

BOARD OF ADJUSTMENT

MINUTES

Thursday, October 22, 2020

The Blowing Rock Board of Adjustment met at the American Legion at 333 Wallingford Street, on Thursday, October 22, 2020 at 5:30 p.m. Members present were E.B. Springs, Jim Steele, Lee Rocamora, and Sarah Murphy. Staff present were Planning Director Kevin Rothrock, Town Clerk Hilari Hubner and Town Attorney Allen Moseley.

Chairman Springs called the meeting to order at 5:30 p.m.

APPROVE MINUTES:

Chairman Springs asked Ms. Hubner if the September 24, 2020 meeting minutes were ready. She advised yes and said the Board should have received them from Mr. Rothrock. Chairman Springs advised they did not and asked that the minutes be emailed to the Board.

Miscellaneous Business

Chairman Springs said he told the Board that he would brush up on the pertinent law relative to each case. Chairman Springs advised this case is about short-term rentals and distributed a summary of pertinent law and the Blowing Rock Land Use Code Permissible Use Table to the Board, Mr. Rothrock, Mr. Moseley and to Mr. Miller.

Chairman Springs introduced the Board members to the Appellant and their attorney, Mr. Nathan Miller.

Administrative Appeal 2020-02 Myers

Chairman Springs advised that the Board had received the staff report and asked Mr. Miller if he had received it. Mr. Miller confirmed. Chairman Springs noted a discrepancy in the case number in the staff report and asked Mr. Rothrock for the correct case number. Mr. Rothrock advised that 2020-03 is the correct case number. Chairman Springs noted this is a scrivener's error and asked if anyone objected to this error. No one objected.

Chairman Springs advised that Ms. Hubner is an employee of the Town and that she would be taking the minutes for this hearing. Chairman Springs asked Mr. Miller if he had any objections to Ms. Hubner taking the minutes. Mr. Miller did not. Chairman Springs asked Mr. Rothrock and Mr. Moseley if they had any objections to same. They did not. Chairman

Springs asked the Board members if they had any conflict of interest or bias that would cause them to be unable to serve. All members said that they did not have a conflict of interest or bias. Chairman Springs asked the Board members if they had any ex parte communications, conversations or heard anything regarding this case prior to tonight. None had. Chairman Springs advised that he received five unsolicited emails to which he did not respond. Chairman Springs did not communicate the substance of these emails with the other Board members. Chairman Springs submitted printed copies of these emails as Exhibit A and distributed copies to Mr. Miller, Mr. Rothrock and Mr. Moseley. Chairman Springs said that receipt of the emails does not change his ability to act in an impartial way for all parties. Chairman Springs advised, for the record, that these five emails were the only communication he had received regarding this case.

Chairman Springs asked Mr. Miller if he wanted to review these emails with his clients in private. Mr. Miller confirmed.

Chairman Springs asked if either party objected to his serving on this matter. Mr. Ranson asked if he could ask questions. Chairman Springs agreed, but added that he did not want the questions content to taint the other members. Mr. Ranson said he did not necessarily have an objection but wanted to know if there must be three Board members for a quorum. Chairman Springs advised that the other Board members must vote on Chairman Springs not serving. Mr. Ranson asked if the other Board members so voted, would that destroy their ability to have a hearing and asked how many Board members there are. Chairman Springs advised there are five Board members and it is his understanding that three would constitute a quorum, but all three must be unanimous in their vote. Mr. Ranson said he did not object. Chairman Springs asked Mr. Miller and Mr. Moseley if they objected. They did not.

Chairman Springs asked if any spectators or Zoom attendees wanted to be a party. Mr. Ranson asked what that meant. Chairman Springs advised that anyone who felt they have suffered special damages could ask to be a party. Mr. Ranson said he wanted to be a party. Chairman Springs asked Mr. Ranson to be sworn for testimony. Mr. Ranson, of 174 Norwood Circle, was sworn for testimony for the Board.

Chairman Springs asked Mr. Ranson what special damages he feels he would suffer if the Myers are allowed to continue short-term rental of their property. Mr. Ranson advised that they purchased their house in January and have invested significant funds in it in aims of being part of the community. Mr. Ranson said it became apparent after a few months that it was a never-ending stream of tenant or people. Mr. Ranson said that that Mr. Myers told his wife that they swap their house with other people in some sort of rental pool. Mr. Ranson said that he has a 13-year-old daughter and that he and his wife invested in this second home feeling it would be a community, not being next to a hotel. Chairman Springs asked how he is being hurt by this. Mr. Ranson said that he was getting to that. Mr. Ranson said that every weekend there is a different group and that when people rent a house they want to party and so they go out on the deck where the view is nice, get liquored up, turn

on the music and dance around. Mr. Ranson said that is just not where he wants to be next to and that he is sure that the Board would not want to be next to that either. Mr. Ranson said it is their understanding that this is not how it is supposed to be here, that this is a residential neighborhood, and this certainly impacts their quality of life and property value. He added that one nice thing about Blowing Rock is the moratorium on short-term rentals, which makes Blowing Rock special. Mr. Ranson said that when there are no rentals, people are encouraged to be a community with their neighbors and that this area is a very neighbor focused nook. Chairman Springs asked if his primary concern is noise. Mr. Ranson said there is noise and the Coronavirus and that the people coming up are not quarantining. Mr. Ranson said that every week it was different people and they did not sit in the house; they went all over the place. Mr. Ranson said when you are paying a million, two million for a house you want to know who is next to you; that you don't want a bunch of riff-raff coming in and out every week. Chairman Springs asked Mr. Ranson the relation of 174 Norwood Circle to 178 Norwood Circle. Mr. Ranson said he is directly next door, that his back deck is directly next to the Myers and he gets all the noise and sees all this. Mr. Ranson said he had nothing against the Myers, but that he did not want to live next to this.

Mr. Miller asked for a copy of the Board packet and questioned Mr. Ranson. Mr. Miller asked if he bought the property back in January. Mr. Ranson confirmed. Mr. Miller asked him how long the property was under contract. Mr. Ranson did not recall. Mr. Miller asked if he had spoken with a Realtor about short-term rentals in the area. Mr. Ranson did not recall. Mr. Miller asked if he did any due diligence regarding short-term rentals. Mr. Ranson said they were aware was some sort of rule against short-term rentals. Mr. Miller asked if he knew what the rule was. Mr. Ranson responded rentals shorter than 28 days. Mr. Miller asked where this applied. Mr. Ranson said in the town of Blowing Rock. Mr. Miller asked if this is his belief. Mr. Ranson said that is his understanding. Mr. Miller asked if this is a second home and if Mr. Ranson lives here. Mr. Ranson said he would be splitting his time. Mr. Miller asked if he had been splitting his time since January. Mr. Ranson said that they spent most of the winter here. Mr. Miller asked the location of his other home. Mr. Ranson said Charlotte. Mr. Miller confirmed the location of Mr. Ranson's and the Myers' homes in the Board packet information. Mr. Miller asked if they share a driveway. Mr. Ranson said he did not believe so. Mr. Myers said Mr. Ranson signed a shared driveway agreement. Mr. Miller asked if they are the only neighbor. Mr. Ranson said no. Mr. Miller indicated the neighbors marked number 2 and number 6 in the map included in the packet information. Mr. Miller noted that to get to his property or the Myers property, they must drive past the two other houses. Mr. Ranson confirmed. Mr. Miller said that people going to the Myers' property do not drive past his home. Mr. Ranson confirmed. Mr. Miller commented that his damages don't differ anymore that the other two properties. Mr. Ranson said his damages are higher because his property is very close to the Myers' property. Mr. Ranson said there is a vacant lot between house number 2 and the Myers' and that number 6 is across the street and not privy to what happens on the back deck of the Myers' side. Mr. Miller asked Mr. Ranson what, exactly, are his damages and how are they different from houses 2 and 6. Mr. Ranson said that, as shown on the packet document, his back deck is adjacent to the Myers' adding that he and the Myers' tenants spend a lot of time on the decks and the

tenants generate a lot of noise. Mr. Miller noted that Mr. Ranson can hear the noise from the Myers' deck. Mr. Ranson confirmed. Mr. Miller asked if he could hear noise from 221 below his deck. Mr. Ranson said he did hear traffic, but that is different from your next-door neighbors drinking and partying. Mr. Miller asked if house number 2 could hear less of the same noise. Mr. Ranson said he did not know. Mr. Miller said you only know what you know from your property. Mr. Ranson confirmed. Mr. Miller asked if property number 8 had a house on or if it's a vacant lot. Mr. Ranson said it's a vacant lot. Mr. Miller asked if property number 7 is also a vacant lot. Mr. Ranson confirmed adding that is part of his neighbor's property. Mr. Miller asked if their house is shown. Mr. Ranson said it is number 6.

