What a difference a year makes! On May 26, 2015, the City's consultant, ECONorthwest, issued its "Hood River Housing Needs Analysis." The Analysis—paid for with taxpayer dollars—recommended three separate strategies. STRs were only one of those (#2). The Analysis' concern with STRs was that *newly constructed* STRs "would consume Hood River's surplus residential land." To prevent that, there were four action steps recommended. None called for phasing out STRs or disallowing STRs closer than 250 feet. (Interestingly, the now-proposed STR legislation seeks to reduce density while the Analysis recommended increasing it!)

In the past year, Planning has ignored the other two strategies: increasing land use efficiency (by changing zoning classes to increase density) and developing affordable housing. For affordable housing, the Analysis wisely calls for tax abatements, TIFs, reduced multifamily parking, and non-profit preferences on surplus properties. The Analysis does not say that regulating STRs will help affordable housing.

If Planners really want to promote affordable housing, why are they not following their own consultant recommendations by proposing legislation implementing the affordable housing strategy?

Perhaps they and their supporters have found it easier to conflate affordable housing and vacation homes and demonize people who own them. Mr. Metta's letter in the February 24 *News* suggests this. He attacks the "wealthy" out of towners as the "bad guys" because they don't live here. He say that vacation rental discussions are "fundamentally discussions on affordable housing," that STRs are the reason that the lives of the "working poor" are being "squeezed out."

Those zenophobic and irrational arguments are not a proper foundation for any legislation let alone comprehensive housing policy. The City needs to return to its own Analysis to see that regulating or eliminating STRs will not help affordable housing but will hurt the community's $75 million tourism business.

Ask yourself this: If we eliminated every single vacation home rental tomorrow, would we gain even one unit of affordable housing? Since vacation home values are exceed $350,000, the obvious common sense answer is "no."

Tom Kirkwood
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RECEIVED

MAR 02 2016

CITY PLANNING DEPT.

Cindy Walbridge

From: Laurie Balmuth <llbalmuth@gorge.net>
Sent: Wednesday, March 02, 2016 8:58 AM
To: Cindy Walbridge
Subject: Vacation Home Regulation Written testimony Ballot Measure 49

The best description of the Measure 49 I could find.

The following are the first three sections of the law; for a complete version, see Oregon State Land Use site.

1. If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.
2. Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.
3. Subsection (1) of this act shall not apply to land use regulations:
    1. Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;
    2. Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
    3. To the extent the land use regulation is required to comply with federal law;
    4. Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or
    5. Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

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Cindy Walbridge

From: Laurie Balmuth <llbalmuth@gorge.net>
Sent: Wednesday, March 02, 2016 9:02 AM
To: Cindy Walbridge
Subject: Vacation Home Regulations Written Testimony Yogman v. Parrott

This is the case where the Oregon Supreme Court ruled that Vacation Rentals are a Residential use....

Supreme Court of Oregon,En Banc.

Peter H. YOGMAN and Diane E. Walker, husband and wife, Raymond C. Miller and Myrtle L. Miller, husband and wife, and Robert W. Knapp and Ruth E. Knapp, husband and wife, Petitioners on Review, v. Gregory A. PARROTT and Myra L. Parrott, husband and wife, Respondents on Review.
CC 94-4377; CA A89262; SC S43641.
Decided: May 30, 1997

Judith N. Selich, Newport, argued the cause and filed the petition for petitioners on review. Stephen F. Crew, of O'Connell Ramis Crew Corrigan & Bachrach, Portland, argued the cause for respondents on review. With him on the briefs was Gary Firestone.

Plaintiffs and defendants own houses in a beach-front subdivision in Lincoln County. Plaintiffs' and defendants' lots are subject to a set of restrictive covenants, among them the following:

"All lots within said tract shall be used exclusively for residential purposes and no commercial enterprise shall be constructed or permitted on any of said property."

Defendants use their beach house as a vacation home and, when they are not using it themselves, they rent it for short periods of time to others, who likewise use it as a vacation home.

