

FILED

SUPERIOR COURT OF CALIFORNIA

SEP 07 2016

COUNTY OF MONTEREY

TERESA A. RISI
CLERK OF THE SUPERIOR COURT
Alina Oliver

DEPUTY
Alina Oliver

Case No.: 15CV000782

William Lewis, et al,

Plaintiff,

vs.

County of Monterey, et al,

Defendant.

Statement of Decision

This matter came on for hearing 7/18/16 on Petitioners' administrative appeal of administrative hearing officer's finding that Petitioners had committed a nuisance by virtue of violation of Monterey County ("County") Ordinances. Petitioners also seek a judicial determination by declaratory relief that they need not obtain a permit to rent out a residence, which they own but in which they do not live, on a short term basis.

The threshold issue is whether the County Ordinances in fact prohibit the short term rental of the property for vacation and wedding events in the Coastal Zone where the property in question is located. Not a question simply answered¹, but the court has concluded that such activities are prohibited without a permit.

The basic ordinance scheme upon which County relies to proscribe such rentals is found in Title 20, Monterey County Code, sections 20.02.040 et seq. This group of ordinances was enacted as part of the County's Local Coastal Plan, which first had to be vetted and approved by the California Coastal Commission ("Commission"). Public Resources Code sections 30513,

¹ this is in large part because Title 20 contains a byzantine collection of less-than-clear, ad hoc provisions apparently drafted or adopted with little regard for the ordinance scheme's internal consistency. Consequently, the Court has expended inordinate judicial resources divining the County's statutory intent. It is unnecessarily close to the brink of requiring persons of ordinary intelligence necessarily to guess at its meaning

1 0514. Title 21 Monterey County Code regulates the inland (i.e., non-coastal) unincorporated
2 areas of the County.

3 The introductory section of Title 20 states that:

4 “The coastal zoning districts list the uses which are allowed or may be allowed subject to
5 discretionary permit approval processes. Those listed uses and other uses which are consistent
6 with the Monterey County Local Program may be allowed subject to appropriate permits. Other
7 uses are prohibited. ...” MCC 20.02.040. The effect is to prohibit any listed activity unless a
8 permit is obtained, and to prohibit any activity not listed.

9 However, this introductory language is somewhat ambiguous, implying that there are
10 some uses which may be allowed without the necessity of a permit, though it does not directly so
11 state. Other sections do state that there are some uses for which no permit is required. They are
12 not all readily found.

13 The lists of uses allowed with a permit are in two separate ordinance sections, MCC
14 20.14.040 (“Principal Uses Allowed, Coastal Administrative Permit [“CAP”] Required In Each
15 Case”) and MCC 20.14.050 (“Conditional Uses Allowed, Coastal Development Permit [“CDP”]
16 Required In Each Case”). Both of these sections respectively reference that uses exempt under
17 MCC 20.70.120 do not require either type of permit. None of the exempted uses in the latter
18 section appear applicable here, and neither party has argued that any do. However, elsewhere
19 there are other sections which exempt --- from both CAPs and CDPs uses which are ” ... not
20 considered development“ MCC 20.76.020 [uses not considered development per MCC
21 20.06.310 do not require CAP], MCC 20.70.025 [uses not considered development shall not
22 require a CDP].

23 County argues that the (1.) commercial rental of the premises for weddings constitutes an
24 ‘assemblage’ expressly subject to a CDP requirement, and (2.) short term rentals constitute
25 “development” and hence not allowed unless a CAP or CDP is first obtained.

1 The only arguable allowable use under section 20.14.040 [CAP required] here would be
2 that under subsection A, “The first single family dwelling per legal lot of record.” Both parties’
3 arguments assume that either a permit has been issued under this section or the existing residence
4 is deemed an allowable existing use under this section. But a permit under this section does not
5 permit the rental activities here, because of the definition of ‘dwelling’ in section 20.06.360,
6 which allows dwellings only if “... occupied exclusively for non-transient purposes ...” MCC
7 20.06.360.

