IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR MANATEE COUNTY, FLORIDA

C & D PROPERTIES OF AMI, LLC,

Plaintiff, **CASE NO. 2024-CA-000334**

vs.

WEST MANATEE FIRE AND RESCUE DISTRICT,

Defendant,

_____/

ORDER GRANTING DEFENDANT WEST MANATEE FIRE AND RESCUE DISTRICT'S MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE comes before the Court on cross motions for final summary judgment, filed by Defendant, West Manatee Fire and Rescue District ("Fire District"), on December 20, 2024, and by Plaintiff, C & D Properties of AMI, LLC ("Property Owner"), on February 22, 2025. Both parties filed affidavits and written legal arguments in support of their respective motions,[1] and both filed responses in opposition to the opposing party's motion.[2] The Court heard arguments on both motions, on April 2, 2025, and reserved ruling. Having considered the parties' submissions, the arguments of counsel, and the applicable law, the Court finds that the Fire District is entitled to final summary judgment on both counts.

Property Owner initiated the instant action by Complaint, filed February 27, 2024, as amended on May 6, 2024, to obtain declaratory and permanent injunctive relief from enforcement of a non-ad valorem assessment imposed by the Fire District, pursuant to Fire District Resolutions 2023-01 and 2023-09. These resolutions authorized and certified an assessment on Property Owner's two condominium units, which are used for vacation rentals, at the commercial rate, for

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[1] The Fire District submitted the affidavits of District Fire Chief Ben Rigney ("Rigney"), filed December 20, 2024, and March 31, 2025 [Docket Seq. Nos. 37 and 55]; and Property Owner submitted the affidavits of C & D Properties Manager and Corporate Principal Lawrence Chatt ("Chatt"), filed February 11, 2025, March 13, 2025, and April 1, 2025 [Docket Seq. Nos. 45, 48, and 53].

[2] Property Owner filed its "Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment" on March 13, 2025 [Docket Seq. No. 49]; and the Fire District filed its "Response in Opposition to Plaintiff's Motion for Summary Judgment" on March 31, 2025 [Docket Seq. No. 54].

the year 2023-2024.[3] The units, located in Holmes Beach, Manatee County, had previously been assessed at the lower, residential rate, pursuant to the Fire District's seminal enabling act, which required the District's assessments to be based on general classifications of properties, including vacant undeveloped parcels, developed residential parcels, and developed commercial parcels, and to remain capped absent legislative action.[4] However, in 2016, the Florida Legislature enacted Chapter 2016-255, which amended the Fire District's enabling act by striking the general classification categories and allowing rates to be assessed in accordance with § 191.009, Fla. Stat., or as otherwise provided by general law.[5] Chapter 191 permits non-ad valorem rates to be set by the Fire District's elected board, using certain prescribed parameters. *See* § 191.009(2)(a), Fla. Stat. Consequently, the District may now set rates based on the actual use of a property, in addition to the land use designation, when imposing assessments.[6]

In 2023, the Fire District elected to take advantage of this legislative change by levying a commercial-rate assessment on properties rented on such a frequent bases as to qualify as "transient public lodging establishments," as defined under Florida law, even if they were zoned as "residential" by the local zoning jurisdiction.[7] As a result of the change, Property Owner has been assessed the commercial rate for both of his condominium units used as short term vacation rentals, since they qualify as "transient public lodging establishment."[8]

Fire District Resolution 2023-01 gives as cause for this change the "continual rise in the vacation rental industry," as homeowners with properties within the District's jurisdiction increasingly used their single-family-zoned residential properties as vacation rentals; and the qualification of such rentals as "transient public lodging establishments," which makes them

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[3] *See* Fire District Resolutions 2023-01 and 2023-09, Civil Attachment to Complaint, Exh. C [Docket Seq. No. 12].

[4] *See* Chapter 2000-401 and Chapter 2001-334, Laws of Florida, Fire District's First Request for Judicial Notice, Exhs. 5 and 6 [Docket Seq. No. 39]; *and see, e.g.,* Fire District Resolution 2015-03, Fire District's First Request for Judicial Notice, Exh. 10 (approving 2015-2016 District assessment rates, pursuant to terms of original enabling act).

