

December 8, 2009

Napa County Board of Supervisors
1195 Third Street, Suite 305
Napa, CA

Comments Re: Dec. 15 Agenda Item, Vacation Rental Ordinance

Dear Supervisors:

The fact that the Planning Commission has forwarded this ordinance to you with a recommendation for approval does not mean the majority of them actually support a ban on vacation rentals. In fact, they do not. The recommendation passed on a three-to-two vote, with one member of the majority, Chairman Fiddaman, specifically stating that although he did not want to see “companies” buying up residences and converting them to vacation rentals, he would like to see some way to allow individuals to rent. He said that if someone can come up with a creative approach including a way to prevent loss of long term housing stock and including a way to manage potential nuisances, he would be interested in listening to that. The bottom line is that if staff had prepared such an ordinance for the Planning Commission, rather than the one before you now, it very likely would have been approved. The same process that you set in motion by directing staff to prepare the current ordinance could have been used instead, and still can be used, to begin creating a useful and workable ordinance that would allow some vacation rentals.

Staff is representing the proposed ban as just a “clarification” of existing policy. However, “clarifying” provides an excellent opportunity to analyze and to consider whether a total ban really is the best policy for Napa County. As I will argue below, vacation rentals are not inconsistent with the General Plan, they are not inconsistent with agriculture, there are lots of good reasons to allow some vacation rentals in appropriate locations, there are ways to effectively manage potential problems with neighbors without banning such rentals entirely, and destroying an active segment of our economy, especially in these difficult times, would be a costly mistake. Crafting an ordinance that properly regulates vacation rentals while still achieving the goals of the general plan would be a far better policy than a total ban.

Although staff contends that vacation rentals have been prohibited since the late nineteen eighties, that ban has not been enforced, other than by sending a few threatening letters. Consequently, a significant amount of local business has been built up around Napa vacation rentals. A single website listing vacation rentals by owner lists well over 100 of them. Also, many rental agents have web pages listing multiple Napa vacation rentals. I think there may be several hundred units in all. Vacation rentals have apparently become a significant part of our tourist economy, generating not just the rental income that funds the jobs of many house cleaners and groundskeepers, but also generating business for our local wineries, restaurants, bars, cafes, bakeries, caterers, grocery stores, gas stations, limousines, taxis, tour buses, bicycle and car rentals, shops, theaters, balloon companies, etc. Every one of the local companies providing these services also provides entry level and higher paying jobs, and most pay sales taxes. Driving away vacationers and the business they bring could eliminate needed

jobs and seriously damage our economy at a time when we can least afford it. At the very least, you should order a study to analyze and quantify the economic damage that would be done before you actually impose this enforceable ban.

I believe the Read and Understand Act requires such an analysis when it says “Now, therefore, the people of Napa County resolve and do hereby order that each and every County Supervisor who votes to approve any new ordinance, regulation, or resolution shall first have thoroughly read and understood it, including its direct and indirect impacts on the citizens of Napa County, and shall certify in writing at the time of signing the ordinance, regulation, or resolution; and prior to its going into effect, that he/she has read it thoroughly and has thoroughly understood its direct and indirect impacts on the citizens of Napa County prior to voting to approve it.” Although the Read and Understand Act does not specify any penalty for violation, such violation could be grounds for a suit challenging the validity of this vacation rental ordinance.

I suspect the big hotels have been pushing you (either during preparation of this ordinance or during preparation of the housing element Program H-1c) to ban vacation rentals because their business is slow and they think if they can get you to eliminate short term rental of homes, those renters will stay in the hotels instead. Aside from the obvious public relations (and possible re-election) problems you will create for yourselves by throwing local citizens under the bus to line the pockets big hotels, eliminating vacation rentals won't significantly benefit the hotels. To think you can tell people where they must stay overnight is typical Napa wine country hubris. People who want to rent a dwelling don't want to stay in a hotel. They want to rent a house. If they can't rent a house here, they will simply vacation elsewhere. Napa wines are good, but Sonoma wines are good, too. If you don't provide the accommodations vacationers want in Napa, they will simply spend their money in Sonoma, where they are welcomed with open arms.

