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November 29, 2016

VIA HAND DELIVERY

Mr. Peter Adam, Chair
and Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

2016 NOV 29 PM 2:38
COUNTY OF SANTA BARBARA
OFFICE OF THE
BOARD OF SUPERVISORS

Re: December 6, 2016 Hearing
Proposed Short-Term Rental Ordinances

Dear Chair Adam and Supervisors:

On December 6, 2016 you are scheduled to consider the recommendations of the County Planning Commission and the Montecito Planning Commission for adoption of several versions of a short-term rental ordinance which, if approved, will be added to the County's Land Use and Development Code ("LUDC"), Article II of Chapter 35 of the County Code (the "Coastal Zoning Ordinance"), and the Montecito Land Use and Development Code ("MLUDC"). Unfortunately the outright prohibition on short-term rentals in all residential zones throughout the County has captured not only the "Airbnb" day-by-day rentals -- often of single rooms in owner-occupied residences that bring a constant stream of strangers into residential neighborhoods -- but also the long-standing, stable and well-managed rentals of vacation homes that happen to be for fewer than 31 days per stay. The proposed ordinances employ the proverbial sledgehammer when a scalpel is needed to address a specific perceived problem. We request that you reject the proposed ordinances and direct staff to include in any revised drafts reasonable options for short-term rentals in residential areas, some of which are suggested in this letter.

While all residential zones throughout the County are affected by the proposed ordinances, we want to focus, in particular, on the coastal areas affected by the Coastal Zoning Ordinance. We

represent Dr. Steven Mosby who, as successor trustee of the Mosby Family Trust dated July 6, 1998, owns an oceanfront residence in Summerland that his parents built in 1990 as their retirement home, and which his mother occupied until her death in 2003. After her death, Dr. Mosby and his siblings were determined to keep “Mom’s house,” but they had made their lives elsewhere. Renting this beautiful home to vacationers for most of the year was the only practical way for the family to hang onto it. They entered into a property management agreement with Paradise Retreats World Class Vacation Rentals, LLC, and they set strict limitations on the numbers of occupants and uses of the property. Their renters are carefully screened, and they have never received complaints from neighbors about the vacationers’ activity. Typically a weekly rental is \$6,000. The Trust is registered with the County Assessor and collects and pays the County’s transient occupancy tax (“TOT”) for all rentals of 30 days or less. As a legal matter, Dr. Mosby and the Mosby Trust are aggrieved by the unavoidable impacts to its property that will result from a ban on all short-term rentals in residential zones under the proposed amendments to the Coastal Zoning Ordinance.

The Mosby home is one of many along the south coast that have become desirable destinations for vacationers. Beach area residences are located on some of the County’s most valuable real estate. Many such vacation homes were purchased with the expectation of rental income or, like the Mosby home, would be an economically infeasible proposition if left unoccupied many months of the year. At the same time, County staff has estimated that the TOT revenue from rentals of private homes is upwards of \$5,000,000 per year, and a significant part of that income comes from the rental of coastal homes (although Summerland, in particular, represents a small percentage of the total).

The irony is that the impetus for short-term rental controls came not from the long-standing practice of renting high-end vacation homes through reputable agencies but from the emergence of peer-to-peer internet advertising, such as “Airbnb,” which appeals to a different kind of economy-minded traveler and often involves very short stays in owner-occupied residences. As members of the County Planning Commission acknowledged in their deliberations, the operators of “homestay” properties rarely register and pay the TOT and are likely to keep on operating illegally unless their neighbors report them to the County, burdening an already limited enforcement staff. Nevertheless, the distinction between homestay and home rental impacts on residential neighborhoods was lost in the process of developing the ordinances. The difficulty in identifying and enforcing against the problematic Airbnb-type rentals does not justify capturing all short-term rentals throughout the County in a draconian ban that is devastating to an existing, successful part of the County’s economy. The legitimate vacation home owners should not be penalized for a problem not of their making.

#### What’s Wrong with the Draft Ordinances?

While we could raise concerns about many specific details of the draft ordinances, we want to focus on three “big picture” issues.

1. Having reviewed the several hearings of the Planning Commission through which the changes to the Coastal Zoning Ordinance took shape, we can see how the ordinance went “off track” very early in the process. At its December 9, 2015 hearing, when the Commission was supposed to provide direction to staff in the preparation of draft ordinances, Commissioner Hartmann, in particular, called attention to the long tradition of beach home rentals and repeatedly asked staff to work on a solution that would avoid curtailing such rentals and injuring the owners of those properties. Commissioners Blough and Ferini expressed skepticism about the wisdom of trying to control short-term rentals by zoning ordinance. Staff, however, advised that only a “one size fits all” approach was possible because uniformity in zoning throughout the County was the paramount consideration. Staff’s proposal of a complete ban in all residential zones ultimately became a recommended motion supported by three of five Commissioners because they believed there were no less draconian controls that could be implemented selectively. We question this presumption, particularly when all of the community plan areas are considered overlay districts, with zoning distinctions, as described in the Coastal Zoning Ordinance. In fact, ultimately the draft ordinances took shape with distinct variations: the MLUDC ordinance prohibits all short-term rentals in all zones except in the Resort/Visitor Service Commercial zone district, while the LUDC version permits short-term rentals in Ag-II, MU Mixed Use, C-1 Limited Commercial, C-2 Retail Commercial, C-3 Service Commercial, C-H Highway Commercial, and C-V Visitor Serving Commercial, and the Coastal Zoning Ordinance permits short-term rentals in Ag-II, C-1 Limited Commercial, C-2 Retail Commercial, and C-V Resort-Visitor Serving Commercial. In the end, the principle of uniformity has been honored more in the breach than in the observance, and your Board should not be constrained in taking an approach that considers the unique characteristics of the County’s residential areas.