[5] *See* Chapter 2016-255, Laws of Florida, Fire District's Second Request for Judicial Notice, Exh. 2 [Docket Seq. No. 56]; Fire District Resolution 2023-01 at ¶24, Civil Attachment to Complaint, Exh. C [Docket Seq. No. 12]; Second Affidavit of Rigney at ¶¶4-5 [Docket Seq. No. 55].

[6] *See* Second Affidavit of Rigney at ¶5 [Docket Seq. No. 55].

[7] *See* First Affidavit of Rigney at ¶¶14-15 [Docket Seq. No. 37]; Second Affidavit of Rigney at ¶7 [Docket Seq. No. 55].

[8] First Affidavit of Chatt at ¶¶6-7 [Docket Seq. 45]; *and see* Notice from Manatee County Tax Collector of 2023 Ad Valorem Taxes and Non-Ad Valorem Assessments, Civil Attachment to Complaint, Exh. D [Docket Seq. No. 12].

subject to "increased life safety inspection, enforcement and response requirements" under state law that are "not otherwise applicable to single family zoned residential structures that are not used for short term vacation rentals."[9] These regulations demand that the Fire District devote greater resources to inspect, enforce, and respond to calls for service at transient public lodging establishments, exacting a greater cost in time, personnel, and expenditures; and as a result, the District resolved that the dedicated resources were "comparable to inspection, enforcement, and response requirements for commercially zoned properties," so that assessing them at the higher commercial rate "fairly apportion[ed] the District's assessment amongst all benefiting properties."[10] The District has also made same rate change for other residentially-zoned properties, including daycare centers and assisted living facilities, based on their increased use and attendant higher life-safety standard requirements.[11]

Property Owner does not challenge the authority of the Fire District to impose non-ad valorem assessments, under the general provisions of § 191.006(14) and § 191,009(2), Fla. Stat., or the qualification of its units as a type of "transient public lodging establishment";[12] nor does it raise an unjust apportionment challenge, or dispute the underlying rational for changing the rate. It argues, instead, that the rate change is patently unlawful because of the clear language of § 509.032(7), Fla. Stat., which reads, in relevant part, as follows:

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[9] *See* Fire District Resolution 2023-01, Civil Attachment to Complaint, Exh. C at ¶¶10-12 [Docket Seq. No. 12]. Fire District Resolution 2023-05, passed three months later, states that the Fire Code standards applicable to "transient public lodging establishments" require not only increased life safety, inspection, and enforcement duties, but increased fire, rescue, and emergency medical responses. *See* Fire District Resolution 2023-05, Fire District's First Request for Judicial Notice, Exh. 9 at ¶¶11, 12, and 27 [Docket Seq. No. 39].

[10] *See* Fire District Resolution 2023-01, Civil Attachment to Complaint, Exh. C at ¶¶12 and 14 [Docket Seq. No. 12]; *and see* Fire District Resolution 2023-05, Fire District's First Request for Judicial Notice, Exh. 9 at ¶¶13, 22, and 26 [Docket Seq. No. 39] (stating need for increased life safety inspections and emergency responses, intent that new assessment policy serve to remedy problems with using land use codes as sole criterion for apportionment of assessments, which often resulted in properties being assessed disproportionately to the special benefit conveyed by District, and intention that new policy look to both land use classification and actual use of the property in setting rates); *and see* First Affidavit of Fire Chief Rigney [Docket Seq. No. 37] (averring that Resolution 2023-05 was passed to clarify purpose for District's commercial assessment of transient public lodging establishments to properly apportion the fire, rescue and emergency medical services amongst the District's benefiting property owners based on actual usage).

[11] *See* First Affidavit of Rigney at ¶16 [Docket Seq. No. 37].

[12] *See* C & D Properties' Response to Requests for Admissions, Fire District's Notice of Filing Materials in Support of Final Summary Judgment, Attachment 4 [Docket Seq. No. 38].