8 Under section 20.14.050 (activities allowed, but only if CDP obtained), the only
9 potentially applicable uses by permit would be under subsection G (“Bed and Breakfast facilities,
10 pursuant to section 20.64.100”), subsection R (“Assemblages of people, such as carnivals,
11 festivals, races and circuses, not exceeding 10 days and not involving construction of permanent
12 facilities.”) or subsection Z (“Other residential uses of a similar character, density and intensity
13 to those uses listed in this Section determined by the Planning Commission to be consistent and
14 compatible with the intent of this Chapter ...”). County has argued that weddings fall under the
15 ‘assemblage’ category and short term rentals under the ‘similar uses’ category.

16 “Bed and Breakfast Facility”, however, is defined at section 20.06.110 as “... an
17 establishment providing overnight accommodations and a morning meal by people who provide
18 rental rooms in their homes. ...” Here, the Lewises live in a home on an adjoining lot. Neither
19 party suggests that they provide a morning meal. And the entire premises are rented out, not just
20 single rooms. Furthermore, Title 20, Section 20.64.100, “Regulations for Bed and Breakfast
21 Facilities,” requires that “[t]he property owners shall occupy and manage the facility.” Clearly,
22 the Bed and Breakfast use does not apply here. Consequently, the Lewises did not fail to exhaust
23 their administrative remedies by failing to apply for such a permit.

24 The “assemblages” use allowed with a permit may be available to the Lewises, but no
25 permit for such use was sought or obtained. The commercial rental of the premises for weddings

1 falls within the contemplation of the “assemblages” category of subsection R of 20.14.050.

2 Whether a blanket prohibition could be imposed on noncommercial wedding events for a relative
3 or family member of a property owner is not presently before the Court. As to weddings, then, a
4 permit was required. The commercial rental of the premises for wedding events would fall within
5 the Section 20.06.310 definition of ‘development’ ---- a change in the intensity of use of the land
6 as well as of water. MCC 20.06.310, sub-sections 4 and 5. The latter section consequently does
7 not exempt commercial rental for weddings from the permit requirement. Petitioners have
8 stipulated that they have allowed transient renters to hold weddings on the property.

9 County argues that short term rentals of the property other than weddings constitute
10 “development” and are therefore not immunized from the permit requirements by MCC sections
11 20.76.020 [CAP] or 20.70.025 [CDP]. In support of this position, County argues, but does not
12 elaborate, that the definitions within MCC 20.06.310 render short term rentals ‘development’ in
13 that they “change[] the density or intensity of the land” and “change the intensity of the use of
14 water.” MCC 20.06.310.

15 The term “density” is defined in the ordinance scheme. “Intensity” is not. Density
16 “...means the measure of the ratio of population to the area of land *occupied by that population*,
17 which may be expressed as dwelling units per acre, families per acre, persons per acre, or
18 conversely as acres per dwelling unit or square feet per dwelling unit.” MCC 20.06.290
19 [emphasis added]. Transient use may involve many different people using the property over
20 time. There is nothing in the record which suggests that in the case of short term rentals there are
21 more people using the property at any given point in time than there would be during long term
22 occupancy, or that short term renters use more water. On the other hand, the County in enacting
23 these ordinances could (and did -- per the recitals in Ordinance 3911, Sections 3 and 4, which
24 though later enacted ‘clarify, restate and ratify’ existing law and thereby provide interpretive
25 assistance in ferreting out the intention of the original ordinances in Title 20) presume that

1 transient rental in an area of geographic beauty and exclusive and expensive homes --- such as
2 the coastal zone here --- would generate more traffic and higher populate the rented property
3 because the expense of renting it would require the pooling of multiple individuals' resources. It
4 could presume that transient renters are largely vacationing renters and would keep different and
5 longer hours of activity than longer term residents. Such uses would be similar, but not identical,
6 to long term residential use. They could have a significant impact on a neighborhood. See
7 Ordinance 3911, Section 1, adding MCC 20.64.290, and in particular subsection A. 5, "Findings
8 and Declarations."

