

24. At no time have Plaintiffs, or any renter of Plaintiffs' Property, been cited for a violation of noise or parking ordinances in relation to the Property, and Plaintiffs have paid all required taxes and maintained all necessary licenses and permits with regard to the Property.

25. In February 2010, Defendant's code enforcement department noticed Plaintiffs that they were in violation of Section 2.01.03(L)(3)(a)(iii) of the County's Land Development Code, which states without elaboration that "nonresidential uses are not allowed" within the Residential Preservation Area, by renting their property to visitors who held weddings and events on the Property, and by advertising the Property as a wedding destination.

26. Defendant offered no guidance to Plaintiffs regarding what they could do to ameliorate the alleged violation, refusing on numerous occasions to explain the discrepancy between the violation and the County's endorsement of weddings / events on similar properties.

27. At the hearing on the notice of violation, County officials, including the code enforcement officer and the Planning Director responsible for the interpretation of the County's Land Development Code, testified under oath that it was the frequency and advertising of the holding of events, and not the holding of any single event itself, that resulted in the determination that Plaintiffs were conducting a "nonresidential" use of the Property.

28. When asked by Plaintiffs' counsel, with regard to this frequency interpretation, how many events could be held on a given property before a property would be deemed in violation, the Planning Director testified that he had no official position, instead offering a tautology that the way for Plaintiffs to be found in compliance with the residential use requirements was to "use the property for a residential use."

29. The Planning Director further testified that the Land Development Code offered no definition of the term "nonresidential" and was silent as to permitted frequency of uses, and that this deficiency, along with the otherwise ambiguous nature of the Code and the difficulty of its interpretation, had led Defendant's County Commission to undertake an effort to codify the relevant rules in a vacation rental / event ordinance.

30. To date, Defendant has enacted no such ordinance, despite numerous public hearings, preliminary versions of an ordinance, and public readings of a potential set of guiding provisions, spanning well over a year.

31. On May 20, 2010, Defendant's Code Enforcement Board found Plaintiffs in violation of the County's Land Development Code, and issued an order to this effect on June 3, 2010.

32. Plaintiffs appealed this order to this Court, alleging violations of due process and other irregularities with the procedure of the code enforcement hearing. In December 2010, this Court, reviewing the code enforcement proceedings for violation of a minimum of due process, upheld Defendant's order.

33. Based on Defendant's officers' testimony that rental events, per se, were not prohibited within the Residential Preservation Area, and lacking any guidance as to what was or was not specifically prohibited, Plaintiffs resumed renting their property to visitors, some of whom held events on the Property.

34. In an attempt to comply with what they supposed was Defendant's interpretation, Plaintiffs no longer charged different rates when a renter decided to hold an event; that is, Plaintiffs charged the same rate to all renters of the property, whether or not that renter proceeded to hold a wedding.

35. In March 2011, Defendant again noticed Plaintiffs that they were in violation of the County's Land Development Code.

36. Via telephone, electronic mail, and in person, Plaintiffs pleaded with Defendant's officers, again, to offer guidance as to what specifically was and was not allowed on the Property.

37. After a week of such communications went unanswered, Defendant's officers finally advised, in writing via electronic mail, that if Plaintiffs removed all references to weddings from Plaintiffs' rental website, and paid administrative fees relating to the 2010 code enforcement hearing, they would be deemed in compliance. Plaintiffs complied with Defendant's demands the same day they were made.

38. On or about March 25, 2011, Defendant's code enforcement officer swore an affidavit, later recorded in the public records, declaring that Plaintiffs were in compliance with regard to the use of the Property.

39. On April 12, 2011, Defendant's County Commission held a public hearing on a proposed ordinance that would have regulated the frequency of events allowable within the Residential Preservation Area.

40. The contentious public hearing was widely covered in print media and on television, and included Plaintiffs' counsel offering comment to the Commission that any such regulation would likely result in a legal challenge based on violations of constitutionally guaranteed property rights. The Commission did not pass the proposed ordinance.

41. On April 19, 2011, Defendant, despite the March 25 affidavit of compliance and Plaintiffs' compliance with Defendant's officers' written demands, again noticed Plaintiffs that they were in violation of the Land Development Code.

42. As before, Plaintiffs requested on numerous occasions that Defendant's code enforcement officers, Planning Director, County Attorney, or other officials might offer any guidance whatsoever as to what was and was not permitted on the Property, or to otherwise explain the discrepancy between the notice of violation and the written demands that led to the March 25 affidavit of compliance.

43. Defendant's officers refused such requests.

44. On May 18, 2011, Defendant's Code Enforcement Board held a hearing on the April 19 notice of violation. At this hearing, Defendant's code enforcement officer testified under oath that the new interpretation of the Land Development Code was that even a single event held by a renter of the Property would result in a violation of the Code.

45. Defendant's officers offered no explanation for the discrepancy between this interpretation and the "frequency" rule advocated at the 2010 hearing, and declined to testify whether property owners similarly situated would be found in violation for renting their properties in a like manner.