Preemption authority.--

> (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) * * *

§ 509.032(7)(a) and (b), Fla. Stat. (underscoring added).

Property Owner argues that, pursuant to subsection (7)(a), "[t]he regulation of public lodging establishments...is preempted to the state"; Property Owner's vacation rentals qualify as a type of "public lodging establishment," under statutory definitions;[13] and the commercial-rate

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[13] *See* the following relevant statutory definitions:

§ 509.242(1)(c), Fla. Stat.

Public lodging establishments; classifications.--

(1) A public lodging establishment shall be classified as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental if the establishment satisfies the following criteria:

* * *

(c) *Vacation rental.*--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.

§ 509.013(4)(a), Fla. Stat.

Definitions.—As used in this chapter, the term:

* * *

(4)(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1, and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

assessment constitutes an unlawful local "regulation." Property Owner reads subsection (7)(b), which expressly forbids local authorities from "prohibit[ing] vacation rentals or regulat[ing] the duration or frequency of rental of vacation rentals," as merely a prefatory statement to (7)(b)'s true purpose, set forth in the succeeding sentence, to resurrect and grandfather all local regulations that prohibit vacation rentals or regulate their duration or frequency of rental and were adopted on or before June 1, 2011. Given the unambiguous meaning of the statutory text and guiding principle that regulations be construed broadly in favor of private ownership rights, Property Owner argues it is entitled to final summary judgment, declaring the increased rate to be unlawful, permanently enjoining its enforcement, and awarding costs and any other supplemental relief, pursuant to § 57.041, Fla. Stat.

The Fire District acknowledges that, before 2014, local governments were prohibited from imposing any restrictions on vacation rentals solely based on their "classification, use, or occupancy," by the terms of § 509.032(7)(b), Fla. Stat. (2013). It argues, however, that this ban was lifted with the passage of Chapter 2014-71, Laws of Florida. The 2014 law amended subsection (7)(b) to reflect the narrower directive, set forth above, that forbids local governments from prohibiting the existence of vacation rentals or the duration or frequency of their rental, but still grandfathers-in laws enacted prior to June 1, 2011, that do this. The District argues the fact of this statutory change is evidence that the Legislature now permits local governments to treat vacation rentals differently based on their classification, use, or occupancy, so long as they don't violate the express prohibitions. It points also to the need to read Section (7)(a) in harmony with (7)(b), so as not to make the latter redundant to the former, and to perceive that there is no general express or implied preemption as to all regulations on vacation rentals. Finally, the District argues that the increased assessment rate does not even arise to a "regulation," because its purpose is to fairly apportion the burden of paying for the Fire District's services, so that it is akin to a revenue-raising tax, and not a regulation intended to control the existence of vacation rentals, or the duration or frequency of renting them.

This Court has original jurisdiction, pursuant to § 26.012(2)(c) and § 86.011, Fla. Stat. The suit is also timely filed under the 4-year limitations period provided in § 95.11(3), Fla. Stat., given

no apparent local provision limiting the time for filing a local assessment challenge. *Cf. City of Cooper City v. Joliff*, 227 So. 3d 633, 636-37 (Fla. 4th DCA 2017) (finding city ordinance's 20-day deadline to challenge fire and rescue special assessment controlled over 4-year statute of limitations in § 95.11, Fla. Stat.).

Summary Judgment Standard

Florida adopted the federal summary judgment standard, effective May 1, 2021. *In re Amendments to Fla. R. Civ. P. 1.510*, 309 So. 3d 192, 192 (Fla. 2020); *and see* Fla. R. Civ. P. 1.510(a) (providing that the summary judgment standard provided for in Rule 1.510 "shall be construed and applied in accordance with the federal summary judgment standard"). Under this standard, the "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a); *accord* Fed. R. Civ. P. 56(c). A dispute is "genuine" if the evidence is such that "a reasonable jury could return a verdict for the nonmoving party," and a fact is "material" if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 1505, 2510 (1986); *accord Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1243 (11th Cir. 2008) (citing *Anderson*). Summary judgment evidence from which the facts are derived must be in the form of evidence that would be admissible at trial. *Gidwani v. Roberts*, 248 So. 3d 203, 208 (Fla. 3d DCA 2018); *Bryson v. Branch Banking and Trust Co.*, 75 So. 3d 783, 786 (Fla. 2d DCA 2011); *and see Daeda v. Blue Cross & Blue Shield of Fla., Inc.*, 698 So. 2d 617, 618 (Fla. 2d DCA 1997) (observing that "only competent evidence may be considered by the court in ruling upon a motion for summary judgment" and unauthenticated material attached to memo in support of summary judgment motion left open issues of material fact).