Due to the recent enforcement letters, some rental agents have already begun steering short term renters to Sonoma County, and that trend will increase if the enforceable ban is imposed. Those vacationers will then shed their excess money in Sonoma County rather than here. They will visit Sonoma County wineries and establish their long term wine buying relationships there. They will eat in Sonoma County Restaurants, shop in Sonoma County stores, hire Sonoma County caterers and purchase other Sonoma County goods and services. Napa County wineries and other businesses **and their employees**, as well as Napa County sales tax and TOT receipts, will all be the losers. I think you need to understand the economic impacts of this new enforceable ban before enacting it.

The economic damage could be significant. Sonoma County, according to a recent article in the Sonoma West times, has about 1,000 vacation rental units generating about \$27 million in vacation rental income and over \$2 million in TOT. If those vacationers spend as much on other purchases as they do on lodging, they could be spending over \$50 million annually in Sonoma County. If you use a multiplier of 5 to estimate the total economic impact of those tourist dollars as the money gets passed along, spent and re-spent, contributing to livelihoods at every step, those short term renters could be giving a \$250 million boost to the Sonoma County economy. Even if Napa County has only 1/2 as many vacation rentals, enforcing a ban could deliver a \$125 million hit to the already depressed local economy. How many jobs will that cost us? Are our wineries, shops, and restaurants already selling so much that we need to drive away some

of their customers? Or should you be looking at ways to protect the local businesses that are the heart of our economy?

There has never in my memory been a public hearing on this ban at which property owners were invited to speak, or at which the merits of such a ban were carefully considered, or at which the disadvantages and the lack of need for such a ban were articulated and considered. You have an opportunity to have such a hearing now, and I encourage you to seize the opportunity. This process should be about whether we really want and need a total ban, rather than about some technical “clarification” in a futile effort to benefit the big hotels. This is your opportunity to solicit and evaluate economic data, information about how other counties are handling this issue, and public comment, and to make a reasoned decision on whether we should ban short term rentals or whether we should find a way to effectively regulate them for everyone’s benefit.

I urge you to table this proposed ban and ask staff to prepare an alternate ordinance that will allow some vacation rentals in appropriate locations. At the very least, you should order a study of this existing thriving industry and evaluate the economic damage that would result from destroying it.

While there are many good reasons to allow vacation rentals and many good reasons to regulate them, there are no good reasons to impose a total ban. Even staff’s Dec. 2 Board Agenda Letter, near the end of page 4, points out that the General Plan does not preclude legalization of vacation rentals in urbanized areas, of which there are several.

The findings staff has offered in support of this ban are intentionally misleading, defective, and totally inadequate. Let’s examine them word by word:

Paragraph one of Findings, restating the General Plan goals (AG/LU-1 & 2) of preserving agriculture and *concentrating* urban uses in existing urban areas, does not support a ban, because “concentrating” does not mean “exclusively locating”, and occupancy of rural dwelling units is not an urban use. Even if rentals of rural dwellings were to be arbitrarily defined as urban use, there are several existing urbanized areas in the unincorporated county, and this findings paragraph offers no justification at all for banning (nor even discouraging) vacation rentals in those existing urbanized areas. Also, this paragraph neglects to mention AG/LU-5, which encourages commercial uses compatible with adjacent uses and agriculture. Rental of existing dwelling units, whether long term or short term, has not in the past been incompatible with agriculture, is not likely to be incompatible in the future, and staff has not demonstrated any such incompatibility. There are many locations where vacation rentals would support goal AG/LU-5.

Paragraph two of Findings, listing General Plan policies in support of the first goal, seems to misrepresent what the General Plan means, is misleading in other important ways, and in any case, does not support a ban. For example:

The General Plan policy of having agriculture as “the primary land use in the county” does not preclude vacation rentals, because “the primary land use” does not mean “the ONLY land use”,

and there are plenty of precedents involving other uses, specifically including a single family residence occupied by humans, whether those humans happen to own it or rent it.

