the primary designated responsible person, jointly and severally, in the event of an event or complaint where the city or its designated agents are unable to reach or secure a response from the owner and any of the designated responsible person(s) within the time period set forth in this section. An alleged violation can be rebutted by evidence of unanticipated exigency, an act of god, or other exceptional circumstances justifying the unavailability of each identified responsible person notwithstanding measures taken to ensure compliance.
>
> It shall be the sole responsibility of the property owner to appoint reliable responsible person(s) and to inform the city of his or her correct mailing address. Failure to do so shall not be a defense to a violation of this section.
>
> . . .

**Service.** Service of notice on the responsible person shall be deemed service of notice on the property owner, guest, occupant and violator.

**Exterior Posting**. The owner and responsible party shall ensure a non-illuminated sign, that is one square foot in size on each side, is prominently displayed in the frontage of a vacation rental property. The sign must identify the business tax receipt number for the property and the phone number of the primary designated responsible party. The sign's background shall be white in color, and the font shall be in black Times New Roman or Arial Font, and in no smaller than 144 Point typeface, or otherwise no smaller than an inch and a half (1 $^{1}/_{2}$") in height. The sign must be constructed of weather resistant wood or plastic. An exterior posting shall not be required for properties within the city's CT zoning district.

**Interior Posting.** The owner or responsible person shall provide the city, and conspicuously post on the interior surface of the front door of the premises or on a wall within five feet of the front door, the name, address, and day/evening telephone numbers of the responsible person and be available twenty-four (24) hours per day, seven (7) days a week for the purpose of promptly responding to complaints regarding conduct or behavior of vacation rental occupants or alleged violations of these regulations. Any change in the responsible person shall require written notification to the city on forms provided by the city and in a manner promulgated by the city upon payment of the applicable fees.

**Response Time.** Complaints to the responsible person concerning violations by occupants of vacation rental units to this section shall be responded to within a reasonable time but in no instance greater than one (1) hour. A record shall be kept of the complaint and the manager's response, by the manager, for a period of at least two (2) years after the incident, a copy of which shall be made available to the city upon request.

**Redesignation.** An owner may change his or her designated responsible person(s). To change the designated agent or responsible person, the owner shall notify the city in writing of the name, contact information and other information required in this article for the new responsible person, along with a signed affidavit from the new responsible person acknowledging receipt of a copy of this article and agreeing to serve in this capacity and perform the duties set forth in this article. Any notice of violation or legal process which has been delivered or served upon the previous

> responsible person, prior to the city's receipt of notice of change of the responsible person, shall be deemed effective service.
>
> **Legal Duties.** No property owner shall designate as a responsible person any person who does not expressly comply with the provisions of this article. The property owner and the responsible person shall jointly and severally be deemed to be the "violator" of this article as the term is used in Florida Statutes § 162.06. By designating a responsible person, a vacation rental owner is deemed to agree that service of notice on the responsible person at the address listed by the owner shall be deemed service of notice on the owner, responsible person, and violating guest. Copies of all code violation notices shall also be provided to the property owner in the manner set forth in Florida Statutes § 162.12. If, alternatively, a citation is issued by the code enforcement officer or deputy, the citation process set forth in Florida Statutes § 162.21.

(emphasis in the original). *See* Section 18-214(b).

28. Given the requirements set forth above by the Ordinance, including as described in paragraphs 17-26 herein (the "Imposed Burdens"), the Ordinance substantially burdens owners of short-term vacation rental property owners in the City, such as Plaintiff – who have lawfully operated their historically permissible vacation rentals – by such a drastic increase in compliance costs and restrictions being targeted upon previously compliant vacation rentals, such as the Property. Effectively, the frequency and duration of future vacation rentals for the Property will be severely curtailed, if not eliminated, directly harming the value of the Property and its vacation rental business.

29. These changes to the City's existing regulations, policies, and procedures constitute broad and substantive changes.

30. The City attempts to use purported findings of fact to support these substantive changes to further the City's interest in the health, safety, and well-being of its residents. Instead, however, the totality of the requirements in the Ordinance creates an unworkable, arbitrary, and inundated scheme which prohibits certain properties from reaching its investment backed purposes indefinitely.

**COUNT I**
**DECLARATORY JUDGMENT**
**AS-APPLIED TAKINGS CLAIM**

31. Plaintiff reasserts the allegations contained in Paragraphs 1 through 30 above as though fully set forth herein.

32. The United States and Florida Constitutions protects individual property rights by prohibiting the governmental taking of private property for public use without payment of full compensation. Amendment 5, U.S. Const.; Article X, § 6(a), Fla. Const.

33. When the government acts for the benefit of the public as a whole, a select group of citizens should not bear the expense. Yet, here, Plaintiff and a few other similarly situated property owners bear the burden of the Ordinance, without any resulting benefit.

34. On May 9, 2023, the Ordinance became effective immediately to Plaintiff's Property.

35. Currently, Plaintiff's Property is within the "vesting period" under Section 18-216(b), which subjects its maximum overnight occupancy to twelve overnight occupants for two years, provided all other requirements are met.

36. Pursuant to Section 18-216(b), after the vesting period of two years elapses, on May 9, 2025, Plaintiff's Property will have a maximum overnight occupancy of ten overnight occupants. Moreover, Section 18-216(b)(4) requires immediate effect of the maximum overnight occupancy of ten overnight occupants upon a sale of the vacation rental.

37. This claim is ripe for review because the regulation is currently effective on the Property, and creates restrictions that have caused an actual controversy.

38. The maximum overnight occupancy requirements of the Ordinance create a substantial deprivation of Plaintiff's economic use and reasonable investment-backed expectations.

39. The Property was purchased on November 16, 2021, for the primary and exclusive purpose of being a continuous short term vacation rental.

40. On the date of the Property's purchase, Indian Rocks Beach Ordinance No. 2018-01 ("2018 Ordinance") was effective.

41. The 2018 Ordinance did not include any maximum occupancy restrictions for any short-term vacation rental.

42. Notwithstanding the 2018 Ordinance effective on the date of Plaintiff's purchase of the Property, the City's 2016 Comprehensive Plan ("Plan")[2] adopted by the Indian Rocks Beach City Commission was also effective.

[2] City of Indian Rocks Beach Comprehensive Plan, http://www.indian-rocks-beach.com/docs/COMP%20PLAN-2016.pdf (last visited Oct. 3, 2023).

43. The Plan similarly did not include any restrictions on a short-term vacation rental owner's ability to rent its property for profit.

44. Rather, the Plan included several sections that demonstrated its intent to further progress the rental market in the area and deferred much of this market to property owners in the private sector.

45. For example, on page 7/296, the Plan states: "[s]ince the City of Indian Rocks Beach is not directly involved in the building and maintenance of housing, the responsibility lies with the private sector for both owner-occupied and rental housing. By ordinance, the city has adopted the *Southern Standard Building Code* and *Housing Code* . . . **but beyond these guidelines, its role is limited. The private sector remains the main provider and preserver of the housing stock**." (emphasis added).

46. On page 12/296, under "Future Land Use" and "Goal 1" of the Plan, it states: "Protecting private property rights, in accordance with established law, **especially for municipal actions not classified as a regulatory taking**." (emphasis added).

47. On page 29/296, the Plan states: "**Existing residential land uses shall be protected**, through provisions contained in the land development regulations, from the encroachment of incompatible activities."

48. On page 43/296, a policy purpose of the Plan is to "[e]ncourage both ownership and **rental opportunities for all types of housing**." (emphasis added).

49. Neither the 2018 Ordinance nor the Plan included notations, provisions, or even working notes/future ideas or working plans that expressly, or even implicitly,

could put Plaintiff – or others similarly situated like Plaintiff – on notice that a change to the short-term vacation rental market would occur.

50. In fact, the *Southern Standard Building Code* and *Housing Code*, which are expressly adopted by the City for the health and safety of its residents, permit the Property to have a higher occupancy than ten or twelve overnight occupants.

