

**SHORT TERM RESIDENTIAL USE COMMITTEE
THURSDAY, MAY 27, 2010, 3:30 P.M.
CITY HALL, 100 NORTH ANDREWS AVENUE
1ST FLOOR, FORT LAUDERDALE, FL**

MEMBER		CUMULATIVE MAR 2010 / FEB 2011	
		Present	Absent
Marilyn Mammano, Chair	P	3	0
Joe Amorosino, Vice Chair	P	3	0
H. Collins Forman, Jr.	P	1	1
Larry Isakowitz (3:39)	P	3	0
Dwight Ledbetter	P	3	0
Ronald Mastriana	P	2	1
Lula Myers	P	3	0
D.J. Parker	P	3	0
Annette Ross	A	2	1

Staff Members Present

Adrienne Ehle, Liaison, Planner III, Planning and Zoning Department
 Sharon Miller, Assistant City Attorney
 Terry Burgess, Zoning Administrator, Planning and Zoning Department
 Deborah Rutkowski, Planning Assistant, Planning and Zoning Department
 Cheryl Felder, Service Clerk, Planning and Zoning Department
 Liz Davila, Recording Secretary, Prototype, Inc.

Communication to the City Commission

None at this time.

I. Call to Order

Chair Mammano called the meeting to order at 3:35 p.m.

II. Roll Call

Roll was called and it was noted a quorum was present. Chair Mammano welcomed Mr. Forman, who is a new Committee member.

III. Approval of Minutes

Mr. Forman asked if it is possible to receive a draft of the previous month's minutes prior to the meeting. Ms. Ehle agreed to follow up on this item.

Mr. Isakowitz joined the meeting at this time (3:39 p.m.).

Mr. Ledbetter referred to the March 2010 minutes, noting that he did not feel statements attributed to Mr. Mastriana on p.4 were accurate. He explained he did not wish the yachting industry to be negatively affected by “the overall effort” of the Committee. It was determined that the reference to the yachting industry would be removed.

Mr. Ledbetter also pointed out p.7, stating that Mr. Mastriana had been inaccurately quoted in the reference to crew areas. Ms. Ehle referred the Committee to an excerpt showing Mr. Mastriana’s statements quoted verbatim. Mr. Mastriana explained that he had requested to know the crew areas that were affected. It was agreed the minutes would reflect Mr. Mastriana’s verbatim statement, and the summary would be removed.

Motion made by Vice Chair Amorosino, seconded by Mr. Forman, to approve the minutes of the March 25, 2010 as corrected. In a voice vote, the **motion** carried unanimously.

Motion made by Vice Chair Amorosino, seconded by Mr. Ledbetter, to approve the April 22, 2010 minutes. In a voice vote, the **motion** carried unanimously.

IV. New Business

a. Chair / Vice Chair Update

Chair Mammano requested that Staff members introduce themselves at this time.

Ms. Ehle distributed copies of the most recent report on the City’s enforcement efforts, which will be updated at each subsequent meeting as cases progress. She also distributed copies of the definition of short-term rentals “relative to the Department of Revenue for the purposes of assessing tourism development tax.” Chair Mammano explained that the documents were provided so all members would be working with the same information.

Chair Mammano observed that during the course of a given month, members of the Committee may receive information from other Boards, neighbors, or groups, and asked if there is a way this information may be shared prior to meetings. While the Sunshine Law restricts communication of Committee business between members, Chair Mammano stated other advisory bodies shared information through a “centrally controlled” email from Staff. Ms. Ehle agreed this could be done, and advised that when information for the next meeting is discussed, some of this information will be provided in advance and some will be provided as hard copies at the time of the next scheduled meeting.

Chair Mammano stated she had spoken to a member of Code Enforcement, who informed her that at the last Magistrate's meeting, all four cases involving short-term rental Code violations were found to be in violation of zoning. She added that there are some constraints on what the Committee can discuss with regard to pending cases.

Compliance, in Code Enforcement cases, is different in each individual case. If a case is closed out after being found in violation by a Special Magistrate, and the violation recurs, it must be brought back as a repeat violation and the Special Magistrate may impose fines of up to \$1000 for each day the violation continues to exist. The property owner has 30 days from the date of the Special Magistrate order to appeal a decision; Chair Mammano stated that cases may not be discussed while under this appeal. Cases are considered to remain open until compliance occurs, and may also be closed if the Special Magistrate determines there is no longer a violation or if an appeal is not upheld.