9 In this light, the category of subsection Z of 20.14.050 requiring a CDP for "other
10 residential uses of a similar character, density and intensity to those uses listed in this Section"
11 can apply --- as County argues (Supplemental Briefing at page 5, lines 22-23). Because it does, a
12 permit, namely a CDP, must be obtained. And since County has successfully argued here that
13 short term rental is a similar use whether similar to a single family dwelling under section
14 20.14.040 A, or similar to a Bed and Breakfast facility or Assemblage under section 20.14.050, it
15 must adhere in the future to that position.

16 This conclusion is not undercut by the position, taken in the July 9, 2015 interpretation of
17 the ordinance from County's Planning Department and its then-Planning Director Mike Novo,
18 stating that no short term rentals are allowed by the County in the Coastal District; that
19 interpretation is at page 80 of the administrative record lodged by County ("Rental for 30 days or
20 less (non-bed and breakfast) is not permitted in the coastal zone."). As County points out, there
21 was an avenue available for an 'official' interpretation which was not utilized here. The 7/9/15
22 position was to that extent not accurate, and may well have been the end product of confusion
23 generated by the patchwork ordinance scheme here.

24 This form of zoning prescription – i.e., no use is permitted unless explicitly permitted –
25 has been held lawful, and effective to prohibit uses not expressly listed. *City of Corona v. Naulls*

1 (2008) 166 Cal.App.4th 418, 433; City of Monterey v. Carrnshimba (2013) 215 Cal.App.4th 1068,
2 1094-1096 [upholding nuisance finding based upon similar scheme].

3 Complicating matters here is the fact that County enacted in 1997 an ordinance
4 authorizing, with a permit, transient rentals in the inland zone. Ordinance 3911. County had
5 apparently originally proposed a similar regulation for the Coastal Zone as well, but the District
6 Manager for the Coastal Commission advised that the Commission preferred that any such
7 permit process be conducted under a separate ordinance rather than under the Local Coastal Plan
8 Ordinance; he also stated that allowing such rentals within the Coastal Zone would first require
9 an amendment of the existing Coastal Zoning in Title 20 --- perhaps by revising the definition of
10 dwelling --- since transient rentals were not a permitted use under the definition of dwelling
11 contained in section 20.06.360. Such an amendment of the Coastal Zoning would in turn require
12 approval by the Coastal Commission. AR 133-134. This statement noting that amendment of the
13 Local Coastal Plan and its zoning ordinances under Title 20 require Coastal Commission
14 approval -- prior to allowing rentals within the coastal zone -- is congruent with the recent
15 6/13/16 letter, submitted by Petitioners, from the current Coastal Commission District Manager
16 (“We look forward to working with [County] on potential [Local Coastal Plan] language that
17 meets Monterey County’s specific needs and Coastal contexts consistent with the Coastal Act.”).
18 County has not opted to follow the Coastal Commission’s suggestion that it and the Commission
19 collaborate in drafting an ordinance specifically dealing with short term rentals within the
20 Coastal Zone.

21 Accordingly, without first amending the Local Coastal Plan zoning under Title 20,
22 County could not and did not enact for the Coastal Zone a transient residential permit ordinance.
23 And such rentals were prohibited without such an enactment, by virtue of the rather indirect
24 language of sections 20.02.040, 20.14.040 and 20.14.050, unless by permit --- unavailable here
25 except under the ‘assemblage’ category for weddings and the /similar uses’ category for short