51. On the date of the Property's purchase, the City did not adopt more stringent code standards to properties within its jurisdiction. The 2018 Ordinance and the Plan were the operative standards.

52. Considering Ordinance 2018, the Plan, and the relevant codes outlined above, the Property was purchased by Plaintiff with the intent to rent to short term rental groups with more than twelve or ten overnight occupants.

53. In 2022, approximately 719 short term renters rented the Property.

54. In 2023, before the enforcement of the Ordinance, approximately 655 short term renters rented the Property.

55. Since the Property began being rented to short-term vacation renters, approximately 25.37% of Plaintiff's net revenue came from rentals of greater than ten (10) but less than or equal to twelve (12) short term vacation rental groups.

56. Since the Property began being rented to short-term vacation renters, approximately 21.60% of Plaintiff's net revenue came from rentals of greater than twelve short term vacation rental groups.

57. The Ordinance directly prevents the Property from being rented to groups larger than twelve (during the vesting period) or ten (after the vesting period) overnight

occupants, which has substantially diminished the value of the Property as a short-term vacation rental.

58. Because of the Ordinance, the primary economic use of Plaintiff's property has been, and will be, significantly diminished, notably by the Ordinance's restriction on the Property's use.

59. Because of the Ordinance, Plaintiff's reasonable investment backed expectations of renting the Property are substantially diminished.

60. Indeed, these reasonable investment backed expectations of Plaintiff were generally acknowledged by City Attorney Randy Mora during an April 11, 2023, City of Indian Rocks Beach Regular City Commission Meeting:

> City Attorney Mora stated he had received renewed interest last week in the legislative impact of the Bert J. Harris Jr. Private Property Act, memorialized in Florida Statute 70.001. There has been some suggestion that the Florida Statute was not given its due attention during this process. He would have to object to that representation if only to say he has tacitly and explicitly been referring to the Bert Harris Act since 2017. **He had advised the city commission that potential claims exist with the parties' reasonable investment-backed expectations.**[3]

61. Lastly, the character of the Ordinance also directly impacts larger short term vacation rental properties because its occupancy use restriction applies only towards larger properties that have the ability to occupy more than twelve or ten persons.

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[3] *Minutes – April 11, 2023 City of Indian Rocks Beach Regular City of Commission Meeting* at 6/40 (Jun. 13 2023), *04-11-2023 CCM Minutes-WebsitePost.pdf (indian-rocks-beach.com) (emphasis added).

62. The practical and realistic impact of the Ordinance in targeting these larger properties by constricting its use can and does diminish the value of properties in the City.[4]

63. This macroeconomic effect has, and will continue to, substantially reduce the value of property tax revenue for the City, which according to the 2024 General Fund Revenue Chart from the City's September 20, 2023 Agenda,[5] accounts for 60.50% of the City's growth income.

64. Considering the presumed findings of fact supporting the Ordinance, the benefit bestowed upon the public is solely at the expense of larger single-family home property owners in the City who purchased the homes for the purpose of renting the properties to larger rental groups.

65. Therefore, the character of the Ordinance creates an imminent and continuous blockage for rentals to larger groups, injuring Plaintiff.

66. Plaintiff requests the impaneling of a jury of 12 people.

**WHEREFORE**, Plaintiff, AP 6 LLC, respectfully requests that this Court enter judgment against Defendant, the City of Indian Rocks Beach, find that a taking

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[4] *See* Harvard Business Review, *Research: Restricting Airbnb Rentals Reduces Development*, (Nov. 17, 2021), *Reduces Development*, (Nov. 17, 2021), https://hbr.org/2021/11/research-restricting-airbnb-rentals-reduces-development#:~:text=Since%20STR%20regulations%20decrease%20the,by%20%2440%20million%20per%20year ("Since STR regulations decrease the number of permit applications which in turn stymies growth in property values, we conservatively estimate that for the 15 cities we studied, STR restrictions reduced property values by a total of $2.8 billion and tax revenues by $40 million per year.").

[5] *Agenda City of Indian Rocks Beach Special City Commission Meeting* at 23/63 (Sep. 15, 2023), 09-20-2023 SCCM Agenda Packet_Budget.pdf (indian-rocks-beach.com).

occurred on the date the Ordinance became effective on May 9, 2023, and for any other and further relief this Court deems just and proper.

**COUNT II**
**DECLARATORY RELIEF**
**FREEDOM OF EXPRESSION**

67. Plaintiff reasserts the allegations contained in Paragraphs 1 through 30 above as though fully set forth herein.

68. Section 18-214 of the Ordinance relates to advertising restrictions for vacation rentals.

69. Under Section 18-214(b) the Ordinance requires the following statement to be included in any advertising of a vacation rental:

> **"You are vacationing in a residential area. Please be a good neighbor by keeping the noise to a respectful level during the day and night. Excessive and unreasonable noise can deprive neighbors of the peaceful enjoyment of their private property."**

("Statement"). Under Section 18-214(c), any advertisement for a vacation rental that does not contain the above statement is subject to a penalty.

70. Under Section 18-217(c)(4), the same statement is required to be posted "in English, using a non-script font such as times new roman or arial…in a font no smaller than 14-point in size" on the interior front door of the vacation rental (or near the front door) *and* on any exterior lounges, patios, porches and patios. A separate notice may also be required that vacation rentals post "[n]otice of the need for the peace and quiet of neighborhood residents, especially between the quiet hours of 10 p.m. and 7 a.m."

71. These penalties include fines, suspension of the property owner's vacation rental registration for the property or unit at issue, and revocation of a property owner's vacation rental registration.

72. Under Section 18-202(d), a revoked rental registration for a specific unit or property shall not be re-issued for the same unit or property to the property owner who had his/her registration revoked, or to any entity in which he/she has any financial or ownership interest.

73. The required Statement is not the speech that Plaintiff would otherwise say, and Plaintiff does not consent; the forced Statement is compulsion of property owners to declare a belief and affirm an attitude of mind.

74. The required Statement is not purely factual and uncontroversial speech. It does not seek to clear up any misunderstanding otherwise present in an advertisement.

75. The required Statement does not directly advance substantial governmental ends, is more restrictive than necessary, and is unduly burdensome.

76. Therefore, because the City coerces speech upon property owners subject to the Ordinance, Section 18-214(b) and Section 18-217(c)(4) are unconstitutional.

77. Moreover, Section 18-214(a) also prohibits the advertising of vacation rentals as an "event venue for gatherings such as weddings, corporate retreats, or film productions, which are likely or intended to draw attendance in excess" of the occupancy limits or parking regulations. This restriction does not directly advance

substantial governmental ends, is more restrictive than necessary, and is unduly burdensome.

78. Section 18-214(a) directly targets the content of lawful non-misleading speech and forbids a speaker from expressing his message. Yet, the City has no evidence that such a restriction will serve its interests nor does the City have evidence that the restriction is not more extensive than necessary to serve its interests.

**WHEREFORE**, Plaintiff, AP 6 LLC, respectfully requests that this Court enter judgment against Defendant, the City of Indian Rocks Beach, issue an Order declaring that the Ordinance's speech provisions violate Article I, § 4 of the Florida Constitution and/or Amendment I of the U.S. Constitution, and are therefore, invalid, and unenforceable.

## COUNT III
## DECLARATORY RELIEF
## EQUAL PROTECTION

79. Plaintiff reasserts the allegations contained in Paragraphs 1 through 30 above as though fully set forth herein.

80. This is an action for a declaratory judgment that the City has acted in violation of the equal protection guarantees of the United States and Florida Constitutions due to its arbitrary occupancy limits on short term rental units, which has created an actual controversy between the parties.

81. Through the Ordinance's occupancy limit, the City intentionally treats similarly situated groups dissimilarly, without a rational basis for the difference in treatment.

