

City Council Action Item Cover Sheet

April 4, 2018

Agenda Item:

Ongoing Discussion on Vacation Rentals

Question Before Council:

Council question related to vacation rentals as a "Business"

Person/Group Initiating Request:

Council discussion

Item Summary/Background:

Memo from City Attorney Ross Williamson

**LOCAL
GOVERNMENT
LAW GROUP**

A member of Speer Hoyt LLC

Memo

To: Yachats City Council
Shannon Beaucaire

From: Ross M. Williamson

Date: March 2, 2018

Re: Council Question Related to Vacation Rentals as a "Business"

Question

At its February 14 meeting, the Council discussed the current status of vacation rental regulations. Although the full context of the question presented to me is a little difficult to grasp from the draft minutes of the meeting, I believe there was a discussion of zoning issues related to vacation rentals and a question about whether a vacation rental property could transform a property into a business use that would then not be allowed in the City's R-1 residential zone.

The specific question I was asked is: At what point does a vacation rental become a business in the R-1 zone?

Short Answer

Under the City's current zoning and land use regulations, a vacation rental is a residential use. Converting a single-family residential structure in the R-1 zone from an owner-occupied property to a vacation rental does not change the use of the property from single-family residential.

Occupancy of a single-family structure by a family unit on a short-term basis is no different than occupancy of a single-family structure by a family unit on a long-term basis. In addition, how the property is paid for (whether owned outright, mortgaged, long-term rental, or short-term rental) does not change the "use" of a single-family structure into some unspecified business use simply because the property's owner is not the resident and the property's owner may be realizing income from the property. A property's use is neither defined by whether the property is owner-occupied nor defined by whether the resident is paying rent or loan payments for the tenancy.

Discussion

Chapter 9 of the Yachats Municipal Code regulates "uses" within the City's various zones. The term "use" is defined in YMC 9.040.030 as: "the purpose for which land or a building is arranged, designed or intended, or for which either land or a building is, or may be occupied."

Vacation rentals are regulated within the City's business regulations in Chapter 4.08, but are not a separately defined use category within Chapter 9. Thus, to classify a single-family home being used as a vacation rental, we look to the use tables to determine how it should be classified. The City's R-1 residential zone permits "residential home" as a use permitted outright. YMC 9.12.020(G). There is no other classification that would fit better for a single-family home being used as a vacation rental.

Chapter 9 defines the term "business" as "a commercial enterprise carried on for profit." YMC 9.04.030. But, the various use tables do not use the term "business" as an independent use classification. For example, the City's C-1 retail commercial zone permits "business or professional office" uses. YMC 9.28.010(F). As a result, the City's use classifications deal with uses in terms of either how a structure on the property is designed or how a structure is occupied. In the C-1 zone, it is an "office" that is used for business purposes that classifies an allowed use within the C-1 zone. Similarly, it is the residential use of a single-family home that classifies a single-family structure as an allowed use within the R-1 zone. Whether an owner of a single-family home is making income off of the residential use is not a factor considered by the City's use classifications. (Chapter 9 defines the term "owner-occupied dwelling" but a search revealed that the term is not used in reference to any use category.)

Under the City's current zoning and land use regulations, so long as a single-family residential structure is used as a residential structure, there is no point at which the single-family residential structure would transform into a "business" when the residential structure is rented on a short-term basis as a vacation rental. Occupancy of a single-family home in a residential capacity, whether short-term tenancy or long-term tenancy, meets the City's "residential home" use classification that is permitted outright in the R-1 zone.