

Salt Lake City Land Use Appeals Hearing Officer
PLNAPP2020-00052
Appeal from Decision of Historic Landmark Commission
1229 East 1700 South – Pacific Century Development LLC
May 20, 2020

This is an appeal from an administrative decision to issue a Notice and Order – Civil which determined the property at 1229 East 1700 South was being used as a short-term rental in violation of the City Land Use Regulations as of December 20, 2019. The applicant/appellant is Pacific Century Development LLC. The appeal is denied.

RECORD

The record includes the Staff Report, a document of 22 pages dated May 7, 2020 and an email communication sent by Richard Brockmyer. The Staff Report includes a copy of the appeal form filed by the property owner. The record also includes a brief by the Office of the City Attorney, prepared by Allison Parks, Senior City Attorney. The record also includes an audio recording of a hearing conducted via electronic video means on May 14, 2020. Appearing at the hearing was Richard Reeve, Esq. and Phillipa Zhang on behalf of Pacific Century Development. Allison Parks, Senior City Attorney, appeared on behalf of Salt Lake City. Catherine Salazar, City Civil Enforcement Officer, also appeared and provided information and evidence. Although this was a public hearing and public notice was provided prior to the hearing there were no comments offered by any member of the public other than Mr. Brockmyer's email.

BACKGROUND

According to information provided in the Staff Report and the hearing, the City Enforcement personnel responded to neighbor complaints and conducted an inquiry into the use of the property at 1229 East 1700 South as a short-term rental. Sections 21A.33.020, 21A-33-020 and 21A-62-040 include provisions which prohibit rental of residential property in the R-1/5000 Single-Family Residential District for a period of less than 30 days. City officials went to the property and visiting with individuals who apparently occupied the property for less than thirty days and researched the uses of the property described on the Airbnb.com website by listings there posted by the owners of the property. The City staff determined that the property was being used in violation of the ordinance against short-term rentals and issued the Notice and Order – Civil on December 20, 2019. From that decision the property owner takes its appeal.

ANALYSIS

According to the relevant code, this issue is to be heard de novo by the hearing officer. The review is not based solely on the record of the administrative decision. New information and evidence may be considered including public comment at the hearing which is required to be conducted. The issue here is whether the Notice and Order – Civil was and is based on substantial evidence in the record.

The property owner argues that information in the Staff Report which originated at the Airbnb website is not admissible under state law, citing Utah Code Ann. 10-8-85.4(2) which provides:

Notwithstanding Section [10-9a-501](#) or Subsection [10-9a-503\(1\)](#), a legislative body may not:

- (a) enact or enforce an ordinance that prohibits an individual from listing or offering a short-term rental on a short-term rental website; or
- (b) use an ordinance that prohibits the act of renting a short-term rental to fine, charge, prosecute, or otherwise punish an individual solely for the act of listing or offering a short-term rental on a short-term rental website.

The text of the statute, however, does not prohibit information obtained on a short-term rental website as evidence upon which to punish an individual for violations of the land use code. While the statute states that the City cannot prohibit listing short-term rentals on a website, it does not say that listing short-term rentals on a website gives the person listing the rental a “King’s X” from prosecution for violation of local ordinances.

Indeed, Pacific Century is not charged here with listing a short-term rental on a website, but for the specific act of renting property for less than 30 days in a zone where that activity is prohibited. There does not appear to be any ordinance in Salt Lake City which violates subsection (a) or (b) of this statute. It is clear that Pacific Century is not charged with listing a rental on a website, but for the act of renting the property for less than thirty days.

To rephrase the statute, the City cannot prohibit listings by property owners on short-term rental websites. The statute does not prohibit ordinances limiting short-term rentals, however. If a property owner, in violation of the local ordinance, actually rents the property for a period of less than thirty days, that nightly rental is prohibited whether the property was listed on a website or not. By the statute, the city can prohibit short-term rentals, but simply cannot punish anyone solely for the listing – there must be proof of actual occupancy for less than thirty days at a time. Evidence of short term rentals in this case is provided by the Airbnb.com website, not because the property owner listed the property for rent, but because the comments and feedback provided by others on the website are consistent with short-term rentals of the property and not consistent with monthly rentals.

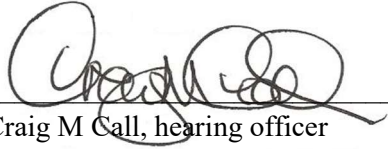
In this case the de novo process on appeal also allows for new evidence at the hearing. That new evidence includes a statement by the property owner that the property was, in fact, operated in violation of the land use ordinances as a short-term rental up until the time that the Notice and Order – Civil was received by them.

There is much discussion in the record about what the current status of the property is and whether it is now being operated in a manner consistent with the ordinance. That is an appropriate topic for the City and the property owner to resolve, but irrelevant to this appeal. The narrow issue here is whether the property was being operated in violation of the short-term rental ordinance when the Notice and Order – Civil was issued. Based on the evidence at the hearing as outlined above as well as other relevant and

credible information provided in the Staff Report, it is found that the property was indeed being operated in violation of the short-term rental prohibitions in the ordinances in December of 2019.

The Administrative Decision is upheld. The appeal is denied.

Dated this 20th day of May, 2020.



Craig M Call, hearing officer