The moving party bears the initial burden of informing the court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986). In determining whether the movant has met this burden, the court should "review the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion." *Hinesville Bank v. Pony Express Courier Corp.*, 868 F.2d 1532, 1535 (11th Cir. 1989). A court "may not weigh evidence or make credibility determinations, which 'are jury functions, not those

of a judge.'" *Lewis v. City of Union City, Georgia*, 934 F.3d 1169, 1179 (11th Cir. 2019) (quoting *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1252 (11th Cir. 2013)).

If the moving party meets this initial burden, then the "nonmoving part must come forward with 'specific facts showing that there is a *genuine issue for trial.*'" *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348 (1986) (quoting Fed. R. Civ. P. 56(e) (emphasis in *Matsushita*). This requires something more than "simply show[ing] that there is some metaphysical doubt as to the material facts."[14] *Id.* "The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient; there must be evidence on which a jury could reasonably find for the [non-moving party]." *Anderson*, 477 U.S. at 252. "If more than one inference could be construed from the facts by a reasonable fact finder, and that inference introduces a genuine issue of material fact, then the [trial] court should not grant summary judgment." *Bannum, Inc. v. City of Fort Lauderdale*, 901 F.2d 989, 996 (11th Cir. 1990).

"[C]ross motions for summary judgment may be probative of the nonexistence of a factual dispute, but this procedural posture does not automatically empower the court to dispense with the determination [of] whether questions of material fact exist." *Georgia State Conference of the NAACP v. Fayette County Board of Commissioners*, 775 F.3d 1336, 1345-46 (11th Cir. 2015). Even where the issues presented on motions for summary judgment overlap, a court must consider each motion on its own merits, "resolving all reasonable inferences against the party whose motion is under consideration." *Southern Pilot Insurance Co. v. CECS, Inc.*, 52 F. Supp. 3d 1240, 1243 (N.D. Ga. 2014) (citing *American Bankers Ins. Group v. United States*, 408 F. 3d 1328, 1331 (11th Cir. 2005)). In particular, where "the parties respond[] to each respective summary judgment motion with disputes as to the 'undisputed' facts, add[] 'material facts' of their own, and then repl[y] with subsequent objections to the other party's additional facts," the mere filing of cross motions for summary judgment is not conclusive. *Id.*

In this case, the cross motions of the parties clearly evidence the absence of a genuine issue of material fact in dispute. While the Fire District objects to Property Owner's factual assertion

[14] By adopting the federal standard, Florida has done away with the "slightest doubt" standard for determining whether a dispute is genuine. *See In re Amendments to Fla. R. Civ. P. 1.510*, 317 So. 3d at 76 ("In Florida, it will no longer be plausible to maintain that 'the existence of *any* competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the 'slightest doubt' is raised.'") (emphasis in original).

