

Adam Zack

From: Linda Bannerman <lindaj@teleport.com>
Sent: Tuesday, August 17, 2021 8:52 PM
To: Lynda Guernsey
Cc: Adam Zack; Erika Shook
Subject: VR moratorium and CAPS Discussion

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Please make a part of the council's public record:

Linda Bannerman
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August 17, 2021

San Juan Planning Commission

Cc: San Juan County County Council, Erika Shook, Adam Zack

RE: Vacation Rental (VR) Moratorium, CAPS discussion

Dear Planning Commission Members,

As you plan your advice to the county council regarding caps on vacation rentals, I would urge you to base your advice upon soundly gathered data and not upon reactionary, misinformed and assumptive anecdotal stories sent you in emails and calls I suspect will bombard you in the next days and at future public comment periods. Your recommendations to the council has enormous impact on the economic future of our islands and upon the livelihoods of many island residents who are not part of the group opposing short term rentals but substantial in number. The data supports the following:

1. Caping vacation rentals will do nothing to solve the affordable housing crisis.

STRs are not affordable. They are a different "product" than LTRs, STR owners want to be in their homes during vacation times so won't convert. Land-Lord Tenant Laws heavily favor tenants. Home owners don't want the trouble. During COVID, landlords cannot collect rent nor evict tenants. We are losing LTRs to returning owners, not conversion to STRs. Affordable housing in a highly sought destination spot is increasingly unlikely Building costs have soared as lumber and land are expensive Workers cannot commute here from affordable places, increasing demand for affordable housing. This has nothing to do with VRs.

We certainly need to solve the problem of the LTR shortage as well as needs for seasonal workers. Please expend your energy *solving that problem*. Focus on the problem rather than on an ill founded "solution."

A community of innovative seasonal abodes, yurts or tiny homes, for example, with gardens in the the middle of a circle, solar energy, and cutting edge septic systems like AxMax Treatment Systems. A modest tax on STRs devoted to LTR construction. We want to be part of the solution.

2. Vacation rentals are not the cause of neighborhood disturbances.

2018 regulations provide a means to solve problems. Suggest means to enforce them.

VR owners do not want bad renters either. Bad renters destroy property and neighborhood goodwill so owners read reviews and avoid bad renters..

Complaints so far are found largely to be the fault of residents, not renters. See police reports.

Locals invite family and friends who crowd streets, ferries and traffic too.

Camping and hotel guests contribute.

People who have moved here recently contribute.

3. Restricting vacation rentals would restrict valuable lodging tax dollars.

The 4% lodging taxes generated \$1,023,533 for 2020 and helped to fund

Agricultural Guild Project

Agricultural Resource Committee

San Juann Performing Arts Center

Historical Museums

Farm Tours

Friends of the San Juans Maritime History

Island State Left

KWIAHT

Lopez Center Community & Arts

Lopez Island Grange

Master Gardener Foundation

Birding Festival

Shakespeare Festival

Orcas Chamber Music

Eastsound Landscaping

Orcas Lit Festival

Orcas and San Juan Film Festivals

Orcas Theatre Project and San Juan Community Theatre

Patos Lighthouse

San Juan and Orcas Islands Farmers Market

SJI's Libraries Salish Speaker Series

TedX San Juan Island and Orcas Island

Holding for Affordable Housing tourist related

Eastsound Village Green and Eastsound Playground

Orcas Island Off Leash area

Imagine Convergency

Orcas Island Jazz Festival

DHPRC Trails

Do any of you use and enjoy these things?

4. Implementing caps, especially ones without research justifying limits, risks costly litigation draining county coffers whether the battles are won or lost.

Consider the following comments from The Law Office of J. Patrick Sutton, Real Estate Litigation & Civil Appeals in Austin, Texas. What follows is a bit long and wordy but important. Please read and know this is one lawyer in one city. There are many many other such legal fights we should expect should caps be implemented [emphasis mine]:

When actions to ban STRs [caps and moratoriums ban them], though varying in degrees depend on bogus rationales - owner-occupied vs. non-owner-occupied, for example, or 25% of homes only. Those kinds of regulations present all sorts of problems and unfairness.