Mr. Moseley asked Mr. Ranson the approximate distance between his house and the Myers house. Mr. Ranson said 20 to 25 feet maybe.

Chairman Springs advised that the Board must decide if Mr. Ranson would suffer damages, beyond any suffered by the other residents of Blowing Rock, such that he would be allowed to be a party and therefore participate in this hearing.

Mr. Miller said he would like to be heard before the Board makes their decision. Mr. Miller said he objects as the proposed intervener has failed to show any special damages that he would suffer that the neighbors wouldn't suffer. Mr. Miller added that the same noise suffered by the appellant will be heard by at least one neighbor. Mr. Miller said, yes, the entire town of Blowing Rock will not suffer the same damages as this particular individual. Mr. Miller said the reason that notice of this hearing was not sent to the entire town, but to properties within 150 feet is because these people might be affected differently. Mr. Miller said that this family is not affected any more than other neighbors and that he did not articulate any special damages. Mr. Miller said that, for the reason that Chairman Springs stated NCGS 160A-393 subsection 2, only if they suffered special damages which is greater than normal. Chairman Springs consulted the *Quasi-Judicial Handbook* written by David Owens. Chairman Springs read 'has the individual shown that his or her damages are distinct and facts to consider are proximity and property value impact, and secondary impacts such as traffic, parking and litter.'

Chairman Springs asked Mr. Moseley if he had anything to add. Mr. Moseley said that all the properties could arguably have special damages adding that Mr. Miller is making a distinction between Mr. Ranson and other property owners who received notice and who haven't asked to intervene. Mr. Moseley said that if his house is within 50 feet and adjoins his property, he is different from the public at large and that he could suffer special damages.

Chairman asked the Board members, who think Mr. Ranson has suffered special damages and should be allowed to participate as a party, to say 'aye'. **All members said aye. The vote was unanimous.** Chairman Springs told Mr. Ranson that he is now a party and he can cross-examine witnesses.

Chairman Springs asked if anyone else felt like they had standing to be a party in this case. Mr. William Barbour said he wanted to be a party. Chairman Springs asked where his property is relative to 178 Norwood Circle. Mr. Barbour said he is house number 6, 172 Norwood Circle. Mr. Barbour was sworn for testimony to the Board.

Chairman Springs asked Mr. Barbour to state the special damages he suffers. Mr. Barbour said they have lived at 172 Norwood Circle for about two years and that when he bought the house, he did check to see if there was any history of rentals in the area. His agent said there was no history. Mr. Barbour said it did matter to him and it would matter to the next person should he decide to sell, and this would decrease his value. Mr. Barbour added that the Covid virus is a very real thing adding that there are sometimes up to nine people staying at the Myers' house that are coming from states outside North Carolina as evidenced by their license tags. Mr. Barbour said they are walking and roaming around and exposing him and his wife to possible contamination which is a consideration, and this is unfair to him and his neighbor, Mr. Ranson. Mr. Barbour said no one else in the neighborhood is affected by this and that there are no other rentals. Mr. Barbour said they are the two properties affected by this and none of the rest of the neighborhood is. Mr. Barbour added it is not reasonable to expect them to take that for someone to make profit in a situation where it is already stated that short-term rentals are not acceptable. Chairman Springs asked Mr. Barbour, other than his fear that his family may have more exposure to Covid, does he have any other harm. Mr. Barbour said damage to his property value. Chairman Springs advised that he would have to bring in an expert to speak to that. Chairman Springs asked if there is any other harm. Mr. Barbour said uncontrolled egress and accessibility to his property by people that he does not know and are transient. Mr. Barbour said this is a risk that he should not have to take. Mr. Barbour said the noise is also a harm. Mr. Barbour said he could hear them as well as Mr. Ranson. Mr. Barbour said he is easily 50 to 60 feet from the Myers' deck and he could hear them when they are partying. Mr. Barbour said this is deleterious to his enjoyment of his property and he did not think someone should have the right or ability to prevent him the right to enjoy his property. Mr. Barbour said he thinks there is damage there that does not exist in other parts of the same section.

Mr. Miller questioned Mr. Barbour. Mr. Miller asked Mr. Barbour when he bought his house. He responded around July 2019. Mr. Miller said one year. Mr. Barbour said one year and three or four months. Mr. Miller noted that Mr. Barbour is relatively new to the neighborhood as well. Mr. Barbour confirmed. Mr. Miller asked him if he was aware that the Myers' house had been short-term rental since the 1940s. He said no he wasn't and if that is the case, proof needs to be shown. Mr. Miller noted that Mr. Barbour said he investigated this and asked him how. Mr. Barbour said he asked his realtor. Mr. Miller asked the identity of the realtor. Mr. Barbour said Advanced Realty. Mr. Miller said out of Boone. Mr. Barbour confirmed. Mr. Miller asked him if he asked Mr. Rothrock. Mr. Barbour said no. Mr. Miller asked him if he asked to go see any permits in Mr. Rothrock's office. Mr. Barbour said no, he trusted that the information he was given was correct. Mr. Barbour said it is a very close-knit community and he spoke with several residents and they were not aware of

and rentals being in that house adding that he had no real reason to pursue it. Mr. Barbour said then the tenants started showing up. Mr. Miller said they have been showing up since Mr. Barbour bought his house. Mr. Barbour said no, they just started showing up in the last three or four months. Mr. Miller said that Mr. Barbour doesn't know if they are tenants. Mr. Barbour said he does by their cars and added he knows the Myers' cars. Mr. Miller said that Mr. Barbour shares a driveway access with the Myers' property. Mr. Barbour said that there is an access road from Mr. Ranson's property that goes down his property line. Mr. Miller asked Mr. Ranson to confirm the access road on the map. Mr. Miller pointed out where Mr. Barbour's property shares driveway access with the Myers.

Mr. Miller noted that one of Mr. Barbour's potential damages is possible exposure to Covid. He asked Mr. Barbour if he went to the grocery store locally. Mr. Barbour said he does not; his wife does, but she wears a mask and protective equipment. Mr. Miller noted that Mr. Barbour was not wearing a mask now. Mr. Barbour responded that he was at least 20 feet from anyone. Mr. Miller asked Mr. Barbour if he understands the county has a university in it. Mr. Barbour confirmed. Mr. Miller said this is a largely transient population. Mr. Barbour said that is at least seven miles from his property. Mr. Miller said that renters don't go on his property and knock on his door. Mr. Barbour said they walk on this property, but don't knock on his door. Mr. Barbour said the risk exists, whether or not it pans out that way, that's a risk that we take, adding that he would rather not take that risk by allowing more people to have access to walk across his property. Mr. Barbour said if he happens to be in his yard and people wanted to say hello that he would not want that, adding that he does not want people coming from out of state to do that as he thinks that is a risk. Mr. Miller asked Mr. Barbour if he knew of anything that would block him as a citizen of the United States from driving on Norwood Circle. Mr. Barbour said absolutely not, but that if you were a citizen of the United States and you were coming onto his property, he would say stop, do not come onto my property. Mr. Barbour said if there are seven people he does not know, that raises the risk of infection. Mr. Barbour added if they are not there, then the risk does not exist. Mr. Miller asked what part of his property they had gone on. Mr. Barbour said they walk out into the road onto his property walking their dog. Mr. Miller asked are they walking on the road or your property. Mr. Barbour said on his property, that the dog doesn't poop on the road, but on the grass on his property. Mr. Miller noted that Mr. Barbour said he hears the same noise as Mr. Ransom. Mr. Barbour said he can't say that it is the same noise, that he hears partying, loud music and he assumes if it's coming from the Myers' house it must be them.