Chair Mammano asked if a case may be discussed after the 30 days for an appeal have passed. Attorney Miller stated she would need to clarify this with the Code Enforcement Attorney for accuracy.

Mr. Mastriana pointed out that Code Enforcement actions are a matter of public record. Attorney Miller confirmed this, and added that documents from these actions are available; however, the Committee may not "get into" another Board or Committee's quasi-judicial activities indirectly.

Mr. Mastriana noted there seems to be a question of what the Code Enforcement Board considers to be short-term. He asked if this would be "anything less than six months," according to the Department of Revenue's requirement of a tax certificate number; this would also mean the subject is a business and therefore "can't be in single-family housing areas." He requested clarification of the criteria used by the Code Enforcement Board. Attorney Miller explained that this Committee was established to address this question and determine what Code says, as well as to define the parameters of short-term use "more effectively than what is today."

Chair Mammano continued that Committee members were emailed a copy of a zoning map, which identifies the location of all currently open cases. Mr. Forman requested a copy of this map, as well as a copy of the memo to which Chair Mammano had referred for the discussion of compliance. Chair Mammano emphasized the need for communication through Staff and the dissemination of materials to Committee members.

Vice Chair Amorosino asked why the email in question was generated. Ms. Ehle explained it was a reply to an email to her from Chair Mammano, and added that if an individual member sends her an email, she would not assume it is for all

members to see unless otherwise requested. Vice Chair Amorosino requested clarification that “no one is to discuss any of these cases” cited the email. Ms. Ehle confirmed that open cases may not be discussed.

Vice Chair Amorosino asked if any Committee members are “exempt from having knowledge about a case or being involved in a case” – in other words, if any members are “exempt from this email.” Attorney Miller advised that the email states two or more Committee members may not discuss any open Code Enforcement cases. Vice Chair Amorosino noted that “a member could be representing somebody else,” which Attorney Miller acknowledged could be the case, although she was not aware of any such occurrence.

Vice Chair Amorosino asked if any Committee members were representing “anyone in any of these cases.” Attorney Miller advised it would be up to individual members whether they should answer the question. Vice Chair Amorosino stated he felt there was a conflict, and that there was “someone on this board that represents the other side.”

Mr. Forman noted that he was not sure if the comment was in reference to his having represented an individual who is subject to a Code violation; he informed the Committee that while this was true, he understood the purpose of the Committee to be helping the City determine a definition of short-term residential use. He added that he “was not aware there were ‘sides,’” but the intent was to arrive at a definition that works for various entities, including the City, property owners, and the marine industry.

Vice Chair Amorosino asserted that he did not agree, and felt the Committee members should “know who the people are on this board, who they’re representing, why they’re on the board.” He concluded that he felt there was a conflict if a member is “defending someone who is renting,” and that any such individual should “step down from the board and not represent.” He stated his intent was to resign if this was not done.

Chair Mammano agreed that the Committee is charged with “a balancing act,” and noted that there are individual members who represent various interests and neighborhoods. She advised she had “no problem” with this issue as long as “the information is made public and it’s transparent.”

Vice Chair Amorosino stated that he resigned, and departed the meeting (4:04 p.m.).

Ms. Parker felt the Committee members were selected specifically to serve on the Committee in order to combine their various areas of expertise and arrive at a solution. She noted if every member represents his or her own goal, she was unsure whether or not the Committee’s objective can be met.

Mr. Mastriana observed that there appears to be an issue of whether or not the members' various representations constitute a conflict of interest. He noted that some members represent homeowners' associations who oppose rentals, while others represent "profit-oriented" groups that handle short-term rentals in some neighborhoods, for example. He concluded that he would like to ask Vice Chair Amorosino to return to the Committee despite his concern regarding Mr. Forman's representation of "homeowners that may be on the other side of the matter."

Mr. Forman addressed this, explaining that before he signed up for the Committee, a Code violation had been found against an individual he represented in August 2009. This case was dismissed, and later on he volunteered to serve on the Committee. The Code Enforcement issue ultimately went forward and has been decided by the Special Magistrate, and is currently in the 30-day period in which an appeal may be filed. He advised his understanding was that the Committee acts in an advisory capacity, and he was "quite shocked" that his representation of a client was at issue.

He continued that he could tell Vice Chair Amorosino is "very passionate" about the issue of short-term use; while Mr. Forman is less passionate, he maintained that he could bring helpful expertise and information to the Committee, such as the rights of various parties and the rule of law. He added that he would have a different perspective whether or not he had represented an individual in a case.

