

**SHORT TERM RESIDENTIAL USE COMMITTEE
THURSDAY, MAY 26, 2011, 3:30-5:15 P.M.
CITY HALL, 100 NORTH ANDREWS AVENUE
CITY COMMISSION CHAMBERS, 1ST FLOOR
FORT LAUDERDALE, FL**

**CUMULATIVE
MEMBER**

		MAR 2011 / FEB 2012	
		Present	Absent
Marilyn Mammano, Chair	A	2	1
H. Collins Forman, Jr., Vice Chair	P	3	0
Genia Ellis	P	3	0
Larry Isakowitz	P	1	2
Dwight Ledbetter	P	3	0
Ronald Mastriana	P	3	0
Lula Myers	A	2	1
D.J. Parker	P	3	0
Annette Ross	P	2	1
Peter Witschen (arr. 3:48)	P	3	0

At this time there are 10 appointed members to the Board, which means 6 would constitute a quorum.

Staff

Adrienne Ehle, Liaison, Planner III, Planning and Zoning Department
Deborah Rutkowski, Assistant Planner, Planning and Zoning Department
Sharon Miller, Assistant City Attorney
D'Wayne Spence, Assistant City Attorney
Ginger Wald, Assistant City Attorney
Barbara Hartmann, Recording Secretary, Prototype, Inc.

Communications to City Commission

Motion made by Ms. Ellis, seconded by Mr. Ledbetter, to transmit the meeting minutes of April 28, 2011 to the City Commission, and that the Committee be given an opportunity to be heard at the June 7 Conference Agenda meeting.
Amendment made by Mr. Witschen, accepted by Ms. Ellis and Mr. Ledbetter, to include the draft minutes of the May 26, 2011 meeting, so the City Commission may see the context of this request. In a voice vote, the **amended motion** passed unanimously.

I. Call to Order

Vice Chair Forman called the meeting to order at 3:31 p.m.

II. Roll Call

Roll was called and it was noted a quorum was present. Ms. Ehle introduced the Staff members.

III. Approval of April 28, 2011 Minutes

Motion made by Ms. Ellis, seconded by Mr. Mastriana, to defer [approval of] the minutes to the next meeting.

Ms. Ellis explained that the City Attorney's Office has forwarded additional information to the members; she said requests for corrections to the draft minutes may be negated by this information, and she did not believe the corrections offered were fully accurate.

Vice Chair Forman asked if Ms. Ellis felt the minutes of the April 28 meeting were an accurate reflection of what occurred at that meeting. Ms. Ellis said she felt they were accurate without the corrections offered. Vice Chair Forman stated that potential modification of the minutes was a separate issue.

Ms. Ellis **withdrew** her **motion**.

Motion made by Ms. Ellis, seconded by Mr. Mastriana, to defer the minutes until the end of the meeting, after the Committee has heard from the City Attorney, and then move them forward if the Committee so chooses.

Mr. Ledbetter requested further clarification of the issue. Vice Chair Forman explained that he felt the way the motions were recorded in the minutes was not appropriate for a formal resolution to present to the City Commission, or a clear communication of what the Committee intended to do. While he felt the wording of the motions was accurate, he did not feel they would be understandable to the City Commissioners. He advised his intent was only "to streamline the process" in order for the Committee to reach its goal of completing its work by June 1.

Ms. Ellis said she had requested the approval of minutes be deferred because she is aware there is information the Committee needs to hear, which she said may determine whether or not they meet again. She said while the minutes do accurately reflect the meeting of April 28, there is additional information that has since come to light.

Ms. Ellis **withdrew** her **motion**.

Mr. Mastriana said his understanding is that, due to action taken by the State legislature, "it makes it very confusing what this Committee is all about." He said

he would also like to hear from the City Attorney's Office before the Committee takes any action at today's meeting.

Mr. Ledbetter said the fact that the State legislature voted for action that "makes these proceedings moot" does not change the fact that the Committee voted upon and passed motions at the previous meeting.

Motion made by Mr. Ledbetter, seconded by Mr. Isakowitz, to approve the minutes of the April 28, 2011 meeting. In a voice vote, the **motion** passed 4-3 (Ms. Ellis, Mr. Mastriana, and Ms. Ross dissenting).

IV. New Business

a. Chair / Vice Chair Update

Vice Chair Forman recalled that at the previous meeting, the Committee had dispensed with the Public Comment section of the meeting. For this reason, he suggested that it may be appropriate to allow Public Comment at this time in today's meeting, before any action is taken by the Committee.

Mr. Mastriana requested that the Committee hear the update from the City Attorney's Office before proceeding with Public Comment. He said he felt this would be the most important information for everyone to hear at today's meeting, including members of the public.

Ms. Ehle agreed to defer the Liaison's Report as well.