Chairman Springs asked Mr. Ranson if he had any questions of Mr. Barbour. He did not. Chairman Springs asked if anyone had any questions for Mr. Barbour. There were none.

Chairman Springs asked Mr. Miller if he would like to speak before the Board makes their decision. Mr. Miller said the only credible thing that he found was regarding the noise and that Mr. Barbour has not shown that the noise causes him special damages greater than those of Mr. Ranson. Mr. Miller said, for the same reasons that he objected to Mr. Ranson, he objects to Mr. Barbour.

The Board discussed Mr. Barbour's request. Chairman Springs said that he did not hear anything about an excessive amount of noise. Chairman Springs said the risk of Covid is just that. Dr. Rocamora said that he heard the term 'loud' regarding the noise and he thinks this makes a difference. Ms. Murphy asked if Mr. Barbour really needs an expert to speak to his property value. Chairman Springs said yes. Mr. Steele noted there are noise ordinances and 'loud' is relative, but apparently to these people it is loud enough so they don't like it and it bothers them. Mr. Steele said in R – 15 short-term rentals are not allowed and added that if anyone is being too loud the Police Department will investigate if notified. Mr. Steele said he is hearing that they don't like it. Chairman Springs said that he was a little condescending about the risk of Covid but understands if there are visitors from other parts of the country. Dr. Rocamora said the county initially passed a quarantine ordinance, that we don't know the exposure of people coming in so there is a risk.

Chairman Springs asked the Board if they think Mr. Barbour should be a party and participate in this case. **All members were in favor. The vote was unanimous.**

Chairman Springs advised Mr. Barbour that he is a party and will have the opportunity to cross examine witnesses. Chairman Springs asked if anyone else feels they have standing to be a party including those attending via Zoom. There were none.

Chairman Springs asked everyone who was giving testimony to be sworn.

Mr. Myers and Ms. Myers, Ms. Ranson, Mr. Dan Phillips, Mr. Sam Hess, Ms. and Mrs. Myers and Mr. Rothrock were sworn for testimony to the Board.

Mr. Rothrock gave the Staff Report for Appeal Case 2020-02. Charles and Elizabeth Myers have appealed a Final Notice of Violation (Exhibit A) issued to them on August 3, 2020 regarding short-term rental of their property at 178 Norwood Circle. Short-term rental is a period of rental less than 28 days. The Myers' property at 178 Norwood Circle is zoned R-15, Single-family where short-term rental of property is not permitted. The property is further identified by Watauga County PIN# 2817-13-6488-000.

The Town received a complaint of short-term rental activity at 178 Norwood Circle. In response and understanding that short-term rentals have not been known to have been grandfathered at 178 Norwood Circle, staff sent a Notice Violation to the property owner detailing that short-term rentals were not allowed in the R-15 zoning district.

The Notice of Violation was sent by certified mail on August 3, 2020 and received and signed for on August 6, 2020. An application for appeal (Exhibit B) was received on September 4, 2020 which is within the required 30-day appeal deadline.

Public Notice for this Appeal was mailed on October 9, 2020 (and corrected on October 12, 2020) to the property owner and adjacent property owners within 150 feet (Exhibit C). The

property was posted on October 9, 2020. A public notice appeared in the Blowing Rocket on October 15th and 22nd, 2020. The difference in the corrected public notice was that the meeting was moved to the American Legion due to early voting at Town Hall.

Attachments included in the packet were:

- EX. A. Notice of Violation dated August 3, 2020
- EX. B. Appeal Application dated August 28, 2020
- EX. B-1. Appeal Application
- EX B-2. Applicants attachment to B1
- EX. C. Public Notice and mailing list and map
- EX. C-1. Public Notice that was mailed
- EX. C-2. List of property owners and mailing address who received Public Notice
- EX. C-3. Map of properties that received Public Notice (used earlier tonight)
- EX. D. Aerial Map of subject property outlined in red
- EX E. Zoning Map of subject property outlined in red

Mr. Rothrock said this completes the Staff Report adding that he had other documents that he can introduce on the Town's behalf later if that would be appropriate. Chairman Springs asked other than the Staff Report document. Mr. Rothrock confirmed. Chairman Springs Mr. Rothrock to introduce these documents now.

Mr. Miller said if the burden shifts to him, he does not think it's proper for the Town to introduce this evidence, unless the Town wants to keep the burden and he thinks it should stay with the Town because the Appellant was not given notice of this evidence. Chairman Springs said that ordinarily the Board has the Town present their evidence together and then it is turned over the Appellant. Chairman Springs said before the burden shifts to him the Town shows the current violation of the Town ordinance. Mr. Miller said he thinks the burden shifting is unconstitutional, but that's a personal feeling that will not be decided by this Board. Mr. Miller said he knows Mr. Rothrock and respects him very much, but all he has to do is the Notice of Violation and the burden automatically shifts to the Appellant, that they do not have to do any investigations. Mr. Miller said for the purposes of this hearing the Town has presented its evidence as to what the violation is, and the burden is now upon the Appellant to prove it is not a violation. Mr. Moseley said that he does not disagree with Mr. Miller's position and said that he has no idea what else Mr. Rothrock intends to produce. Mr. Moseley said the Appellant does have the burden adding he has no objection to them starting their case now and then come back to what Mr. Rothrock will introduce adding that Mr. Rothrock will testify as well. Mr. Rothrock said this is no more than sections of the Land Use Code that Chairman Springs distributed in the beginning that were not included in the Staff Report. Mr. Miller said that he has no objection if it is just the Land Use Code as this is not really evidence. Chairman Springs said if Mr. Rothrock feels it is relevant to go ahead and introduce it now. Mr. Miller agreed. Chairman Springs asked Mr. Rothrock to show these to Mr. Miller, Mr. Moseley and Mr. Ranson and Mr. Barbour.

Mr. Miller questioned Mr. Rothrock. Mr. Miller asked why the Short-Term Rental ordinance was passed on June 12, 2018, but not signed August 13, 2019. Mr. Rothrock advised that it had to be corrected, that there were some things not included in the final draft, and the correct copy was signed in August 2019. Mr. Miller said the Town Council passed it, but it was not signed until a year and some months later. Mr. Rothrock confirmed. Mr. Miller asked when it became effective. Mr. Rothrock advised August 13, 2019. Mr. Rothrock said there were inconsistencies in the ordinance and those were corrected. Mr. Miller asked that non-conforming uses that were in existence prior to the August 13, 2019, more specifically short-term rentals in areas that are now are banned if they were in operation then, if there is a provision to allow those to continue to operate so long as they comply with the grandfather status and the other ordinances. Mr. Rothrock said the ordinance that was signed in 2019 was an updated section of the code adding that the Town had regulated short-term rentals as far back as 1984. Mr. Rothrock said there was another ordinance back in 2000 that further added some clarification to the ordinance and adopted a Short-term Rental Overlay District and more work was done in the 2018 ordinance that dealt with getting a permit where short-term rentals are authorized. Mr. Rothrock said this was the ordinance that was finalized on 2019. Mr. Miller said 1984 was the first time it was regulated. Mr. Rothrock confirmed. Mr. Miller said in 1984 if there was a short-term rental operation in an area that it is not allowed, it would be grandfathered in so long as that use continue. Mr. Rothrock confirmed.

Chairman Springs asked Mr. Ranson and Mr. Barbour if they had any questions for Mr. Rothrock. Neither had any questions for Mr. Rothrock.

Ms. Murphy asked if in 1984 was there anything official, automatic, or did you have to go to the Town and tell them you were short-term renting to be grandfathered. Mr. Rothrock said he did not know how it was treated as he did not work for the Town then; that he just knows what the code said.