Plaintiffs filed a complaint seeking (a) a declaration that defendants' rental activity violates the quoted restrictive covenant and (b) an injunction enjoining such activity. After defendants answered, the parties filed cross-motions for summary judgment. The trial court granted plaintiffs' motion and denied defendants' motion, reasoning that defendants were "engaging in the commercial activity of a rental business." Accordingly, the trial court entered a judgment for plaintiffs. Defendants appealed. The Court of Appeals reversed and remanded for entry of judgment for defendants, concluding as a matter of law that defendants' activity does not violate the terms of the restrictive covenant. Yogman v. Parrott, 142 Or.App. 544, 921 P.2d 1352 (1996). We now affirm the decision of the Court of Appeals.

For present purposes, the facts are not in controversy. Defendants live in Portland. They rent their beach house to others of their choosing, on a short-term basis, when they are not using it. Defendants and their renters use the property for vacations. Defendants charge a daily or weekly fee to renters and allow as many as ten people and five vehicles at a time. Defendants provide their renters with a list of rules for using the house, including arrival and departure times. The transactions concerning the rental of defendants' beach house do not occur on the premises. Negotiations occur elsewhere, and payment is made elsewhere. Defendants provide no goods, staff, or services at the house. For example, renters use their own linens, do their own cleaning, buy and prepare their own food, and take out their own garbage.

Defendants are not required to have, and do not have, a business license.

At least one other house in the same subdivision has been used as a short-term vacation rental.

To interpret a contractual provision, including a restrictive covenant, the court follows three steps. First, the court examines the text of the disputed provision, in the context of the document as a whole. If the provision is clear, the analysis ends.

"When considering a written contractual provision, the court's first inquiry is what the words of the contract say * * *. To determine that, the court looks at the four corners of a written contract, and considers the contract as a whole with emphasis on the provision or provisions in question. The meaning of disputed text in that context is then determined.

In making that determination, the court inquires whether the provision at issue is ambiguous. Whether terms of a contract are ambiguous is a question of law. In the absence of an ambiguity, the court construes the words of a contract as a matter of law." Eagle Industries, Inc. v. Thompson, 321 Or. 398, 405, 900 P.2d 475 (1995) (citations omitted).
See also ORS 42.230 (in construing a document, the court is "to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted"); Johnson v. Campbell, 259 Or. 444, 447, 487 P.2d 69 (1971) (restriction of property "for residential use only" did not mean that the property was to be used only for single-family residences; that interpretation would add to and thus be inconsistent with the express terms of the covenant).

We proceed to consider the text and context of the restrictive covenant at hand. We first address whether defendants' rental activity violates the requirement that the property "be used exclusively for residential purposes." "Residential" means, as relevant, "used, serving, or designed as a residence or for occupation by residents * * * [;] of, relating to, or connected with residence or residences." Webster's Third New Int'l Dictionary 1931 (unabridged ed 1993). In turn, "resident" refers to "one who resides in a place: one who dwells in a place for a period of some duration." Ibid. "Residence" is defined as "the act or fact of abiding or dwelling in a place for some time: an act of making one's home in a place * * * [;] the place where one actually lives or has his home as distinguished from his technical domicile * * * [;] a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit * * * [;] a building used as a home: DWELLING." Ibid.
The ordinary meaning of "residential" does not resolve the issue between the parties. That is so because a "residence" can refer simply to a building used as a dwelling place, or it can refer to a place where one intends to live for a long time. In the former sense, defendants' use is "residential." The people who rent defendants' beach house use it as a temporary home, and their purpose is to engage in activities commonly associated with a dwelling place. For example, the record shows that they eat, sleep, bathe, and watch television there. On the other hand, if "residential" refers to an intention to live in a home for more than a temporary sojourn or transient visit, even defendants' own use of the property, as well as their rental use, is not "residential." Because of the different possible meanings of "residential," this portion of the restrictive covenant is ambiguous.
We next consider whether defendants' rental activity constitutes a "commercial enterprise." "Commercial" means, as relevant, "occupied with or engaged in commerce * * * [;] related to or dealing with commerce." Id. at 456. "Commerce," in turn, means "the exchange or buying and selling of commodities esp. on a large scale"; but it also can mean "dealings of any kind." Ibid. "Commercial" also can mean "having profit as the primary aim." Ibid. "Enterprise" can mean "VENTURE, UNDERTAKING, [OR] PROJECT"; "a business organization: FIRM [OR] COMPANY"; or, simply, "any systematic purposeful activity." Id. at 757.
If a "commercial enterprise" is any undertaking or systematic purposeful activity involving business dealings of any kind, then the covenant covers defendants' use of the property, because the short-term vacation rentals systematically and purposefully generate revenue from arm's-length transactions. On the other hand, if a "commercial enterprise" requires a business organization that has profit as its primary aim, then the covenant does not cover defendants' use, because the facts shown do not demonstrate that defendants are a business organization or that they have profit as their primary aim (as would be true, for example, of a bed-and-breakfast business). Because of the different possible meanings of "commercial enterprise," this portion of the restrictive covenant also is ambiguous.

