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**Appeal 20-001/Motroni & Peterson
Comment Letters**

COMMENT LETTERS RECEIVED BY 4PM ON 07/21/20

Amy Motroni & Pete Peterson

Eldon Shiffman

Dave Parker

MEMO FOR BOARD OF SUPERVISORS HEARING, JULY 21, 2020
Amy Motroni and Pete Peterson, appellants

This memo describes our responses to the contentions in the Planning Division's staff report for our appeal. Their main arguments concern the use of "commercial" and "residential" in the General Plan. Point 1 below is our argument that owner-occupied short-term rentals (STRs) are deemed commercial by the use and definition of "business" in the General Plan. Points 2 through 5 below set out the Planning Division's arguments in the Discussion section of the staff report that STRs are residential and that, therefore, they are not commercial; our contentions directly below the arguments show why the Planning Division is wrong.

1. STRs must have business licenses. The rules for STRs refer to a definition of "business" that is the same as the dictionary definition of "commercial."

-- Chapter 5.65, Short-Term Rentals in Residential Areas, section 5.65.040, subsection H, states "All short-term rental property owners must obtain a valid business license pursuant to Chapter 5.04."

-- Section 5.65.030, Definitions, states "The definitions in the Mono County General Plan, including but not limited to, those contained in Chapter 2, shall apply to this chapter." (emphasis in original).

-- Chapter 02 – Definitions, subsection 02.220 provides "Business' means the retail or wholesale sale, provision of service, or handling of any article, substance or commodity for profit or livelihood." (Emphasis added.) Thus, "Business' means the . . . provision of service . . . for profit."

-- Since neither the General Plan nor Chapter 5.65 contains a definition of "commercial," the standard dictionary definition must be used: "Making or intended to make a profit". The Chapter 02 definition of "business" is basically identical to the dictionary definition of "commercial."

2. Argument in Discussion section:

"The commercial versus residential nature of short-term rental uses was not explicitly evaluated in the use permit staff report because those issues were primarily addressed during the development and approval of the General Plan Amendments (GPAs) for short-term rental regulations (GPAs 12-04, 17-01B, 18-01, and 19-01)."

-- The topic of whether STRs are commercial was evaluated in the use permit staff report. In the Planning Commission Packet for the Planning Commission Hearing, the Planning Division summarized six written objections to the application that were submitted by local residents. All of the six objections included concerns

about the negative effects of STRs on the community character. The Planning Division responded:

4. Impacts to Community Character: Policy 24.A.3 of the Wheeler Crest Area Plan policies specifies the importance of retaining the rural residential character of the entire study area (full text below). The actions listed under this policy acknowledges [sic] that “general commercial uses are not desired within the residential area” however, bed-and-breakfast establishments and owner-occupied rentals are listed as exempt. (Emphasis added.)

If STRs are exempt from the prohibition of commercial uses they clearly must be commercial uses. STRs are not, in fact, identified as exempt in Police 24.A.3 of the Wheeler Crest Area Plan, but at some point the Planning Division evidently thought they should be – therefore, they thought STRs were commercial.

-- Where are the GPAs on the Mono County Web site? If they aren’t accessible through a general Web search, how can they be authorities for interpretations of the area plans?

-- Issues may have been addressed during the development and approval of the General Plan Amendments, but the conclusions have to be included in the actual language of the amendments for them to be adopted.

3. Argument in Discussion section:

“However, activities that generate an income for the property owner, including long-term rentals; home occupations such as consulting, legal services, drafting/architecture, etc.; as well as short-term rentals can be conducted in residential structures and are therefore not considered commercial land uses. If activities that generate an income are determined as commercial, all of the above-mentioned activities would be prohibited under that definition.”

-- This statement contends that there are two commercial uses of residences that are clearly allowed in Swall Meadows — long-term rentals and home occupations. They ask that if STRs are not allowed, shouldn’t these commercial uses similarly be banned? The answer is that neither long-term rentals nor home occupations are required to conform to area plans, while STRs are. A long-term rental is not a residence with a commercial use; it is a residence used as a residence. People who rent their homes long-term do not have to obtain business licenses and their rental income is not subject to transient occupation taxes. The designation of Estate Residential includes “single family dwelling” as a Permitted Use that is not subject to a Use Permit.