Chairman Springs asked for the official Zoning Map for Blowing Rock. Mr. Rothrock advised he did not have one with him, but advised that he did have a smaller, older version. Chairman Springs asked if it includes the property in question on Norwood Circle. Mr. Rothrock confirmed. Chairman Springs noted that Mr. Rothrock said the property was zoned R – 15. Mr. Rothrock confirmed. Chairman Springs asked how long it has been R – 15. Mr. Rothrock said since at least 1984. Chairman Springs noted the zoning map Mr. Rothrock has is smaller and stale. Mr. Rothrock confirmed. Chairman Springs asked him if the property is in the R – 15 district. Mr. Rothrock confirmed. Chairman Springs asked if Mr. Rothrock would make the map part of the record. Mr. Rothrock said absolutely.

Chairman Springs asked when the house was built. Mr. Rothrock said he did not have any idea. Chairman Springs asked if he had given proper notice to the neighbors of this hearing. Mr. Rothrock said yes.

Chairman Springs referred to the Final Notice of Violation and asked how many complaints were received. Mr. Rothrock said he received one complaint. Chairman Springs asked from whom. Mr. Rothrock advised Mr. Ranson. Chairman Springs asked when the property was allegedly rented illegally for short-term rentals as a basis for the Notice of Violation. Mr. Rothrock said July 2020, that he did not have the exact date. Mr. Rothrock said his first contact was in July 2020. Chairman Springs asked if he had more than one contact with Mr. Ranson. Mr. Rothrock said since he sent the Notice of Violation, he has had subsequent contact with Mr. Ranson. Chairman Springs asked if Mr. Rothrock if he knocked on the door of 178 Norwood Circle. Mr. Rothrock said he did not. Chairman Springs asked why he didn't. Mr. Rothrock said he did not visit, that he sent the letter. Chairman Springs asked if he contacted the Myers before he sent the letter. Mr. Rothrock said he did not. Chairman Springs asked him if he checked the internet for rental listings for the property. Mr. Rothrock said he did but did not find any such listings.

Ms. Murphy said, going back to 1984, how do we know who is grandfathered and who is not. Mr. Rothrock said it is a very short list; there is one on the corner of Morningside and te221 and there are some in the ETJ that were short-term rentals prior to the Town taking that area into Extraterritorial Jurisdiction in 2005 and we know those properties. Mr. Rothrock said there are a few in Sunrise Cove. Mr. Steele asked how long someone can be in non-conformity in a grandfathered situation. Mr. Steele asked if something is passed in 2010 how long can the non-conformity last. Mr. Steele asked if this ended with the original owners. Mr. Rothrock said it could be passed on through ownership as long as not more than 180 pass from one to the other. Mr. Steele said if there haven't been any rentals in that 180 period, then it would end. Mr. Rothrock said it would unless they were getting a permit for renovations and they let the Town know that they have been doing short-term rentals and if the Town agrees that they are grandfathered in and once the work is finished, they can resume that grandfathered status of that non-conforming use. Mr. Steele asked if rules like this are common knowledge when people buy houses. Mr. Rothrock said he did not know that he gets calls every week about the status of certain homes and the status of short-term rentals being permitted. Mr. Steele asked if he had a list of properties in town that are grandfathered for short-term rentals. Mr. Rothrock said he may have a list on the computer, but he can't say for certain.

Chairman Springs noted in the new ordinance there is a system for regulating lawful short-term rentals. Chairman Springs asked who administers this, is it you. Mr. Rothrock said yes that Tammy, prior to Covid when the office was open full time, would receive those. Mr. Rothrock said he has received a few recently. Chairman Springs asked him if he received a short-term rental application for this property. Mr. Rothrock said he had not.

Chairman Springs asked Mr. Ranson if he had any questions for Mr. Rothrock. Mr. Ranson asked Mr. Rothrock if he was surprised when he could not find advertisements on the internet, yet Mr. Ranson was telling him that this was continuing, and did he have a question about how that might be going on. Mr. Rothrock said yes. Mr. Ranson asked him if he cared to elaborate. Mr. Rothrock said the Town uses a system, in cooperation with the

TDA, called STR Helper which combs the internet looking for short-term rentals through HomeAway, Airbnb or other rental platforms where short-term rentals are being advertised. Mr. Rothrock said he did not find this property and that was surprising, and that he had not received any prior complaints on this property.

Chairman Springs asked Mr. Barbour is he had any questions for Mr. Rothrock. Mr. Barbour asked what proof would be sufficient to show continued short-term rental operation since 1984. Chairman Springs objected stating that Mr. Barbour was asking Mr. Rothrock to speculate and that is not fair.

Chairman Springs asked Mr. Miller if he had any further questions for Mr. Rothrock. Mr. Miller noted that non-conforming situations are actually part of the ordinance. Mr. Rothrock confirmed. Mr. Miller said that is the same ordinances that deals with all the land use regulations. Mr. Rothrock confirmed. Mr. Miller noted that anybody who looked at the ordinances could find that a non-conforming use could go away after 180 days. Mr. Rothrock said yes.

Mr. Miller asked Mr. Rothrock if he looked at the county tax records for this property. Mr. Rothrock said he uses the Blowing Rock GIS that utilizes the county tax records as base information. Mr. Rothrock said that's how he determined the owner and their mailing address. Mr. Miller asked if Mr. Rothrock noticed in the county records that the house was built in 1941. Mr. Rothrock said no that he did not look for that. Mr. Miller asked if Mr. Rothrock had any reason to doubt the county tax records. Mr. Rothrock said he did not. Mr. Miller noted that Mr. Rothrock said that he had not had any other complaints on this property for short-term rental. Mr. Rothrock said not prior to this complaint. Mr. Rothrock said after the notice was posted he started getting calls about continued rentals at the property. Mr. Rothrock said he advised the callers that the appeal stays any enforcement action until the appeal hearing is over and they understood that. Mr. Miller said so prior to notice from the neighbor you had never heard anything. Mr. Rothrock said he had not. Mr. Miller asked if Mr. Rothrock enforces the noise ordinance. Mr. Rothrock said he did not. Mr. Miller asked if he was aware of any noise violations for this property. Mr. Rothrock said he was not. Mr. Miller asked if the software would catch a property that is not advertised on the internet. Mr. Rothrock said no since the software is combing the internet to find rentals. Mr. Miller said when the ordinance was changed recently that there were hearings on it, and it was reported by local media. Mr. Miller asked if property owners at-large were notified by any other means besides local media. Mr. Rothrock said for the ordinance in 2018 and 2019, no. Mr. Miller said that no notice is sent to all property owners that the Town is amending ordinances. Mr. Rothrock said not about this, but prior to 2018, there have been notices sent with the water bills. Mr. Rothrock said previous Town Manager Don Holycross sent letters town-wide to water customers informing them, and that he had sent letters to local realtors about the Town's standards dealing with short-term rentals and where they are allowed. Mr. Miller said that at times some sort of notice was sent out. Mr. Rothrock confirmed adding that notice is also sent in the Town newsletter, but he could not

recall if the 2018 update was included. Mr. Rothrock said in the Around the Rock newsletter there would be a blurb about short-term rentals and any code amendments.

Mr. Moseley asked Mr. Rothrock the current definition of short-term rentals. Mr. Rothrock read the definition from the Land Use Code. 'Short-Term Rental of a Dwelling Unit. The rental, lease, or use of an attached or detached residential dwelling unit for a duration that is less than 28 consecutive days.' Mr. Moseley asked when that definition first became part of the Blowing Rock Land Use Code. Mr. Rothrock responded in 2000. Mr. Moseley asked if that definition came into to play in 2000 by ordinance. Mr. Rothrock confirmed. Mr. Moseley asked the purpose of that ordinance. Mr. Rothrock said the purpose of the ordinance was to establish a short-term overlay district that could be applied over the multi-family residential zoning districts. Mr. Rothrock said at the time some general terms were added including short-term overlay district and short-term rental of a dwelling unit which is the same definition as currently in the code, and all the language dealing with short-term overlay districts. Mr. Moseley asked him if he was actually looking at the 2000 ordinance. Mr. Rothrock confirmed. Mr. Moseley asked if this is part of what Mr. Rothrock plans to introduce. Mr. Rothrock said no. Mr. Moseley asked Mr. Miller if he had any objections to this being made part of the record. Mr. Miller said he would like a copy as he does not have access to this, noting that he knows Mr. Moseley has institutional knowledge. Mr. Miller asked Mr. Rothrock how long he has worked for the Town. Mr. Rothrock advised 19 years, since 2001. Mr. Moseley asked Mr. Miller if he would like to see this. Mr. Miller confirmed. Mr. Rothrock shared this with Mr. Miller and said that it includes the minutes and everything from that day. Mr. Miller reviewed the material during a break in testimony.