82. In particular, short-term vacation rental units situated in the single family ("S"), medium density ("RM 2"), and medium density duplex residential ("RM 1") zoning districts which have, prior to the Ordinance, regularly rented to a maximum of ten overnight occupants, are treated dissimilarly (and better) than those short-term vacation rental units situated in the single family ("S"), medium density ("RM 2"), and medium density duplex residential ("RM 1") zoning districts which have, prior to the Ordinance, regularly rented to more than ten overnight occupants.

83. In relevant part, the Ordinance commands that, in the single family ("S"), medium density ("RM 2"), and medium density duplex residential ("RM 1") zoning districts, "[r]egardless of the number of bedrooms in or on the property, the overnight occupancy [for vacation rental units] shall not exceed a maximum number of ten (10) overnight occupants." The City intentionally, and arbitrarily, selected this number, which has severe impacts on those on the wrong end of the City's whimsical choice.

84. During the January 24, 2023, City Commission Work Session, Commissioner Houseberg stated his preference for a maximum capacity of 10. Commissioner McCall favored simply two persons per bedroom, plus two. Commissioner Hanna selected eight as the right number. Commissioner Bond said he would like to see a little higher than ten as the limit, and that it didn't make sense to him why there would be a cap that constricts someone beyond the number of bedrooms an owner has. One thing is clear from this exchange—the City arbitrarily picked the occupancy limit.

85. The equal protection guarantees of the United States and Florida Constitutions do not simply ensure some equal protection related to suspect classes, but instead these guarantees require that every governmental decision and line drawing decision must have a rational basis. The City violated this cardinal rule by its irrational and wholly arbitrary selection of the number ten (10) as its favored number for an occupancy limit.

86. The disfavored property owners have been harmed by the City's selection of the number ten (10) and this number was not based on social science, science, or even common sense. Instead, the selection of the number ten (10) as the limit was based on the arbitrary preference of five City Commissioners.

87. The maximum occupancy limit imposed by the Ordinance is too far attenuated from the City's stated goals and is vastly underinclusive in its application. For example, it is entirely possible that a group of ten persons at a short-term rental can cause a disturbance, the prevention of which is ostensibly the Government's interest.

88. In contrast to the City's arbitrary selection of the number ten (10) as its occupancy limit stands the applicable Building and Fire Codes, which limit the maximum occupancy at a property to a reasonable number based on *that* property and a number that is necessary to maintain safety.

89. Because the City has unlawfully isolated Plaintiff and similarly situated property owners for distinct and harsher regulation, the City has created a circumstance where Plaintiff will be unable to rent its property as Plaintiff intends.

90. The equal protection guarantees of the United States and Florida Constitutions prohibit the City's selection of its occupancy restriction. Therefore, this Court should declare such restriction unconstitutional.

**WHEREFORE**, Plaintiff, AP 6 LLC, respectfully requests that this Court enter judgment against Defendant, the City of Indian Rocks Beach, issue an Order declaring that the Ordinance's occupancy limits violates Article I, § 2 of the Florida Constitution and/or Amendment XIV of the U.S. Constitution, and is therefore, invalid, and unenforceable.

**COUNT IV**
**DECLARATORY RELIEF**
**PROCEDURAL DUE PROCESS/VAGUENESS**

91. Plaintiff reasserts the allegations contained in Paragraphs 1 through 30 above as though fully set forth herein.

92. The Fourteenth Amendment's Due Process Clause guarantees procedural due process. A governmental actor must follow certain procedures before they may deprive a person of a protected life, liberty, or notably here, property interest.

93. A statute or ordinance is void for vagueness when, because of its imprecision, it fails to give notice of what conduct is prohibited.

94. Ordinances, particularly those which carry the threat of civil sanctions, must provide a person of ordinary intelligence with fair notice of what constitutes forbidden conduct. A municipality may not adopt an ordinance which, by its vague wording, leaves persons to necessarily guess at its meaning.

95. Several sections of the Ordinance are not clearly defined.

96. For example, the Ordinance provides for maximum overnight occupancy under Section 18-216(a)(1), (2).

97. Section 18-216(a)(1), (2) provides:

> (a) **Generally.** The maximum overnight occupancy of a vacation rental unit shall be stated in the vacation rental form, and shall be limited as follows:
>
> (1) In the CT zoning district, the maximum overnight occupancy shall be limited to two (2) persons per bedroom, **plus two (2) additional persons may sleep in a common area**. Regardless of the number of bedrooms in or on the property, the overnight occupancy shall not exceed a maximum number of twelve (12) overnight occupants.
>
> (2) In the single family ("S"), medium density ("RM 2"), and medium density duplex residential ("RM 1"), the maximum overnight occupancy shall be limited to two (2) persons per bedroom, plus two (2) additional persons may sleep in a **common area**. Regardless of the number of bedrooms in or on the property, the overnight occupancy shall not exceed a maximum number of ten (10) overnight occupants.

(emphasis added).

98. There are no definitions in the Ordinance about what qualifies as a "common area" of a vacation rental unit. The term "common area" is only referenced twice in the entire Ordinance, in Section 18-216(a)(1), and (2).

99. There are no criteria in the Ordinance for a person of ordinary intelligence to apply or to determine what would constitute a "common area" of a property.

100. Section 18-216 does not expressly state that only one "common area" in a property may be used for overnight occupancy of up to two additional persons.

101. The Ordinance can reasonably be interpreted to include more than one "common area," thus allowing two (2) overnight occupants to sleep in each "common area.".

102. If the City intended the Ordinance to mean only two overnight occupants per "common area," express language could have been used when Section 18-216(a) to specifically designate that maximum limit.

103. This ambiguity is directly corroborated by public records relative to this section of the Ordinance on January 24, 2023, where City Attorney Randy Mora stated that the Ordinance's occupancy limits, "will not be by room. The way the regulation is written is 2 per bedroom, plus 2. **Where they sleep is beside the point**." (emphasis added).

104. This vagueness, specifically on the point of "common area," can create situations that contradict the entire purpose underlying the Ordinance's creation.

105. For example, a smaller square footage single-family home with one bedroom, but includes several areas within the property that could reasonably be considered a "common area," such as a living room, kitchen, and dining room, could allow for eight overnight occupants pursuant to Section 18-216. This situation – i.e. permitting a large group in a smaller sized home with only one true bedroom – would contradict the City's alleged purpose in enacting the Ordinance because a group of eight occupants in a smaller single-family home poses a higher risk of creating safety, noise, and other disturbances/concerns in the City than other homes that could

reasonably accommodate more than 10 overnight occupants under relevant building and life safety code.

106. Moreover, the vagueness created by the Ordinance's reference to "common area" can allow uses of certain properties that are incompatible with residential uses and run afoul of the Florida Building Code and Life Safety Code.

107. Section 18-204 of the Ordinance requires a property owner subject to the Ordinance to be in "full compliance" with the "most recently adopted versions" of the City Code, Florida Statutes Chapter 509, the Florida Building Code, the Florida Administrative Code, and the Florida Fire Prevention Code.

108. Section 18-206(c)(10) requires property owners subject to the Ordinance to abide by and agree to "initial and ongoing compliance" with the Ordinance's strictures and "all other city codes and federal, including FEMA requirements, as well as state and county laws which are applicable to the owner's ownership, maintenance, repair, modification, and use of the vacation rental property."

109. As written, Section 18-204 and 18-206(c)(10) requires compliance with all current and future amended and created federal, state, court, and City law and regulations.

110. Prospectively, Section 18-204 and 18-206(c)(10) requires property owners subject to the Ordinance to be aware of, make a valid legal conclusion through its interpretation, and comply with a voluminous set of evolving statutes, legislative enactments, case law, and all other forms of legal set of standards that have not been enacted or decided to date.

111. This requires property owners to be subject to standards and requirements that are not clearly defined and fails to give adequate notice of what conduct is prohibited, because such prohibited conduct *has not been established yet by law*.