that vacation rentals are "residential properties" that, therefore, *must* be assessed at the residential rate,[15] the question of whether the properties are used in a "residential" manner is not a material fact at issue. Section 509.032(7), Fla. Stat., makes no references to use designations such as "residential" or "commercial," but to "public lodging establishments" and "vacation rentals; and neither a "public lodging establishment" nor a "vacation rental" is defined by its "residential" status. *See* § 509.242(1)(c), Fla. Stat. The residential nature of the units, therefore, is only relevant as to zoning, and the District does not contest that the units are zoned residential and that vacation rentals are a permissible zoning use. *See and compare with Town of Jupiter Inlet Colony v. Bondar*, 2011 WL 13393220 (Fla. 15th Jud. Cir. Ct., Palm Beach County, 2011) (finding town could not prohibit homeowners from using properties for short-term rentals based on residential zoning laws requiring use only for single-family dwellings and accessory uses). As all the materially disputed issues presented actually involve legal conclusions regarding the applicability of § 509.032(7) to the District's commercial-rate assessment, and disputed legal conclusions are insufficient to raise a disputed issue of fact, *see Abu-Khadier v. City of Fort* Myers, 312 So. 3d 975, 976 (Fla. 2d DCA 2020); *and see, generally, Straub v. Village of Willington*, 941 So. 2d 1269, 1270 (Fla. 4th DCA 2006), summary judgment is the appropriate resolution for this pure matter of law. *See Galaxy Fireworks, Inc. v. Bush*, 927 So. 2d 995, 996 (Fla. 2d DCA 2006).

Assessment as "Regulation"

Our courts have historically made distinctions between monetary exactions that are regarded as revenue-raising taxes, and those regarded as duties imposed for a regulatory purposes. A tax is an enforced burden, imposed unilaterally by sovereign right, for the purpose of supporting "routine government functions." *City of Largo v. AHF-Bay Fund, LLC*, 215 So. 3d 10, 16-17 (Fla. 2017); *see also Klemm v. Davenport*, 129 So. 904, 907 (1930) (taxes are for "support of the government, the administration of the law, and to execute the various functions the sovereign is called upon to perform"). If the "main object [of the law] is the obtaining of revenue, it is properly referable to the taxing power." *Greenleaf & Crosby Co. v. Coleman*, 158 So. 421, 428 (Fla. 1934)

[15] *See* Fire District's Response in Opposition to Plaintiff's Motion for Summary Judgment at pp. 2-3 [Docket Seq. No. 54]; Amended Complaint at ¶9 [Docket Seq. No. 21]; First Affidavit of Chatt at ¶6 [Docket Seq. No. 45]; Property Owner's Motion for Summary Judgment at p. 6 [Docket Seq. No. 43]; Property Owner's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment at p. 2 [Docket Seq. No. 49].

(quoting *State of Rhode Island v. Foster*, 46 A. 833, 835 (RI 1900)); *accord Dept. of Banking and Finance, State of Florida v. Credit Corp, Inc.*, 684 So. 2d 746, 750 (Fla. 1996). Taxes by a local governing authority must be expressly authorized either by the Florida Constitution or a grant of the Florida legislature. *Collier County v. State*, 733 So. 2d 1012, 1014 (Fla. 1999); *State v. City of Port Orange*, 650 So. 2d 1, 3 (Fla. 1994).

In contrast, if the main object of the monetary exaction is "not economic in purpose," *Credit Corp, Inc.*, 684 So. 2d at 751, but to promote the health, health, safety, welfare, or public morals, it is a regulatory measure. *Graham v. Estuary Props., Inc.*, 399 So. 2d 1374, 1381 (Fla. 1981); *and see, e.g., Greenleaf & Crosby Co., supra* (finding state licensing fee imposed on itinerant merchants was constitutional regulation falling within state police power, as purpose was to forestall and prevent unfair business competition and protect public from fraud and deception by merchants with no permanent place of business and not readily reached by legal process); *Global Hookah Distributors, Inc. v. Dept. of Business and Prof. Regulation*, 318 So. 3d 613 (Fla. 1st DCA 2021) (finding tax on tobacco products brought into state was regulatory measure, where levied funds went to Health Care Trust Fund for legislature's stated purpose not to raise general revenue, but to protect Floridians' health by making tobacco wholesalers share in health care costs caused by tobacco use).

