Therese F. Sweet

June 27, 2019

Amador County Planning Commission
810 Court Street
Jackson, CA 95642

Re: July 9, 2019 Hearing – Proposed Ordinance 19.48.2 Short Term Rentals

Honorable Commissioners:

Lawfully operating short-term rentals such as mine, now regulated under Amador County Code section 3.16, will be exempt from the regulations of any new ordinance when adopted because they will have become legal nonconforming uses. County Code on Nonconforming Uses 19.60.010 Generally: The lawful use of land or buildings existing on the effective date of areas zoned or rezoned under Title 19 of this code, although such use does not conform to the regulations specified in the district in which such land is located, is a nonconforming use and may be continued as hereinafter provided, except that any such use ceases for a period of two years, the subsequent use of such land shall be in conformity to the regulations specified for a period of two years, the subsequent use of such land shall be in conformity to the regulations specified for the district in which such land is located. When the planning department becomes aware of an abandonment of the nonconforming use it shall notify within thirty days the property owner of such opinion. (Ord. 1084 sec 2 (part), 1986).

Amador County does not require a business license. My short-term rental, Sweet Oaks, was lawfully established and has continued lawful operation under zoning code 3.16, as confirmed by the staff report for the June 11, 2019 hearing.

These proceedings seek to ignore 19.60.010. If the County adopts some form of 19.48.2 in 2019, then amends it next year and every subsequent year, adding new conditions and fees each time, will it always attempt to make retroactive application?

The ordinance's language is vague concerning fees. Section 19.48.212 Application Fee states: "An application for a Short-Term Rental Permit shall be accompanied by a non-refundable fee established by resolution of the Board of Supervisors; provided the fee sufficiently defers the cost incurred by the County in administering the provisions of this chapter." The Ordinance requires an inspection which could cost over $300. as other County home inspections do. There seems to be no limit what the County could charge short-term rental owners.

The ordinance's language is vague about whether the permit is ministerial or discretionary. 19.48.109(B)(1) states that a "staff-issued" permit is required then refers to 19.48.211 which includes neighbor notice (discretionary). There appears to be no statutory authority for neighbor notice other than the June 11, 2019 Planning Commission hearing. At 19.48.213(B)(2) under "Permit Conditions," it says "Conditional Use Permit, if applicable." There is no criteria showing when or why a discretionary Conditional Use Permit would be required.

The problem with this proposed ordinance is similar to that described in Jones v. City of Los Angeles, 211 Cal. 304 (Cal. 1930) where the property owner successfully enjoined a zoning ordinance that purported to abolish an existing use; "the distinction between the power to prohibit nuisances and the power to zone is exceedingly important. The power over nuisances is more circumscribed in its objects; but once an undoubted menace to public health, safety, or morals is shown, the method of protection may be drastic." The draft ordinance amounts to drastic nuisance abatement instead of sound zoning law. It attempts to eradicate the public nuisance on Emily Way rather than outline the orderly development of short-term rentals to benefit the public's general welfare.

Quoting "Jones", "Zoning is not so limited in its purposes. It may take into consideration factors which bear no relation to the public health, safety or morals, but which come within the meaning of broader term "general welfare." It deals with many uses of property which are in no way harmful. If its objects are so much broader than those of nuisance regulation; if its invasion of private property interests is more extensive, and if the public necessity to justify its exercise need not be so pressing, then does it not follow that its means of regulation must be more reasonable and less destructive of established interests? Must we say that the property of some of the residents of a district can be taken from them, without compensation, in order to make more attractive and pleasant the lives of other residents? This background of nuisance law in the development of zoning occasionally leads to erroneous results." The California Supreme Court's conclusion in the Jones case was "that where, as here, a retroactive ordinance causes substantial injury and the prohibited business is not a nuisance, the ordinance is to that extent an unreasonable and unjustifiable exercise of police power."

Unlike "Jones," the County doesn't seek to prohibit short-term rentals; however, it seeks to further regulate existing lawful ones. In Dobbins v. Los Angeles (195 U.S. 223 (1904)), the United States Supreme Court stated: "...it is now thoroughly well settled by the decisions of this court that municipal by-laws and ordinances, and even legislative enactments undertaking to regulate useful business enterprises, are subject to investigation in the courts with a view to determining whether the law or ordinance is a lawful exercise of the police power, or whether under the guise of enforcing police regulations there has been an unwarranted and arbitrary interference with the constitutional rights to carry on a lawful business, to make contracts, or to use and enjoy property."

