

SHORT TERM VACATION RENTAL ADVISORY COMMITTEE

The Indian River County (IRC) Short Term Vacation Rental Advisory Committee (STVRAC) met at 10:00 a.m. on Thursday, December 10, 2015, in the County Administration Building, Building B, 1800 27th Street, Vero Beach, Florida. You may hear an audio of the meeting; review the agenda and the minutes on the IRC website – www.ircgov.com/Boards/Shorttermvacationrentaladisorycommittee/2015.

Present were: Chairman **Glenn Powell**, District 1 Appointee; **Joel Molinari, Sr.**, District 3 Appointee; **Alan Curtis**, District 4 Appointee; **Glenn Heran**, District 5 Appointee; and **Dr. Robert DeWaters, Jr.** and **Angela Beckley Waldrop**, Members-at-Large Appointee.

Absent were: Vice Chairman **Joseph Paladin**, District 2 Appointee (excused).

IRC staff present were: **Stan Boling**, Community Development Director; **Bill DeBaal**, Deputy County Attorney; **Cheryl Dunn**, Health Department Environmental Manager; **John King**, Emergency Services Director; **John Duran**, Emergency Services, Lieutenant Inspector; and **Misty L. Pursel**, Commissioner Assistant, District 1 and Recording Secretary.

Others present were: **David Hunter**, **Carter Taylor** and **Dan Lamson**, Indian River Neighborhood Association (IRNA); **William “Tuck” Ferrell**, **Colleen Rosenbaum**, **Miles Conway**, and **Bronia Jenkins**, Interested Parties.

Call to Order & Welcome

Chairman Glenn Powell called the meeting to order at 10:00 a.m.

Approval of Minutes of November 12, 2015 – *Auction Required*

Chairman Powell noted the following changes to be made: On Page 1, under Approval of Minutes of October 8, 2015, within the Motion, delete 2014; and on Page 2, under New Business, third paragraph, change the word “lobbying” to “lodging”.

ON MOTION BY Dr. DeWaters, SECONDED BY Mr. Curtis, the members voted unanimously (6-0) to approve the minutes of November 12, 2015, as revised.

New Business

a. Fire Safety/Occupancy Limits/Septic Compliance – Action Required

Stan Boling, Community Development Director, reviewed his memorandum dated December 1, 2015, providing background, analysis and recommendations; a copy of which is on file in the Commission Office. He summarized additional information contained in the memorandum Attachments, including LDR Chapter 901.03 Definition of “Hotel/motel and lodging facilities”, State Septic System Standard and the Health Department Septic System Evaluation Application Form & Interagency Form.

Mr. Boling explained because the County dealt with fire safety and occupancy limits, there was coordination with the Emergency Services Director, John King and Fire Marshall, John Duran regarding fire safety issues. He reported the State of Florida (State) license for vacation rentals required smoke alarms, emergency lighting which activated when the power shut off; and a fire extinguisher. He continued vacation rental units were defined in the County Code as a residential unit.

Mr. Boling mentioned currently there were no problems or particular issues the Indian River County Fire Department had reported with vacation rentals.

Mr. Boling summarized staff’s recommendation concerning vacation rental requirements consisted of when an applicant applied for local licensing, the applicant must provide photo documentation showing installation of the State required fire extinguisher, emergency lighting and smoke alarms.

Mr. Boling reviewed the issues concerning septic system compliance and treating the vacation rental units as a residential use. He advised of the Health Department’s requirements for units constructed under the pre-1983 rules and the post-1983 rules, and the Health Department’s authority to have existing systems examined and evaluated by a contractor. He continued, staff’s recommendation for vacation rental units on septic, was the applicant to have a system permit or evaluation approved by the Health Department from the last five years. He added to date, according to the Health Department, there were no reports or evidence of local issues involving septic tanks and vacation rental units.

Ms. Waldorp asked, once the resident owner provided photographic evidence of compliance and proceeded to obtain the vacation rental license, who was responsible for following up for continued compliance and what were the penalties for non-compliance? She also inquired about those owners who did not report the rentals; hence were in licensing violation.

Mr. Boling responded in a previous meeting, this committee recommended the County establish its own local licensing for vacation rental units. He said currently there were no adopted local licensing requirement for vacation rental units. He continued if the County enacted a licensing requirement, the County's Code Enforcement department would enforce the licensing.

