

BOARD OF ADJUSTMENT

MINUTES

Tuesday, November 17, 2020

The Blowing Rock Board of Adjustment met on Tuesday November 17th at 5:30 p.m. Members present were EB Springs, Lance Campbell, Sarah Murphy and Lee Rocamora. Staff present were Planning Director Kevin Rothrock and Town Clerk Hilari Hubner.

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

APPROVE MINUTES:

Chairman Springs said he had the following corrections for the September 24, 2020 minutes. Under Miscellaneous Administrative Matters on Page 1, first line 'unsworn testimony' should be 'telephone testimony' and the third line should be 'telephone testimony' instead of 'unsworn testimony'. On page 6, near the bottom Chairman Springs asked that a redundant 'Chairman Springs' be struck through. Chairman Springs said that in the second paragraph on the same page from the bottom 'Mr. Hartnett' should be 'Ms. Hartnett.' *Chairman Springs made a motion to approve the minutes from September 24, 2020 as corrected. Mr. Rocamora. Ms. Murphy seconded the motion. All were in favor of the motion.*

APPROVAL OF MINUTES:

Chairman Spring commended Ms. Hubner on the October 22 minutes. Chairman Springs had the following corrections. On Page 2, top paragraph 'Chairman Springs did communicate the substance of these emails should be 'Chairman Springs did **not** communicate the substance of these emails.' Page 4, third paragraph change 'beyond any suffered by' to 'beyond and suffered by any residents of Blowing Rock.' Page 6, second paragraph from bottom 'Chairman Springs asked if anyone had any questions for Mr. Rothrock.' It should read 'any questions for Mr. Barbour.' On Page 15, second line from the bottom 'Mr. Ranson's words to Mr. Rothrock and the written report were evidence' needs to read 'Mr. Ranson's words to Mr. Rothrock were evidence.' On Page 19, bottom paragraph, fourth line, 'said it needed to be entered into evidence first', please add 'before it can be read aloud' after 'first.'

Chairman Springs asked Mr. Miller if he had any corrections. Mr. Miller said he has not seen the minutes. Chairman Springs asked Mr. Moseley if he had any corrections. Mr. Moseley did not. Chairman Springs asked the Board if they had any corrections. Dr. Rocamora said that he heard one witness referencing 'loud noise' and asked that this be added. Chairman Springs said it was Mr. Barbour and asked this be added. *Chairman Springs made a motion to approve the minutes*

from October 22, 2020 as amended. Mr. Rocamora seconded the motion. All were in favor of the motion.

Mr. Miller objected to approval of these minutes, to preserve the record, as he has not seen the minutes. Chairman Springs noted his objection.

Chairman Springs advised that Mr. James Steele who participated in the October 22 hearing is not present due to a Covid-19 quarantine. Chairman Springs said that Board Member Mr. Lance Campbell is here tonight. Chairman Springs said that he was not present during the October 22 meeting. Chairman Springs noted that Mr. Campbell received a copy of the minutes, exhibits and record of the last hearing and has had a chance to look them over. Chairman Springs asked Mr. Campbell to confirm that he had looked over the minutes, exhibits and record of the last hearing. Mr. Campbell confirmed. Chairman Springs referred to rulings by the NC Supreme Court in one Board of Adjustment case and by the NC Court of Appeals in another which found that if a Board member who missed an earlier hearing is given an opportunity to examine the minutes and record from that meeting, he can participate in later hearing. Chairman Springs asked if there were any objections to Mr. Campbell serving. There were none.

Chairman Springs advised that he must disclose an unsolicited ex-parte communication that he had received since the last hearing. Chairman Springs advised that he had bumped into Mr. James Steele on Main Street two days after the last hearing and Mr. Steele asked him about the hearing. Chairman Springs advised Mr. Steele that they could not discuss that and advised Mr. Steele that he can disclose that he has prior knowledge of the subject property at the next hearing. Mr. Steele indicated that he understood. Chairman Springs asked if any Board member or party had any objection to his participating in this hearing. There were no objections.