"Dobbins" quotes Lawton v. Steele, 152 U.S. 133, 137, "Mr. Justice Brown, speaking for the court said upon this subject: To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

Similarly, in County of San Diego v. McClurken, 37 Cal.2d 683 (234 P.2d 972), the California Supreme Court summarized: "If an owner has legally undertaken the construction of a building before the effective date of a zoning ordinance, he may complete the building and use it for the purpose designed after the effective date of the ordinance. Protection of an undertaking involving the investment of capital, the purchase of equipment, and the employment of workers, is akin to protection of a nonconforming use existing at the time that zoning restrictions become effective. The same principle

underlies the rule that a permittee who has expended substantial sums under a permit cannot be deprived by a subsequent zoning ordinance of the right to complete construction and to use the premises as authorized by the permit."

In Spindler Realty Corp. v. Monning 243 Cal. App. 2d 255, 265 (Cal. Ct. App. 1966), the court stated "The general rule applicable to all cases such as this is that if a property owner has acquired a vested right under a permit, the permit cannot be revoked, particularly where, on the faith of the permit, the owner has incurred material expense. Such a permit has been declared to be more than a mere license revocable at the will of the licensor. When, in reliance thereon, work upon the building is actually commenced and liabilities are incurred for work and material, the owner acquires a vested property right to the protection of which he is entitled."

Other case law shows it is unlawful for local government to revoke or refuse to renew authority to continue a lawful business unless that business is proven individually by substantial evidence to be a public nuisance. In Trans-Oceanic Oil Corp. v. City of Santa Barbara, 85 Cal.App.2d 766 (194 P2d 148), the court stated regarding an attempt to take private property without due process: "It is not, nor could it be, claimed that a city council exercises unlimited discretion in the matter of revoking permits. A permit having issued, the power of a municipality to revoke it is limited...If a permittee has acquired a vested property right under a permit, the permit cannot be revoked."

In Goat Hill Tavern v. City of Costa Mesa, 6 Cal.App.4th 1519 (Cal.Ct.App.1992), the court stated: "Interference with the right to continue an established business is far more serious than the interference a property owner experiences when denied a conditional use permit in the first instance. Certainly, this right is sufficiently personal, vested and important to preclude its extinction by a nonjudicial body."

Griffin v. County of Marin, 157 Cal. App. 2d 507 (Cal. Ct. App. 1958) held that a building permit issued and substantially acted upon may not be revoked. An amendatory ordinance as applied to Griffins' property was declared to be "discriminatory, arbitrary, capricious, confiscatory and oppressive, and the same is unconstitutional, null and void, and constitutes an unreasonable exercise of police power on the part of defendant County of Marin." That very well describes the proposed Short-Term Rental ordinance here.

In Pelham View Apartments v. Switzer, 130 Misc. 545, 546 (N.Y.Misc.1927), the court said "It was beyond the power of the common council to enact an ordinance to invalidate the permit issued and acted upon. It was likewise beyond the jurisdiction of the building inspector to revoke such permit, basing his revocation upon a subsequently enacted ordinance. Where a permit to build a building has been acted upon, and where the owner has, as in this instance, proceeded to incur obligations and in good faith to proceed to erect the building, such rights are then vested property rights, protected by the Federal and State Constitutions. (City of Buffalo v. Chadeayne, 134 N.Y. 163.) The courts in such cases have uniformly applied the remedy of mandamus to cancel the revocation and to reinstate the permit...the public officials representing the people cannot legally be permitted to change the zoning law, and cancel a permit previously issued under the original zoning act, where an innocent purchaser of real estate has in good faith acted upon such official action of the city, and has thereby acquired vested rights under his permit...It would be nothing short of confiscation, and a complete disregard of constitutional rights, if a municipality could revoke a building permit issued under the conditions as presented in this case."

My understanding regarding Occupancy is that the general rule in California is "two persons per bedroom plus one." This practical guide was demonstrated to us last month. A couple reserved two nights at Sweet Oaks. Two days before their arrival, the wife called me and said her grandmother had just died and could she bring her mother with them so she would not be alone. Of course, I agreed. The mother stayed one night and left this note in our guest book: "My sweet mother passed away 2 days ago. My daughter and son-in-law reserved Sweet Oaks to celebrate their 4th anniversary. They invited me to spend the night here. It was so uplifting and helped us to be able to share memories and prepare for the difficult week ahead. This was a blessing." This is an example of why a rigid, nuisance-oriented ordinance such as the one proposed is fundamentally unjust and potentially harmful.

At the June 11, 2019 hearing, Mr. Beatty, Planning Director, was unable to tell me if any of the Commissioners had property within 1,000' of a short-term rental, triggering a material conflict of interest. That would preclude one from deliberating or voting on this issue, as would ownership of a short-term rental by himself or his immediate family, according to the Fair Political Practices Commission Regulations.

This proposed ordinance is completely unjustified. There is no need for it and I don't see any evidence or legal basis to support it or its myriad regulations. It is oppressive and should be scrapped.

Sincerely,

Therese F. Sweet