Chairman Springs asked Mr. Moseley if there are any other witnesses besides Mr. Rothrock that the Town plans to present. Mr. Moseley said that Mr. Dan Phillips and Mr. Sam Hess would like to testify and the folks who are present. Mr. Moseley said his discussion with Mr. Miller during the break is that he has the burden and he wants to proceed with his evidence. Mr. Miller said since they have the burden it is their prerogative to present their case. Mr. Miller said he did not object to Mr. Rothrock giving the views and ordinances, including historical information. Mr. Miller said if the Town wants to reabsorb the burden then he will agree to let the Town present their case first.

Chairman Springs said that the Town had presented evidence that established the violation and that Mr. Miller could proceed, but the Town will have the right to bring back witnesses after the Myers' case is presented. Mr. Miller agreed.

Mr. Miller, before presenting the Myers' case, moved to dismiss the Town's case based on the Town establishing that a violation occurred. Mr. Miller said that it was not established based just on the notice that a violation occurred. Mr. Miller said what was presented is that Mr. Ranson made a complaint and Mr. Rothrock searched the software, did not go to out to the house, sent the notice of violation and that's why we are here. Mr. Miller said the Town never actually established whether there were short-term rentals at the house or not. Chairman Springs distributed a list, that he prepared, of pertinent law for any short-term

rentals. Chairman Springs said the burden of proof shall be on the appellant, which is a Blowing Rock code section and another code section deals with the administration of short-term rentals which reads someone applying for a zoning permit for short-term rentals in an area not permitted by right, i.e. a zoning district in which it is prohibited, must provide historical documentation that a non-conformity has been legally obtained, however, a local governmental authority bears the burden of proving the existence of a current Town violation. Chairman Springs said the court of appeals says this. Chairman Springs continued, stating that once a Town meets the burden of establishing the existence of a current zoning violation, the burden completely shifts to the landowner to prove that the use to establish the existence of a legal or non-conforming use.

Chairman Springs read the Final Notice of Violation dated August 3, 2020 and asked Mr. Miller if he has any problems with it. Mr. Miller said the first sentence informing the Myers that they 'may' be in violation adding there is a difference between 'may' and 'shall', and said it is not definitive that they are in violation. Mr. Miller said that Mr. Rothrock's letter refers to a complaint being received and noted that the complaint was not confirmed nor anything that would effectively shift the burden, based on the cases provided by Chairman Springs. Mr. Miller read 'the governmental authority bears the burden of proving there is a violation and once that violation has been proved, the burden shifts to the appellant. Mr. Miller said the very language in the letter states that the Town hasn't met the burden of proof.

Chairman Springs said the letter, the Final Notice of Violation is a notice document stating they may be in violation. Chairman Springs said he does not have a problem with the word 'may'. Chairman Springs said the letter does not refer to historical use of short-term rentals at the property adding that there is no time in the letter. Chairman Springs referred to the Administrative Appeal staff document. Chairman Springs said this document does not allege a time or a year when the illegal activity was taking place. Chairman Springs said he sees real problems with the notice that the Myers have received and asked Mr. Moseley if he wanted to speak to that. Mr. Moseley referred to Section 16-5.1 of the Land Use Ordinance, Appeals, and read 'An appeal from any final order or decision of the Administrator may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the Administrator and the Board of Adjustment a written notice of appeal specifying the grounds therefore.' Mr. Moseley said in this Final Notice of Violation it states clearly and tracks what Section 16-5.1 states as it states this written final notice of violation constitutes the final written notice and it gives the property owner their appeal rights as required by Article 5 of the Land Use Ordinance. Mr. Moseley said the Final Notice of Violation is in compliance. Mr. Moseley began to speak to the burden of proof and Chairman Springs asked him to hold off, saying that he wants to finish with the notice document.

Chairman Springs said that the notice document, number one, did not allege any time. Chairman Springs asked Mr. Moseley his position on that. Mr. Moseley said that he did not have to state anything specific, that the notice stated complaints of illegal short-term rentals. Mr. Moseley said this constitutes proper notice as it plainly states the violation of

the Land Use Ordinance. Mr. Moseley said he does not believe that the Land Use Ordinance requires that specific violation dates be set forth. Chairman Springs referred to due process and asked if someone serves an arrest warrant on 'Joe Smith' that he had been embezzling from his employer, without alleged dates, does that constitute due process. Mr. Moseley said he doesn't think the analogy works, that this is a zoning violation and is specific enough to put the property owner on notice of what the alleged violation is. Mr. Moseley said this is not the same thing. Chairman Springs said they are alleging breaking the law and that when you break the zoning law you've broken a law and many people take that very seriously. Chairman Springs said there needs to be something to back this allegation up.

Chairman Springs referred to Article 7 in the Blowing Rock Code, Enforcement and Review, Section 16-7.1. Chairman Springs read 'Whenever the Administrator (he added that Mr. Rothrock is the Administrator) receives a written, signed complaint alleging a violation of this chapter, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken. Chairman Springs said he assumes there was not a written, signed complaint from Mr. Ranson. Mr. Rothrock said there was not.

Chairman Springs asked everyone to turn their attention to the Administrative Appeal document. Chairman Springs stated that the introduction basically mirrors what Mr. Rothrock testified to initially and once again it does not allege a time frame when the short-term rental took place. Mr. Moseley referred to Article 7 and said Mr. Miller referred to 16-7.1 which references what the Administrator is required to do if he receives a written, signed complaint. Mr. Moseley said it is not the only basis upon which the Administrator may discover violations or cite a property owner for violations. Mr. Moseley said that 16-7.3 states 'If the Administrator finds that any provision of this chapter is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it.' Mr. Moseley said this is what Mr. Rothrock did when he sent the final written notice, which clearly states it is a final written notice. Mr. Moseley read Section 16-7.1.1. 'The final written notice (and the initial written notice may be the final notice) shall state what action the administrator intends to take if the violation is not corrected and shall advise that the administrator's decision or order may be appealed to the Board of Adjustment as provided in Section 16-5.1. Mr. Moseley said Mr. Rothrock tracked specifically as to what he was required to do. Mr. Moseley said he wasn't required to say 'that on August 10th you engaged in short-term rental'. Mr. Moseley said the property owner was on notice and they knew what the complaint was, and they already had their position with respect as to why they can continue. Chairman Springs said they have not, that they have not presented their case. Mr. Moseley said they have somewhat gotten that forecast from Mr. Miller.

Chairman Springs asked Mr. Moseley if this final notice is fair, does it apprise the person of what they've done and when they've done it sufficiently to be fair. Mr. Moseley said yes. Chairman Springs asked Mr. Miller regarding just the paperwork, his position on the Final Notice of Violation and Administrative Appeal document as far as sufficiency. Mr. Miller said

he does feel it is insufficient and it would violate his client's due process rights to know the time and place of what they are alleged doing and when they are alleged to have done it so that they can come in and properly defend themselves. Mr. Miller, referring to Chairman Springs's criminal analogy, said that time and place matter and that the burden stays with the state. Mr. Miller said here it is more onerous because here a notice is sent out and the burden shifts and when the burden shifts they must be able to come here, because this is the trial court and they must be able to properly defend themselves. Mr. Miller referred to Section 16-7.1 regarding Mr. Rothrock's representations in his letter and a little bit of his testimony this came from a complaint from Mr. Ranson. Mr. Miller said 16-7.1 applies and that Mr. Rothrock went online and could not find anything online that said it was the short-term rental. Mr. Miller said that he is not alleging that Mr. Rothrock did not investigate, that he did a little investigating, but it did not rise to the level under 16-7.3, 'If the Administrator finds that any provision of this chapter is being violated, he shall send a written notice' because Mr. Rothrock never found that, he relied on a complaint to create the violation, but it was not a written complaint as required. Mr. Miller said they are flying blind, adding that they have a defense, but that doesn't matter if at this point they did not get proper notice of exactly what they have done and when it was done. Mr. Miller said the ordinance and the statutes set up for due process, but it wasn't followed to a 't'. Chairman Springs asked Mr. Miller if he would agree that Mr. Ranson's words to Mr. Rothrock were evidence. Mr. Miller said it is evidence.

