

Reetz, Fox, &
Bartlett LLP - Letter dated #3
12.2.16

Daly, Julia Rutherford

From: Terry A Bartlett <tbartlett@reetzfox.com>
Sent: Friday, December 02, 2016 11:31 AM
To: sbcob
Cc: Russell, Glenn
Subject: Agenda Item Number 3 December 6, 2016 / Short-Term Rental Ordinances
Attachments: 20161202112025881.pdf

Attention: Russ Barker, Deputy Clerk

I apologize for the late delivery of the attached. Please cause the same to be delivered to each of the Supervisors, again with my apologies.

Thank you.

Terry A. Bartlett

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December 2, 2016

Via Email

Mr. Peter Adam, Chair
And Board of Supervisors
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, California 93101

AGENDA ITEM NUMBER 3, SHORT-TERM RENTAL ORDINANCES

Dear Chair Adam and Members of the Board,

On December 7, 2015, February 19, 2016, and August 2, 2016, I submitted letters to your Planning Commission on behalf of an affected property owner. I attach copies here for your convenience. I appreciate the progress that your Commission has made in addressing short-term rentals and believe that the Short-Term Rental Supplement Application, prepared by Staff and attached to the July 27, 2015, Staff Report as Attachment H, goes a long way in addressing some of the concerns that have been raised. I am still concerned, however, whether the Ordinance as proposed will pass Constitutional muster.

My primary concern is the requirement that, should a property owner in the AG-II Zone pursue renting his property as a short-term rental, he will be required to obtain a Land Use Permit or a Coastal Development Permit while similarly situated owners who choose to rent their properties on a long-term basis will not.

The California Constitution prohibits local government from adopting standards that attempt to regulate conduct based upon the identity of the participant (the user, i.e. tenant versus property owner). Thus, the proposed Ordinance will not survive a Constitutional challenge because of its attempt to regulate short-term renters differently than long-term renters or property owners. It is well established that distinctions which attempt to regulate activities/uses on property based on the identity of the user are unconstitutional in that they violate the protections for freedom of speech and assembly, and equal protection under the law.

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Mr. Peter Adam, Chair
And Board of Supervisors
December 2, 2016
Page 2 of 2

Further, the proposed amendments set forth in Section 35.42.245 of Section 35-1 of the Santa Barbara County Land Use and Development Code imposes some development standards that must be adhered to by property owners offering short-term rentals. Those include a limitation on the number of guests, parking restrictions, regulations concerning decibel levels, and the prohibition of the leasing of a guest house in conjunction with the leasing of the main house, none of which are imposed on long-term rentals.

It would be my recommendation that your Board instruct Staff to remove any provisions which serve to treat short-term renters differently than long-term renters or property owners as well as any classification that does not bear a rational relationship to a legitimate purpose.

Further, I would suggest that the Short-Term Rental Supplement Application, once completed and submitted to the County, be sufficient to permit a property owner to participate in the Short-Term Rental Program and not require the processing of a Land Use or Coastal Development Permit. To require the issuance of such a permit in compliance with Section 35.82.110 would, for all intents and purposes, defeat the purpose of allowing short-term rentals on AG Property and be administratively burdensome.

I look forward to participating in your discussions on December 6, 2016, and thank you for your time and consideration.

Sincerely,

REETZ, FOX & BARTLETT LLP



Terry A. Bartlett

TAB/shj

Switzer\10-Short-term Rental Ordinance\Board.16.12.02.docx

Enclosures

cc: Glenn S. Russell, Director (via email)
Santa Barbara County Planning & Development

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December 7, 2015

Via Email & Hand Delivery
Santa Barbara County Planning Commission
123 Anapamu Street
Santa Barbara, California 93101-2030

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S B COUNTY
PLANNING & DEVELOPMENT

SHORT-TERM RENTAL HOUSING RESTRICTIONS

Members of the Commission,

As part of its preparation for the December 9, 2015, meeting, Planning Staff requested that the Department of Conservation comment on the issue of vacation rentals as a "compatible use" on land restricted under the Williamson Act. Molly A. Penberth, a Manager with the Division of Land Resource Protection, in her letter dated November 18, 2015, provides a discussion on compatible use as it relates to the Williamson Act, providing recommendations as well. A copy of Ms. Penberth's correspondence to Glenn S. Russell is attached here for your convenience.