Home occupations are covered by Land Use Element, General Provisions, Chapter 02 — Definitions, subsection 02.590, Home occupation. Home occupations “are permitted in all residential designations, subject to obtaining a business license and compliance with . . .home occupation standards.” None of these standards requires conformance with area plans. In fact, after the text for home occupations there are separate, additional provisions for “expanded home occupations”: cases where home owners want to have one or more of the requirements waived. Per subsection 2.590, expanded home occupation uses must be “consistent with this General Plan and any applicable area or specific plans.”

On the other hand, several places in the General Plan state that STRs have to comply with area plans, including Chapter 25 — Short Term Rentals (in two places) and Chapter 5.65 — Short-Term Rentals in Residential Areas. Also, as the staff report says, “The Estate Residential (ER) land use designation allows for both owner-occupied rentals and not owner-occupied rentals subject to use permit.” But the designation itself also states that STRs must comply with Chapter 25 (which requires compliance with area plans), Chapter 5.65 (which requires compliance with area plans), “and any applicable area plan policies.”

Conclusion: Long-term rental and home occupation uses of residences do not have to comply with area plans. STRs do have to comply with area plans. Commercial uses of residences are not permitted in the Wheeler Crest Area Plan; therefore, STRs are not permitted in Swall Meadows.

-- Long-term rentals and home occupations are permitted in Mono City, even though that area plan explicitly prohibits STRs.

4. Argument in Discussion section:

“Further, Mono County General Plan EIR Addenda 12-01 and 19-01 found that short-term rental use of single-family residences does not result in any change to the underlying property use and is used substantially in the same manner as a single-family home.”

-- We don’t have Addendum 12-01 and could not find it on the Mono County Web site. It appears to be a 2012 vintage document, so we wonder about its relevance to a 2020 situation.

-- Addendum 19-01 is an addendum to the General Plan EIR. Its goal is to explain why the General Plan EIR doesn’t require a subsequent EIR. In the Conclusion there is a paragraph that begins “Based on the considerations and analyses presented above, and based on the conditions contained in CEQA 15164(a) . . . it is concluded that none of the conditions calling for preparation of a subsequent EIR have occurred.” By its own terms, Addendum 19-01 was not written as an authority for the implementation for Chapter 25.

-- The underlying property use of Swall Meadows homes doesn't change if they host STRs. STRs are a commercial use that is undertaken in a residence.

5. Argument in Discussion section:

STRs are not commercial because they fit in the California Building Code section covering the category "Residential Group R-3 occupancies where the occupants are primarily permanent in nature".

-- The Building Code section says that Residential Group R-3 buildings can be built using residential standards. It doesn't say anything about whether Residential Group R-3 activities are commercial. In fact, most of the other building uses in that category can be run for profit, which would make them commercial.

Eldon Shiffman
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760 878 8293

July 17, 2020

Kelly Karl, Assistant Planner
P.O. Box 347
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Re: Appeal 20-001/Motroni / Peterson

I am writing to support the appeal of the Conditional Use Permit for short term rentals of two bedrooms at 320 Mountain View Drive, Swall Meadows, CA which was previously approved. Please consider the following:

1. Swall Meadows was developed into a community of residential parcels for residents desiring to live away from urban locations such as Mammoth or June Lake which offer a variety of mixed use residential and commercial businesses including hospitality hotels and motels. People live in Swall to get away from these types of activities. The hospitality industry in Mammoth is well suited for the type of activity proposed for the Mountain View property and the infrastructure is already in place to provide for expanded development of additional rental units if demand increases over the years.
2. I am informed that Planning Commission was moved by the owner of the short term rental units need to rent out rooms to be able to afford to own the property. This sets a dangerous precedent, approving non-conforming property uses based on an owners poor financial planning.
3. As I write this letter it is 10:45 PM and our fire department has responded to a second fire call in the past 24 hours during a period of extreme fire weather. Earlier, some tourist pulled off the road on 395 and started a brush fire. This latest call involved a group that decided to light a campfire in a non- camping area on Lower Rock Creek Road. Or fire department gets several calls each year to douse camp fires on undeveloped lots lit by people who think it is safe to set up a trailer and camp for the weekend. Bringing in vacationers to our neighborhood will overtax our local volunteer fire department.