A special assessment is like a tax, in that it is an "enforced contribution from the property owner," but it is governed by different principles. *Joliff*, 227 So. 3d at 637 (quoting *Klemm*, 129 So. at 907). Special assessments operate on the theory that community members should pay an amount proportionate to the level of benefit received from the government's actions, rather than in relation to the value of their property. *See id.* An assessment can often be imposed when a tax would otherwise be unauthorized. *See id.* at 636. For a special assessment to be valid, it must meet the two-pronged requirement of providing the assessed property with a special benefit from the service provided, and it must be fairly and reasonably apportioned among the properties that receive the special benefit. *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992) (citing *South Trail Fire Control Dist. v. State*, 273 So. 2d 280 (Fla. 1973)); *and see, e.g., City of North Lauderdale v. SMM Properties, Inc.*, 825 So. 2d 343 (Fla. 2002) (finding emergency medical services did not provide special benefit to property and could not be basis for special assessment).

As previously noted, Property Owner does not dispute that the Fire District is properly authorized by the Florida legislature to impose non-ad valorem assessments on its properties, or that the apportionment is fair.[16] It argues that the increased assessment *rate* acts as a regulation, and therefore violates § 509.032(7)(a), Fla. Stat. Because Property Owner fails to raise an argument peculiar to an "assessment" versus a "tax," it appears that the cases discussing the definition of a "tax" versus that of a "regulation" are similarly applicable to consideration of the present question.

The Florida Legislature's stated purpose for the Fire District's assessments is for "any and all operating purposes" for the services provided by District.[17] The District's stated purpose for increasing the assessment rate on transient public lodging establishments, which includes vacation rentals, is to ensure a fair apportionment between those residential properties which require less resources from the District, and those used as transient public lodging establishments, which do.[18] District assessments, therefore, would appear to be intended for general revenue raising purposes. Notably, vacation rentals were not singled out for the increased rate, which otherwise might suggest a veiled purpose, since the commercial rate also applies to other residentially-zoned properties, such as daycare centers and assisted living facilities, as an apportionment based on their use.[19]

For the Fire District's assessment rate to act as a regulation, despite these policy statement indicators, it would have to *do something* to control Property Owner's vacation rentals, like fund a licensing scheme designed to impose accountability standards. *See Greenleaf & Crosby Co.*, 158 So. at 744 (citing *Foster*, 46 A. at 836). Property Owner concedes that the increased assessment rate does not prohibit the existence of its vacation rentals or regulate the duration or frequency of the rental of its condominium units.[20] Moreover, and most importantly, Property

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[16] *See* C & D Properties' Response to Requests for Admissions, Fire District's Notice of Filing Materials in Support of Final Summary Judgment, Attachment 4 at ¶¶4-9 [Docket Seq. No. 38].

[17] *See* Chapter 2000-401, §§10-11, Laws of Florida, Fire District's First Request for Judicial Notice, Exh. 5 [Docket Seq. No. 39].

[18] *See* Fire District Resolution 2023-01, Civil Attachment to Complaint, Exh. C at ¶¶10-12 [Docket Seq. No. 12]; Fire District Resolution 2023-05, Fire District's First Request for Judicial Notice, Exh. 9 at ¶¶13, 22, and 26 [Docket Seq. No. 39]; First Affidavit of Fire Chief Rigney [Docket Seq. No. 37].

[19] First Affidavit of Rigney at ¶16 [Docket Seq. No. 37].

[20] *See* C & D Properties' Response to Requests for Admissions, Fire District's Notice of Filing Materials in Support of Final Summary Judgment, Attachment 4 at ¶¶10-12 [Docket Seq. No. 38].

Owner fails to identify any control mechanism imposed on its vacation rentals as a result of the increased rate. While the units, operating as vacation rentals, are apparently now being subjected to increased life safety standards under the Fire Code, these standards are imposed by the State, *see* Chapter 633, Fla. Stat., and the District merely enforces them, using their available resources. Permitting an increased rate to fund increased services benefitting an owner's property, in proportion to that benefit, simply does not meet the definition of a "regulation."

Because there is an absence of any evidence indicating that the Fire District's increased assessment rate is for a non-revenue-generating purpose, the rate increase does not act as a "regulation" on Property Owner's vacation rentals, and it does not violate the provisions of § 509.032(7)(a), Fla. Stat.