112. Section 18-206(c)(7) and (c)(11) also require an affirmation by the property owner of circumstances over which the property owner does not have complete control. Therefore, no property owner could certify with certainty that there will be compliance in the manner demanded by the Ordinance. Due process requires that a person only be punished for what he has control over, and a person should not be forced to affirm a fact over which he does not have control.

113. Currently, without looking to the future, Section 18-204 and 18-206(c)(10) requires property owners to adhere to a vague and overbroad set of standards that the Ordinance does not clearly define.

114. Generally, subject to certain exceptions, most properties are subject to building and life safety codes at the time such property is constructed.

115. The Ordinance requires property owners subject to the Ordinance, including Plaintiff, to guess at what versions of new code with which it may be required to comply.

116. These set of standards will also be difficult, if not impossible, for the special magistrate to properly enforce as laws, standards, codes, and any other forms of legal strictures are enacted and possibly applicable to certain properties.

117. This creates a set of overbroad, vague, and ambiguous set of standards that are continuously changing, requires legal and expert interpretation, and subject to dispute even after detailed consideration and evaluation by a qualified expert and/or attorney.

118. Under Section 18-202, the Ordinance provides a variety of enforcement mechanisms, including code enforcement fines, a civil citation system, suspension, and permanent revocation of a property owner's vacation rental registration.

119. As such, the Ordinance causes a burdensome, arbitrary, and unduly difficult set of strictures that makes it impossible or extremely difficult for property owners subject to the Ordinance to fully comply, resulting in inevitably violations, suspensions, and permanent revocation of its license to operate a vacation rental.

120. These lack of standards to properly enforce the contents of the Ordinance were acknowledged by Captain Leiner during an April 11, 2023, City of Indian Rocks Beach Regular City Commission Meeting.

121. Captain Leiner raised concern over enforcement of differentiating whether a property contains residents or short-term vacation renters.[6]

122. Captain Leiner made several statements that are included in the City's Meeting Meetings:

> The first test, can the sheriff's office physically do it? **The second test is the equitable application of it, and that one is difficult. It is easily defined as an impartial application of it. However, it draws him into the city attorney's area**.

[6] *Minutes – April 11, 2023 City of Indian Rocks Beach Regular City of Commission Meeting* at 7/40 (Jun. 13 2023), *04-11-2023 CCM Minutes-WebsitePost.pdf (indian-rocks-beach.com) (emphasis added).

> For example, it might be difficult for deputies to differentiate between residents and short-term vacation rentals concerning pools and hot tubs and who can and cannot be there after 10:00 p.m.
>
> . . .
>
> **Captain Leiner stated it would be difficult to explain to deputies how to figure out if a vehicle parked on a roadway is related to somebody visiting a full-time resident or a short-term rental.**
>
> . . .
>
> **Captain Leiner stated parking would also be difficult to enforce**.

*Minutes – April 11, 2023 City of Indian Rocks Beach Regular City of Commission Meeting* at 7/40 (Jun. 13 2023), *04-11-2023 CCM Minutes-WebsitePost.pdf (indian-rocks-beach.com) (emphasis added).

123. Plaintiff is entitled to a declaration that the Ordinance is unconstitutionally void for vagueness.

124. There exists a current dispute and controversy between Plaintiffs and the City as to whether the Ordinance as adopted by the City is void for vagueness.

**WHEREFORE**, Plaintiff, AP 6 LLC, respectfully requests that this Court enter judgment against Defendant, the City of Indian Rocks Beach, issue an Order declaring that the Ordinance is unconstitutionally vague, and is therefore, invalid, and unenforceable.

## COUNT V
## DECLARATORY JUDGMENT
## PREEMPTION UNDER § 509.032(7) AND § 162.09, FLORIDA STATUTES

125. Plaintiff reasserts the allegations contained in Paragraphs 1 through 30 above as though fully set forth herein.

126. Florida law preempts the regulation of short-term rentals:

> (a) The regulation of **public lodging establishments** and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, **is preempted to the state**. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.
>
> (b) 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.
>
> (c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

(emphasis added). *See* § 509.032(7), Florida Statutes.

127. § 509.013(4)(a), Florida Statutes, provides that "public lodging establishment" includes a "transient public lodging establishment," which is defined as:

> [A]ny unit, group of units, dwelling, building, or group of buildings within a single complex 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 and held out to the public as a place regularly rented to guests.

§ 509.013(4)(a)(1), Florida Statutes.

128. § 509.242(1)(c), Florida Statutes, provides that a "vacation rental" is "any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project." This is the same definition provided under the Ordinance as mentioned above.

129. Here, the Ordinance is preempted by the provisions of Chapter 509, Florida Statutes as the Property is a "public lodging establishment" and a "vacation rental" insofar as the Ordinance regulates any item beyond the City's ability "to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code." *See* § 509.032(7), Florida Statutes.

130. The Ordinance therefore improperly regulates items in the Imposed Burdens to the extent that the Imposed Burdens are not permitted under § 509.032(7)(a), Florida Statutes.

131. Additionally, the Ordinance in its entirety stands as an obstacle to the execution of the full purposes of § 509.032(7)(b), Florida Statutes. The Ordinance improperly regulates the "duration or frequency" of vacation rentals on the Property considering the restrictions imposed by the Imposed Burdens.

132. These restrictions on rental properties in the City, such as Plaintiff's, prevent Plaintiff from being able to rent its Property to the fullest extent permitted under applicable building code, specifically to more than 10 overnight occupants.

133. The Ordinance, through its application, will effectively reduce the frequency of vacation rentals in Indian Rocks Beach, which is the goal of the Ordinance.

134. The Ordinance, through its application, will effectively reduce the duration of Plaintiff's ability to rent the Property. Some renters will change to longer-term rentals in order to escape the Imposed Burdens of the Ordinance.

135. Thus, the Ordinance in its application to larger vacation rental properties within the City, like Plaintiff's, creates a *de facto* regulation for the *frequency* in which these properties can be rented.

136. The Ordinance's occupancy restriction will decrease the frequency of vacation rentals.

137. It is far less likely a larger home with 5 plus bedrooms will be rented by groups of ten or less. Therefore, the Ordinance implicitly regulates the frequency and duration that these larger homes can be rented. Therefore, the Ordinance stands as an obstacle to the full purposes of § 509.032(7)(b) which is to prohibit restrictions on the frequency and duration of vacation rentals.

138. Additionally, under Section 18-202, the Ordinance permits the City to permanently revoke a property owner's vacation rental registration.

139. A vacation rental registration is required for a property owner to rent its property as a short-term vacation rental.

140. Therefore, this ability created by the Ordinance afforded to the City to permanently revoke a property owner's ability to rent its property is prohibited by§ 509.032(7)(b), Florida Statutes. Further, if the City is delayed in conducting an inspection, a property owner's ability to rent is temporarily suspended, which is yet another obstacle to the full purposes of § 509.032(7)(b).

141. In addition to running afoul of § 509.32(7)(b) by allowing for a prohibition of short-term vacation rentals, this enforcement mechanism runs afoul of Section 162.09, Florida Statutes, which only provides for enforcement by certain proscribed methods, including limited fines.

142. The City has opted-in to the enforcement mechanisms of § 162.09 and it has specifically done so with regards to this Ordinance. *See* 18-202(b) (directing the Magistrate to adhere to the "limitations set forth in Fla. Stat. § 162.09").

143. Yet, § 162.09 does not provide for the rental registration suspension or revocation provided in Section 18-202(c-d). Moreover, unlike the rights that § 162.06(2) provide (including the right to correct the alleged violation to avoid the imposition of penalties and punishments), the Ordinance is retrospective and authorizes penalties without prior notice of violation or warning. Therefore, Section 18-202(c-d) is preempted by § 162.09.

144. There exists a current dispute and controversy between Plaintiff and the City as to the application of the preemption of the Ordinance by Florida Statutes, including the aforementioned.