Chair Mammano stated that the City Commission, and not the Committee, makes appointments, and the City Commission "has spoken" in favor of Mr. Forman. She added that she also hoped Vice Chair Amorosino would return to the Committee, as he has a lot to contribute.

Mr. Ledbetter agreed all members were appointed due to their experience and knowledge of the issue, and advised that "the key is to be impartial." If this is not possible, an individual may not be able to serve effectively on the Committee. He concluded that they should not "simply and blindly" shut down short-term rentals, as the problem has grown for decades and affects various industries in the City.

b. Liaison Update

Ms. Ehle advised she would provide brief updates from both her perspective as Liaison and as a member of Planning and Zoning Staff. She requested again that if a member would like her to share an email with the other Committee members, they make this clear; otherwise her assumption would be that an email from a member is intended for her only.

c. Staff Presentation

- **At Present, What the Code Says**

Ms. Ehle pointed out that the designations on the far right column of the list represent the zoning districts themselves: all those with an R, and some that do not include R, allow residential use. Those not including an R may be non-residential districts that may allow residential uses. She also referred the Committee to a list of all zoning districts, including whether or not they permit hotels, motels, bed & breakfasts, or hotel/marinas.

She explained the list is intended to help inform and educate the Committee members with regard to what is “tranquility in a neighborhood,” as well as what the character of a neighborhood means to those who live, visit, or work there, and what contributes to making neighborhoods look and feel different from one another. Ms. Ehle noted that the term “character” is often used in Planning and Zoning; this is a broad description that serves to address the way neighborhoods can feel different when contributing factors change.

For each voting district, she explained, there are permitted uses as well as conditional uses; additional review by Planning and Zoning is required for conditional uses, such as review by the Planning and Zoning Board or the City Commission. There may also be additional requirements in Code for conditional uses, such as neighborhood compatibility, which require Planning and Zoning to look at a use in greater detail to determine whether or not it should be permitted in context with the surrounding area. This ties into whether or not a use affects the character of a neighborhood. If a use is neither permitted outright nor conditionally, it is not permitted.

She pointed out that the four columns to the right are rental uses included in Code. The list also includes ULDR sections and definitions from Code with which the Committee may find it useful to familiarize itself. Ms. Ehle noted that with regard to neighborhood compatibility, it is sometimes necessary for Planning and Zoning Staff or Board members to ask themselves what makes residential property use different from non-residential use. In some areas, the character of residential and non-residential districts may be “so close,” by proximity, appearance, or feel, that it would be possible to cross a zoning line without recognizing the difference.

Ms. Ehle advised that a neighborhood development criteria revision project is currently underway, and a public meeting will be held the following week to discuss this in detail. She invited the Committee members to attend and/or review the document as it stands thus far. The project is “all about preserving the character” of the neighborhoods.

Ms. Parker asked if the term “character” was used legally. Attorney Miller replied that there is not a definition of “character” in the ULDR, but noted that this could

be addressed. She added that the term is more often used when referring to compatibility.

Chair Mammano asked Mr. Ledbetter if any of the definitions on p.5 “comport with what goes on in a crew quarter.” She pointed out that they are non-residential uses but “permit a residential kind of use.”

She explained that if these definitions accommodate crew quarters, the question became one of where it is appropriate to have crew quarters; however, if no definition addresses crew quarters as a use, Zoning must respond to and define this use. Her question, she concluded, was whether any of the current definitions are applicable to crew quarters.

Mr. Ledbetter agreed it is important that crew quarters “not be shoehorned into areas they don’t belong.” He noted that some of the open cases listed involve crew houses which were put into “places that upset the neighborhood peace and tranquility;” however, he was also aware of crew houses in other neighborhoods that are considered an improvement, as they bring in a clientele with “median income of approximately \$60,000” who are often there to attend schools.

Chair Mammano explained she wanted to “break this down” into a definition of use and where that use is permitted. If the Ordinance does not have a definition that would include use as crew quarters, she felt it should develop “a good working definition” that would apply to that use; the Committee could then discuss how that use affects the character of communities, and where it would be appropriate to include this use. She reiterated that she did not believe any of the current definitions “serve the purpose.”

Mr. Ledbetter stated he was not surprised that crew housing did not fit any of the existing uses, as the marine industry itself does not fit into “everybody’s ideal of what yachts and yachting should be like,” particularly with regard to foreign flag vessels. He advised that the best suggestion he has heard is to start an association for crew housing, which would dictate housing laws, minimum standards of cleanliness and maintenance, and standards of attendance, for example.