Additionally, we look at the context of the disputed provision. It is one of nine provisions in the covenants. One provision prohibits keeping livestock on the premises, while the others relate to building and structural standards. None of the other provisions relates to short-term rentals or elaborates on any portion of the disputed provision. Thus, the provision remains ambiguous after an analysis of its text in context.
It may be that, in a case involving a differently-worded covenant, the facts shown here would be dispositive. Under the text and context of this covenant, however, the activities involving defendants' property, taken collectively, are neither clearly permitted nor clearly forbidden.

Because the contractual provision at issue is ambiguous, we proceed to the second of the three analytical steps that the court follows in interpreting contracts. That step is to examine extrinsic evidence of the contracting parties' intent.
"If a contract is ambiguous, the trier of fact will ascertain the intent of the parties and construe the contract consistent with the intent of the parties. Words or terms of a contract are ambiguous when they reasonably can, in context, be given more than one meaning." Pacific First Bank v. New Morgan Park Corp., 319 Or. 342, 347-48, 876 P.2d 761 (1994) (citations omitted).
See also ORS 41.740 (extrinsic evidence is admissible "to explain an ambiguity" in a contract). The intention of the parties to an instrument is to be pursued if possible. ORS 42.240. In this connection, the parties' practical construction of an agreement may hint at their intention. See Tarlow v. Arntson, 264 Or. 294, 300, 505 P.2d 338 (1973) (when instrument was ambiguous, court examined what parties did under it; "How the original parties and their successors conducted themselves in relation to the agreement is instructive in our determination of what must have been intended.").
In the present case, at least one other house in the same subdivision has been used as a short-term vacation rental. The evidence also indicates that property in neighboring subdivisions, covered by identical covenants, has been or currently is being used as vacation rental property. However, the evidence is so sketchy that it cannot fairly be said that the original contracting parties or their successors have given a "practical construction" that resolves the ambiguity. The

parties agree that no additional evidence of the contracting parties' intent is available beyond what is in the summary judgment record. We therefore conclude that the provision remains ambiguous after the second step of the analysis.

Because the first two analytical steps have not resolved the ambiguity, we must reach the third and final analytical step. If the meaning of a contractual provision remains ambiguous after the first two steps have been followed, the court relies on appropriate maxims of construction. The maxim that defendants urge us to apply is the

"familiar rule of law that restrictive covenants are to be construed most strictly against the covenant; and unless the use complained of is plainly within the provisions of the covenant it will not be restrained." Scott Co. v. Roman Catholic Archbishop, 83 Or. 97, 105, 163 P. 88 (1917) (citations omitted).

See also Alloway v. Moyer, 275 Or. 397, 400-01, 550 P.2d 1379 (1976) (first an effort is made to gather the intent of the parties from the wording used, read in the light of the circumstances of its formulation; if a restrictive covenant is ambiguous, strict construction against the restriction operates).

This court has reiterated that maxim several times,1 but questioned it in Swaggerty v. Petersen, 280 Or. 739, 744, 572 P.2d 1309 (1977):

"We are doubtful * * * whether we should continue to [recognize and apply the rule that, because of the public policy favoring untrammeled land use, a restrictive covenant is construed against the covenant]. Public policy, as expressed in recent legislation, no longer favors 'untrammeled land use,' but requires the careful public regulation of the use of all of the land within the state. See especially, ORS chapter 197."