The General Plan policy, “Minimize conflicts arising from encroachment of urban uses into agricultural areas” does not support a ban on short term rentals for four reasons:

1. No conflict has been demonstrated and no conflict exists.
2. “Minimize” does not mean “prohibit”.
3. Occupancy of a rural dwelling is not an urban use.
4. Not all vacation rentals are in agricultural areas.

The policy, “Limiting new non-agricultural uses or developments” is not relevant when we are talking about existing units because continued occupancy of existing units does not constitute a new use, nor does changing the names of those occupants constitute a new use. And in any case, “limiting” does not mean “prohibiting”.

The policy, “Concentrate urban uses and residential growth in the incorporated cities and town” similarly is not relevant when we are talking about continued occupancy of an existing structure, because:

1. “concentrate” does not mean “exclusively locate”.
2. occupancy of a rural dwelling is not an urban use.
3. changing the occupants of an existing unit is not residential growth.

Furthermore, the General Plan does not just say “concentrate urban uses in existing cities and town”, and saying so is intentionally misleading. Goal AG/LU-2 actually says “concentrate urban uses in existing cities and town and urbanized areas”, of which there are several in the county unincorporated area.

In addition, the General Plan Policies cited in the second paragraph of findings do not support a total ban. Let’s analyze them one at a time.

Policy AG/LU-1 involves preserving agriculture. However, as long as vines are not removed or vineyard suitable land is not covered with a new structure, or agricultural operations are not otherwise hindered, agriculture is not harmed, so this policy does not prohibit vacation rentals. “Preserve agriculture” does not mean “prohibit all other uses”, and staff has failed to establish how allowing short term rental of an existing dwelling unit would conflict with the goal of preserving agriculture. In fact, it does not conflict.

Policy AG/LU-3 involves supporting the economic viability of agriculture. It is hard to see how a vacation rental of an existing dwelling would threaten the economic viability of agriculture, and staff has failed to explain how this would occur. The reverse may be true. Collection of some vacation rental income might enhance and preserve the viability of a small farm which would otherwise fold.

Policy AG/LU-12 prohibits new non-agricultural use or development of a parcel located in an agricultural area. This policy does not support a ban because continued occupancy of a dwelling unit does not constitute a new use just because of a change in occupants, nor does it constitute development. AG/LU-12 certainly does not support a ban in “all

residential and agricultural zoning districts in the County” as provided in this ordinance, because residential zoning districts are not “agricultural areas”. Furthermore, the listed exceptions, including those listed in Policy AG/LU-2, include accessory uses. Why should occasional rental of a guest cottage or second unit or of someone’s second home not be considered an accessory use? Another listed exception, AG/LU-26, specifically exempts construction of a single family residence. If the construction of it can be exempted, why cannot the occupancy by visitors also be exempted? In addition, AG/LU-48 specifically allows home occupations. Is not holiday rental of a guest cottage or second unit a home occupation?

Policy AG/LU-22, “Urban uses shall be concentrated in the incorporated cities and town and designated urban areas...” does not support a total ban because occupancy of a rural dwelling unit is not an urban use. And even if it were to be arbitrarily defined as urban, AG/LU-22 would not support the proposed ban in the residential zoning districts, which are presumably the referenced “designated urban areas” where urban uses are supposed to be concentrated.

Policy AG/LU-23 is not relevant because it deals with growth, while changing the occupants of an existing dwelling does not constitute growth. Even if it were to be relevant, it does not support a ban in the residential zoning districts.

Paragraph three of Findings, listing additional General Plan policies supposedly supporting this ordinance, also seems to misstate the meaning of the General Plan, and in any case does not support a total ban. For instance, the statement, “and without allowing residences to become commercial short-term guest accommodations” is taken out of context to support this ban. The proper context and the purpose of the statement (found in AG/LU-33) is to prevent existing long term rental housing from being converted to short term rental. That purpose is not served by a ban on short term rental of units that have never been and never will be part of the long term rental housing stock, such as guest cottages, granny units, and second homes. Nor does it support a ban on short term rental of a dwelling for which a long term tenant cannot be found, nor during short intervals between long term tenants. An outright ban is clearly unnecessary and unjustified by the General Plan.

