

ADMINISTRATIVE HEARING OF A LAND USE DECISION
Case No. PLNAPP2020-00052
(Appealing Enforcement Case HAZ2019-04378)
May 14, 2020

Appellant:	Pacific Century Development, LLC
Decision-making entity:	Salt Lake City Civil Enforcement Division
Address Related to Appeal:	1229 East 1700 South
Request:	Appealing the Civil Enforcement Division’s civil notice and order finding the property’s use in violation of Title 21A
Brief Prepared by:	Allison Parks, Senior City Attorney

Statement of the Case

This appeal stems from a finding that the subject property is being used as a short-term rental¹ in violation of Title 21A. After receiving complaints from neighbors and investigating the property, the Salt Lake City Civil Enforcement Division (“Civil Enforcement”) issued a notice and order on December 20, 2019. The notice and order states that the property is being used as a short-term rental property, which violates Title 21A’s prohibition on residential properties being used as a rental shorter than thirty days. On January 21, 2020, Appellant Pacific Century Development, LLC (“Pacific Century”) filed this appeal, challenging the notice and order. Because there is evidence that the property is being rented for less than thirty days, the notice and order should be upheld.

¹ The term “short-term rental” used throughout this brief means renting out the property for less than thirty days.

Standard of Review

When an appellant asserts an error in an administrative decision made by the Zoning Administrator, the appellant may file an appeal with an appeals hearing officer.² An appeal from an administrative decision shall be filed within ten days³ and specify the decision being appealed, the alleged error, and the reasons the appellant claims the decision was made in error.⁴ In reviewing the administrative decision, the appeals hearing officer's decision shall be de novo, reviewing the matter anew, based upon applicable procedures and standards for approval, giving no deference to the decision below.⁵ It is the appellant's burden to prove that the decision that was made was incorrect and the appellant's responsibility to marshal the evidence.⁶

The decision being appealed in this case is an administrative determination that the subject property's use as a short-term rental violates Salt Lake City's zoning code. Under the City's zoning code, certain uses are prohibited in certain residential districts.⁷ Specifically, renting a residential dwelling unit for less than thirty days is not a permitted use in the subject property's zoning district.⁸ As set forth in more detail below, because Civil Enforcement found

² *Salt Lake City Code* § 21A.16.020.

³ *Salt Lake City Code* § 21A.16.030.A.1. Here, the notice and order states that if Pacific Century wanted to challenge the notice and order, they had 30 days to file an appeal. Consequently, the City does not contest the timeliness of Pacific Century's appeal as it was filed within 30 days of the notice.

⁴ *Salt Lake City Code* § 21A.16.030.A.

⁵ *Salt Lake City Code* § 21A.16.030.E.1.

⁶ *Salt Lake City Code* § 21A.16.030.F; *Carlsen v. City of Smithfield*, 287 P.3d 440 (2012); *State v. Nielsen*, 326 P.3d 645 (Utah, 2014); *Hodgson v. Farmington City*, 334 P.3d 484 (Utah App., 2014).

⁷ See *Salt Lake Code* § 21A.33.010.C (stating that any uses not specifically permitted or conditionally permitted in the land use tables shall not be allowed in that zoning district).

⁸ See *Salt Lake Code* §§ 21A.33.010.C; 21A.33.020 (hotels, bed and breakfasts, apartment hotels, boarding houses and lodging houses are not permitted or conditional uses in most residential districts, including in R-1/5,000 where the subject property is located); 21A.62.020 (defining "dwelling", as: "A building or portion thereof, which is designated for residential purposes of a family for occupancy on a monthly basis and which is a self-contained unit with

that the property was being used as a short-term rental, the administrative decision finding the property in violation of the City’s zoning code is correct and the notice and order should be upheld.

Background

Pacific Century is the owner of the subject property located at 1229 East 1700 South in Salt Lake City. The subject property is located in the R-1/5,000 Single-Family Residential District. In October 2019, Civil Enforcement received a complaint that the property was being used as a short-term rental.⁹ Under City Code, short-term rentals are not a permitted use in the R-1/5,000 Single-Family Residential District in Salt Lake City.

Catherine Salazar, a Civil Enforcement Investigative Officer, followed up on the complaint. On December 3, 2019, Ms. Salazar went to the property, knocked on the front door, and spoke with someone staying in the home.¹⁰ The woman that answered the door informed Ms. Salazar that she was staying in the home for one week.¹¹ More than a week later on December 19, 2019, Ms. Salazar again visited the property.¹² During this visit, she spoke to a man who indicated that he was renting the space through Airbnb and that he was checking out of the place that day.¹³ From these two interactions with renters, Ms. Salazar confirmed that the property was been rented out to two different parties within a sixteen-day period, violating the prohibition on short-term rentals.

kitchen and bathroom facilities. The term “dwelling” excludes living space within hotels, bed and breakfast establishments, apartment hotels, boarding houses and lodging houses”).