Plaintiffs urge us to follow that logic and to retract the maxim of strict construction of restrictive covenants. Their argument is, in essence, that this court recognized in Swaggerty that surrounding statutory law had altered an essential legal element that was assumed in the prior cases. See G.L. v. Kaiser Foundation Hospitals, Inc., 306 Or. 54, 59, 757 P.2d 1347 (1988) (the foregoing circumstance may be a premise for reconsidering a common law rule). We are not persuaded.

In Swaggerty, the court did not need to "inquire whether this legislative expression of public land use policy requires a new approach to the construction of private restrictions on the use of land." 280 Or. at 744, 572 P.2d 1309. That was so because the defendant's proposed construction of the restrictive covenant was "not reasonable" in that it was "contrary to [an] express provision[ ]" elsewhere in the covenants. Ibid. Accordingly, the quoted discussion of public policy (assuming arguendo its accuracy) was dictum.

We are not convinced by the dictum of Swaggerty to dilute the maxim of strict construction of restrictive covenants. In the absence of clarity in wording and in the absence of an understanding of the parties' actual intent, this maxim serves at least four purposes: to avoid imposing a restriction on the buyer of property that the buyer cannot reasonably be expected to know, to allow full use of property, see Aldridge v. Saxey, 242 Or. 238, 242, 409 P.2d 184 (1965) (public policy favors untrammeled land use), to reduce litigation by increasing certainty, and to promote uniform interpretation of like covenants. Additionally, this court has stated that, "when property rights are at stake, consistency, that is, adherence to precedent, is a * * * virtue" because of the need for certainty. Dorsey v. Tisby, 192 Or. 163, 180, 234 P.2d 557 (1951).2

We conclude that the maxim calling for strict construction of restrictive covenants remains applicable. In this case, its application means that defendants' rental of the property is permissible, because that use is not "plainly within the provisions of the covenant." See Scott Co., 83 Or. at 105, 163 P. 88 (setting forth maxim). Therefore, defendants are entitled to a judgment in their favor.

The decision of the Court of Appeals is affirmed. The judgment of the circuit court is reversed, and the case is remanded to that court for entry of judgment for defendants.

FOOTNOTES

1. See, e.g., Johnson v. Campbell, 259 Or. 444, 447, 487 P.2d 69 (1971); Aldridge v. Saxey, 242 Or. 238, 242, 409 P.2d 184 (1965); Smoke v. Palumbo, 234 Or. 50, 52, 379 P.2d 1007 (1963); Rodgers v. Reimann, 227 Or. 62, 65, 361 P.2d 101 (1961); Schmitt v. Culhane, 223 Or. 130, 132, 354 P.2d 75 (1960); Hall v. Risley and Heikkila, 188 Or. 69, 87-88, 213 P.2d 818 (1950); Heitkemper v. Schmeer, 146 Or. 304, 327, 29 P.2d 540, 30 P.2d 1119 (1934); Crawford et al. v. Senosky et al., 128 Or. 229, 232, 274 P. 306 (1929); Grussi v. Eighth Church of Christ, Scientist, 116 Or. 336, 342, 241 P. 66 (1925).

2. The maxim that restrictive covenants are to be construed strictly is the majority rule. See, e.g., Richard R. Powell and Patrick J. Rohan, 5 Powell on Real Property ¶ 674 (1994) (collecting cases); Emily S. Bernheim, 3 Tiffany Real Property § 858, at 474 (1939), & at 306-10 (Supp.1996) (same).

GRABER, Justice.

- See more at: http://caselaw.findlaw.com/or-supreme-court/1468234.html#sthash.d5mT4Jv8.dpuf

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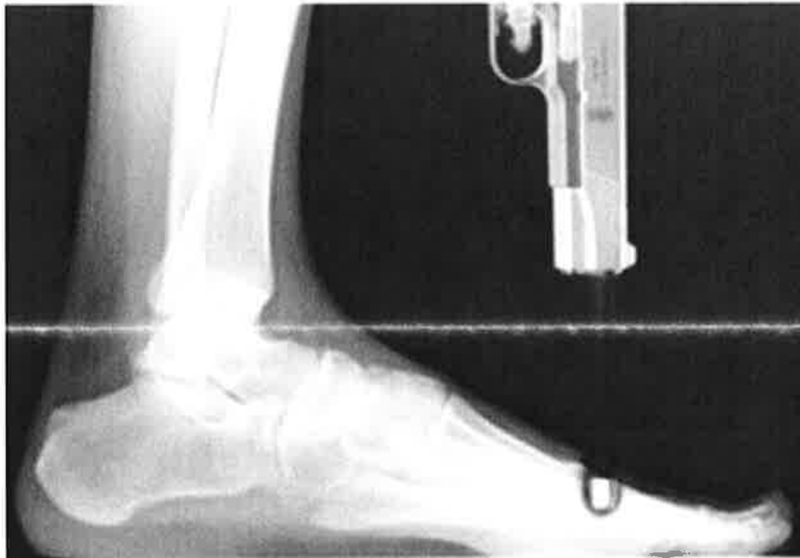
Cindy Walbridge