Mr. Forman asked if crew houses are for individuals who are “between vessels” and are perhaps seeking a place to stay while they look for work. Mr. Ledbetter agreed this is one use, but advised the majority of individuals using these structures is made up by students, including merchant mariners. He noted that the City’s schools have grown along with the yachting industry, which has grown in “double-digit numbers” for the last 15 years. He noted that some structures “masquerade as crew houses” and house individuals with “no stability,” while other crew quarters screen their residents “strenuously.” He estimated 35-40% of the residents of crew quarters are between jobs.

Mr. Forman noted that halfway houses are similar in their basic function to crew quarters in that multiple individuals are staying in a residential area. Attorney Miller stated halfway houses are defined by the ULDR as social service residential facilities, and are listed as a permitted or conditional use in certain zoning districts. She suggested the regulations for these facilities might provide the Committee with “something to compare to.”

Mr. Mastriana stated there is a concern about allowing the marine industry to “stretch too far,” and he did not wish to reach the point at which housing for all other City colleges, for example, merited the provision of their own housing. He suggested the regulations for halfway houses could be applied to crew quarters, such as limiting them to certain zoning areas; if these areas are not properly zoned to permit this use, they could be rezoned. He felt this was preferable than extending “short-term rental for crew basis” throughout the City’s residential housing, or setting up housing regulations that only apply to a single industry, as this could perhaps be easily contested.

Mr. Ledbetter noted that over half the complaints about crew quarters came from RS zones, or single family housing. He felt this suggests RS zones have lighter density and expect greater privacy, and the answer could be to “ban short-term housing or define it” in these zoning districts, as it does not fit into the “peace and tranquility of these lower-density zoned residential areas.”

Chair Mammano felt the idea of forming an association to be “fascinating,” as individuals would be certified to determine whether or not they fall into the appropriate category; if an individual is certified, s/he would be allowed to be housed in a zone in which residential use is not normally permitted. She did not feel it would be impossible to develop appropriate criteria to distinguish between crew quarters and other short-term rentals. Mr. Ledbetter added if an association required these short-term residences to submit to inspections and other City controls, there would be an effective way to enforce the peace and tranquility of a neighborhood.

Chair Mammano recalled that Ms. Ehle had provided a draft copy of how other cities handle this issue, and asked that this be distributed to the members.

Ms. Ehle referred the members to the Code section excerpts, explaining that they correspond with the sections shown under Applicable ULDR Sections. This shows the districts in which specific uses are permitted as well as definitions of use.

Chair Mammano noted that some aspects of Bed & Breakfast use could apply to crew quarters. Mr. Ledbetter pointed out, however, that crew quarters do not serve meals, although full kitchens are provided. Ms. Ehle added that other

aspects include a 14-day time limit on a stay and a registry of all guests. Other locational limitations exist when Bed & Breakfast facilities are located in residential districts, including minimum lot frontage and proximity to rights-of-way. She also noted the specifications for hotel use, including dimensional requirements, number of rooms, amenities, accessory uses, and other considerations.

- **At Present, How the Code is Applied**

Attorney Miller noted that the City Attorney's Office and Planning and Zoning had worked together on a memorandum from November 2009, which outlines some of the issues related to short-term rentals. She called the members' attention to the issue of tourist development and tax regulations, explaining that these do not apply in the City in terms of enforcement; what the City must apply is the Code.

The memo refers to "the Castro case," including the basis upon which it was prosecuted. A single family dwelling was used, in this case, for nightly, weekly, and monthly fees. Attorney Miller advised that the parameters for the case include the definitions of residential and non-residential use, noting that the definition of non-residential "has been set to be 'everything that is not residential,'" including hotels.

She pointed out that the definition of a hotel includes the phrase "transient living accommodations" as well as "a place where sleeping accommodations are provided for pay overnight." While the term "transient" is not defined by a period of time, Attorney Miller advised the City believes this term is enforceable. She concluded, however, that if the Committee wishes to be clearer regarding the enforcement of short-term rentals, they may want to clarify these words. She also noted that crew quarters may fit into this category, as there is not a clearly defined use between residential facilities and transient accommodations for overnight pay.