Chairman Springs welcomed Mr. Ranson and Mr. Barbour to the hearing. Chairman Springs said let the record show that Mr. Ranson and Mr. Barbour arrived a little late. Chairman Springs asked if they were aware of the situation with Mr. Steele. Both were aware of Mr. Steele's absence and Mr. Campbell's participation. Chairman Springs asked if there was anything else from anyone before the Myers hearing resumed. Mr. Miller said he wanted to make his motion to the record. Mr. Miller said they were happy to have Mr. Campbell join to have a 5-member Board and understands the implication of being in quarantine. Mr. Miller said regardless of that he renews his motion to continue, so they can have a full Board without these type complications. Mr. Miller said what worries him are future issues with members being absent due to Covid. Chairman Springs advised that the Board does the scheduling, and they were moving Heaven and earth to complete this case tonight.

Continuation of Administrative Appeal 2020-02 Myers

Chairman Springs asked Ms. Myers if she was being cross examined and by whom at the end of the earlier hearing. Ms. Myers confirmed and advised by Mr. Moseley. Chairman Springs asked Mr. Moseley to continue.

Mr. Moseley asked about her personal knowledge of use and occupancy of the house from 1984 forward. Ms. Myers said family, friends and friends of friends used the property. Mr. Moseley continued to question Ms. Myers regarding this knowledge. Ms. Myers listed several dates and times of year when she would stay at the house with friends averaging three to four times per year. Mr. Moseley asked if she had records of others using the house. Ms. Myers said no, just conversations with her parents. Mr. Moseley asked if she had any rental records prior to her owning the property in 2017. She said she did not. Mr. Moseley asked if she had any records of the continuous use of the property from 1984 until 2017 other than guest books. Ms. Myers confirmed and indicated that Mr. Miller would introduce those into the record. Mr. Moseley had no further questions.

Mr. Ranson nor Mr. Barbour had questions for Ms. Myers. Dr. Rocamora asked Ms. Myers if she had any tax records to substantiate this was income producing property. Ms. Myers said she had some and said Mr. Miller will introduce later. Ms. Murphy asked if sharing the home was for money. Ms. Myers said not for family use. Chairman Springs asked if she had paid any occupancy tax to the Town of Blowing Rock. Ms. Myers said no. Chairman Springs asked if since 2017 is there one day of the week that tenants usually arrived. Ms. Myers usually Friday or Saturday. Chairman Springs asked the usual length of stay. Ms. Myers said typically long weekends.

Mr. Miller asked Ms. Myers how she would determine if she could use the house after she turned 18. Ms. Myers said she asked her parents. Ms. Myers said she could not use the house if it was in use by others. Ms. Myers said her father oversaw the records. Mr. Miller asked if signing the guestbooks were required. Ms. Myers said no and that the guest books had a very prominent place on a built-in podium in the main hallway. Ms. Myers said she does not have all the guest books.

Mr. Nathan Miller called Mr. Medearis. Mr. Medearis was sworn for testimony. Mr. Miller questioned Mr. Medearis. Mr. Medearis stated his name for the record, Mr. William Fields Medearis, III and stated he is Ms. Myers brother and Mr. William F. Medearis, Jr.'s son. Mr. Medearis advised that he was born in 1958 and his earliest memory of the home was when he was five or six. Mr. Medearis described the home as 5 bedrooms, servant's quarters in the back, big living and dining room and breakfast room and would accommodate a fair number of folks. Mr. Medearis said his knowledge of the rental history prior to 1984 was that it was rented fairly often, primarily through word-of-mouth, and that his mother kept wall calendars showing use of the house. Mr. Medearis said he started staying in the house without his parents when in 1977 when he was in college. Mr. Medearis said he never had ownership interest in the houses. Mr. Medearis said he came every fall with friends from 1978 until 1990 and every MLK day from 1990 until 2015 skiing with his children. Mr. Medearis said he left money in the bread box to cover expenses when he used the house. Mr. Medearis said he did visit every fall and spring but did not keep a record of his use of the house. Mr. Medearis said he could not say, from his personal knowledge, that there was ever a gap of 180 days in the rentals of the house, that people were

constantly using it. Mr. Medearis confirmed for Mr. Miller that he is referring the rentals of less than 28 days. Mr. Medearis said one family rented the entire summer for about 15 years.