From: Laurie Balmuth <llbalmuth@gorge.net>
Sent: Wednesday, March 02, 2016 9:13 AM
To: Cindy Walbridge
Subject: Vacation Rentals: Regulations, Standards & Practices written testimony

This entire blog is filled with useful information about how to reasonably regulate Vacation rentals

http://www.vrregs.com/

Cities That Chase Their Short Term Rentals Away...



Have you heard the expression "shooting yourself in the foot". The expression is shorthand for pointing out self-defeating beha

Many counties and cities exhibit this behaviour in their reaction to Short Term Rentals. Its not too unusual to see:

a city, county or region that spends millions of dollars each year in an attempt to attract tourists, but passes laws that outlaw one the most highly preferred lodging options for those tourists -- short term rentals.

cities and countys that spend several years courting a big business to come to their aea, because that big business brings jobs tax revenues and prosperity when it opens its doors, but passes laws that are destructive to a thriving vacation rental economy t provides just as many jobs, just as much tax revenue, and just as much economic prosperity.

a city that spends millions to redevelop a section of their community, while outlawing activity of vacation rental owners, who hav history of redeveloping neighborhoods and improving property values, at their own expense.

city and county officials that complain about the lack of citizen participation, but are offended and refuse to listen when a hundre people show up at a meeting to tell them they are on the wrong track in their efforts to interfere with local vacation rental activity

Vacation rentals impact local neighborhoods, just like longer term rentals do, but the economic, social and ecological impacts of disbursing your tourists in houses across a community are arguably much less than the impacts of developing large hotels and resorts.

In many communities tourism is seasonal, and a hotel and tourism district looks like a ghost town when the season is over, but i those same communities, vacation rentals tend to bring in families and business travelers all year long.

When factories and big box stores and other big businesses come into a community they create problems and bring benefits. Legislators make agreements and appropriately regulate these operations, to manage the problems and maximize the benefits. The same approach works well with vacation rentals.

Cindy Walbridge

From: Elizabeth Whelan <gorgekey1@gmail.com>
Sent: Wednesday, March 02, 2016 11:21 PM
To: Cindy Walbridge; Jennifer Gray; Steve Wheeler; Laurent Picard; Kate McBride; Paul Blackburn; Mark Zanmiller; Susan Johnson; Peter Cornelison
Subject: Ordinance 17

TO: HOOD RIVER CITY COUNCIL, HOOD RIVER PLANNING COMMISSION

FROM: ELIZABETH WHELAN, GORGE KEY VACATION RENTALS

RE: UPCOMING VACATION RENTAL PROPOSED ORDINANCES

DATE: MARCH 1, 2016

This is a fact: Hood River has received many National accolades for best town to visit. It's been named a Top Ten ski town in America, One of the Great Riverfront Towns and A Best Small town in the US. The tourism business has proven economically viable as well as healthy for the town.

The current proposals of zoning Ordinances for Vacation Home Rentals are creating serious concern for many reasons but mainly because it will decrease the tourist economic contribution to Hood River. The ECONorthwest report from 2011 regarding the tourism dollars brought into Hood River County states recreational visitors to Hood River County spent over 75 million in 2011. The tourism dollars certainly have not decreased since 2011. Tourism income is a vital part of Hood River. Eliminating vacation rental houses will eliminate income provided by tourists.

Here are my main concerns proposed by Ordinance 17 to regulate and eliminate VHR's:

- Cap. So many cap numbers have been proposed, 141, 143, 149! How does one create a cap number when the city doesn't how many VRH's exist currently? Simply, there should not be a cap. Vacation rentals by nature are a self regulating business that will shift and change to the demands of tourism.