For reasons more specifically discussed in my letter dated December 7, 2015, to Ms. Penberth attached here as well, I believe that Ms. Penberth's conclusions fail to take into account certain constitutional protections afforded to property owners and, as a result, render her recommendations unadvisable.

By way of summary, the Department's analysis of compatible uses versus non-compatible uses under the Williamson Act focuses on the length of the term of a tenancy (short-term versus long-term) and relies on upon the fact that the landowner, whose property is under a Williamson Act contract, must be onsite to manage the agricultural operations. The California Constitution prohibits local government from adopting standards that attempt to regulate conduct based on the identity of the participant (the user, i.e. tenant versus property owner). The Department's recommendations will not survive a challenge because of its attempt to regulate short-term renters of property differently than long-term renters or property owners.

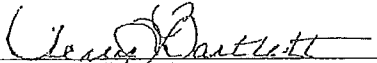
The right of equal protection under the law prohibits arbitrary classifications which distinguish between short-term renters versus long-term renters and property owners and provides that any classification must bear a rational relationship to legitimate purpose. Nowhere in the Williamson Act is there language which would permit the kind of distinction being made by the Department.

Santa Barbara County Planning Commission
December 7, 2015
Page 2 of 2

I would encourage you to read my response to Ms. Penberth, and welcome any questions that you may have.

Sincerely,

REETZ, FOX & BARTLETT LLP


Terry A. Bartlett

TAB/shj

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Enclosure

cc: Glenn S. Russell, Director,
County of Santa Barbara Planning and Development

Attachment I



State of California • Natural Resources Agency
Department of Conservation
Division of Land Resource Protection
801 K Street • MS 18-01
Sacramento, CA 95814
(916) 324-0850 • FAX (916) 327-3430

Edmund G. Brown Jr., Governor
John M. Lowrie, Assistant Director

November 18, 2015

VIA EMAIL: GRUSSELL@CO.SANTA-BARBARA.CA.US

Mr. Glenn S. Russell, PhD., RPA
Director, Planning and Development
President California County Planning Directors Association
County of Santa Barbara
123 Anapamu Street
Santa Barbara, CA 93101-2030

Dear Mr. Russell:

**SHORT TERM "VACATION RENTALS" AS COMPATIBLE USE ON WILLIAMSON ACT
CONTRACTED LAND**

Santa Barbara County (County) has asked the Department of Conservation (Department) to comment on the issue of vacation rentals as a "compatible use" on land restricted under Williamson Act contracts. Specifically the request is in regard to renting of the main dwelling on an agricultural property. The Department offers the following discussion on compatible use as it relates to the Williamson Act.

In recent years there have been expanding opportunities for farmers and ranchers to utilize their land for adjunct non-agricultural commercial uses, as a means of broadening their income base. These uses are typically in addition to their agricultural and open-space uses. While some of these opportunities may be compatible with agricultural and open space use of the land, many proposed uses have the potential to displace or impair the property's agricultural productivity or open space character. The County's concern with short term vacation rentals is an example of one of the recent issues regarding compatible uses on Williamson Act contracted lands.

In summary, a use is compatible with a Williamson Act contract only if it does not compromise, displace or impair the agricultural use of the land or otherwise interfere with the land's devotion to agricultural use. However, the Williamson Act affords cities, counties and landowners latitude in determining whether a use is compatible with Williamson Act contracted land. Consequently, determining compatibility is a highly fact-specific analysis that encompasses a variety of factors.

Government Code § 51242 enables local governments to enter into Williamson Act contracts on land that is devoted to agricultural use and located in an area designated as an agricultural preserve. In return, restricted parcels are assessed for property tax purposes at a rate consistent with their actual agricultural and/or open space use, as opposed to potential market value. Because the Williamson Act provides a preferential tax assessment on contracted land in exchange for limiting the land to agricultural uses, any use other than the agricultural or open space use for which the property was placed under contract must be found to be compatible.

Typically, compatible uses are divided between activities that are clearly related to agricultural operations (such as vineyards or animal grazing), and those that require a special use permit (such

as permanent roadside stands or wine tasting venues). The latter examples promote the sale of agricultural products produced on-site (such as wine and cheese), and are commonly termed 'agritourism'. The potential of an educational opportunity for consumers regarding where their food and fiber comes from may exist if agritourism uses are executed with sensitivity.

The Department supports the activities of an agribusiness venture on land under a Williamson Act contract as long as the marketing events support and promote the agriculture commodity being grown on the premises. Once events begin to overtake the main venture, or feature products not produced on the property, they no longer reflect the agricultural intent of the Williamson Act and become incompatible with the statute.