She noted that in order to legally function as a hotel, a property may not be located in RS-8 zoning; if a structure is in a district that allows hotels, but does not have all the necessary Code qualifications for a hotel, it could be cited in this district as well. The structure and permitted use must be combined. She also pointed out that the issue is not necessarily about renting, but about the use for which the property is rented. She concluded that the line drawn for short-term rental use could be drawn more clearly, and perhaps new uses, such as crew quarters, could be addressed by the ULDR.

d. Discussion

Chair Mammano commented that while short-term use may appear to be a zoning issue, she considered it to be a public policy issue, as it is a question of

whether the community wishes to maintain the existing Code, or if policymakers wish to change the Code to allow short-term rentals in residential districts, perhaps limiting this to “a certain subset of users.” She noted that the City’s Comprehensive Plan states they are supportive of marine industries, and “carving out a special class of residential use” for marine industries would comport with this Plan.

Mr. Ledbetter requested clarification that if Code does not specifically state a particular permitted use, “everything else is not permitted.” Ms. Ehle read from Code, stating that “a prohibited use is any use which is not listed as permitted, conditional, or accessory use in a zoning district” or is not “substantially similar” to permitted uses.

Chair Mammano asked who makes the interpretation of what is considered “substantially similar.” Attorney Miller referred to Section 47, Article 9, which lists all boards that deal in Planning and Zoning items; it also states that “there shall be a Zoning Administrator in the Department.” The current Zoning Administrator is Mr. Burgess, who makes the final interpretation.

Mr. Ledbetter asked if the Castro case has “the weight of law,” and asked if the case serves as precedent. Attorney Miller replied that the case was appealed and lost; however, she did not wish to speak to precedent, and would refer the question to a Code Enforcement attorney. As the window for further appeals has closed and the case is considered “in the past,” it is possible for the Committee to discuss it.

Mr. Forman stated that his understanding is the case was binding for the litigants, but as it was not appealed further and there are no written opinions, it does not provide guidance. He observed that the crux of the issue is how to define a short-term residential use.

Mr. Mastriana advised that in his neighborhood, short-term rental of homes on the beach for events, such as weddings, has become a great concern; he estimated that “10 to 20 homes are rented on a daily/weekly/weekend basis.” This is a problem in other neighborhoods as well, with “single family housing literally used as hotels.”

Ms. Ehle noted that this issue has arisen more than once since the Committee began meeting, and suggested that it could be included as a future Agenda Item.

Mr. Forman advised that the landlord-tenant Statute discusses weekly rentals, and this must be reconciled “from a City standpoint.” Mr. Mastriana pointed out that this statute is subject to local zoning. Attorney Miller offered to provide a copy of the State Statute for discussion on how it is applied to zoning law.

Chair Mammano asked if renting a home for a wedding is considered commercial use. Attorney Miller explained this is also part of the problem, and noted that the effect is different between renting a home for a one-time use and renting it “20 times.”

e. Set Agenda for Next Meeting

Chair Mammano stated the Committee would like to have the following information on next month’s Agenda:

- The Castro case memorandum;
- Information on how other cities have defined and dealt with short-term residential use;
- The State Statute regulating landlord-tenant relationships;
- Non-residential wedding v. residential wedding attributes.

Mr. Mastriana also requested further information on the tourist tax for use under six months.

Chair Mammano also asked that draft minutes be provided to the members via email, and an email system be established allowing members to share information with Staff for dissemination among members. Attorney Miller added that this must include “the understanding that everybody else does not reply” to this email in consideration of the Sunshine Law.

f. Other New Business

Mr. Forman asked if it was possible to attend a meeting telephonically. Attorney Miller explained that the City Commission’s policy does not permit electronic attendance for advisory committees or boards.

Chair Mammano suggested that the Committee consider, after six months, producing a draft or interim report to contain all the material they have gathered and discussed. Mr. Mastriana proposed establishing a schedule of what the Committee would accomplish and when it will be presented to the City Commission.

Ms. Ehle agreed that an interim report and schedule are both “great ideas” and could be passed along to the City Commission if the Committee wishes. Chair Mammano stated the Committee will talk about these issues at greater length in the future.

Mr. Forman recommended that each Committee member have the opportunity to articulate some of the specific issues that concern them; he felt it would be helpful to “understand where everybody is coming from,” and that a goal could be to address everyone’s concerns.

Mr. Mastriana advised that another issue facing some neighborhoods occurs when large homes are given to charities and tax-deducted. These homes are often used to host "major events" for large rental fees. He observed that it should be considered whether this is a legal activity or should merit "a major fine."

V. Unfinished Business

There was no unfinished business at this time.

VI. For the Good of the Committee

Nothing at this time.

VII. Communication to the City Commission

None at this time.

VIII. Announcements

None at this time.

There being no further business to come before the Committee at this time, the meeting was adjourned at 5:30 p.m.

[Minutes prepared by K. McGuire, Prototype, Inc.]