Some of the city ordinances are either draconian or outright unconstitutional. Hastily-written or ill-conceived STR regulations are just going to generate more litigation. Good for lawyers, of course; bad for everyone else.

Where owners already have a vested property right in renting a property for short terms, both constitutional and state statutory requirements forbid an abrupt taking of such rights.[Apply that some suggest removing the right to have the permit go with the sale of the land.]

Opponents of short-term rentals insist that short-duration leases constitute the operation of a business at a home, a logically untenable position for any number of reasons — not the least of which is that the tenants are not doing anything different on day 31 than they were doing on day 29.

The problem, in my experience arguing cases at every level of the court system and before city officials, comes in convincing local officials — judges, politicians, and city staffers alike — to break through the incendiary claims and arguments and analyze the *real* issue. The basic problem that opponents hate to acknowledge is that every argument against STR's applies equally to long-term rentals as to short-term ones: landlords make money, landlords advertise, landlords use property managers, too many renters at the house, etc. More importantly, every landlord has an obligation to have decent tenants who respect neighbors — just as every owner should. Bad neighbors are bad neighbors whether they are owners or renters, and there are plenty of both kinds. The problem with *everyone's* occupancy of residential homes is that people can create nuisances, noise, trash, and other kinds of poor behavior, either sometimes or often. But that has nothing to do with the *duration of someone's occupancy*. All durations are equally bad and equally good in the sense that whoever is occupying a property can be bad for any duration or good for any duration. The proper target of regulation of leasing is what it has always been: respectful behavior by whoever is occupying a home. But what has happened instead is that opponents — just like the prohibitionists back in the day — demonize every property owner who leases and try to ban leasing — and not just STR's, either. At some point, higher-level elected officials and judges are going to have to step in and say, right, whatever else we do, we don't ditch freedom, whatever its faults. We regulate it and make money on it through taxation. That, of course, is the American way.

In an alarming convergence, Donald Trump's incendiary campaign statements appear to be emboldening opponents of leasing and short-term rentals to say what they really mean: they want every subdivision to be gated and patrolled so that "people who don't belong here" can be kept out.

Austin is now a city where code police surveil ordinary people exercising ordinary property rights and going about their daily lives on their own land. Code officers train lenses on owners and tenants. They come onto the land and interrogate people. They stick lenses to window glass and shoot photos of people engaged in private, intimate activity. They issue code violations — believe it or not — for *advertising on the internet*.

Nosy neighbors peer through binoculars into private homes. They shoot photos of license plates and people relaxing in back yards and on porches. They confront and abuse tenants. They call in harassing, often false and extravagant claims. They stick their noses into the private affairs of human beings with lawful rights to occupy residences.

Welcome, visitors, to sunny Austin, Texas: Police State. Don't be alarmed when the code police and the neighbors knock on r door asking to explain who you are, where you're from, how many people are in your home, what their ages are, what you plan to do while in the home, and how long you plan to stay. It's all part of the Austin Experience.

However, the HOA argument is that "residential" requires an "intent to remain permanently." My argument has been that that standard applies to both owners and tenants equally, so it would require owners to occupy their own homes permanently even if the property at issue is a vacation home or investment property. I don't see how that can be the law in the absence of clear deed restriction wording to the contrary. "Residential use," that is, applies equally to owners and renters, so you can't single out renters who don't stay permanently for a ban; you'd also have to ban owners who don't reside permanently at the homes they own.

February 26, 2013, following a December 2012 jury trial, the Travis County District Court entered judgment in favor of my client, Marvin William Hays, as against Briarcliff Property Owners Association, invalidating the HOA's short-term rental

ban and awarding \$40,000 in attorney's fees plus costs of suit to Hays. The final judgment is here. The final judgment incorporates the summary judgment orders earlier in the case that invalidated the rental ban.

The HOA spent around \$150,000 to obtain \$2400 in fines, even though its short-term rental ban went by the wayside entirely. The central purpose of its lawsuit against homeowner Hays failed

I urge Planning Commission to advise council to do what they said they would do when they passed and then extended the moratorium. Before taking any action, suspend the contentious back and forth conversations and hire firms and gather data to actually study the issues.

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The greatest perk, among countless others, that comes from loving someone right now, just exactly as they are, instead of waiting for them to change, is that you get to love someone right now.

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