The following Item was taken out of order on the Agenda.

b. City Attorney's Office Update: SB 476 and HB 833

Attorney Spence advised that the Committee members have received a copy of Enrolled HB 883, which has been presented to the Governor. If the Governor signs this legislation, or chooses not to sign it within seven days, it will become law. He noted that there have been some changes to the bill since it was previously discussed by the Committee; however, the sections significant to the Committee have not changed substantially. Further analysis from the City Attorney's Office resulted in a change in their view of how the bill affects the Committee. He invited Attorney Wald to address these issues.

Attorney Wald said it is the interpretation of the City Attorney's Office that HB 883 will preempt any type of potential new Ordinance from restricting the use of vacation rentals, which the bill defines as "a unit or group of units in a condominium cooperative or time share plan, or any individually or collectively owned single-family, two-family, or four-family house or dwelling unit, and is also

a transient public lodging establishment.” A transient public lodging establishment was defined as a unit or dwelling rented to guests more than three times in one calendar year, for periods of less than 30 days or one calendar month, or which is advertised to the public as being regularly rented to guests. Attorney Wald said these are changes to the definitions previously included in the Statute as to rentals.

She continued that any Ordinance in effect prior to June 1, 2011 will stand; any Ordinances with regard to the use, occupancy, and classification of vacation rentals that would be enacted after June 1, 2011 would not be allowed.

Attorney Wald said the purpose of the Committee, when the City Commission created it by Resolution, was to discuss some of the issues involved with short-term use of residential properties. If the bill becomes law, any recommendations from the Committee to the City Commission that would involve restrictions on uses and occupancy of vacation rentals would not be allowed. She explained that this was a timing issue, as any new Ordinance would require two readings to be done before June 1. The first meeting of the City Commission after tonight’s meeting will take place on June 7.

She concluded that the Committee may still make recommendations to the City Commission, or may be given other purposes to address; however, any regulation of short-term rentals would be made moot if HB 883 becomes law.

Mr. Witschen arrived at 3:48 p.m.

Vice Chair Forman requested clarification that it is the interpretation of the City Attorney’s Office that the bill, should it become law, would dictate that the City has no way to address short-term rentals. Attorney Wald said she could not confirm this statement. She could, however, advise that should HB 883 pass, any recommendation to the City Commission that would result in a new Ordinance would be specifically prohibited by this Statute after June 1, 2011. If recommendations are made “short of an Ordinance,” the Committee may make them, but she reiterated that the Committee’s original stated purpose was to address short-term residential use issues.

Vice Chair Forman asked if Attorney Wald would agree that an Ordinance stating vacation rental operators in the City must register their properties with the City would be struck down as a violation of State law. Attorney Wald said this was potentially true, as it dealt with regulation. She said any recommendations would have to be reviewed by the City Attorney’s Office to determine whether or not they would be in violation of the bill if it becomes law.

Ms. Parker noted that the term “vacation rentals” is rather generic, and noted there are other categories that fall under this definition, such as Social Service

Residential Facilities (SSRFs) or sober houses. She expressed concern that the new law might allow someone to establish such a facility into any neighborhood. Attorney Wald advised there are already Ordinances that deal directly with SSRFs; therefore they are still valid, even if HB 883 passes. The preemption of local Ordinances only applies to Ordinances that would take effect on or after June 1, 2011.

Mr. Witschen asked if there could be clarification of a provision in existing Code, which defines a hotel as a facility that allows for transient occupancy of less than a specified time. He asked if there was anything in this definition that might “fly in the face” of HB 883. Attorney Wald said it could, as this would mean changing the existing definition of hotel to interpret other Ordinances that are already on the books. She advised that she would recommend discussing this question further with Attorney Miller to determine if such a change would be a sufficient trigger to the proposed law to avoid it as something that would violate the new statute.

Ms. Ellis asked if there is an existing Ordinance precluding boardinghouses. Attorney Miller said this is not a listed prohibited use, but is also not a listed permitted use. Ms. Ellis asked if those neighborhoods in which a particular use has not been listed as permitted are now “trumped” by the new legislation. Attorney Miller said because there is no current definition of boardinghouse, the meaning of the term would have to be defined; if the definition resembled that of a vacation rental, the new legislation would supersede its exclusion.

Mr. Mastriana asked if the City Commission has discussed this issue at all in any of their Conference Agenda meetings. Attorney Wald said she was not aware of any such discussion, although she advised this did not mean it would not be discussed at the next meeting, which is on June 7.

Vice Chair Forman asked if it was true that the City is currently attempting to regulate vacation rentals under the fact that they are not a listed permitted use in the ULDR. Attorney Miller said the City Attorney’s Office has not regulated these rentals. Vice Chair Forman asked if the position he had described was taken by the City Attorney’s Office with respect to “the Castro decision.” Attorney Wald said cases currently in ongoing litigation could not be commented upon.

Vice Chair Forman suggested before the Committee went any further at this time, they should seek direction from the City Commission regarding whether or not the Committee should continue. He advised that before adjourning, he would like to give the public an opportunity to address the Committee with regard to the new information.