- 250 ft distance between VHR's. This number is very short sided and unrealistic. What will happen in 5 years when a lottery decides which homes will remain a VHR? What if one VHR has been in business for 7 years, is a 5 bedroom house and provides a larger percentage of TRT to the city; yet the other smaller home with a smaller percentage of TRT wins the "lottery" chance to continue in business? It is completely irresponsible to base an economic decision on a lottery.

- 5 year grandfather timeframe for existing VHR's. This is far too short for any business plan. 7 yrs is more reasonable & 10 years is even more sustainable.

- Existing VHR's fill out application for license within 60 days of enacted ordinance in 2016. What will be the cost of the application or the license? Are they separate costs? How are the costs determined? There is mention of $200 - $300 in Hood River. Where do these dollars go? Surely, it doesn't cost $300 to process an application.

- No VHR's existing or to be constructed west of Rand Rd. This decision is apparently tied to an illogical conclusion that if no vacation rentals exist, affordable housing will exist.

Affordable housing will not increase if any vacation rentals are eliminated. There is no cause and effect data to support this idea. The City had opportunity 10 years ago to implement affordable housing zoning with buildable land use ordinances. They did not recognize the issue then; they are not correctly recognizing the issue now. Keep the revenue from VHR's in Hood River County and tackle affordable housing as a separate issue.

Vacation Rentals should be regulated and monitored. The TRT income is an asset to this County; accurate collection is necessary. The City should pursue instituting the safety regulation processes for VHR's and use VHR's to their full economic potential, not cut off the revenue dollars by eliminating VRH's.

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Date: March 3, 2016

To: Hood River City Council
Hood River City Planning Commission
Cindy Walbridge, Planning Director

From: J. McGregor Colt

Re: Short Term Rentals

The Short Term Rental issue has our town in an uproar it seems. I have friends, whom I respect, on both sides of this issue and it seems to me that you should be able to come up with a compromise that satisfies both sides. When your dog has fleas you don't get ride of the dog you get rid of the fleas. Lets not get rid of the STRs lets get rid of the problems.

Problem #1 Licensing: Require every STC be licensed and registered and properly inspected for health and safety. A bedroom without a proper ingress/egress window is not a bedroom and should not be used as one. A fee should be paid every year and TRT collected.

Problem #2 Parking: As part of the licensing process a property owner must provide one off-street parking stall per bedroom being rented out. This alone will weed out many of the existing STRs as they will not be able to provide this due to the lack of a curb cut, enough room or topographical challenges.

Problem #3 Garbage: Fines need to be established to deal with property owners who do not properly contain their garbage. This issue will soon become a non-issue once a property owner gets a $200 bill in the mail.

Problem #4 Noise: Hood River already has a noise ordinance that kicks in at 10PM. If neighbor complains the property owner should be fined. There should also be a three-strikes-you're-out policy regarding this and the garbage problem.

Problem #5 Lack of Long Term Rentals: Restricting STRs may provide a handful of LTRs but probably not as many as you would hope for. Be careful what you wish for. When I was a college student in my early 20s in Seattle I rented a four bedroom house in a quiet residential neighborhood with three of my buddies for an entire school year. One of us alone could not afford the house but the four of us together made it possible. That house soon became party central and, as you might imagine, none of the neighbors much appreciated what we did to their peace and tranquility. The current STRs in Hood River will not likely become LTRs.

Problem #5 Density: Let Supply & Demand take care of this issue. If there is a demand that means that the shopkeepers are doing well, the restaurants are active and tourists are enjoying what we have spent many years building.

I know that you have had a great deal of input from both sides and from people much more eloquent than I. I have tried to keep my comments short and sweet (sweet is hard for me sometimes). Lets get this over with and on to more important issues.

I was happy to hear that Cindy Walbridge finally explained to the audience at the Planning Commission meeting that this is not about affordable housing. The only way that we are going to be able to provide "affordable housing", "workforce housing", "key infrastructure employee housing" is with some serious government subsidies so I hope that you are all getting your heads around that and will dedicate as much time to that much more important issue as you have to this STR issue.