Regulation Preempted to the State

Even if the Fire District's increased assessment rate could be viewed as a regulation, the Court would not find that the increased assessment was an action preempted to the State, either expressly or by implication, under the language of § 509.032(7), Fla. Stat.

Express preemptions of a particular matter, pursuant to § 166.021(1)(c), Fla. Stat., require a specific legislative statement that cannot be implied or inferred, and that is accomplished by clear language indicating preemption of a field. *See D'Agastino v. City of Miami*, 220 So. 3d 410, 421 (Fla. 2017); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005). Examples of such express language include phrases such as, "[N]o local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized," *Classy Cycles, Inc., v. Bay County*, 201 So. 3d 779, 785 (Fla. 1st DCA 2016) (quoting § 316.007, Fla. Stat.); "It is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter," *id.* (quoting § 316.002, Fla. Stat.); and "It is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter...." *Phantom of Clearwater, Inc.*, 894 So. 2d at 1018 (quoting § 364.01, Fla. Stat.).

Implied preemption occurs when the state legislative scheme is so "pervasive" as to create a danger of conflict with the local law, so that there is "virtual[] evidence [of] an intent to preempt the particular area or field of operation, and where strong public policy reasons exist for finding such an area or field to be preempted by the Legislature." *D'Agastino*, 220 So. 3d at 421. Courts

are generally reluctant to preclude local elected governing bodies from exercising their authority, so that implied preemptions are usually only for "a narrowly defined field, limited to the specific area where the Legislature has expressed their will to be the sole regulator." *Phantom of Clearwater, Inc.*, 894 So. 2d at 1019 (internal quotations and citation omitted).

Applying these principles to the present case, the Court begins by observing Chapter 509 is directed at establishing the regulatory duties of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation ("Division") over lodging and food service establishments for the purpose of 'safeguarding the public health, safety and welfare." § 509.032(1), Fla. Stat. This primarily includes setting sanitary standards and licensing requirements, and conducting periodic inspections to ensure compliance, among other duties. § 509.032(2)-(5), Fla. Stat. It is within this context that subsection 509.032(7)(a) provides that "[t]he 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."

A plain reading of this text, giving the words their ordinary meaning, *Ham v. Portfolio Recovery Assocs.*, LLC, 308 So. 3d 942, 946 (Fla. 2020), indicates no more than the Legislature's intent for the Division to set all regulations related to the purposes of Chapter 509. It does not indicate an express intent that only the State be allowed to regulate *all* matters touching upon the subset of vacation rentals, so as to embrace things unrelated to Chapter 509's purview, such as noise, parking, registration, and signage requirements. The Second District Court of Appeal reached a similar conclusion when evaluating almost identical language in a related statute. In *Hillsborough County v. Florida Restaurant Ass'n, Inc.*, 603 So. 2d 587 (Fla. 2d DCA 1992), the court considered a challenge to a municipal ordinance requiring all vendors of alcoholic beverages to post signs with health warnings regarding the delirious effects of alcohol. The court found the language in § 381.061(9), Fla. Stat. (1989) (repealed), stating that "[t]he regulation and inspection of food service establishments licensed by chapter 509 and....are preempted to the state," was not an express preemption of *all* local regulations and did not prohibit the local sign requirement.

Reading the language as Property Owner suggests would also render redundant § 509.032(7)(b), which expressly provides that "[a] local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of the rental of vacation rentals." Because the Legislature does not intend to enact purposeless or useless laws, *Sharer v. Hotel Corp. of America*, 144 So. 2d 813, 87 (Fla. 1962), the primary rule of statutory interpretation is to harmonize related provisions, so that each is given effect. *See Butler v. State*, 838 So. 2d 554, 556 (Fla. 2003); *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992). This is especially true here, where subsection (7)(b) was revised in 2014 to abandon the language that precluded all types of vacation rental regulations and include the more limited prohibition on regulations affecting the existence of vacation rentals, or the duration or frequency of their rental terms. "It is presumed that statutes are passed with the knowledge of other existing statutory provisions, so that courts must favor a construction that gives effect to both provisions, rather than construe one as being meaningless or repealed by implication. *See Butler v. State*, 838 So. 2d 554, 556 (Fla. 2003) (citing *Palm Harbor Special Fire Control Dist. v. Kelly*, 516 So. 2d 249, 251-52 (Fla. 1987)). General words also should not be imbued with a meaning wholly unrelated to the more specific terms in a statutory subsection that includes an express preemption, so as to render the preemption useless. *See Hillsborough County*, 603 So. 2d at 590.