Mr. Mastriana disagreed, stating that he did not believe there was reason for further comment before the Committee receives direction from the City

Commission. Mr. Witschen said he was still interested in pursuing his line of questions, which included definitions of what a hotel is or is not. He felt the Committee may be able to “propose an alternative.” Mr. Mastriana said he did not believe this would be possible in light of the legislative action.

Ms. Ellis pointed out that there are still motions passed by the Committee that would go to the City Commission as part of the April 28 meeting minutes, which could help the Commission make an assessment of where the Committee should go from here. Mr. Mastriana asked if the motions would be before the City Commission at their June 7 Conference Agenda meeting. Ms. Ehle said if the Committee wished, they could be presented as communications to the City Commission, which would transmit them to the Commission at an earlier time.

Motion made by Mr. Mastriana to adjourn. [The motion was not seconded.] In a show of hands, the **motion** failed 7-1 (Mr. Mastriana dissenting).

Motion made by Ms. Ellis to transmit the meeting minutes directly to the Commission, so the Committee can be heard on the next Agenda, June 7.

It was clarified that the **motion** was also intended to be sent as a communication to the City Commission.

Mr. Ledbetter **seconded** Ms. Ellis’s **motion**.

Ms. Parker recalled that the motions made at the last meeting had included conditions, such as registration or licensing, and asked how this would sound to the City Commission, as those are no longer possibilities according to new legislation. Ms. Ellis stated that because the Committee is requesting to come before the Commission, they can address the Commissioners directly, get specific direction, and express their concerns.

Vice Chair Forman requested clarification that Ms. Ellis’s **motion** was also intended to ask the City Commission for an opportunity to be heard at the June 7 Conference Agenda meeting in addition to transmitting the minutes from the April 28 meeting. This would mean any Committee member who wished to appear at the Conference Agenda meeting could be heard on this issue. Ms. Ellis confirmed that this request was part of her **motion**.

Mr. Witschen said he would like to **amend** the **motion** to transmit the draft unapproved discussion here [draft minutes of today’s meeting] so the Commission can see the context. Ms. Ellis and Mr. Ledbetter accepted the **amendment**.

Ms. Ehle clarified that sending a communication to the City Commission was not the same as placing an item on the Conference Agenda. She explained that the

deadline has passed to have an Agenda Item added to the June 7 meeting; however, a communication to the City Commission will be sent to the City Commission right away. In addition, she advised that any Committee member may attend the Conference Agenda meeting and speak to the issue at hand.

Mr. Witschen said this deadline was "self-imposed." He stated he would like to request the Committee be added to the June 7 Agenda.

Attorney Wald advised that any member of the public, or the Committee, may ask to be heard at a particular meeting. Mr. Witschen said it would not be appropriate to make this request on behalf of the Committee without the Committee's approval.

Ms. Ehle said if an individual would like to represent the Committee before the City Commission, this could be done; an individual could also attend and present his or her own comments if he or she so chose.

Vice Chair Forman stated that the first **motion** would send the draft minutes of the May 26, 2011 meeting to the City Commission along with the communication to the City Commission and the approved minutes of the April 28, 2011 meeting. In a voice vote, the **motion** passed unanimously.

He continued that the **amended motion** would transmit the April 28, 2011 minutes, the May 26, 2011 draft minutes, and the communication to the City Commission, along with a request to be heard on the June 7, 2011 Conference Agenda meeting. In a voice vote, the **amended motion** passed unanimously.

He advised that the Conference Agenda meeting will be held at 1:30 p.m. in the 8th Floor Conference Room.

c. Public Comment

Vice Chair Forman said if there was no objection, he would like to invite members of the public to come forward for an abbreviated Public Comment section. Ms. Ellis noted that any members of the public who came forward should bring new information; she requested that if the Committee was to "hear the same arguments again," the individuals should instead address the City Commission.

Kara Canizzaro, attorney for the South Florida Rentals Association said she has seen articles in the *Sun-Sentinel* in which the City Attorney "has mentioned a 30-day duration." She requested clarification of this, as well as clarification of the City Attorney's position on "preemption of the statute...as it relates to the 30 days." She explained that she has not been able to find reference to a 30-day duration in the Code.

Attorney Miller said the reference was taken out of context, and clarified that there is no 30-day provision in the Code.

d. Other New Business

Ms. Parker asked if there would be a single speaker attending the Conference Agenda meeting on June 7, or if all interested members of the Committee should plan to attend. Vice Chair Forman said this would be an individual decision, noting that Mr. Witschen, Ms. Ellis, and Mr. Mastriana had expressed interest in attending. He concluded that the members were free to address the City Commission in any way they chose, including as a member of the general public.

V. For the Good of the Committee

None.

VI. Communication to the City Commission

The communication to the City Commission was as determined earlier in the meeting.

VII. Announcements

Vice Chair Forman thanked the members of City Staff who have worked to support the Committee.

VIII. Adjournment

There being no further business to come before the Committee at this time, the meeting was adjourned at 4:16 p.m.

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