145. Plaintiff is entitled to a judgment in its favor regarding the preemption of the City's Ordinance by Florida law.

146. Despite the preemption of the Ordinance by Florida law, the Ordinance, including through the Imposed Burdens, is a source of direct and continuing harm to Plaintiff.

**WHEREFORE**, Plaintiff, AP 6 LLC, respectfully requests that this Court issue an Order declaring that the applicable provisions of the Ordinance, including the Imposed Burdens, are preempted by state law and are therefore invalid and unenforceable.

## DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable.

Respectfully submitted on this 3rd day of October 2023.

**PHELPS DUNBAR LLP**

*/s/ Rhett C. Parker*
Rhett C. Parker | FBN 0092505
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***Attorneys for AP 6 LLC***

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA.**

**HOMES NOT HOTELS, INC., A FLORIDA NOT FOR PROFIT CORPORATION,**

**CASE NO:**

**Plaintiff,**

**v.**

**CITY OF INDIAN ROCKS BEACH, FLORIDA,**

**Defendant.**

_____/

**COMPLAINT EXHIBIT'S**

# EXHIBIT "D"

TRASK DAIGNEAULT LLP ATTORNEYS

THOMAS J. TRASK, B.C.S.*
JAY DAIGNEAULT, B.C.S.*
ERICA F. AUGELLO, B.C.S.*
RANDY D. MORA, B.C.S.*
ROBERT ESCHENFELDER, B.C.S.*
NANCY S. MEYER, B.C.S.*
MEGAN R. HAMISEVICZ
ZOE RAWLS

* *Board Certified by the Florida Bar in City, County and Local Government Law*

January , 2025

***VIA E-Mail and Fed-Ex***
Rhett C. Parker. Esq.
Phelps Dunbar LLP
100 South Ashley Drive, Ste. 2000
Tampa, FL 33602
rhett.parker@phelps.com

**Re: Bert J. Harris, Jr., Private Property Rights Protection Act**
**Claim of AP 6, LLC in re: 455 20th Avenue, Indian Rocks Beach**

**Dear Attorney Parker:**

On November 5, 2024, the City of Indian Rocks Beach (the "City") received your claim for damages (the "Claim Letter") pursuant to Florida Statutes Section 70.001, the Bert J. Harris Jr. Private Property Rights Act (the "Act"), in connection with Ordinance 2023-02 (the "Ordinance"). Pursuant to the Act, the City has 90 days to make a written settlement offer and statement of allowable uses for the subject property at 455 20th Avenue, Indian Rocks Beach, Florida (the "Property").

Please accept this correspondence as the written settlement offer and written statement of allowable uses contemplated by the Act. This correspondence is not intended to waive any defense the City has against any claim or lawsuit your client has brought or may bring, including, without limitation, ripeness defenses, failure/absence of condition precedent defenses, and defenses concerning the validity of your client's Harris Act claim or the appraisal which purportedly supports the claim.

The Property has a Future Land Use Category designation of "Residential Urban." Pursuant to Policy 1.1.2 of the City's Comprehensive Plan, the Residential Urban (RU) designation is to "depict those areas of the City that are now developed, or appropriate to be developed, in an urban low density residential manner; and to recognize such areas as primarily well-suited for residential uses that are consistent with the urban qualities and natural resource characteristics of such areas." The use and locational characteristics are identified as follows:

**Use Characteristics**
Those uses appropriate to and consistent with this category include:

- Primary Uses - Residential
- Secondary Uses - Institutional; Transportation/Utility; Public Educational Facility; Recreation/Open Space

**Locational Characteristics**
This category is generally appropriate to locations removed from, but in close proximity to urban activity centers; in areas where use and development characteristics are urban residential in nature; and in areas serving as a transition between more suburban and more urban residential areas. These areas are generally served by and accessed from minor and collector roadways which connect to the arterial and thoroughfare highway network.

The City has, and the Property is located in, a Single Family (S) zoning designation. The City's Land Development Code provides that the definition, purpose, and intent of the single-family residential zoning district is:

> . . . for single-family residential development located where lower density single-family uses are desirable. The S, single-family residential district, correlates with the residential urban (RU) category of the countywide plan. Essential services and public facilities compatible with this residential district are also provided. Any use which is not specifically identified as a permitted use, accessory use or special exception use is a prohibited use. Prohibited uses shall include, but are not limited to, temporary lodging use of a dwelling.

Pursuant to Section 110-131 of the City's Land Development Code the permitted, accessory, and special exception uses for the Property are as follows:

**Permitted Uses**
The permitted uses in the S, single-family residential district are as follows:
1. Dwelling, single-family detached.
2. Public education facilities of the school board.
3. Assisted living facilities and family care homes with six or fewer residents.

**Accessory uses**.
The accessory uses in the S, single-family residential district are as follows:
1. Home occupations.
2. Private garages and carports.
3. Private swimming pools and cabanas.
4. Residential docks.
5. Essential services.
6. Other accessory uses customarily incidental to permitted or approved special exception uses.

**Special exception uses**

Upon application for a special exception to the board of adjustment and city commission and favorable action thereon, the following uses may be permitted in the S, single-family residential district:

1. Churches, synagogues or other houses of worship.
2. Essential services.
3. Publicly owned parks or recreation areas.
4. Public buildings.
5. Amateur radio towers at 60 feet.

Owing to the regulatory history in the City, and its interplay with § 509.032, Fla. Stat., the operation of short-term vacation rentals is permitted in the Single Family (S) zoning district.

Considering the above-stated allowable uses, and accounting for the unique features of the Property, in response to the Claim Letter, the City offers the following written settlement offer:

> Notwithstanding the language within the City's short term rental ordinances, resolutions, rules, and regulations, as they exist now and may be amended, the City is willing to allow a maximum number of fourteen (14) overnight occupants at the Property, when the Property is used as a short-term vacation rental. The City is not offering any monetary payment in settlement of your claim.

This settlement offer is conditioned upon your execution of a mutually agreeable release of any and all Harris Act claims identified or referenced in the Claim Letter and corresponding appraisal.

If you wish to discuss the contents of this correspondence in further detail, do not hesitate to contact me.

Regards,

_____

Randy D. Mora, Esq.
City Attorney, Indian Rocks Beach

RDM

Encl.

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA.**

**HOMES NOT HOTELS, INC., A FLORIDA NOT FOR PROFIT CORPORATION,**

**CASE NO:**

**Plaintiff,**

**v.**

**CITY OF INDIAN ROCKS BEACH, FLORIDA,**

**Defendant.**

_____/

**COMPLAINT EXHIBIT'S**

# EXHIBIT "E"

CITY OF INDIAN ROCKS BEACH

JANUARY 14, 2025 COMMISSION MEETING

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EXCERPT OF COMMISSION MEETING

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DATE: January 14, 2025

TIME: 6:00 p.m. - 10:44 p.m.

PLACE: Holiday Inn Harborside
401 2nd Street
Indian Rocks Beach, FL 33785

APPEARANCES: MAYOR DENISE HOUSEBERG
VICE MAYOR JANET WILSON
COMMISSIONER JUDE BOND
COMMISSIONER HOPE WYANT
COMMISSIONER JOHN BIGELOW (Via Zoom)
CITY MANAGER GREGG MIMS
CITY ATTORNEY RANDY MORA
CITY CLERK LORIN KORNIJTSCHUK
FINANCE DIRECTOR DAN CARPENTER
PUBLIC WORKS DIRECTOR DEAN SCHARMEN
PLANNING AND ZONING CONSULTANTS
CRAIG FULLER AND HETTY HARMON

REPORTED BY: RUTH A. CARNEY, Notary Public
State of Florida at large

Pages 1 - 3

MORGAN J. MOREY & ASSOCIATES
735 Arlington Central Avenue, Suite 206
St. Petersburg, FL 33701
(727)894-7407

(The following excerpt is taken from the January 14, 2025 Indian Rocks Beach Commission Meeting. The following excerpt begins at 7:06 p.m.)

