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## **Lawsuit charges short-term rental ‘discrimination’**

Pebble Beach homeowners challenge county rule

By KELLY NIX

THE OWNERS of a home overlooking the Pebble Beach Golf Links have filed a lawsuit against the county over rules that bar them from using their multimillion-dollar house for short-term rentals.

William and Duncan Lewis say that for years they have rented out their six-bedroom, seven-bath, house on 17 Mile Drive overlooking the 14th Tee of the Pebble Beach Golf Links. A weeklong stay at the 5,600-square-foot house, which offers “breathtaking panoramic ocean views from every room and every window,” costs \$10,850, according to a listing on a rental website.

But in December, after coming out on the losing end of an administrative hearing held over their rental, the Lewises were told not only to stop renting the home on a short-term basis, but they were slapped with fines ranging from \$25,000 to \$100,000. The county maintains that renting homes for fewer than 30 days violates its rules.

In turn, the Lewises filed suit against the county asking a judge to overturn the fines and declare the county’s rules regulating short-term rentals in the coastal zone invalid.

“As coastal property owners, plaintiffs are being deprived of their property rights and denied rights of use enjoyed by inland property owners,” according to their lawsuit, filed Dec. 22 in Monterey County Superior Court.

### **‘Discrimination’**

As it stands now, the county permits inland property owners (in unincorporated areas) to rent out their homes on a short-term basis with a minimum rental period of seven days. The county, however, prohibits homeowners in the pricey coastal zone from renting their homes on a short-term basis.

The Lewises contend that the rules amount to “discrimination” against coastal property owners, “who were viewed as competition to inland property owners,” according to the lawsuit.

With short-term rentals steadily on the rise over the past five years, the debate over whether to allow them has been heard in city halls all over the Peninsula. Carmel prohibits them entirely, while some cities, such as Pacific Grove, allow such rentals but require property owners to register them and pay transient occupancy taxes.

At \$1,550 per night, the Lewises’ home, dubbed “Woods Hole,” is one of the most expensive short-term rental homes on the Peninsula, according to a few websites, which list other homes in Pebble Beach for rent near the coast.

“For years, the property owned by the plaintiffs has been rented on a transient use basis with the knowledge and consent of the county,” according to the Lewises’ lawsuit. “For years, [the county] received and enjoyed the benefits of occupancy tax income collected by [the Lewises] and regularly remitted to the county.”

County planning director Mike Novo told The Pine Cone that Monterey County has had a prohibition against short-term rentals in unincorporated areas of the coastal zone since at least the 1990s. In 1997, county supervisors passed an ordinance regulating short-term rentals in the coastal zone, but the California Coastal Commission never certified it.

The county's rules, though, are apparently unclear.

"We did have a few people contact us who believed that we did not have rules that prohibited the use in the coastal zone, so we issued a letter about this topic last year saying that short-term rentals were prohibited in the coastal zone and that we were working on developing regulations," Novo said.

### **Competition complained**

The county is apparently not completely confident of its rules, either. In July 2015, Novo requested an "interpretation request" from county officials regarding transient rentals. Analysts determined that besides the bed-and-breakfast exception, rentals for fewer than 30 days are not permitted in the coastal zone.

The county, Novo said, is working on developing an ordinance for short-term rentals that will likely go to the county supervisors for consideration sometime this year.

The Lewises' attorney, Mark O'Connor, told The Pine Cone that his clients have had no complaints from their neighbors about the rental home. The complaint that prompted the county to take action against them, he said, came from an "inland property owner on the other side of Highway 1."

And the grievance wasn't sparked by noise, parking or other problems that often plague short-term rentals — it came from someone trying to eliminate the competition, O'Connor maintains.

"Let's say you have this nice inland property, and couples come there for weddings or retreats, and you are making money from that," he explained. "But for the same price, they can be on the coast and walking to the beach." In most cases, they would prefer the oceanfront property, he said.

O'Connor said the Lewises' complaint is the first legal challenge to the county's short-term rental rules that he knows of. While the Lewises' house still appears on rental websites, O'Connor said it is not being rented.

A prominent legal challenge to short-term rental cases was the 1989 case, *Ewing v. City of Carmel-by-the-Sea*. In that lawsuit, Carmel resident John W. Ewing challenged the constitutionality of the town's law prohibiting short-term rentals for fewer than 30 consecutive days, claiming it violated his right to free association and unduly burdened his right to use his home.

But in a 1991 decision, justices with the Sixth District Court of Appeal upheld the ban, ruling that prohibiting short-term rentals was a valid exercise of a town's police power.

The Pebble Beach case isn't a challenge to the constitutionality of short-term rental bans per se, but to allowing them inland while restricting them along the coast.



This photo posted on a site advertising short-term rentals shows the view from “Woods Hole,” an oceanfront house on the Pebble Beach Golf Links at the center of a dispute between its owners and the county. Its owners argue in a new lawsuit that the county discriminates against coastal property owners because it doesn’t short-term rentals in the coastal zone, but allows such rentals inland.