Action Item AG/LU-33.1, cited in support of this ban, merely urges clarification of the distinctions between single family residences and short term guest accommodations. It does not say to ban one or the other. This action item could be better served by crafting an ordinance that regulates vacation rentals while preserving long term housing stock and protecting neighbors from noise and other nuisance.

Paragraph four of Findings arbitrarily states, without factual basis, that occupancy of dwelling units for less than 30 days “is often incompatible with maintaining the agricultural and rural ambiance of the County, and those areas devoted to rural residential use”. However, no such incompatibility has been demonstrated, and none exists. Pigs don’t fly just because a finding clause says they do. Until such incompatibility can be demonstrated, this finding should be rejected. Even if some occasional incompatibility were to be demonstrated, that would not support a total ban, but rather some regulation to minimize the incompatibility. And even if

universal incompatibility with agriculture and rural ambiance were to be demonstrated, that would not support a ban in existing urbanized areas, of which there are several. An outright ban is clearly not justified by the General Plan.

The same paragraph arbitrarily asserts, without factual basis, that short term rentals involve higher densities. Until this can be shown, this finding should be rejected. Even if it were to be shown, there are other ways to address this than with a total ban. For instance, the permitting process could specify maximum allowable occupancies. Similarly, the “likelihood of late night noise and glare” could be managed through the permitting process, rather than by a total ban, and in any case is irrelevant on large parcels with no close neighbors. This paragraph’s arbitrary and unsupported contention that “increased visitor traffic on narrow roadways exceeding their capacity and the need to drive long distances to obtain visitor serving needs” are reasons for a ban is unsupported by any analysis of traffic or of roadway capacity, or of proximity of services, and therefore is only conjecture, demonstrably false at some locations, and is therefore not sufficient support for a universal ban. Similarly, the contention that short term rental removes dwellings from the potential of providing needed available housing stock is not necessarily true, especially in the case of second homes, which comprise the great majority of currently advertised vacation rentals. Paragraph four of Findings should be rejected as inadequate and misleading.

Paragraph five of findings is also misleading. Although staff and even the Board of Supervisors might wish it were true, and might indeed make it true by enacting this proposed ordinance, it is not true at this time. If it is true, I would like staff to point out to me exactly where in the code rentals shorter than 30 days are prohibited. My November 11 request for that information has so far gone answered. In any case, this ban has never been subjected to public review in a public hearing where impacted parties were invited to speak and where the merits were debated. This ban has never been enforced, other than by a few harassment letters, and so in reality, it has never existed.

I believe staff bases the claim that the ban already exists on the highly dubious argument that renting a house for 30 days is different in some meaningful way from renting that same house for 29 days, and therefore constitutes a different land use for purposes of land use planning, and that if any land use is not specifically allowed, it is therefore prohibited. Staff’s contention that renting a house for 30 days is different in some meaningful way from renting that same house for 29 days is nonsense. Changing the names of the occupants is not changing the use. If the same number of people live there, it makes no meaningful difference to anyone whether they stay 29 days or 30 days.

Aside from the “different use” issue, this argument is demonstrably false on other grounds. For instance, general “commercial uses” are not specifically allowed in most residential districts, and the current definition of “commercial use” is so broad that it includes even accepting a dinner out at a restaurant from your otherwise non-paying house guests, or accepting a reciprocal invitation to visit their home after they visit yours. It includes accepting rent from your adult children living at home. It includes allowing the family of your foreign exchange student to reciprocate by hosting one of yours. It includes vacation house swapping with homeowners in

other countries. All these things are commercial transactions under the definition in the code. If we accept staff's contention that all commercial use is prohibited wherever commercial use is not specifically approved, then all of these activities would be illegal in most homes, yet I doubt that any reasonable person would say any of those activities are illegal. So how can we say that short term rentals are illegal just because they are not specifically allowed? The answer is we cannot, and that is why staff has brought this new ordinance, which is in fact a new land use restriction, to your attention.