Chairman Springs said, before the Board discusses whether there is a current violation of the Town Ordinance, he wants to address the sufficiency of the paperwork. Chairman Springs asked Mr. Miller his position on the sufficiency of the paperwork. Mr. Miller said it is inadequate to meet the constitutional burden of due process. Chairman Springs asked what remedy he would want. Mr. Miller said the only sufficient remedy of the constitutional violation of due process is dismissal of the action. Mr. Miller said they end up back here or not, he doesn't know the future. Mr. Ranson asked if they could go home now and come back next week, that this is a waste of time. Chairman Springs said that if this is dismissed due to improper notice it would be for past violations. Chairman Springs said going forward if, Mr. Rothrock catches them making illegal short-term rentals and develops evidence of that, Chairman Springs assumes he will send notice again as he has every right to do. Mr. Miller agreed. Chairman Springs said a dismissal of the case will stop it right now and asked if Mr. Miller wanted to do that or to try to establish a grandfathered use. Mr. Miller said if they rent again and Mr. Rothrock violates them again, and they appealed it then they could then present the grandfathered evidence. Mr. Miller said they also could apply for a grandfathered permit, assuming that a dismissal is granted, and Mr. Rothrock could approve or deny that.

Chairman Springs asked Mr. Ranson the sufficiency of the letter putting the Myers on notice of what they did and when. Mr. Ranson said the letter is a result of his conversations with Mr. Rothrock. Chairman Springs asked if he felt the letter was sufficient in giving notice to the Myers. Mr. Ranson said yes. Chairman Springs asked Mr. Barbour if he had any

comments on the letter. Mr. Barbour said the letter states what was going on and gave proper notice.

Chairman Springs asked the Board to decide the sufficiency of the letter. Chairman Springs said once this is decided, the Board can decide if the Town has put up enough evidence to establish a violation at which point the burden shifts to the Myers. Dr. Rocamora said he thinks a violation has occurred and has been brought up by several neighbors and this suggests a violation. Mr. Steele asked if Mr. Rothrock would have written the letter without sufficient information from the complainant. Mr. Steele said his question is how Mr. Rothrock received this information. Mr. Steele asked Mr. Ranson if he ever tried to call the Myers. Mr. Ranson said he did not have their number. Mr. Ranson said he had tried to meet them, but it always tenants at the house. The Board discussed the sufficiency of the letter. Chairman Springs said the Myers, through Mr. Miller, have asked for a dismissal because the letter does not sufficiently apprise them of what they did wrong.

Chairman Springs asked for a motion on the sufficiency of the letter putting the Myers on notice of what they did wrong. *Ms. Murphy made a motion to find that the letter was sufficient notice, seconded by Mr. Steele. Mr. Steele, Ms. Murphy and Dr. Rocamora were in favor. Chairman Springs opposed. Motion passed.*

Chairman Springs asked Mr. Ranson, Mr. Barbour and Mr. Moseley if they had if he any comments. They did not.

Chairman Springs asked Mr. Miller to speak to whether the Town had met their burden to establish a violation. Mr. Miller said he had no comment on the letter; that he respects the decision, but he disagrees with judges all the time. Chairman Springs asked Mr. Miller if he thinks the Town has met their burden to establish a current existence of a current Town violation. Mr. Miller said they have not for two or three reasons, the first being by the very wording of Section 16-7.1 which states 'receiving a written, signed complaint' has not been met. Mr. Miller said they have not produced this because no letter exists. Mr. Miller said he knows this through the testimony of an intervener who said it was a voicemail. Mr. Miller said no court that he knows of has found a voicemail to be a written communication. Mr. Miller said this Section is clear that it has to be a written, signed complaint. Mr. Miller said he understands that Section 16-7.3 states if the administrator finds that any provision of this chapter is being violated, he can send written notice to the person responsible. Mr. Miller said that Mr. Rothrock testified that he did not find that, he sent the notice based on what Mr. Ranson said. Mr. Miller said the notice states they may be violating. Mr. Miller said this is a charging document that must place the property owner on notice. Mr. Miller said based on what the Town presented he does not think they met their burden to find a violation. Mr. Miller said if he had gone to the house and found renters there, if he found something on Airbnb that it was a rental, then sure, he would have met their burden, but one, they did not comply with their own Town ordinance and two, there is no evidence other than one complaint that was not written. Chairman Springs asked Mr. Miller if this is

his pronouncement on whether or not they have met their burden showing the existence of a current Town violation. Mr. Miller said yes.

Chairman Springs noted that Mr. Moseley said Section 16-7.1, regarding receiving a signed written complaint, does not preclude other methods; that it does not preclude oral communications and asked Mr. Miller how he would address that. Mr. Miller said he agreed with Mr. Moseley that it does not preclude it. Mr. Miller said that Mr. Rothrock could have engaged in further investigation adding this is nothing against Mr. Rothrock. Mr. Miller said Mr. Rothrock went to the computer to see if the software could catch short-term rentals and it did not. Mr. Miller said he didn't go to the house, that the computer search was the extent of his independent investigation. Mr. Miller said he did not establish anything in his investigation. Mr. Miller said if Mr. Rothrock had done a different investigation, he may have found short-term rentals at the property. Mr. Miller said based on 16-7.3 that Mr. Rothrock did not find anything. Mr. Miller said in his own letter, Mr. Rothrock said 'may' which differs from 'did find'. Mr. Miller said that if Mr. Rothrock had a signed, written complaint from Mr. Ranson then he would have that to act on, but he does not have that.

Chairman Springs said this is the Chair's call and he finds that the Town has met its burden to establish a current Town violation and that the burden now shifts to the Myers. Mr. Miller asked what statutory language allows the Chair to make this unilateral decision as opposed to the Board voting as to whether they met their burden or not. Chairman Springs said it's been their tradition that the Chair rules on evidentiary decisions.

Mr. Miller called Ms. Elizabeth Myers. Mr. Miller asked her to state her name and address at which she resides. She responded Elizabeth Medearis Myers and 220 Altondale Avenue in Charlotte. Mr. Miller asked if she had always lived in Charlotte. Ms. Myers said no, but mostly in Charlotte. Mr. Miller asked her connection to 178 Norwood Circle in Blowing Rock. Ms. Myers said she currently owns the home, that this is the house her grandfather built. Ms. Myers said the house was passed to her daddy and then she purchased it from her dad with the help of her ex-husband Charles Myers. Mr. Miller said to be clear you are no longer married, but both of you still have an ownership interest in the home. Ms. Myers confirmed. Mr. Miller said he guessed they get along to some degree. Ms. Myers confirmed. Mr. Miller asked when the home was built. Ms. Myers said the home was completed in 1941 and the land purchased in 1939. Mr. Miller asked what kind of home this is. Ms. Myers said it's 5 bedrooms but she does not know the square footage. Mr. Miller asked if her grandfather lived in the home. Ms. Myers said it was a summer home, which was very typical at the time, where families would go to escape the heat of the city. Mr. Miller asked if it was just her family or other families. Ms. Myers said her family and their families would also stay there. Mr. Miller said so people who did not have an ownership in the house stayed there. Ms. Myers said absolutely. Mr. Miller said he realizes that the Town did not define short-term rental until 2000 and asked Ms. Myers if she understood what the Town defines as a short-term rental as 28 days or less. Ms. Myers said she thinks she understands that. Mr. Miller asked, to her knowledge, if her grandfather rented the home out during his ownership period for periods of less than 28 days. Ms. Myers said yes. Mr. Miller noted that

her grandfather built it in 1941 and asked when he passed ownership to her father. Ms. Myers said 1965. Mr. Miller asked from 1941 to 1965 what is her knowledge that her grandfather rented the house for less than 28 days. Ms. Myers said there were a couple of letters from his aunt and his sister thanking him for using the cottage, but she does not know if any money was exchanged at that point. Ms. Myers said that 'rental' may be the wrong word for that use, that her grandfather would lend the house to family and friends. Mr. Miller asked if she knows that the ordinance requires that money be exchanged for a short-term rental. Ms. Myers said she does not know that. Mr. Miller noted that in 1965 her father inherited the house. Ms. Myers confirmed. Mr. Miller asked Ms. Myers her birth year. She said 1962. Mr. Miller asked how she gained her knowledge base of what the use of the house was prior to her being able to comprehend or being born. Mr. Miller asked if there is anything besides the letters. Ms. Myers said based on the letters, family talking about it, and her father recounting stories about stays at the property. Mr. Miller asked if a guest book was maintained at the residence. Ms. Myers confirmed. Mr. Miller asked her about the guest book. Ms. Myers said they start in the 1970s and continue forward wherein friends, family and people that rented wrote about their stays.