CITY ATTORNEY MORA: So as it relates to the Bert Harris claim, there is a letter that has been drafted based on guidance this Commission already provided in executive session in terms of how they would like things presented, nothing being resolved yet, and to read specifically from the letter...

(Excerpt ending at 7:06 p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF PINELLAS )

I, RUTH A. CARNEY, Registered Professional Reporter, do hereby certify that I was authorized to and did stenographically report the EXCERPT OF THE CITY OF INDIAN ROCKS BEACH COMMISSION MEETING, and that the foregoing transcript, pages 1 through 2, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 29th day of January, 2025.

*/s/Ruth A. Carney*
Ruth A. Carney
Registered Professional Reporter

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA.**

**HOMES NOT HOTELS, INC., A FLORIDA NOT FOR PROFIT CORPORATION,**

**CASE NO:**

**Plaintiff,**

**v.**

**CITY OF INDIAN ROCKS BEACH, FLORIDA,**

**Defendant.**

_____/

**COMPLAINT EXHIBIT'S**

# EXHIBIT "F"

# *2009 Fla. AG LEXIS 38*

Office of the Attorney General of the State of Florida

Op. Att'y Gen. Fla. 2009-25

***FL Attorney General Opinions***

**Reporter**
2009 Fla. AG LEXIS 38 *; Op. Att'y Gen. Fla. 2009-25

## AGO 2009-25

June 10, 2009

## Core Terms

government entity, section, session, has, settlement, entity, settlement negotiations, pending litigation, ripeness, notice, exempt, notice period, attorney-client, pre-suit

## Headnotes

[*1]

Sunshine, pre-suit notice period not pending litigation

## Syllabus

GOVERNMENT IN THE SUNSHINE - BERT J. HARRIS ACT - ATTORNEY CLIENT - MUNICIPALITIES - SETTLEMENT NEGOTIATIONS - pre-suit notice period is not pending litigation allowing closed attorney-client meeting. ss. *70.001* and *286.011(8), Fla. Stat.*

**Request By:** Mr. Ernest H. Kohlmyer

Counsel to Town of Yankeetown

2707 East Jefferson Street

Orlando, Florida 32803

## Question

As counsel to the Town of Yankeetown, you ask the following question:

May a town council which has received a pre-suit notice letter under the Bert J. Harris Act conduct a closed meeting pursuant to *section 286.011(8), Florida Statutes*, to discuss settlement negotiations?

**Opinion By:** Bill McCollum, Attorney General

## Opinion

In sum:

A town council which has received a pre-suit notice letter under the Bert J. Harris Act is not a party to pending litigation and, therefore, may not conduct a closed meeting pursuant to *section 286.011(8), Florida Statutes*, to discuss settlement negotiations.

The "Bert J. Harris, Jr., Private Property Rights Protection [*2] Act" recognizes that some laws, regulations, and ordinances of the state and political entities in the state "may inordinately burden, restrict, or limit private property rights without amounting to a taking[.]" The act, therefore, creates a separate and distinct cause of action from a takings suit to remedy such situations. [1] It sets forth the procedures for seeking relief and in part provides:

"Not less than 180 days prior to filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity, except that if the property is classified as agricultural pursuant to *s. 193.461*, the notice period is 90 days." [2] [*3]

The governmental entity is required to provide written notice of the claim to all parties to any administrative action that gave rise to the claim and to all owners of real property contiguous to the affected parcel. Within 15 days after the claim has been presented, the governmental entity must report the claim in writing to the Department of Legal Affairs and provide the department with the name, address and telephone number of the employee who may be contacted for additional information. [3]During the applicable 90-day or 180-day notice period, unless extended by mutual agreement, the governmental entity is required to make a written settlement offer to effectuate:

"1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.

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[1] *Section 70.001(1), Fla. Stat.*

[2] *Section 70.001(4)(a), Fla. Stat.* If complete resolution of the matter requires active participation by more than one governmental entity, the property owner must present the claim to each of the governmental entities involved.

[3] *Section 70.001(4)(b), Fla. Stat.*

2. Increases or modifications in the density, intensity, or use of areas of development.

3. The transfer of developmental rights.

4. Land swaps or exchanges.

[*4] 5. Mitigation, including payments in lieu of onsite mitigation.

6. Location on the least sensitive portion of the property.

7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.

9. Issuance of the development order, a variance, special exception, or other extraordinary relief.

10. Purchase of the real property, or an interest therein, by an appropriate governmental entity.

11. No changes to the action of the governmental entity.

If the property owner accepts the settlement offer, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, special exception, or other extraordinary relief; or by other appropriate method, subject to paragraph (d)." [4] [*5]

Thus, the act sets forth a laundry list of steps that the governmental entity may take to settle the claim for which it has been notified. If a settlement agreement has the effect of a modification, variance, or special exception to a rule, regulation, or ordinance as it would otherwise apply to the subject property, the statute requires that the relief granted must protect the public interests served by the regulations and be appropriate to avoid an inordinate regulatory burden on the property. [5] If the settlement contravenes the application of a statute that would otherwise be applied to the subject property, the agreement must be reviewed and approved by the circuit court to assure that the relief granted protects the public interest served by the statute and that it is the appropriate relief to avoid an inordinate burden upon the subject property. [6]In addition, during the notice period, unless a settlement offer has been accepted, [*6] each governmental entity notified pursuant to the act must issue a written "ripeness decision" identifying the uses to which the property may properly be put. Should the governmental entity fail to issue a written ripeness decision during the applicable notice period, the prior actions of the governmental entity are deemed to be ripe and such failure is deemed a ripeness decision which has been rejected by the property owner. The act states that "[t]he ripeness decision, as a matter of law, constitutes the *last prerequisite to judicial review*, and the matter shall be deemed ripe or final for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies." [7] (e.s.)It would appear that the statute

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[4] *Section 70.001(4)(c)*, *Fla. Stat. Section 70.001(4)(d)*, Fla. Stat., sets forth a requirement that action taken by the governmental entity in settling a claim "shall protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property. "

[5] *Section 70.001(4)(d)*1., Fla. Stat.

[6] *Section 70.001(4)(d)*2., Fla. Stat.

distinguishes the activities occurring after pre-suit notice has been received and during the notice period from the judicial proceedings that may occur after the issue has become [*7] ripe for judicial review.

*Section 286.011(8), Florida Statutes*, makes litigation strategy or settlement meetings confidential when they are held between a board and its attorney and the board is a party before a court or administrative agency. The statute allows access to the record of such meeting when the litigation is concluded. Specifically, the statute states that:

"Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded [*8] by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation."

As this office recognized in Attorney General Opinion 95-06:

"*Section 286.011(8), Florida Statutes*, does not create [*9] a blanket exception to the open meeting requirement of the Sunshine Law for all meetings between a public board or commission and its attorney. The exemption is narrower than the attorney-client communications exception recognized for private litigants. Only discussions on pending litigation to which the public entity . . . is presently a party are subject to its terms. Such discussions are limited to settlement negotiations or strategy sessions related to litigation expenditures." [8]It is

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[7] *Section 70.001(5)(a), Fla. Stat.*

well settled that the Sunshine Law was enacted for the benefit [*10] of the public and should be construed liberally to give effect to its public purpose, while exceptions to its terms should be defined narrowly. [9] *Section 286.011(8), Florida Statutes*, refers to pending litigation to which the entity is presently a party before a court or administrative agency. The term "presently" is defined as "[i]mmediately; now; at once" while "pending" is defined as:"Begun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined; in process of settlement or adjustment. Thus, an action or suit is "pending" from its inception until the rendition of final judgment." [10] [*11]

Courts have concluded that the Legislature intended that the exemption in *section 286.011(8), Florida Statutes*, be strictly construed, as in *School Board of Duval County v. Florida Publishing Company* [11] where the district court found that the purpose of the exemption was to permit "any governmental agency, its chief executive and attorney to meet in private *if the agency is a party to litigation* and the attorney desires advice concerning settlement negotiations or strategy." (e.s.) As noted in Attorney General Opinion 98-21, had the Legislature's intent been to extend the exemption to include impending or imminent litigation as well as pending litigation, it could have easily so provided as it has in *section 119.071(1)(d)*1., Florida Statutes. That section provides a limited work-product exemption for records "prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings," and for records "prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings[.]" [*12]

The situation you pose is similar to the one considered in Attorney General Opinion 2006-03 where this office was asked whether a closed attorney-client session could be held to discuss settlement negotiations on an issue that was the subject of ongoing mediation pursuant to a partnership agreement between a water management district and others. After discussing the intent of *section 286.011(8), Florida Statutes*, and analyzing its terms, this office concluded that the statute did not apply to the mediation prescribed in the partnership agreement since no litigation had been filed in either the courts or before an administrative body.