The misleading nature of Paragraph five brings into serious question the validity of **Findings Paragraph six**. If the existing "ban" is just wishful thinking on the part of staff and others, and has not really been enforceable, then is this ordinance really "declaratory of existing law"? I think that is highly questionable. I think this new ordinance represents a significant game change which will have serious new impacts on property owners and the local economy, and therefore ought to be considered new law.

Findings Paragraph seven is arbitrary and optional. Since none of the listed deleterious effects have been substantiated, the Board of Supervisors could equally well determine that "the above noted deleterious effects of transient commercial occupancies of dwelling units don't really exist, or that they are insignificant, or that they could be ameliorated through a permitting process or in some other way. Paragraph seven provides no compelling support for a ban.

In short, the cited findings are in large part intentionally misleading, demonstrably false, and totally inadequate to justify a ban of short term rentals in all agricultural and residential zoning districts in the county. The above clear explanation on the public record of the obvious defects in the findings could provide support for a lawsuit challenging this ordinance if it is enacted. The findings should be revised, or this ordinance should be rejected.

There are also some good policy reasons for rejecting this ordinance:

Both the General Plan and the Zoning ordinance allow some specific commercial uses in each and every one of the agricultural and residential zoning districts, both with and without a use permit. Those provisions could be used to justify approval of short term rentals, or at least occasional rentals, rather than a ban. Alternatively, short term rental could be considered a use not separate and distinct from occupancy of a single family dwelling. Or it could be considered an accessory use. If the Board wants to permit vacation rentals, the General Plan is not an obstacle.

The hysteria regarding vacation rentals is misplaced. Most such rentals cause no problems. The proof of that lies in the fact that staff must search internet rental listings in order to find most "offenders", rather than relying on complaints from neighbors.

Renting a vacation house or condo rather than staying in a hotel provides a unique and enjoyable vacation experience, often at lower cost, and with many other benefits, especially for large families, including more direct immersion in the local culture. The proof of this is that we often do it ourselves when we vacation outside the Napa Valley. Why, then, do we want to deny

visitors to the Napa Valley this same experience? Vacation rentals improve the visitor experience, and help keep us competitive with other vacation destinations that offer such accommodations (nearly all of them).

Vacation rentals, if managed properly, would have no harmful effects, and could generate some much needed transient occupancy tax. Sonoma County collects over \$2 million annually from this source alone, even with a TOT rate lower than ours.

Federal tax laws create the need to rent out second homes periodically in order to gain valuable tax deductions (I think it might be 14 days per year in order to be able to deduct some of the costs). The proposed ban on short term rentals would prohibit that, causing unnecessary financial harm to property owners.

Second homes comprise the vast majority of vacation rentals. Renting second homes on a short term basis poses no threat to the long term rental housing stock, as these homes are never available for long term rental anyway. The primary reason to own a second home in Napa Valley is to be able to use it. The home has to be available for use by its owners when they come to Napa. Putting a long term renter in these homes would defeat the purpose of having a second home here. Occasionally renting for a week it does not eliminate any long term rental potential because none exists.

The proposed ban would make it incrementally harder for working or retired Napa families to hold onto their homes. During tough times, being able to rent out a guest cottage or a second unit to vacationers on occasional weekends, when it is not occupied by non-paying guests, (or being able to temporarily move into the guest cottage and rent out the main house once in a while) might make the difference between being able to pay the mortgage and taxes or having to sell and move to a cheaper area. Why should we pass an ordinance that might drive some of our families off their property?

Vacation rentals have become an important and integrated component of our economy, helping to support many businesses and their employees. Destroying this vital segment of our economy could have serious repercussions. Cultivating, regulating, and taxing this resource makes much more sense than banning it.

For these reasons, I urge you to direct staff to craft an ordinance that will allow short term rentals in Napa County, while regulating them in a way that prevents conversion of workforce housing and protects neighbors from nuisance. I believe vacation rental industry representatives stand ready to help in this effort. At the very least, you need to study and understand the direct and indirect impacts of this ban on the citizens of Napa County before voting to enact it.

Sincerely,

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