Mr. Miller asked Ms. Myers her father's name and where he lived. She said William Fields Medearis and he lived in Charlotte. Mr. Miller asked the dates of his ownership of the home. Ms. Myers said from 1965 until 2017. Mr. Miller asked her father's age. Ms. Myers said he will be 88 tomorrow. Mr. Miller said he is not able to testify today. Ms. Myers confirmed. Mr. Miller said to Chairman Springs that he has a signed affidavit from Mr. Medearis and that it is his understanding from Mr. Moseley that the Board would rather have live testimony, which he understands and respects. Mr. Miller said they could possibly call him as the next witness. Mr. Miller referred to NCGS 160A-393, Section K. Chairman Springs asked if the affidavit is notarized. Mr. Miller confirmed. Chairman Springs said the Board will allow the affidavit. Mr. Miller distributed copies of the affidavit. Mr. Miller asked if this is the affidavit that she and Mr. Myers secured from Mr. Medearis. She confirmed. Mr. Miller asked if that was his signature on the last page. She confirmed. Mr. Miller asked if that was a notary stamp below the signature. She confirmed. Mr. Miller asked her to read the first paragraph. Ms. Myers read it. Mr. Miller asked Ms. Myers, based on her knowledge, how her father and aunt rented the home. Ms. Myers said mostly friends, people would hear about the house and call and ask if it could be rented. Ms. Myers said several artists, including Ben Long, stayed there. Mr. Miller said he did not know who Ben Long is and asked her. Ms. Myers said he is the artist that did the frescoes in the area and very noted for his art. Mr. Miller asked when Mr. Long stayed at the house. Ms. Myers guessed it was in the 1980s, but she wasn't sure. Mr. Miller asked if there were times when she wanted to use the home, but it was occupied by non-family members who were essentially renting it. Ms. Myers said yes. Mr. Miller asked while her father owned if she kept a record of who rented it and when. Ms. Myers said only through the guest books. Mr. Miller asked if everyone wrote in the guest books. Ms. Myers said no, it was up to the guest to write in it. Mr. Miller asked if she recalled a time, prior to her acquiring the property in 2017, a period of 6 months when the property was not rented on as a short-term rental. Ms. Myers said not that she recalled; it seemed to be constantly rented and there were

many times that she was told she could not use the property. Mr. Miller said just to be sure that she can't remember everything, but nothing comes to mind. Ms. Myers agreed. Mr. Miller noted that she likes to keep family records. Ms. Myers agreed. Mr. Miller asked if he should mark the affidavit 'Appellant's 1' and formally introduce Appellant's 1 into evidence. Chairman Springs asked Mr. Moseley if he had any objection to this. Mr. Moseley said he does not object to having it admitted, but it can be discussed or argued later whether it is substantial competent evidence. Chairman Springs asked Mr. Ranson if he had any objection to this being entered as part of the record. Chairman Springs asked Mr. Barbour if he had any objection to this. Mr. Ranson and Mr. Barbour did not object.

Mr. Miller noted that Ms. Myers is the purveyor of the family records. Ms. Myers agreed. Mr. Miller asked if in these records she found a handwritten letter to her father. Mr. Miller could not read the authors name and asked Chairman Springs if he could show the letter to Ms. Myers. Chairman Springs said it needed to be read aloud before it is entered into evidence. Mr. Miller marked the letter 'Appellant's 2'. Mr. Miller asked Ms. Myers if she recognized the document. Ms. Myers said she did. Mr. Miller asked how she recognized the document. Ms. Myers said it was sent to her mother from Mrs. Finn Horton. Mr. Miller asked the year of the document. Ms. Myers said 1973. Mr. Miller asked where she found said letter. Ms. Myers said she is the family archivist and it was given to her by her parents. Mr. Miller noted this is a handwritten letter to Ms. Myers's mother that references the cottage. Ms. Myers confirmed. Mr. Miller said before he gets in potential hearsay, he wanted to address the Board and Mr. Chairman to alert them that as to where he is heading at this point. Mr. Miller said he is offering this for what value it has as a 1973 letter from two parties. Mr. Miller asked Ms. Myers if her mother is still alive. She confirmed. Mr. Miller said that theoretically they could get an 80+ year-old lady here to authenticate it. Mr. Miller asked if Ms. Horton is still alive. Ms. Myers said she did not think so, no she is not. Mr. Miller said it is only hearsay if it goes to offer the truth of the matter. Chairman Springs said that is correct. Mr. Miller said it does refer to tenants at the cottage adding that the Board needed to decide if it goes to the truth of the matter, or if it meets the hearsay exception. Chairman Springs said this is hearsay and asked Mr. Miller if he had any hearsay exceptions. Mr. Miller said the hearsay exception that he has is that it represents the cottage as a short-term rental business and would be a business record duly kept in the normal course of this business. Chairman Springs asked who would authenticate it. Mr. Miller said that Ms. Myers as she is now the owner of the business and the keeper of the records. Chairman Springs asked if the writer of the letter is still alive. Mr. Miller said that Ms. Myers testified that she does not believe so. Chairman Springs asked Mr. Moseley his position on the letter. Mr. Moseley objects to the letter. Chairman Springs asked Mr. Ranson if he objects to the letter. Mr. Ranson said he objects to the letter. Chairman Springs asked Mr. Barbour if he objects to the letter. Mr. Barbour said he objects to the letter. Mr. Miller said that his only comment is due to the length of ordinance itself, they must go back very far in time to prove something because the burden is shifted on them. Mr. Miller said he understands that the letter is hearsay adding that hearsay is allowed in these hearings. Mr. Miller said this appears to be competent evidence and that the ordinance dates back to the early 1980s forcing them to reach back and find documents prior to the 1980s to prove this was a

short-term rental. Mr. Miller said they are attempting to do that with what the documents they have with the change in hand. Mr. Miller said inevitably there will be some hearsay items. Chairman Springs asked if he could see a copy of the letter. Chairman Springs asked if there is another page. Mr. Miller said it seems there are pages missing, the only relevant part. Mr. Miller said he would like to leave a copy with the Clerk for the record. Chairman Springs advised that he make sure it was a complete copy. Mr. Miller said this is the only copy he has and asked if he can supplement the record later with a full copy. Chairman Springs said that was fine. Chairman Springs asked Mr. Rothrock if these files live in his office. Mr. Rothrock confirmed. Chairman Springs said Mr. Miller will mail the full copy later to Mr. Rothrock. Mr. Miller confirmed. Chairman Springs advised that the Board does allow telephone testimony if they take the oath. Chairman Springs said if the case is continued, adding that he did not think it would be wrapped up tonight, telephone testimony could be heard then. Mr. Miller said he appreciates that and asked if they prefer it be phoned in or over Zoom. Chairman Springs said it does not matter so long as they take the oath.