More recently, in Attorney General Opinion 2009-14, this office concluded that a city could not hold a closed meeting pursuant to *section 286.011(8), Florida Statutes*, to discuss the terms of mediation undertaken pursuant to the conflict resolution procedures set forth in Chapter 164,

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[8] *And see* *School Board of Duval County v. Florida Publishing Company, 670 So. 2d 99 (Fla. 1st DCA 1996)*, agreeing with and quoting Op. Att'y Gen. Fla. 95-06 (1995). *See also* Op. Att'y Gen. Fla. 04-35 (2004) (*s. 286.011[8]*'s application limited to pending litigation; it does not apply when no lawsuit has been filed even though the parties involved believe litigation is inevitable).

[9] *See* *City of Dunnellon v. Aran, 662 So. 2d 1026 (Fla. 5th DCA 1995)* and *Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693, 699 (Fla. 1969)*.

[10] Black's Law Dictionary, pp. 1066 and 1021 (5th ed. 1979), respectively. *And see* Black's Law Dictionary *Present* ("Now existing . . . Being considered"), p. 1221; and *Pending* (awaiting decision; under consideration; throughout the continuance of; during), p. 1169 (8th ed. 2004).

[11] *670 So. 2d 99 (Fla. 1st DCA 1996)*. *And see* *City of Dunnellon v. Aran, supra.*; *Zorc v. City of Vero Beach, 722 So. 2d 891 (Fla. 4th DCA 1998)*.

Florida Statutes. The exemption contained in *section 286.011(8), Florida Statutes*, does not extend to discussions between the city attorney and the [*13] city commission regarding settlement under the Florida Governmental Conflict Resolution Act. [12]At the time pre-suit notice is given under the Bert J. Harris Act, no action has been filed in a court or before an administrative body. While there is the anticipation of a civil proceeding, I cannot conclude that one would be pending such that the provisions of *section 286.011(8), Florida Statutes*, would be available.

Accordingly, it is my opinion that a town council which has received a pre-suit [*14] notice letter under the Bert J. Harris Act is not a party to pending litigation and, therefore, may not conduct a closed meeting pursuant to *section 286.011(8), Florida Statutes*, to discuss settlement negotiations.

**Load Date:** 2014-09-04

FL Attorney General Opinions

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End of Document

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[12] *See also* Inf. Op. to McQuagge, dated February 13, 2002 (absent expression of legislative intent that officials attending mediation sessions pursuant to *section 164.1055, Florida Statutes*, are authorized to privately discuss among themselves the matters being considered at such a meeting, such meetings must be conducted openly and in accordance with the provisions of *section 286.011, Florida Statutes*).

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA.**

**HOMES NOT HOTELS, INC., A FLORIDA NOT FOR PROFIT CORPORATION,**

**CASE NO:**

**Plaintiff,**

**v.**

**CITY OF INDIAN ROCKS BEACH, FLORIDA,**

**Defendant.**

_____/

**COMPLAINT EXHIBIT'S**

# EXHIBIT "G"

# *2004 Fla. AG LEXIS 33*

Office of the Attorney General of the State of Florida

Op. Att'y Gen. Fla. 2004-35

***FL Attorney General Opinions***

**Reporter**
2004 Fla. AG LEXIS 33 *; Op. Att'y Gen. Fla. 2004-35

## Advisory Legal Opinion No. AGO 2004-35

July 2, 2004

## Core Terms

risk management, entity's, section, settlement, advice, public meeting, exempt, city, session, tort claim, ordinance, attorney-client, attend, has, pending litigation, government entity, file a claim, sunshine, notice

## Syllabus

[*1]

Sunshine Law, risk management committee

GOVERNMENT IN THE SUNSHINE LAW --MEETINGS--MUNICIPALITIES --RISK MANAGEMENT--ATTORNEYS--meetings of risk management committee; announcement of closed attorney-client session at public meeting. ss. *768.28(16)* and *286.011(8), Fla. Stat.*

**Request By:** Mr. Donovan A. Roper

Counsel, City of Palm Bay

116 North Park Avenue

Apopka, Florida 32703

## Question

On behalf of the City of Palm Bay, you ask substantially the following questions:

1. Are meetings of the city's risk management committee, established by city ordinance to review certain proposed claim settlements under the city's risk management program, subject to the Government in the Sunshine Law?

2. Is *section 286.011(8), Florida Statutes*, requiring an entity's attorney to advise the entity at a public meeting that he or she desires advice concerning litigation, satisfied by a previously published and posted notice of a meeting of the board that includes a statement that the attorney seeks the board's advice?

**Opinion By:** Charlie Crist, Attorney General

## Opinion

*Question One*

According to your letter, the City of Palm Bay by ordinance has created a risk management program for the administration of general liability claims, settlement [*2] of claims, a claims prevention program and a risk management fund. [1] The ordinance creates a risk management committee composed of the city manager, the city attorney, and one city council member. [2] The committee is responsible for reviewing all proposed claims settlement demands made either against the city or by the city except for those claims that can be settled for $ 10,000 or less and authorizing settlements not to exceed $ 50,000. [3]

[*3]

*Section 286.011(1), Florida Statutes*, Florida's Government in the Sunshine Law, provides in pertinent part that "all meetings of any board or commission … of any agency or authority of any … municipal corporation … at which official acts are to be taken are declared to be public meetings open to the public at all times ...." As the Florida Supreme Court stated in *City of Miami Beach v. Berns,* [4] "the Legislature intended to extend application of the 'open meeting' concept

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[1] *See* City of Palm Bay Ordinance 2003-52 (Ordinance) .

[2] Section 3, Ordinance.

[3] *Id. And see* s. 5. D. E. and F, Ordinance, providing:

"D. Proposed settlements in excess of Ten Thousand Dollars ($ 10,000) but not more than Fifty Thousand Dollars ($ 50,000) for each individual claim shall be reviewed by the Risk Management Committee. Payment shall be made upon consensus of that Committee, provided that such settlement or compromise shall be for all damages claimed for personal injury, property damage, or both.

E. Proposed settlements in excess of Fifty Thousand Dollars ($ 50,000) shall be submitted by the Risk Management Committee to the City Council for its approval.