⁹ Civil Enforcement Div. Staff Report, May 7, 2020 at 12.

¹⁰ Staff Report at 12.

¹¹ Staff Report at 12.

¹² Staff Report at 11-12.

¹³ Staff Report at 11-12.

Ms. Salazar also confirmed through Airbnb that the property was being offered to rent for a period less than thirty days.¹⁴ When a party completes their Airbnb stay, they have an opportunity to leave a review on the Airbnb website, but can only leave the review within fourteen days of completing their stay.¹⁵ Ms. Salazar found that in December 2019, at least four people had left reviews of the property.¹⁶ In order for four people to have left reviews through the Airbnb platform within one month, the stays must be shorter than thirty days. After Ms. Salazar concluded that the property was being used as a short-term rental, on December 20, 2020 Civil Enforcement mailed and posted the notice and order stating that the property's use violated City zoning code.¹⁷

On January 21, 2020, Pacific Century filed their appeal. The appeal asserts that the property was not being offered as a short-term rental, directly conflicting with Ms. Salazar's findings. The appeal further asserts that the City has waived their right to enforce on short-term rentals because there are many short-term rentals that are being offered for rent throughout the City.

Discussion

The administrative decision that the subject property's use violates City zoning code should be upheld for two reasons: 1) the determination that the subject property was being used as a short-term rental was based on substantial evidence gathered by Ms. Salazar; and 2) the City has not waived its right to enforce the zoning code. As such, the City's administrative decision is correct and should be upheld.

¹⁴ Staff Report at 18-22.

¹⁵ Airbnb only allows reviews to be posted within 14 days by those that have completed their stay. AIRBNB, Help Center, <https://www.airbnb.com/help/article/13/how-do-reviews-work-for-stays> (last visited April 30, 2020).

¹⁶ Staff Report at 20.

¹⁷ Staff Report at 9, 11.

Prior to issuing the notice and order, Civil Enforcement Investigative Officer Ms. Salazar confirmed, through in person conversations with renters and investigating the Airbnb posting, that the property was being rented for a period shorter than thirty days.¹⁸ And while Pacific Century claims that the property cannot be rented for less than thirty days through the Airbnb website,¹⁹ such evidence cannot be reconciled with Ms. Salazar's investigations and findings. Further, since submitting their appeal with their supporting documentation claiming the property was only available to rent for 30 days or more, the Airbnb listing has changed, and the property can now be rented for less than thirty days.²⁰ Pacific Century should not be allowed to circumvent City zoning code by temporarily modifying their Airbnb listing to provide evidence in support of their appeal, only to change it back again to allow short-term stays.

Contrary to Pacific Century's assertion, the City cannot abandon or lose an ability to enforce City code based on the City's history of enforcement. Pacific Century argument defies logic. The ability to enforce City code rests within the sole discretion of the City, and the ability to enforce does not disappear simply because the City has not exercised its enforcement authority. Such logic would mean that a City ordinance could be effectively removed from the code through lack of enforcement, and not by the actions of the City's legislative body.

Further, Pacific Century has wholly failed in providing any evidence that the City is not enforcing on other short-term rentals throughout the City. Rather, Pacific Century assumes that the City is not enforcing on short-term rentals because they claim there is widespread non-

¹⁸ Staff Report at 11-22.

¹⁹ Staff Report at 4-8.

²⁰ From the screen shot taken by Ms. Salazar on May 5, 2020, the Airbnb listing shows multiple reviews for the subject property after the notice and order was issued in December 2019. Specifically, there were four reviews posted in January, five reviews in February, three reviews in March, and one review in April. Further, as of May 5, 2020, the calendar on the Airbnb website allows for renters to make bookings for stays shorter than 30 days. Staff Report at 18-22.

compliance. These arguments are unsupported and are an oversimplification of the issue.²¹

Widespread non-compliance does not equate to lack of enforcement.

Conclusion

For all of the reasons stated above, Pacific Century's arguments must be rejected and the Civil Enforcement's notice and order be upheld.

²¹ Under UTAH CODE §10-8-85.4, municipalities cannot enforce on short term rentals based solely on the Airbnb posting. As such, in order to enforce on a short-term rental violation, Civil Enforcement must also rely on receiving complaints from neighbors and collecting other evidence in addition to the Airbnb posting.