While Property Owner suggests that the preemptive language in subsection (7)(b) is mere precursory verbiage, so as to revive and grandfather laws passed on or before June 1, 2011, this is a somewhat convoluted reading that still asks the Court to treat the first sentence as a nullity. This cannot be so, as all parties agree that prior to the 2014 amendment, § 509.032(7)(b) precluded all regulations on vacation rentals by the express language in the first sentence; and it, too, was followed by the same grandfather clause.[21] Other authoritative sources agree on this point. For example, in a 2014 opinion, the Florida Attorney General opined that, prior to the changes enacted in Chapter 2014-71, all local regulation of the rental of vacations rentals was preempted to the State. Op. Att'y Gen. Fla. 2014-09.

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[21] The pre-2014 version read as follows: A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011. § 509.032(7)(b), Fla. Stat. (2013).

For many of same reasons, the Court further declines to find an implied preemption. A reading of § 509.03(7)(a) and (b) together does not indicate a scheme so pervasive as to completely occupy the entire field involving vacation rental regulations.

The Florida Attorney General essentially reached this conclusion when it addressed questions posed by municipalities regarding the legality of their proposed local regulations, in light of Chapter 2014-71, Laws of Florida. In 2014, the Attorney General opined that Chapter 2014-71 "remove[d] the preemption to the state for the regulation of vacation rentals" and allowed "a local government [to] regulate vacation rentals." Op. Att'y Gen. Fla. 2014-09 (issued 11/12/14). The zoning changes proposed by the city to preclude vacation rentals from some areas were viewed as impermissible, however, because they would effectively ban vacation rentals in certain areas, as expressly prohibited by § 509.032(7)(b), Fla. Stat. (2014). *Id.* In 2021, the Attorney General opined that, under the terms of § 509.032(7)(b), local governments could "create regulation that distinguish[ed] vacation rentals from other residential property," such as, for example, documentation requirements and maximum occupancy limits. However, the distance separation requirements and percentage limitations proposed by the city to apply to vacation rentals were viewed as impermissible since they also could result in prohibiting vacation rentals in certain areas. Op. Att'y Gen. Fla. 2016-12 (issued 10/4/16). "Although an opinion of the Attorney General is not binding on a court, it is entitled to careful consideration and generally should be regarded as highly persuasive." *State v. Family Bank of Hallendale*, 623 So. 2d 474, 478 (Fla. 1993); *Classy Cycles, Inc., v. Bay County*, 201 So. 3d 779, 786 at n.6 (Fla. 1st DCA 2016) (quoting *Family Bank of Hallendale*).

In consideration of the foregoing, the Court finds that the Fire District's rate increase of its assessment imposed on residential properties used as transient public lodging establishments, which includes vacation rentals, is not a regulation that is preempted to the State, either expressly or by implication, under the terms of § 509.032(7)(a) and (b), Fla. Stat. As there is no genuine dispute as to any material fact, the Fire District is entitled to final summary judgment in its favor.

It is, therefore,

ORDERED as follows:

1. For the reasons set forth above, West Manatee Fire and Rescue District's Motion for Final Summary Judgment, as to both counts, is **GRANTED**.

2. C & D Properties of AMI, LLC's Cross-Motion for Summary Judgment is **DENIED**.

DONE AND ORDERED in Chambers at Bradenton, Manatee County, Florida, this 22nd day of May 2025, or as dated by an electronic signature.

HON. EDWARD NICHOLAS
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished by U.S. mail, electronic mail, or hand delivery to:

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(on behalf of Defendant, W. Manatee Fire & Rescue District)

on this 22nd day of May 2025, or as dated by an esignature.

By: _____
Judicial Assistant