Mr. Boling shared his understanding that the State of Florida did not provide any inspections for their licensing, unless there was an issue, or complaint. He said at this time, the Committee had not yet made a recommendation on whether there should be inspection by County staff, what staff would be inspecting for, and how often staff performed inspections, if any.

Mr. Boling told the committee the County's approach was to keep the inspection issue streamlined. He used as an example, when the Health Department prepared an evaluation of a septic system, the Health Department did not inspect the septic system; a certified septic tank contractor evaluated the system and ensured criteria were met. He continued at the present time, staff was not proposing there be a fire or building inspector who inspected the emergency lighting for fire safety.

Mr. Heran voiced his concern this committee was possibly getting ahead of itself and proposed to table this item until further evidence was available; i.e., fire related issues on vacation rentals units. He said before this committee began discussion on regulating this particular business, a discussion should be had on what economic impact to this community vacation rental units were responsible; how many vacation rental units were in Indian River County. He continued once the number of units were known, and how many were licensed with the State, how many could be estimated to be operating without licenses? He also posed the question, what was the dollar impact on licensing in terms of bed and sales tax to this community?

Mr. Heran requested staff to provide the number of known vacation rentals in Indian River County, how rentals could be estimated, and how many complaints had been received related to vacation rentals.

ON MOTION BY Mr. Heran, SECONDED BY Ms. Waldorp, it was recommended to table this matter until economic impacts of vacation rentals in Indian River County were reviewed.

UNDER DISCUSSION, Mr. DeBaal estimated there were approximately 300 to 400 advertised vacation rentals units in Indian River County by owner websites. He added there was an overlap due to the websites categorizing the rentals by city, county, etc.

Mr. DeBraal responded to a question concerning statistics for fire safety issues by asking Lt. Duran if, at the time of responding to a fire safety call, was there a determination made whether the person present at the unit was a tenant or owner. Lt. Duran responded it was deemed as a structure fire, no matter if it was a hotel or residence.

Discussion ensued regarding concerns of burdening taxpayers by regulating a business, economic impact on a community driven by tourism, and the incidence of complaints.

Mr. Boling reported actions taken by Indian River County since July, 2012, included 11 complaints at different sites, and two Ordinances: (1) prohibits a single family residence being rented for a wedding-type event or "commercial events"; and (2) regulates excess parking; allowing five cars parked outside a vacation rental, which the number of vehicles was based upon how many bedrooms were in the house.

Mr. David Hunter, IRNA, stated homes converted into a daily or weekly rental were defined by the State as a public lodging establishment, such as hotel, motels, and bed and breakfast establishments. He suggested the County differentiate between a property being used as a public lodging establishment and a residential home, and correct County law. He provided a copy of an occupancy checklist used by code enforcement authorities across the country before a license was issued, a copy of which is on file in the Commission Office.

Mr. Glenn Heran expressed his view that licensing was a good step; however, regulating before knowing the statistics and how the regulations would impact the industry was a wrong move. He further expressed 11 complaints/incidents in 4 years was not an industry screaming for regulations.

Dr. Miles Conway urged the Committee members to vote against the motion because the mandate assigned to the Committee from the Board of County Commissioners was to draft regulations to regulate the problem, not to table regulations. He stated the purpose of this committee was to exercise the socially responsible and protective arm of government. He also stated in his review, the total population of rentals ranged from 700 to 800, with the State license count at 60 vacation rentals.

Dr. Conway told the Committee a State license was not the solution to the problem. He said what was going to give the State license teeth, was this Committee rejecting the motion to table the discussion and to recommend passing local regulations.

Mr. Molinari stated he supported less government and maintaining pinpointed accuracy with what was attempting to be accomplished in this Committee. He shared his thought the Committee had gotten off center with discussions and did not think it was a bad idea to table the matter a month, until the next meeting, to obtain accurate information before mandating restrictions.

Mr. Hunter pointed out the County and the State were losing huge amounts of revenue by not pinning down the economic activity and getting all units licensed. He gave as example, with 400 to 800 vacation rentals, if some rental properties were going for \$10,000 a week, the County was losing out on its bed tax and those taxes could help with inspectors to inspect properties.

