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April 14, 2023

VIA FAX (503.842.1384), EMAIL, AND FIRST CLASS MAIL

William K. Sargent
Tillamook County Counsel
Tillamook County Courthouse
201 Laurel Avenue
Tillamook OR 97141
Email: bill@williamksargent.com

Re: Tillamook County Short-Term Rentals

Dear Mr. Sargent:

We last wrote to you on behalf of our client Oregon Coast Hosts on February 17, 2023 with concerns about the proposed revisions to Ordinance 84. Since that time, the County has done little to respond to those concerns and in some cases has specifically tabled issues until after the STR advisory committee disbands. Since these issues seem destined for your desk in any event, we write again to highlight several legal issues that continue to threaten Tillamook County's current effort to address and bring balance to its STR landscape. By doing so, we do not mean to exhaustively recite all of our client's concerns, both legal and practical, with the draft ordinances it has seen so far.

First, as discussed in our prior letter, current permit holders must be grandfathered into whatever scheme the County adopts next. ORS 215.130(5); *see also Briggs v. Lincoln County*, LUBA No. 2022-030 (August 8, 2022). And they must be able to maintain that permit so long as they continue the use. ORS 215.130(5). Any outcome that does not recognize and codify these requirements will result in litigation and substantial liability for the County. Also, at least one draft of the new ordinance has proposed a five-year phase out for existing permits. This is insufficient and illegal—the use must be allowed to continue indefinitely. *Briggs* at 20 (five-year phase out violated ORS 215.130(5)). Frankly, we think the County is receiving poor analysis of the *Briggs* case from counsel for those who supported the invalidated Lincoln County ballot measure. We are confident that following your own review of *Briggs* you will advise the County and the advisory committee accordingly and suggest that the next draft ordinance leave no doubt about these outcomes.

Second, comments on the most recent draft ordinance make clear the question of transferability has not yet been definitively resolved. As you know, LUBA directly addressed this issue in *Briggs* and held that counties cannot impinge on the transfer of an STR permit to a new owner of the subject property. *Briggs* at 19. The threat to transferability has already chilled sales of some homes in Tillamook County—Measure 49 liability is ripening before our eyes. The longer the issue remains open, the more likely litigation will commence. We request that you advise the County and the advisory committee that they must maintain full transferability, at least for current permit holders.

Third, whether or not the new STR ordinance characterizes the regulation of STRs as “land use”—or even attempts to specifically disavow that it is land use—is irrelevant. Much time and energy has been spent in advisory committee meetings on this red herring issue, and the current draft ordinance is part of the problem. The County is not going to strip LUBA of jurisdiction or somehow trick a tribunal simply with some post-hoc statement in an updated code. The County needs to recognize that STR regulation has been, and will continue to be, a land use decision. And, as a land use decision, the County needs to comply with the notice requirements of ORS 215.503 and County LUO Section 10.090 before enacting any new ordinance, but there has been no indication so far that the County intends to do so. We request that you advise the County and the advisory committee of their obligations in making land use decisions and that they should not engage in such gamesmanship.

Fourth, the new ordinance cannot subject STR operators to different building code standards than the state building code, unless expressly authorized by the state. ORS 445.040(1). The state building code bars local government from requiring upgrades to existing structures to meet code changes just because the code has changed (*see, e.g.*, 2021 Oregon Residential Specialty Code (ORSC), Section R102.7). Language in the draft ordinance requiring automatic periodic upgrades to meet new building code standards, even in the absence of a proposed alteration of the structure, would not be enforceable. We request that you advise the County and the advisory committee of these plain legal facts so that, again, no additional energy need be wasted on these legal issues.

Fifth, the language in the draft ordinance requiring STR owners to indemnify the County is overbroad and is preempted by the state Tort Claims Act. ORS 30.260 *et seq.*

We had hoped—based on earlier representations from the County advisory committee leadership—that these (and other) issues would be rectified through the advisory committee process. In addition to the issues discussed above, our clients



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remain strongly invested in the (apparently tabled) issues of distance limitations and caps on the number of permits, and would like to see a plan and timetable for meaningful discussion of those issues by the advisory committee before it adjourns. Unfortunately, it is becoming increasingly clear that the County is reticent to address even the relatively straightforward issues discussed above, and it seems to be a foregone conclusion that many aspects of the draft ordinance will not be discussed by the STR advisory committee.

Thus, we believe it is time for the County to clarify its position on these issues. We would welcome a formal response from you or a meeting to discuss. We know these issues are tricky politically, but there are clear legal answers on all of them and ignoring those answers only hinders the County's overall goal to reform the STR permitting process. Our client remains interested in a collaborative solution, but collaboration requires both sides to be engaged and if that is not the case, then OCH will consider other options.

Thank you for your time and attention.

Sincerely,



David J. Petersen



Danny Newman

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Cc: OCH Board of Directors

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