1 term rentals, but in any event not obtained. [The Court notes that although Ordinance 3911 was
2 cited by the County Planning Department at the administrative hearing in support of the
3 proposition that transient rentals were in fact prohibited in the Coastal Zone, the Ordinance
4 presumes that such rental was illegal (“...will legalize existing ...” such uses), rather than
5 providing an independent proscription. However, though Ordinance 3911 cannot, and by its
6 terms does not, institute a proscription against short term rentals (“...this ordinance does not
7 create, enhance or diminish any rights or obligations of any person holding any interest in real
8 property...”), it can – and by its terms does --- provide evidence of the County’s interpretation of
9 existing ordinances that short term rentals “may be allowed only upon the issuance of an
10 administrative [sic – given County’s position in this litigation, the term ‘administrative’ appears
11 to be used in a generic sense, and not to distinguish a CAP from a CDP] permit in the coastal
12 zone.” Ordinance 3911.

13 Once it is determined that transient rental here without a permit was proscribed, there is
14 clearly evidence that there was a violation by Petitioners, and that evidence is substantial,
15 supporting the Hearing Officer’s decision. *Bixby v. Pierno* (1971) 4 Cal.3d 130, 144
16 (administrative hearing officer’s decision must be supported by substantial evidence). Monterey
17 County Code section 20.90.030 declares any use contrary to Title 20 be a public nuisance, and
18 section 1.20.070 declares any condition existing in violation of the county code to be a nuisance.
19 Again, this is the same approach upheld in *City of Monterey v. Carrnshimba*, 215 Cal.App.4th at
20 p. 1087. Petitioners admit to the short term rental and use of the property for weddings. An act or
21 condition legislatively declared to be a public nuisance is a nuisance per se against which an
22 injunction may issue without allegation or proof of public injury. *Id.* at 1086-1087.

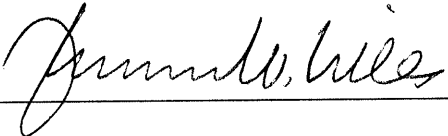
23 Petitioners also have argued that the differential treatment accorded the inland and coastal
24 districts violates the guarantee to equal protection under the law. Both parties apparently now
25 agree that the standard to be applied is that the classification must bear a rational relationship to a

1 conceivable legitimate stated purpose. It is a deferential standard of scrutiny. Under this test, the
2 courts must presume the constitutionality of government action if it is plausible that there were
3 legitimate reasons for the action. *Las Lomas Land Co. v. City of Los Angeles* (2009) 177
4 Cal.App.4th 837, 858. The County here has maintained that the law prohibiting short term rentals
5 in the coastal neighborhood is to preserve the residential character of the neighborhood and
6 prevent the increased levels of traffic, noise, and parking demand that would come with allowing
7 short-term rentals. The court in *Ewing v. City of Carmel-By-The-Sea* (1991) 234 Cal.App.3d
8 1579, 1596 has held that such a purpose is rationally related to a law prohibiting the same type of
9 short term rentals at issue here. Whether there exist cogent arguments that other desirable goals
10 might be served by allowing such rentals, or other ways that the County's goals here could be
11 served by allowing such rentals, does not justify overturning the earnest attempt to regulate them
12 as County has done here.

13 Consequently, the ordinances in question are valid, the administrative hearing officer's
14 decision that they were violated must be upheld, and Petitioners are not allowed to engage in
15 short term rentals or commercial use of the property for weddings without a permit under the
16 current statutory scheme. Petitioners are allowed to apply administratively for a permit under the
17 "assemblages" and "other similar uses" sections.

18 Respondent to prepare the judgment in this matter.

19
20 Dated: 9/7/16



Judge of the Superior Court

Thomas W. Wills

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CERTIFICATE OF MAILING
(Code of Civil Procedure Section 1013a)

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I placed true and correct copies of the Statement of Decision for collection and mailing this date following our ordinary business practices. I am readily familiar with the Court's practices for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Services in Salinas, California, in a sealed envelope with postage fully prepaid. The names and addresses of each person to whom notice was mailed is as follows:

Mark A. O'Connor
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Date: **SEP 07 2016**

TERESA A. RISI, Clerk of the Superior Court,

 Deputy Clerk

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Alina Oliver

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