Chairman Powell reminded the Committee members by unanimous vote, this Committee supported the County's position in favor of requiring a local license. He mentioned should this Committee continue to bring up matters already decided upon, the tasks assigned to the Committee would never get accomplished.

Mr. Carter Taylor, Executive Committee of the Indian River Neighborhood Association (IRNA) shared his observation of a situation of substantial non-compliance of State laws because the State will not donate any resources for this issue. He stated IRNA would further like to see the licensing regime for the County expanded so various elements of State law were adopted as Ordinance.

Mr. Taylor further stated there was a gap between what State laws say, the desire to follow them, and the enforcement. He continued some of the powers normally exercised by the State should be vested in our local authorities to enforce the regulations existing on the State level and should be enforced.

Mr. Taylor commented on Mr. Heran's motion to table discussion of septic tanks and fire safety was an inappropriate motion having been an attempt to cut off discussion of a topic this Committee was directed to discuss.

Mr. Heran stated he was not requesting tabling the discussion; he was tabling the vote. He said he would rather see a package of regulations in its entirety versus piece meal, so at the end of discussion, there was an industry so regulated that good landlords would self-regulate.

Chairman Powell said he did not believe the Committee needed to come up with a package and discuss individual pieces in order to understand what was necessary and what was to be regulated. He further stated he thought evaluating the financial impact was a useless exercise because all agreed the local economic impact of vacation rentals was significant.

Dr. DeWaters shared his thought this Committee did not have any business with the financial/economic impact, as this Committee was to decide what regulations were to be developed and how the County could control the regulations. He believed a well-regulated area equaled a pleasant experience, which equaled economic feasibility; having the neighborhoods preserved, the values of the homes preserved; and everyone was happy in a clean, neat, safe and pleasant place to rent with a value for their dollar.

THE CHAIRMAN CALLED FOR THE QUESTION, and the Motion failed 3-3 (Powell, DeWaters & Curtis in opposition).

ON MOTION BY Mr. Heran, SECONDED BY Ms. Waldorp, the members voted 4-2 (Curtis & Waldrop opposed) agreed to add the economic impacts of vacation rentals in Indian River County to the next Committee agenda.

Chairman Powell suggested and asked Ms. Waldrop and Mrs. Colleen Rosenbaum to identify for the next Committee meeting two (2) properties “typical” vacation rental and how much revenue was brought into the County.

~~Dr. Conway announced this Committee was not qualified for the task, as there was not a statistic representation. He said the only way of obtaining accurate statistics was under grand jury subpoena for the bed and breakfast records from the State Attorney General Office to obtain all the relevant financial information.~~

“Dr. Conway announced this Committee was not qualified to perform any credible economic analysis. Also this Committee was not qualified to conduct any credible statistical analysis due to the problem of statistical sample significance. He said the only way of obtaining accurate transient boarding house records was by court subpoena as had been the method used by the New York Attorney General and by grand jury subpoena in another jurisdiction.”

(Recording Secretary Note: At the January 14, 2016 Committee meeting, Dr. Conway read into the record the above statement and the Committee Members approved the minutes as revised.)

Mr. Hunter said IRNA would be willing to develop a list of unlicensed properties in Indian River County, to assist in determining the size of the vacation rental market.

Mr. Boling suggested Chairman Powell, Ms. Waldrop and Mrs. Rosenberg email him the information on properties “typical” for vacation rental and how much revenue the rentals brought into the County. He reminded everyone the

information would be of public record as soon as it was emailed. He said by gathering this information, it would assist in getting an idea of a potential range of a vacation unit and how many vacation units were in Indian River County, although there would not be enough data to constitute a statistically valid sample.

Mr. Hunter indicated Dr. Conway's beachfront property was recently re-evaluated by the County Property Appraiser and reduced in value by 1.7 Million Dollars because of the activity of a vacation rental property which constituted an attractive nuisance in his property's immediate vicinity and this was something to bear in mind when introducing vacation rentals into some of the residential areas.

Mrs. Rosenbaum brought attention to when counting vacation rentals, one must take into consideration one vacation rental may be listed on more than one website and the occupancy would vary. She felt vacation rentals were more of a perception of a problem than a reality and she did not have any problems with regulations and protecting tenants, neighbors and communities; however, she felt tourism was vital to Indian River County and there was a way to make it work.