F. In the event that a settlement has been tendered upon consensus by the Risk Management Committee in the amount of Fifty Thousand Dollars ($ 50,000) or less, and such settlement is not acceptable to the claimant, then the Risk Management Committee shall submit this matter, along with its recommendation to the City Council, for its ultimate decision."

so as to bind every 'board or commission' of the state, or of any county or political subdivision over which it has dominion or control." As a committee established by city ordinance to review and approve or recommend settlements, the risk management committee clearly is a board or commission subject to *section 286.011, Florida Statutes*.While you refer to *section 286.011(8), Florida Statutes*, which creates a limited attorney-client exception to discuss pending litigation, the [*4] provisions of *section 768.28(16), Florida Statutes*, would appear to be more applicable to your inquiry. *Section 768.28(16)* authorizes the state and its agencies and subdivisions to be self-insured, to enter into risk management programs, or to purchase liability insurance for whatever coverage they may choose, or to have any combination thereof, in anticipation of any claim, judgment, and claims bill that they may be liable to pay pursuant to *section 768.28*. [5] The statute includes several provisions dealing with the confidential treatment of meetings and records relating to risk management programs.*Section 768.28(16)(c)* and (d), Florida Statutes, states:

"(c) Portions of meetings and proceedings conducted pursuant to any risk management program administered by the state, its agencies, or its subdivisions, which relate solely to the evaluation of claims filed with the risk management program or which relate solely to offers of compromise of claims filed with the risk management [*5] program are exempt from the provisions of *s. 286.011* and *s. 24(b), Art. I of the State Constitution.* Until termination of all litigation and settlement of all claims arising out of the same incident, persons privy to discussions pertinent to the evaluation of a filed claim shall not be subject to subpoena in any administrative or civil proceeding with regard to the content of those discussions.

(d) Minutes of the meetings and proceedings of any risk management program administered by the state, its agencies, or its subdivisions, which relate solely to the evaluation of claims filed with the risk management program or which relate solely to offers of compromise of claims filed with the risk management program are exempt from the provisions of *s. 119.07(1)* and *s. 24(a), Art. I of the State Constitution* until termination of all litigation and settlement of all claims arising out of the same incident."

*Section 768.28(2), Florida Statutes*, defines "state agencies or subdivisions" to include "counties and municipalities [.]"

Application of the exemption afforded by *section 768.28(16), Florida Statutes*, however, is limited to tort claims for which the agency may be liable under *section [*6] 768.28, Florida Statutes*. [6] Moreover, pursuant to *section 768.28(16)*, a risk management meeting conducted by a city's risk management committee is exempt from the provisions of the Government in the Sunshine Law when such meeting relates solely to the evaluation of a tort claim filed with the

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[4] *245 So. 2d 38, 40 (Fla. 1971)*.

[5] *Section 768.28(16)(a), Fla. Stat.*

[6] *See* Op. Att'y Gen. Fla. 00-07 (2000), concluding that the records of outside attorney fee bills for the defense of the county for alleged civil rights violations are public records subject to disclosure, even though those records may be maintained by the County Risk Management Office pursuant to the county's risk management program.

risk management program, or relates solely to an offer of compromise of a tort claim filed with the risk management program. Unlike statutes such as *section 286.011(8), Florida Statutes*, however, *section 768.28(16), Florida Statutes*, does not specify the personnel who may attend meetings. [7] [*7]

Regarding the applicability of the exemption afforded by *section 286.011(8), Florida Statutes*, that subsection provides:

"(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. [*8] The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation."

The exemption provided by *section 286.011(8), Florida Statutes*, is not limited to tort claims. The exemption, however, does not create a blanket exception to the open meeting requirement of the Sunshine Law for all meetings between a public board or commission and its attorney. The exemption merely provides a governmental entity's attorney an opportunity to receive necessary direction and information from the governmental entity. [*9] The exemption may only be used when the attorney for a governmental entity seeks advice on settlement negotiations or strategy relating to litigation expenditures. Such meetings may not be used to finalize action or to discuss matters outside these two narrowly prescribed areas. [8] It was not

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[7] *See* Op. Att'y Gen. Fla. 00-20 stating that in the absence of direction from the Legislature with regard to the participants in a risk management meeting or proceeding under *section 768.28(15), Florida Statutes* (now *s. 768.28[16]*), it would appear that personnel of the school district who are involved in the risk management aspect of the tort claim being litigated or settled may attend such meetings without jeopardizing the confidentiality provisions of the statute.

intended to be used as a blanket exception for a board or commission, such as a risk management committee, to carry out its routine functions. [9] Moreover, its application is limited to pending litigation; it does not apply when no lawsuit has been filed even though the parties involved believe litigation is inevitable. [10] [*10] Accordingly, I am of the opinion that pursuant to *section 768.28(16)*, a risk management meeting conducted by a city's risk management committee is exempt from the provisions of the Government in the Sunshine Law when such meeting relates solely to the evaluation of a tort claim filed with the risk management program, or relates solely to an offer of compromise of a tort claim filed with the risk management program. While the exemption provided in *section 286.011(8), Florida Statutes*, is not limited to tort claims, it applies only when the attorney for a governmental entity seeks advice on settlement negotiations or strategy relating to litigation expenditures when there is pending litigation and was not intended to be used as a blanket exception for a board or commission, such as a risk management committee, to carry out its routine functions.

*Question Two*

You ask whether the provisions of *section 286.011(8), Florida Statutes*, requiring that an entity's attorney advise the entity at a public meeting that he or she desires advice concerning litigation, [*11] may be satisfied by a previously published and posted notice of the closed meeting.

*Section 286.011(8), Florida Statutes*, permits any governmental agency, its chief executive, and its attorney to meet in private if the agency is a party to litigation *and the attorney desires advice concerning settlement negotiations or strategy.* The statute requires that must be met that the governmental entity's attorney "shall advise the entity at a public meeting that he or she desires advice concerning the litigation." [11] Thus, one of the conditions that must be met prior to the holding of a closed attorney-client meeting is that the entity's attorney must indicate to the board at a public meeting, *i.e.,* at a meeting the public may attend, that he or she wishes the advice of the board regarding pending litigation to which the entity is presently a party before a court or administrative agency. Using the published and posted notice of a meeting of the board to advise the entity that [*12] the attorney seeks the advice of the public board does not comply with the terms of the statute. A legislative directive as to how a thing should be done is, in effect, a prohibition against its being done in any other way. Where the Legislature has

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[8] *See* Op. Att'y Gen. Fla. 99-37 (1999).

[9] *See* *School Board of Duval County v. Florida Publishing Company, 670 So. 2d 99, 100 (Fla. 1st DCA 1996)*, and *Zorc v. City of Vero Beach, 722 So. 2d 891, 898 (Fla. 4th DCA 1998)*, *review denied, **735 So. 2d 1284 (Fla. 1999)** quoting* Florida House of Representatives Committee on Government Operations, CS/HB 491 (1993) Final Bill Analysis & Economic Impact Statement at 3,

"This act simply provides a governmental entity's attorney an opportunity to receive necessary direction and information from the governmental entity. No final decisions on litigation matters can be voted on during these private, attorney-client strategy meetings. The decision to settle a case, for a certain amount of money, under certain conditions is a decision which must be voted upon in a public meeting. "

[10] *See* Op. Att'y Gen. Fla. 98-21 (1998).

[11] *Section 286.011(8)(a), Fla. Stat.*

prescribed the mode, that mode must be observed. [12] Moreover, the courts of this state have held that the provisions of *section 286.011(8), Florida Statutes*, are to be strictly and narrowly construed. [13] If the attorney does not advise the board at a public meeting that he or she desires the board's advice regarding the litigation, the board is not precluded from providing such advice to the attorney but it must do so at a public meeting. [*13]

Accordingly, I am of the opinion that the requirements of *section 286.011(8), Florida Statutes*, that an entity's attorney advise the entity at a public meeting that he or she desires advice concerning litigation, is not satisfied by a previously published and posted notice. Rather, such an announcement must be made at a public meeting, that is, a meeting the public has a right to attend.

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FL Attorney General Opinions

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[12] *See generally* ***Alsop v. Pierce, 19 So. 2d 799, 805-806 (Fla. 1944)***; *Thayer v. State, 335 So. 2d 815, 817 (Fla. 1976)*.

[13] *See School Board of Duval County v. Florida Publishing Company, supra*, and *Zorc v. City of Vero Beach, supra*; *City of Dunnellon v. Aran, 662 So.2d 1026 (Fla. 5th DCA 1995)*.