Thinking beyond the development phase

A collision between business models and property ownership rights

Where business models and public policy intersect

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Summary

Condominiums are apples; hotels are oranges

- Blending condominiums and very short non-owner generated hotel rentals inappropriately mixes two fundamentally different uses
- An attractive developer business model (recurring revenue post-construction) conflicts with condominium owners' interests
- Due to the way condominiums are created in Florida, developer control of the building can persist for up to seven years with extended board representation in perpetuity
- Unknown impacts from melding the two models
  - Destruction of an ownership model favored by downsizers and snowbirds
  - Potential negative impact on condo property values if Sarasota's condo market shifts to "condo hotels"
  - Reputational damage to Sarasota resulting from residential buyers who intend residential ownership (*cf.* Mayor Trice's comment on 7/20/2026)

<u>Leases</u> of owned condo units are not in question

The question: "May a developer incorporate a hotel under the color of a Florida condominium association which grants that developer concessions to enable a transient use business?"

The Lifecycle of a Condominium Association

1. Developer proposal
2. Approval process
3. Construction, Marketing, Certificate of Occupancy
4. **Governing Documents**
5. **Developer control until turnover**
6. Owner control

In a "condo hotel" developer has incentive to retain control as long as possible with serious long-term impact on owners

Condos *v.* hotels

Condos exist in a completely different legal environment from hotels

- Condominium associations are governed by Florida law Chapter 718
  - One of the most, if not the most, complex condo laws in the country
- Condominium associations are Florida not-for-profit corporations
  - Governed by recorded "governing documents" which include the association's Declarations and Bylaws
  - **Initially recorded by developer – extraordinarily difficult to change later**
- By contrast, hotel use sits under an entirely different legal framework
  - **Hotels are licensed and regulated by the state as public lodging establishments** under Florida Statute Chapter 509, not as owner-governed corporations under Chapter 718
  - Condo owners hold recorded, mortgageable fee simple title; a hotel guest holds no ownership interest — only a revocable license to occupy
  - Hotel guests are transient occupants removable by notice; residential tenants can only be removed through formal court eviction under Florida's Landlord-Tenant Act

CONDO BOARDS ARE EXTREMELY POWERFUL

Issues with developer generated governing documents

While association is in developer control, decisions affecting residential owners can be made to promote rentals

- **Recorded covenants that bind every owner**
  - May give developer exclusive rights to market rentals
  - May give developer additional rights not allowed to other tenants
- **Levy regular and special assessments**
  - During developer control, owners have no control of spending
- **Adopt and enforce rules governing use of the property**
  - Board can adopt and amend rules on common-area **and unit use**

Condo boards control property rights, rules and budgets, an extraordinarily powerful imposition on property rights

RECURRING REVENUE INCENTIVIZES CONTINUED LONG-TERM DEVELOPER CONTROL

Turnover of Control

Condos operated as hotels mirror loss of owner control seen in Community Development Districts

- Full board control transfers at whichever trigger occurs first
  - 3 years after 50% of units sold, or 3 months after 90% sold
  - All units complete, some sold, and developer no longer marketing the remaining units
  - Developer bankruptcy, or a court-appointed receiver not discharged within 30 days
  - 7 years after the declaration of condominium is recorded
- Owners can gain board seats before full turnover
  - 15%+ non-developer ownership entitles owners to elect at least one-third of the board
- **One seat retained by developer as long as developer holds ≥5% of units for sale (≥2% if over 500 units)**
- If affordable units are kept by developer in rental program, long-term control is possible – even likely
- Example:
  - 282 total units with 40 affordable represent 14% of all units in association
  - Developer can vote its units as any other owner, creating powerful voting block for board elections and decisions

Source: Fla. Stat. § 718.301

A real-life example of developer-friendly terms

Could allow developer to overrule board even after turnover

Clause	Effect on Association and Owners
"No Amendment that would alter or interfere with the rights of the Developer hereunder or which would increase the Developer's obligations hereunder shall be effective without the prior written consent of the Developer."	Developer holds a practical veto over most amendments the Board would realistically want. Even a very-high-bar 70% vote is not enough to overcome this language.
"No Amendment shall delete or modify all or any portion of this Article 14 without the prior written consent of the Developer, its heirs, personal representatives, successors, assigns, grantees, designees or nominees."	The veto locks itself. Cannot be voted away — removing it requires the consent of the party it protects.

A preference for owner-occupied units

Zoning, as one instrument of public policy, should promote the City's planning objectives for neighborhoods

It is generally accepted that home owners, in comparison to renters, have a greater stake in their homes and neighborhoods and thereby assume a greater responsibility for their maintenance...

Programs or actions that increase home ownership will have a positive impact on neighborhood livability.

Neighborhood Plan, p. N-18

Takeaways

Condo hotels aren’t condos

- **Mixing hotel and condo uses creates problems the zoning and condo legal frameworks aren’t built to handle**
  - No clear legal nor zoning classification for a hybrid “hotel/condo” use, undermining traffic, parking, and density review
  - Unknown market impacts: risk of diminished value for traditional condo units and lost housing accessibility if the model spreads
- **Chapter 718's developer-control provisions can be turned against residential owners**
  - Recurring hotel-style rental income gives a developer lasting incentive to keep units rather than sell — turning temporary construction-phase control into a durable revenue strategy
  - Chapter 718 assumes eventual owner self-governance; using it to shelter a transient lodging business risks entrenching commercial control indefinitely, to the detriment of residential owners

Planning and zoning regulations need to reflect the entire legal and financial lifecycle of a building, not just its design and construction