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STATE OF NEW YORK
COUNTY OF NIAGARA

ZONING BOARD OF APPEALS
TOWN OF PORTER

Resolution Upholding Code Enforcement Officers Interpretation of the
Town of Porter Zoning Code.

WHEREAS, Patricia Lynch and Mark Lynch (the “Appellants”) submitted an appeal to the Town of Porter Zoning Board of Appeals (“ZBA”) to set aside the interpretation of the Town of Porter Zoning Law (the “Zoning Law”) by the Town Code Enforcement Officer (the “CEO”) determining that the short term rental of single family homes located at 2053, 2085 & 2087 Lake Road which are owned by corporate entities is a permitted use; and

WHEREAS, the ZBA has had an opportunity to review the file of the CEO related to this issue which includes, but is not limited to, correspondence of Tisdale & Coykendall, attorneys for the Appellants to the Town of Porter dated December 17, 2015, January 22, 2016, May 4, 2016 and August 30, 2017 setting forth the Appellants objections as well as correspondence from the CEO dated January 8, 2016 and correspondence from Michael J. Dowd, Attorney for the Town of Porter dated August 24, 2016 in response that correspondence and

WHEREAS, the ZBA has also reviewed the Appellants application to the ZBA appealing the CEO’s determination dated May 26, 2017 and subsequent submission of the Appellant’s Application of Mark Lynch and Patricia Lynch 2089/2091 Lake Road, Youngstown, New York Under Article II Section 10 and Article VII Section 98(j) Appeal to Zoning Board Re: CEO Decision on 2085, 2087 and 2053 Lake Road Tax Map Nos. 33.08-1-3, 33.08-1-2 and 33.11-1-21.1 in support of its appeal dated July 27, 2017 and correspondence of the appellants to the ZBA dated July 9, 2017 and

WHEREAS, the ZBA has reviewed relevant zoning district regulations and definitions set forth in the Law including but not limited to §§200-7 Permitted Uses Table, 200-10 WR Waterfront Residential, 200-28 Bed and Breakfasts, 200-75 Noise Limitations, 200-76 Off Street Parking, 200-79 Property Maintenance and 200-122 Definitions and

WHEREAS, the ZBA sought counsel from the Attorney for the Town regarding the short term rental of single family homes; and

WHEREAS, the ZBA, has, prior to this appeal, been involved in numerous work sessions and meetings, both as an individual board and jointly with the Town of Porter Planning Board to consider the adoption of a local law or ordinance regarding the use of single family homes in the Town of Porter for short term rentals; and

WHEREAS, the ZBA has made a formal recommendation to the Town of Porter Town Board to permit the use of single family homes in residential areas within the Town under certain terms and conditions; and

WHEREAS, the ZBA has recognized that seasonal tourism in this waterfront community is an important and valuable element of the Town's economy and character and that historically single family homes been made available for rent to visitors for periods of less than thirty days in areas of the Town; and

WHEREAS, the ZBA has determined that it is the character of the property being rented, to wit, approved single family homes located on lots of permitted minimum size and not the type of entity owning such property, such as corporations, limited liability companies, family limited partnerships or other entities that adequately protects the Town from being overburdened; and

WHEREAS, the Waterfront Residential district does not limit permitted uses solely to single family homes which are permanently occupied by family units and specifically contemplates "some water dependent uses that would provide public access to the lake"

including marinas and bed and breakfast establishment, farm markets and other uses, and

WHEREAS, the Law provides adequate protections regarding noise limitations and building maintenance requirements which can be enforced by the CEO to insure that residents of the Town are protected from unreasonable disturbance or public blight, and

WHEREAS, single family homes are not Hotels or Motels as defined in the Law and further that the Law contemplates that travelers are already permitted to occupy single family homes within the Waterfront Residential district in Bed and Breakfast establishments,

NOW THEREFORE, BE IT RESOLVED by the ZBA of the Town of Porter that:

The Appellant's appeal seeking to nullify to the CEO's determination that single family homes owned by individuals, corporations or other entities, may be used as short term rentals is denied. This determination is based on the ZBA's review of the CEO's files, the Town of Porter Zoning Law and upon advice of the Town's legal counsel. Single family homes are a specifically permitted use in Waterfront Residential district subject to obtaining Town building permits, Niagara County Department of Health approval for those homes serviced by on-site sanitary septic systems and the issuance of certificates of occupancy. Nothing in the Town Law restricts, regulates or prohibits the rental of single family homes for any stated or specific periods of time or otherwise prohibits the use and enjoyment of property in an otherwise lawful manner. No permit or approval is required for the rental of a single family home unless it is being operated as a "Bed and Breakfast Establishment" or "Boarding/Rooming House" as defined by the Town of Porter Zoning Law. A single family home is not a "Hotel" or "Motel" as defined by the code. The ZBA further finds that nothing in the Law prohibits trusts, partnerships, corporations, limited liability companies or other entities from owning single family homes so long as the property is in compliance with the Law since it is the nature of the property which protects the Town from being overburdened.

AND IT IS FURTHER RESOLVED the health and welfare of the Town's residents are adequately protected by state and local laws and ordinances regarding noise and nuisances in the event visitors to the Town of Porter renting single family homes act in a manner which is disruptive to the residents of the Town,

PASSED AND ADOPTED this 28th day of September, 2017 by the Zoning Board of Appeals of the Town of Porter.

Ayes: **Five** (Terry Duffy, Bryan Meigs; Jackie Robinson; Marshall Hibbard and Chairman Irene Myers.)

Nays: **Zero**