The level of discretion that counties have in regard to agritourism on Williamson Act enrolled land has not been settled and remains open to interpretation. The Department takes a conservative approach, recommending partial nonrenewal for land that would house the infrastructure hosting large events or those where questions regarding the source of the items for sale could occur. This would distinguish that the tax benefits to the landowner for the production of food or fiber, and the conservation of agricultural land, are not extended to uses that could occur in nonagricultural settings.

In regard to the exclusive use of a principle residence as a "vacation rental," the Department's interpretation of compatible use is reflected in Santa Barbara County's Uniform Rules for Agricultural Preserves and Farmland Security Zones, where it states:

Uniform Rule 2: Compatible Uses within Agricultural Preserves

Land enrolled in the Agricultural Preserve Program is to be used principally for commercial agricultural production, with the exception of land enrolled for open space or recreational purposes. However, the Board recognizes that it may be appropriate to allow secondary uses on contracted land that are either incidental to, or supportive of, the agricultural operation on the property. This Rule provides guidance and criteria for evaluating these uses on land under Williamson Act and Farmland Security Zone contracts in terms of their compatibility and consistency with the purpose and intent of the Williamson Act. It is the goal of this County that, through application of the principles of compatibility in the Act, compatible uses allowed on contracted land will be beneficial to and inherently related to the agricultural use of the land.

In 1999 the Legislature spoke to the limitations upon compatible uses. In un-codified language adopted in Chapter 1018 of the statutes of 1999, the Legislature declared: "The latitude provided by the Williamson Act to participating local governments is not, and has never been, so great as to make uses that are not inherently related to, or beneficial to, the agricultural or open-space character of contracted land permissible under the compatible use provisions of the Williamson Act."

Department Recommendations and Conclusions

The Department recommends that any short term vacation rentals of the principle residence be limited in scope, and be allowable only if the landowner is on site to manage the agricultural

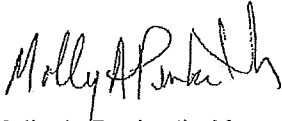
Mr. Russell
November 18, 2015
Page 3 of 3

operations. Short term rentals, with examples such as Airbnb¹ or VRBO², take on a number of forms, including partial and full house rentals. A limited use arrangement would be analogous to a bed and breakfast, with the renter having a specified footprint within the house. The overall number of days that the rental can occur should be restricted so as to ensure it remains incidental to the agricultural uses on the property.

The Department cautions that if the primary residence is rented for most or all of the year, the connection between its use and the agricultural operation is lessened to the point that a determination of compatibility is highly unlikely. Although the landowner could file for nonrenewal or partial cancellation for the portion of the property where the residence is located, that outcome may open the door for landowners to request additional conditional uses that future diverge from the surrounding agricultural operation. For this reason, the Department recommends that any allowance for vacation rental of the primary residence remain limited in scope and duration.

Thank you for giving us the opportunity to comment on compatible use as it relates to the Williamson Act. Please provide this Department with notices of any future hearing dates as well as any staff reports pertaining to this project. If you have any questions regarding our comments, please contact Earl Grundy, Environmental Planner at (916) 324-7347 or via email at Earl.Grundy@conservation.ca.gov.

Sincerely,



Molly A. Penberth, Manager
Division of Land Resource Protection
Conservation Support Unit

¹ www.airbnb.com

² <http://www.vrbo.com/>

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E-MAIL: frontdesk@reetzfox.com

December 7, 2015

Via Facsimile & U.S. Mail
Molly A. Penberth, Manager
Division of Land Resource Protection
Conservation Support Group
801 K Street, MS 18-01
Sacramento, California 95814

Dear Ms. Penberth,

I am in receipt of your letter dated November 18, 2015, addressed to Glenn S. Russell, Director of the Santa Barbara County Planning and Development Department, where you discuss the compatibility of short term vacation rentals with the Williamson Act. As part of your Departmental recommendations you state that any short term vacation rental of the principal residence on land under contract with the Williamson Act be limited in scope, and be allowable only if the landowner is onsite to manage the agricultural operations. Requiring the landowner to be onsite is not required by Government Code section 51243 which simply provides that uses on Williamson Act properties must be compatible with agricultural uses.

