

# City loses appeal on short-term rentals

By GREG GILES NEWS EDITOR VENICE GONDOLIER

A property owner accused of violating the city's rental ordinance has won an appeal, unraveling what was thought to be a remedy for troublesome short-term rentals in residential neighborhoods.

Twelfth Judicial Circuit Judge Charles E. Roberts ruled on Nov. 3 that Martha L. Gwynn, who rents out a home on Darling Drive in Venice, was denied her constitutional rights because a new city ordinance banning rentals of less than 30 days more than three times annually was implemented without compensating her.

"I never really had any doubt that this is a taking," said Gwynn's attorney, Grady Huie. "If they want to do that, they have to compensate."

What that means for new citations that have been issued against Gwynn since the original fine was levied is unknown, Huie said.

He's hoping the city will simply drop the issue.

"If they don't, they're going to get more lawsuits," he said.

What makes this case unique is that Gwynn wasn't one of the original property owners grandfathered in when the city adopted the new ordinance prohibiting short-term rentals in July 2009. A handful were, but only if they produced proof they were licensed properly and paid the appropriate local, county and state taxes. Gwynn didn't.

Some questioned at the time whether limiting the number of grandfathered properties in this way was legally defensible. This court ruling says it isn't.

"I would assume this would apply to everyone who was in the same boat," Huie said.

Just how many property owners are affected is unknown. Dozens of property owners were told they weren't in compliance regarding licensing and were ordered to cease renting out their properties. At one point more than 60 short-term rentals were identified, but only a few property owners covering a dozen or so properties were grandfathered.

Most of the properties belong to Steve Milo, a Jacksonville businessman who bought more than a dozen homes to rent.

City Attorney Wayne Hall, who acts as counsel for the city code enforcement board, hasn't weighed in on the decision yet.

Neighbors have complained about noise, trash and parking since 2005, when the first short-term rentals were discovered.

Early on the city tried arguing its code didn't allow for such rentals.

## Milo sued.

A judge overturned a 2008 administrative order by the city that short-term rentals were prohibited by implication under city code.

The judge told the city it had to adopt an ordinance that specifically prohibits the rentals if it wanted to go that route.

Several claims against the city were pending when the city agreed to settle with Milo for \$300,000 in damages, attorney's fees and costs. More was spent on attorneys and consultants to craft a new ordinance.

Roberts' decision in Gwynn's case was based on a review of the record, which included findings of a property inspection on Aug. 3, 2009, a code board hearing on Oct. 1, 2009, and witness testimony.

Roberts cited testimony by the city's own code enforcement officer and neighbors — who tracked the comings and goings of renters by collecting license plate numbers, documenting rental dates and speaking with renters even before the new ordinance went into affect — as evidence the property owner had an established business prior to the new ordinance.

"The testimony presented at the hearing shows appellant (Gwynn) had routinely advertised and rented the property on a short-term basis prior to the ordinance's adoption," Roberts wrote in his decision.

"The court finds that appellant's takings claim is meritorious because she owned the property prior to the ordinance's adoption.

"For this reason, the court finds that the ordinance is unconstitutional as applied to (the) appellant."

Accordingly, he ruled, the city cannot enforce the ordinance "as written."

"Our case must have been pretty weak," said Roland Becker. Becker lives next door to the rental in question.

He came to city hall on Tuesday, the last day in office for outgoing mayor Ed Martin and council members Sue Lang and Ernie Zavodnyik, to ask if nothing else could be done.

"I can't believe all the money and time spent on creating that ordinance that is that unfavorable," he said.

"We were set to go against her (Gwynn) next month. And now that's probably down the drain. "What is the city going to do to change this and get it back on track?"

"It's under consideration," said Martin. "I am sorry for you. We thought it was resolved."