Please do not approve this permit for transient rentals in Swall Meadows. This type of short-term rental over taxes the minimal services available in our area. Unlike larger population centers like Mammoth Lakes and Bishop with paid firefighters, Swall Meadows has a very small Volunteer

Fire Department to respond to all emergency services. Having vacation rentals in the area puts a huge burden on our department and members. Temporary visitors do not understand what high fire danger and red flag warnings really mean and do not receive the Mono County emergency communications. I have experienced visitors disregard (or being ignorant of) fire warnings, building fires while camping above Swall in high wind conditions and building outdoor fires while staying in an illegal Air B&B at 190 Pine Drive. Having fought many fires including the Round Fire and Rock Creek Fire as well as working campaign fires in other parts of the state, we do not need this added liability of nightly visitors, whether owners say they will be on the premises or not.

In addition, when visitors come to our area they often enthusiastically participate in activities they are not accustomed to risking injury. They forget they are at high altitude and become safety liabilities for all of us and especially impact our fire department, the only EMS in Swall. Fire department services are not paid for by any of these transient visitors so in turn these visitors also become a financial impact for our community. Many of these visitors will never have experienced driving on roads like our steep winding canyon roads especially in winter when ice and snow are prevalent.

Swall Meadows does not have onsite law enforcement to mitigate many situations. Although County sheriffs respond when they can, they are usually 30 minutes or more from our community when called upon. Our community members and fire department are left to handle situations until help can arrive. Mammoth Lakes and Bishop have these needed services where these types of transient rentals do occur. Swall Meadows is not the place for vacation rentals.

The people who live here are considerate and value our environment and neighbors. This transient rental activity totally changes the character of our community. We never knew who was coming and going. AND in this time of COVID-19, the negative impacts would be even greater for the fire department and local hospitals!! Approving just one situation like this will open up the whole community in the future.

Please reverse the approval of this Conditional Use Permit. Visitors can stay in the more commercial areas already set up for this type of activity. There are so many places they can explore and enjoy while they are here without changing the character of our small residential area. Please do not jeopardize our community over the money that owners might be able to make. Please help Swall Meadows remain the safe, beautiful and peaceful location we all sought when we moved here.

Thank you for your consideration.

Eldon D. Shiffman, Captain
Wheeler Crest Fire Protection District

From: spottab@aol.com
To: [Kelly Karl](#)
Cc: [Fred Stump](#)
Subject: Swall Meadows Short-Term Rental Appeal
Date: Saturday, July 18, 2020 1:55:46 PM

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July 18, 2020

Kelly:

Because I was unable to review the specifics of the appeal of the Barter short-term rental (STR) decision until yesterday's posting of the packet, I chose to refrain from commenting earlier. I hope it is not too late to get my brief rebuttal before the Board prior to their deliberations on the 21st. I will follow the seven points enumerated in the appellant's letter.

Points 1-3. It is not clear if the appellant is confused, or trying to confuse the reader, but I find the relevant codes and policies to be straightforward enough, especially when viewed in the context of *intent*. STRs are not commercial enterprises, which allows them to exist not just in communities that have commercial zoning, but in *any* community or individual neighborhood that is 100% residential. Arguing that owner-absent STRs are banned countywide is simply incorrect. They are permitted in most of North County, reaffirming the notion that both types of STRs are implicitly allowed in unincorporated Mono County unless explicitly prohibited in the relevant section(s) of the General Plan (as is the case for owner-absent rentals in all of District 2).

Point 4. More than half of the property owners who were invited to sign a petition opposing the permit, but lacking any specific arguments, chose not to do so. There was no corresponding petition seeking signatures from those in favor, nor any poll that would adequately account for those who are neutral. The letters, both from May and most recently, are a mix. The three most proximal neighbors are very supportive of the application.

Point 5. I can only speak for myself and my wife, but we were quite aware of those deliberations, the existence of public meetings, and even what was in the pipeline for District 2 (owner-present STRs allowed, owner-absent prohibited). I fail to see how the onus was on County staff to ensure that everyone in Swall Meadows was paying attention. Moreover, it was *our* collective decision to allow our RPAC to lapse into nonexistence.

6. I don't see how this argument is germane. Again, I think the intent of the current STR policies within District 2 is clear: to balance the rights (and financial needs) of the individual homeowner versus the concerns of the community about possible adverse impacts. Characterizing the latter as "enormous" strikes me as hyperbolic, especially absent any actual experience with legal, owner-occupied STRs in Swall

Meadows.

7. This is an argument against the existence of 25.015 and 25.040, not their interpretation or implementation by the Planning Division and/or Commission. Petitioning to have this language changed is a matter for another day.

PS: Except for David Humes, I live closer than anybody to 320 Mountain View Drive, and I fully support Mr. Barter's proposed STR usage.

Dave Parker
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Swall Meadows