Thus, in determining whether a use is compatible with the Williamson Act, the State cannot distinguish between whether the person in residence is a short-term renter, a long-term renter or the property owner. The use would need to be regulated across the board and considered the same for all purposes, regardless of the user in order to meet Constitutional requirements.

Additionally, your letter distinguishes between "compatible" users versus "non-compatible" users, arbitrarily classifying any short-term user of property as non-compatible while classifying the use as compatible if the use is a by long-term rental or by the owner of the property. Landowners frequently lease their agricultural properties to third party growers and/or ranchers, the property owner contributing little, if anything, to the day-to-day management of the agricultural operations.

Thus, to tie compatibility with the Williamson Act to the number of days that a residence on land covered by the Williamson Act can be rented is neither logical nor legally defensible. Who resides in the principal residence has no impact on the continued use of the surrounding property for agricultural purposes. I would remind you that the County's Zoning Ordinance provides for a 2-acre designated development envelope, a pocket so-to-speak, within the agricultural property. So agricultural uses would not be impacted notwithstanding the length of the users stay. Accordingly, I respectfully disagree with your recommendation that vacation rentals be limited in scope and duration.

REETZ, FOX & BARTLETT LLP

Via Facsimile & U.S. Mail

Molly A. Penberth, Manager
Division of Land Resource Protection
Conservation Support Group

December 7, 2015

Page 2 of 2

The Williamson Act has remained stable and effective as a mechanism for protecting agriculture and open space land from premature and unnecessary urban development. Further, the Act has recognized the enormous cost to both the economy and the environment of haphazard, opportunistic, and sprawling patterns of urban development. A laudable goal which should be encouraged, but one which is not impacted by the length of time which a residence is rented.

Sincerely,

REETZ, FOX & BARTLETT LLP


Terry A. Bartlett

TAB/shj

Switzer\10-Short-term Rental Ordinance\Penderth let 15.12.07a.docx

cc: Glenn S. Russell, Director (via email)
Santa Barbara County Planning and Development
Earl Grundy, Environmental Planner (via email)
State of California Natural Resources Agency,
Division of Land Resource Protection

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E-MAIL: frontdesk@reetzfox.com

February 19, 2016

Via Email

Santa Barbara County Planning Commission
123 East Anapamu Street
Santa Barbara, California 93101
Attention: David Villalobos
Board Assistant Supervisor

AGENDA ITEM NUMBER 2 SHORT-TERM RENTAL HOUSING RESTRICTIONS

Members of the Commission,

On December 7, 2015, I submitted a letter to you on behalf of an owner of an AG II Property. A copy of that letter and its enclosures is attached here for you convenience. The purpose of my letter was to respond to an opinion rendered by one Molly A. Penberth, a Manager with the Division of Land Resources Protection, Department of Conservation, that short-term rentals are not a compatible use on land restricted under the Williamson Act. Ms. Penberth's letter dated November 18, 2015, is attached to the Staff Report as Attachment C.

Ms. Penberth, in her correspondence dated November 18, 2015, to Glen S. Russell, Director of your Planning and Development Department, wrote that any short-term vacation rental of the principal residence on land under contract with the Williamson Act should be limited in scope, and be allowable only if the property owner is onsite to manage the agricultural operations. She further writes that the overall number of days that the rental can occur should be restricted so as to ensure it remains incidental to the agricultural uses on the property.

Ms. Penberth recommendations and conclusions are not in keeping with the requirements of the Williamson Act or the California Constitution. Requiring the landowner to be onsite is not required by Government Code Section 51243 which simply provides that uses on Williamson Act properties must be compatible with agricultural uses. Landowners frequently lease their agricultural properties to third party growers and/or ranchers, the property owner contributing little, if anything, to the day-to-day management of the agricultural operations.

Further, distinguishing between whether the person in residence is a short-term renter, a long-term renter, or the property owner will not pass Constitutional muster. Ms. Penberth, in addressing "compatible" uses versus "non-compatible" uses focuses on the length of the term of a tenancy (short-term versus long-term). Distinctions which attempt to regulate activities/uses on property based on the identity of the user are unconstitutional in that they violate the protections for freedom of speech and assembly, and equal protection under the law.

Santa Barbara County Planning Commission
February 19, 2016
Page 2 of 2

Similarly, the County's Agricultural Preserve Advisory Committee's ("APAC") concerns, as expressed in their February 8, 2016 letter, of potential agriculture/urban conflicts fails to address the constitutionality of any prohibition of short-term rentals. Further, APAC does not recognize that the County's Zoning Ordinance provides for a 2-acre designated development envelope within the agriculturally zoned property. The APAC letter is attached as Attachment I to the Staff Report.