Mr. Miller noted that Ms. Myers obtained ownership in 2017. Mrs. Myers confirmed. Mr. Miller asked her why she bought the house. Ms. Myers said because it is very special to her family and the legacy and heritage is very important to her family. Ms. Myers said her daughter will be the fifth generation when she inherits it and she is fourth. Ms. Myers said the house was built by local people and a lot of the furniture is local and a lot of things have been celebrated there. She added it is very special. Mr. Miller asked if there was economic reasoning in buying it as well. Ms. Myers asked if Mr. Miller is asking if she will make money off the house. Mr. Miller asked if she paid for the house. She confirmed. Mr. Miller asked what she and Mr. Myers paid for the house. She said around \$880,000. Mr. Miller said he would represent that the deed stamps on the deed say \$1700 which equates to a purchase price of \$850,000 and asked if that is in the neighborhood of what she spent. Mrs. Myers said yes. Mr. Miller asked if she talked to Mr. Myers about ways to afford the house. Ms. Myers said yes. Mr. Miller what were those conversations. Ms. Myers said in a nutshell that they needed to rent the house to bring in income to pay taxes, mortgage, and upkeep and that when friends ask to use it, they help them out by paying something. Mr. Miller asked if this was something that she and Mr. Myers determined before or after they purchased the home, or does she recall. Ms. Myers said she is not sure. Mr. Miller asked if they formed a business, an LLC. Ms. Myers yes. Mr. Miller asked, in regards to the LLC, who is the member-manager or controlling member. Ms. Myers said Mr. Myers. Mr. Miller asked if it would be better to ask Mr. Myers financial questions. Mr. Myers said Mr. Myers. Mr. Miller asked if the short-term rentals continued after they bought it. Ms. Myers said yes that their family and friends were excited that they had bought it. Mr. Miller asked if at any time since they have owned it in 2017, was there a continuous six-month period where there were no short-term rentals. Ms. Myers said no that someone is always using the house adding that she did not think there was ever a lull, whether it was family, rentals, or friends. Mr. Miller said the property has a magnificent view. Ms. Myers said it does. Mr. Miller asked how often she comes to Blowing Rock. Ms. Myers said about once a month, more if she has the opportunity, but she works. Mr. Miller asked if, at home, she takes the Blowing Rocket or the Watauga Democrat or any newspapers from Charlotte. Ms. Myers said no. Mr. Miller

asked if prior to the notice of violation, she had ever heard of a short-term rental ban in the R – 15 zoning district. Ms. Myers said no. Mr. Miller said so nobody ever brought that up to her, whether it be a town member or Mr. Myers or her dad. Ms. Myers said no. Mr. Miller said when they were doing the rentals, did she have any knowledge that she was in violation of the ordinance. Ms. Myers said no, she did not know there was an ordinance that she could not do that, and she apologized.

Mr. Miller asked how do you advertise the house, since you and Mr. Myers bought it how do you rent it. Ms. Myers said until recently it was just hearsay, family connecting with and friends connecting with friends. Ms. Myers said it has been primarily people they know until recently when they listed it with Evolve. Chairman Springs asked for the spelling. Ms. Myers spelled it for him. Ms. Murphy asked if it is evolve.com. Ms. Myers said she did not know. Mr. Miller said that Mr. Myers did not put the house on Evolve until after they received the notice of violation. Ms. Myers said yes and that she is pretty sure that they asked Mr. Rothrock if it was okay to do that until the hearing because they had some people lined up and Mr. Rothrock said it was fine. Mr. Rothrock said they asked if they could continue to rent once the appeal application was filed and he said yes because the appeal stays any enforcement action by the Town. Mr. Rothrock said he could not stop them. Mr. Miller asked prior to the notice of violation did they ever advertise it on the internet. Ms. Myers said no. Ms. Myers said they are also part of a program called Third Home which is throughout the world, but members are not charged to stay in the homes. Mr. Miller asked if that is advertised over the internet. Ms. Myers said she does not know how that works. Mr. Miller said she does not know if Third Home is internet based or not. Ms. Myers said she would assume it is, but she does not know. Mr. Miller asked if the home is advertised on Airbnb. Ms. Myers said no. Mr. Miller asked if it advertised on VRBO. Ms. Myers said no. Mr. Miller asked if they have a rental agency. Ms. Myers said no. Mr. Miller said other than Third Home there has been no independent advertising, that it's just been word-of-mouth. Ms. Myers confirmed.

Mr. Moseley asked what time they were out. Several people advised that it was 8:20.

Mr. Moseley said he wants to understand the ownership history adding that he had pulled some deeds from the Register of Deeds office. Mr. Moseley said as he understands it, Ms. Myers grandparents acquired it in 1939. Ms. Myers confirmed. Mr. Moseley said he was reading from a deed which states her grandmother died in 1961 and her grandfather died in 1965. Mr. Moseley said he gathered from the affidavit that when her grandfather passed away, he left the property to her dad and her aunt, Mary Anne Medearis Troutman, and they owned it half and half. Mr. Moseley said then they each apparently transferred the deed titles of their one-half interests to entities, your dad to Medearis Properties, Limited Partnership and your aunt to Mary Anne Troutman Family, LLC. Ms. Myers said this is correct. Mr. Moseley asked who ownership interests in those entities, starting with Medearis Properties. Ms. Myers said she guesses it would just have been her dad and mom. Mr. Moseley said if she doesn't know that's fine; he is just asking. Mr. Moseley asked who would have an ownership interest in Mary Anne Troutman, LLC. Ms. Myers said her aunt.

Mr. Moseley said according to the affidavit that her dad signed, he states in the affidavit that both he and your aunt engaged in short-term rental of the property. Mr. Moseley asked if she had any knowledge as to whether they kept records of their rentals. Ms. Myers said she does not. Mr. Moseley said that she clearly does not have any records. Ms. Myers said she has a guest book or two. Mr. Moseley said you have a guest book, but no records or any rentals. Ms. Myers said that is correct, that her father could not find any of that. Mr. Moseley asked if she has any knowledge as to what percentage of their guests were renters and what percentage was family and friends who stayed there. Ms. Myers said she did not. Mr. Moseley asked the dates of entries in the guest books. Ms. Myers said there are two, one is in the 1970s and she is not sure when the other began, but it is very current into 2020. Mr. Moseley noted that she had continued the guest book. Ms. Myers confirmed. Mr. Moseley said that the guest books would have been maintained by her father and aunt until they sold the property to her. Ms. Myers confirmed. Mr. Moseley noted that she has the guest book and asked if her attorney was going to introduce it. Mr. Miller said he was going to introduce it with a different witness. Mr. Moseley said the Ms. Myers stated that they had formed a limited liability company. Ms. Myers confirmed. Mr. Moseley said that the ownership is with you and Mr. Myers, correct. Ms. Myers confirmed. Mr. Moseley asked the relationship between the limited liability company that they formed and you and Mr. Myers. Ms. Myers said she has no idea. Mr. Moseley asked if from the time they acquired the property between now and 2017 what percentage of occupants during that three-year period have been paid rentals and what percentage were friends. Ms. Myers said, off the top of her head, that probably 60 to 70% paid something. Mr. Moseley said they don't know all of these people. Ms. Myers confirmed. Mr. Moseley asked if they have rental contracts that they enter into. Ms. Myers said she is sure the companies do, but when it is a friend or a friend of a friend, they just give them cash or a check. Mr. Moseley said he is asking if people renting the house are signing a rental contract. Ms. Myers said she guesses they do, but she doesn't know.

Chairman Springs asked that they talk about a continuation date as Thanksgiving week is a challenge. Mr. Rothrock suggested Tuesday, November 17th. Chairman Springs asked those in attendance if they have any conflicts and would not be able to attend. Mr. Ranson said he is having surgery that day, but if he can't make it his wife can. Chairman Springs asked Mr. Ranson if she knows what he knows. He said yes. Mr. Miller said the thinks since Mr. Ranson is a party that will not work. Chairman Springs asked if anyone else has a problem with this date. Mr. Steele said he would let Chairman Springs know tomorrow. Mr. Miller said he is free and asked if Ms. Myers is available. She said she would have to check her calendar. Mr. Rothrock suggested the meeting start earlier as it may go longer. Mr. Miller said he can make 5:30 but not earlier. Chairman Springs said the tentative date is November 17th at 5:30 pm in Town Hall. Chairman Springs asked for emails once everyone checks their calendars.

Mr. Steele made a motion to close the hearing tonight, seconded by Mrs. Murphy. All were in favor of the motion.

The Board adjourned at 8:35 p.m.

E.B. Springs, Chairman

Hilari Hubner, Town Clerk