Mr. Taylor commented much attention had been focused on how many complaints and the volume of complaints. He said not all matters were complaint driven, i.e., the failure to complain about the lack of a fire extinguisher should not be reason to not have a regulation to enforce fire safety. He stated fire safety should be pro-active, not reactive.

Mrs. Rosenbaum inquired about the steps this committee was expected to take now and what awaited at future meetings.

Mr. Boling explained the structure the Committee was following was to take individual topics, respond to questions, and then move forward with a draft (one topic at a time). He continued those draft recommendations would go into a final overall draft for the Committee's final evaluation before final recommendations went before the Board of County Commissioners.

ON MOTION BY Mr. Curtis, SECONDED BY Dr. DeWaters, it was recommended to approve staff recommendations regarding the Vacation Rental Fire Safety.

UNDER DISCUSSION, Mr. Heran confirmed the photo-documentation of smoke alarms, fire extinguisher, and emergency lighting within the unit was already State law.

Mr. Boling confirmed it was State law, as a State licensing requirement, with the County's way of backing the State's requirement and at this time was not meant

to require an on-site inspection. He said the license could be annual, every three years, etc., yet to be considered by the Committee.

Mr. Hunter suggested the fire inspection standards to maintain sprinkler systems and posting of an exit path for the vacation rental properties, having fire extinguishers mounted next to the kitchen and other defined areas be included in an initial inspection as a contingency prior to issuing a County license. He explained the County would do an initial inspection of premises, before issuing a license and would check off a checklist such as the checklist provided to Chairman Powell and on file in the Commission Office. He continued this would indicate those checked off items were indeed in place and were functioning correctly.

Chairman Powell reminded Mr. Hunter the motion on the floor was to approve staff recommendations, which the matters spoken of by Mr. Hunter, was not a part of staff's recommendation.

Mr. Hunter argued vacation rentals were not private homes, but public lodging establishments and asked if sprinkler systems were required in State requirements.

Chairman Powell advised the State did not require a single family residence to have a sprinkler system.

Dr. Conway asked to vote against the way staff had proposed this item and to include an initial inspection by the County because photographs did not confirm whether or not the protective devices were functional.

Mr. Taylor referred to reliance upon inspections done pursuant to a Certificate of Occupancy (CO). He pointed out the CO may have occurred more in the past, with no regulatory official physically inspecting any of the facilities while the residence was converted from a private residential purpose to a public lodging establishment. He reminded the Committee of what Mr. Hunter had said about providing a uniformed and quality product to the public which would increase the economic value to the community.

Chairman Powell mentioned as a vacation rental owner, he had smoke detectors in all rentals (3 of which houses were built before there were smoke detectors), because he wanted to protect his property, and no County or State regulation was going to change it.

Mr. Boling confirmed in 2012, the County updated the definition of hotel and lodging facilities in the County's Land Development Regulations, a copy of same was provided in the agenda backup, specifically noting a residential unit, regardless of how often it was rented, was not a hotel or lodging facility. He said

from fire code to building code, the unit was built as a residential unit and occupied as a residential unit. He continued, if treated as a commercial or lodging unit, a whole other category from a code standpoint, with a whole other regime of inspections and requirements applied.

Mr. Boling stated staff was recommending a vacation rental be treated as a residential unit and to ensure County code compliance as a single family resident with the ability to confirm the property complied with the State standards as well.

Mr. Taylor invited legal representatives for the County to review the assertion made by Mr. Boling to confirm it was the case under Florida laws.

Dr. Conway said in light of the parking ordinance, vacation rentals were differentiated from a conventional residence and he did not understand why the same distinction with the fire protection devices.

THE CHAIRMAN CALLED FOR THE QUESTION, and the Motion passed unanimously (6-0).

Septic Compliance

Mr. Boling reiterated from his memorandum, the recommendation from the Health Department staff and County staff was for a licensee for a local license to provide evidence the unit was either on sewer, or the septic system was constructed, repaired or evaluated and approved by the Health Department within the last five years.

Chairman Powell questioned whether the certification would include a system pumped out and in working order.

Mr. Boling advised Ms. Cheryl Dunn, Health Department Environmental Manager, had to leave the Committee meeting due to another scheduled appointment; however, Ms. Dunn had told him the certification was usually performed by a contractor; however, an owner could also perform it utilizing a checklist to evaluate and complete; usually with a pump out every five years. He said the checklist included whether the septic system was properly sized based upon how many bedrooms; and if constructed after 1983, the number of bedrooms and unit size.