The parcel in question is zoned AG II and consists of approximately 150 acres. The residence in question was constructed with County permits and occupies not more than two (2) acres of the entire parcel as permitted by the County's Uniform Rules for Agricultural Preserves and Farmland Security Zones, Rule 1-4.1.C.3. Further, notwithstanding the constitutional barriers framed above, the use of the principal residence does not significantly compromise the long-term productive agricultural capability of the contracted parcel nor does it significantly displace or impair current or reasonably foreseeable agricultural operations on the subject parcel. In short, the use of the residence as a short-term or long-term rental has no impact upon the ongoing agricultural operation and, as such, is compatible.

I think we would all agree that the Williamson Act has remained stable and effective as a mechanism for protecting agriculture and open space land from premature and unnecessary urban development. Further, the Act has recognized the enormous cost to both the economy and the environment of haphazard, opportunistic, and sprawling patterns of urban development. A laudable goal which should be encouraged, but one which is not impacted by the length of time a residence is rented.

I look forward to participating in your discussions on February 24, 2016, and thank you for your time and consideration.

Sincerely,

REETZ, FOX & BARTLETT LLP


Terry A. Bartlett
Attorneys for Figueroa Mountain, LLC

TAB/shj

Switzer\10-Short-term Rental Ordinance\Commission let 16.02.19a.docx

Enclosures

cc: Glenn S. Russell, Director (via email)
Santa Barbara County Planning and Development
Kenneth Switzer

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August 2, 2016

Via Email

Santa Barbara County Planning Commission
123 East Anapamu Street
Santa Barbara, California 93101
Attention: David Villalobos
Board Assistant Supervisor

AGENDA ITEM NUMBER 2, SHORT-TERM RENTAL ORDINANCE

Members of the Commission,

On December 7, 2015, and February 19, 2016, I submitted letters to you on behalf of an owner of an AG-II Property. I attach copies here for your convenience. I appreciate the progress that your Commission has made in addressing short-term rentals and believe that the Short-Term Rental Supplement Application, prepared by Staff and attached to the Staff Report as Attachment H, goes a long way in addressing some of the concerns that have been raised. I am still concerned, however, whether the Ordinance as proposed will pass Constitutional muster.

My primary concern is the requirement that, should a property owner in the AG-I or AG-II Zone pursue renting his property as a short-term rental, he will be required to obtain a Land Use Permit or a Coastal Development Permit while similarly situated owners who choose to rent their properties on a long-term basis will not.

The California Constitution prohibits local government from adopting standards that attempt to regulate conduct based upon the identity of the participant (the user, i.e. tenant versus property owner). Thus, the proposed Ordinance will not survive a Constitutional challenge because of its attempt to regulate short-term renters differently than long-term renters or property owners. It is well established that distinctions which attempt to regulate activities/uses on property based on the identity of the user are unconstitutional in that they violate the protections for freedom of speech and assembly, and equal protection under the law.

Further, Section 35.42.245 of Section 35-1 of the Santa Barbara County Land Use and Development Code sets forth some development standards that must be adhered to by property owners offering short-term rentals. Those include a limitation on the number of guests, parking restrictions and regulations concerning decibel levels, none of which are imposed on long-term rentals.


Santa Barbara Planning Commission
August 2, 2016
Page 2 of 2

It would be my recommendation that your Commission instruct Staff to remove any provisions which serve to treat short-term renters differently than long-term renters or property owners as well as any classification that does not bear a rational relationship to a legitimate purpose. Further, I would suggest that the Short-Term Rental Supplement Application, once completed and submitted to the County, be sufficient to permit a property owner to participate in the Short-Term Rental Program and not require the processing of a Land Use or Coastal Development Permit. To require the issuance of such a permit in compliance with Section 35.82.110 would, for all intents and purposes, defeat the purpose of allowing short-term rentals on AG Property and be administratively burdensome.

I look forward to participating in your discussions on August 3, 2016, and thank you for your time and consideration.

Sincerely,

REETZ, FOX & BARTLETT LLP



Terry A. Bartlett

TAB/shj

Switzer10-Short-term Rental Ordinance\Commission.16.08.02.docx

Enclosures

cc: Glenn S. Russell, Director (via email)
Santa Barbara County Planning & Development