2. At the December 9, 2015 hearing, staff asked the Planning Commission to consider the differences between homestays and short-term rentals of homes, distinguishing between rentals where the owner is on the premises and the rental usually is for a room or a portion of a house, and the rental of entire property for a specified rental period. At that moment in time the problem raised by the proliferation of the “homestay” peer-to-peer rentals remained somewhat in focus. The Planning Commission, however, never completed that discussion and, as a result, after December 9, the drafters of the ordinance treated the two types of rentals as though indistinguishable, ultimately defining a short-term rental (in the Coastal Zoning Ordinance) as “a structure which is permitted to be rented for overnight lodging in compliance with this Article, in whole or in part and with or without the presence onsite of the Owner or representative of the Owner, that is rented for 30 consecutive days or less.” Of course the distinction between the renters of rooms in quiet neighborhoods and the contracting for rental of a vacation home in a vacation destination area is at the heart of the matter.

3. Staff has taken the position that short-term rentals are a “commercial” enterprise, apparently because they are a revenue-generating activity and because they involve marketing. We disagree. The right to rent one’s property is an incident of land ownership. Ownership does not require owner occupancy. Indeed, staff has not suggested that leasing a home from month to month or year

to year is anything more than an exercise of a homeowner's rights, even though presumably the owner advertises somewhere to attract potential tenants. Short-term rentals are defined, under the TOT regulations, as 30 days or less, but there is no other "magic" in this number of days. Is a rental of 32 days any less or any more "commercial" than a rental of 30 days? Is the potential impact, or the nature of the arrangements between owner and occupant, substantially different because the arrangement is for more or fewer days? Of course not. Yes, people rent their properties because they make money doing it, but as homeowners they have a right to earn money from their property. (We are not addressing CCR situations where a property owner agrees to be constrained in various ways.) It seems to us beyond the reach of government to impose such a sweeping constraint on property ownership that arguably is not the proper subject of zoning. In addition, the notion of short-term rentals as "commercial" apparently has fed the reasoning that short-term rentals should be allowed primarily in commercial areas where hotels are permitted. The logic fails when one realizes that a vacation rental of a home (or even an overnight stay in a home) is intended to avoid hotels and commercial facilities. Some travelers simply prefer a home-like setting. Restricting short-term rentals to commercial areas virtually guarantees that the few legal (and tax-paying) short-term rentals will exist in the County.

#### Recommended Alternative Approaches

We strongly suggest consideration of the following alternatives to the proposed ordinances:

1. Create a blanket exemption or "grandfathering" provision for all existing certified TOT participants and make the ordinances entirely prospective in nature, focusing on new rental activity. The existing TOT participants are a category of law-abiding owners who should not be penalized. Over time these grandfathered owners will diminish in number, but in the meanwhile the County will not lose the considerable revenue from their TOT payments.
2. Allow the application and permitting process proposed in the draft ordinances to apply to residential zones (either throughout the County or under the Coastal Zoning Ordinance in particular). If meeting these criteria satisfies use-related concerns in one zone, why not in another? If grandfathering is not an acceptable approach, then existing vacation homeowners could exercise this option if they want to continue operating legally, and potential new owners would have to meet threshold requirements before providing vacation rentals. Permitting can overcome both legitimacy and quality control concerns in residential zones.
3. If allowing short-term rentals by permit in some or all residential zones is considered too broad an approach, then create an "overlay" for coastal residential areas that makes short-term rentals and/or homestays permissible in the overlay area. Staff advised the Planning Commission that an overlay is a feasible approach to treating similarly-zoned properties differently from each other and, indeed, the LUDC and Coastal Zoning Ordinance have numerous examples. This approach would acknowledge the history and unique beach vacation environment of properties like the Mosby home without disturbing residential restrictions elsewhere.

5. Rethink the ordinance concept by returning to the initial question of the distinction between homestays and short-term rentals, and add to that consideration of the lack of any real difference (except for the TOT definition) between a 30 day rental and a 32 day rental. Impacts arise not from the length of stay as much as from the type of property and its specific location, the portion of the property that is rented, and the owner's management of the activity. Dr. Mosby, as but one example, would be very happy to rent the Trust's property for longer than 30 days, but because it is most attractive as a vacation rental, and because of the high-end price in its desirable area, vacationers typically are interested in one or two weeks at a time. From a policy perspective, a well-managed two week occupancy of a vacation home, with payment of TOT, has much to recommend it over a peer-to-peer rental of any duration. It is the homestay, not the short-term vacation home rental, that should be the entire focus of regulation.

In summary, while we appreciate the amount of work that has gone into the preparation of the draft ordinances and the lengthy accompanying discussions among Commissioners, we think this approach is ill-advised for all the reasons we have stated. We do not discount the possibility that regulation of particular types of short-term rentals in particular locations could be accomplished through the zoning ordinances, but where the essence of the problem, and its potential solutions, are more specific than a zone-by-zone analysis allows, and where property owners like Dr. Mosby are slated to become the victims of a too-broad, "one size fits all" approach, we urge you to reject the draft ordinances as presented.

We plan to attend the hearing on December 6 and look forward to your deliberations.

Very truly yours,



Susan M. Basham  
for PRICE, POSTEL & PARMA LLP

cc: Client