Mr. Taylor asked whether staff's recommendation was for the septic system to be evaluated for proper sizing by the contractor with respect to current code, or the code under which the original permit was granted.

Mr. Boling responded it was his understanding from the Health Department

it was the code under which the original permit was granted.

Mrs. Rosenbaum pointed out for a good portion of the year, the vacation rental unit was vacant, referring to the septic system not being affected.

Chairman Powell stated in his experience with vacation rentals and septic tanks, different septic tanks required different amounts of maintenance, depending upon the baffle, age of tank and natural hazards such as tree roots, etc. He said this was a self-regulating issue, given when there was a problem with sewage, it demanded immediate attention.

Mr. Molinari stated generally, vacation rentals were privately owned properties, with the owners maintaining investment interest in the properties; therefore, motivated to properly maintain the rental property. He commented this motivation applied to most of the proposed regulations.

Mr. Taylor shared his thought of the five-year inspection and maintenance regime was a great idea; however, the loop hole was the properties newly converted from residential to lodging establishment use. He continued those properties may not have been properly configured and should be required to have an inspection in the current year of the first license to ensure meeting code and properly functioning for a lodging use consistent with the reading of Chapter 64E-6 of the Florida Administrative Code, a copy of which is on file in the Commission Office.

Mr. Taylor asked for the County's Ordinance to comply with State law and if the County did not require, upon the conversion of the property to a different use, an inspection at that time, a violation of State law existed.

Mr. Boling stated the question of the change in use was State-wide; however, the local departments and other counties and municipalities treated vacation rental units as a single family home in terms of where it fit within the code category. He relayed his understanding from the Health Department that vacation rentals did not change the category of the use; however, there was a technical justification in the Health Department's code to require a 5-year time frame, a process already in place, with a \$35 permit to ensure the septic system was functioning under applicable single family standards.

Mr. DeBraal shared a change of use recognized by the Health Department would occur if, for example, a daycare was started up in your home that would trigger the inspection and the recertification. He confirmed according to the Health Department, by using the property as a vacation rental did not trip the necessary trigger for re-categorizing, re-sizing, re-certifying, and inspection.

Dr. Conway read into the record Florida Statute 381.00655(4):

“Except as provided for in Section 381.00655, F.S., any existing and prior approved system which has been placed into use and which remains in satisfactory operating condition shall remain valid for use under the terms of the rule and permit under which it was approved.

Alterations that change the conditions under which the system was permitted and approved, sewage characteristics or increase sewage flow will require that the owner, or their authorized representative, apply for and receive re-approval of the system by the DOH county health department, prior to any alteration of the structure, or system.”

Dr. Conway reported having discussed this Statute with Ms. Dunn and received a written response, of which he read into the record:

“A residential rental homes are licensed by the Department of Business and Professional Regulation. The wastewater capacity of the home should be part of licensing review.”

ON MOTION BY Mr. Heran, SECONDED BY Mrs. Waldrop, the members voted unanimously (6-0) to oppose Staff’s recommendation regarding Septic Compliance.

Mr. Debraal offered to bring to the Committee’s meeting next month verification regarding receipt of the homestead exemption from the Property Appraiser as a short term rental property. He also offered to address the earlier discussion regarding the Property Appraiser’s evaluation of surrounding properties when involving a short term vacation rental and if any, effect on appraisals.

Mr. DeWaters asked whether the State required any additional insurance for rental properties.

Chairman Powell voiced his understanding the State did not require any insurance when renting a house for a year, a month, a week, or a weekend; mortgage companies required insurance.

Other Business – *Action Required*

a. 2016 Meeting Dates

ON MOTION BY Dr. DeWaters, SECONDED BY Mr. Heran, the members voted unanimously (6-0) to accept the scheduled 2016 meeting dates for the Short Term Vacation Rental Advisory Committee.

Adjournment

There being no further business, the meeting adjourned at 12:25 p.m.

The next meeting of the Short Term Vacation Rental Advisory Committee is scheduled for **Thursday, January 14, 2016 at 10:00 a.m.**, in Building B, Conference Room B1-501.