Mr. Moseley questioned Mr. Medearis. Mr. Moseley asked if any wall calendars exist today. Mr. Medearis said he cannot say but doesn't think so. Mr. Medearis said he did not have any interest in the Medearis Properties Limited Partnership. Mr. Medearis said to his personal knowledge, from the mid-eighties until 2017 there might have been one year when he did not come to the property once in a 180-day time. Mr. Medearis said he recalled one other long-term rental.

Mr. Ranson questioned Mr. Medearis. Mr. Medearis said that the house was rented as well as letting friends use it. Mr. Medearis said the percentage of paying to non-paying guests was about 50 percent. Mr. Medearis said he did not know how long this lasted.

Mr. Campbell questioned Mr. Medearis. Mr. Medearis said the family did not use a rental agency.

Mr. Miller questioned Mr. Rothrock. Chairman Springs asked to note in the record that Mr. Rothrock was sworn at the last hearing. Mr. Rothrock said he is the Planning & Zoning Director for Blowing Rock and it is his job to interpret the Town code. Mr. Rothrock said there was an ordinance as far back as 1972 or 1974. Mr. Rothrock said in 2000 an ordinance clarified short-term rental and established a short-term overlay district. Mr. Rothrock said he did not know for sure if the earlier ordinances addressed short-term rentals. Mr. Rothrock said, based on his recollection, in 1984 the definition of a short-term rental was tourist homes and other temporary residences rented by the day or week. Mr. Rothrock said short-term rentals were prohibited in Town in the R-15 single-family zoning district, and everywhere except General Business and Central Business. Mr. Rothrock said short-term rentals were allowed in Chetola as it developed. Mr. Rothrock said a non-confirming use allowed a use established prior to 1984 to continue provided there was not a 180-day gap in the non-confirming use. Mr. Rothrock said in 2018 the Town Council adopted an amendment to establish a permitting process for where short-term rentals are permitted, Section 16-10.12. Mr. Rothrock said this also changed the use table by adding the definition of short-term rental. Mr. Rothrock said this was ultimately signed and ratified in August 2019. Mr. Rothrock said the Town code does not define rental or lease. Mr. Rothrock said use is defined in the Town code. Mr. Rothrock said the ordinance does not require that money be exchanged. Mr. Rothrock said if family is using a property, he does not interpret that as short-term rental.

Mr. Barbour questioned Mr. Rothrock. Mr. Rothrock said that if the property is legally grandfathered in, it runs with the property.

Mr. Moseley questioned Mr. Rothrock. Mr. Moseley asked to enter the 2000 ordinance in the record. Mr. Miller did not object to having the ordinances entered into the record. Mr. Rothrock identified two pages of Town's Exhibit T-1 as the Table of Permissible Uses from the 1984 ordinance and Town's Exhibit T-2 as ordinance number 2000-05 discussed earlier. Mr. Rothrock said that his interpretation of short-term rentals is the ordinance Section 1.620 in Town's Exhibit T-1. Mr. Rothrock stated for the record that this section allowed short-term rentals in the Central

Business and General Business districts. Mr. Rothrock read the first three 'whereas' paragraphs in Town's Exhibit T-2. Mr. Rothrock said the definition of short-term rental was established in Town's Exhibit T-2 and read that definition.

Ms. Murphy questioned Mr. Rothrock. Mr. Rothrock confirmed there are a few grandfathered properties for short-term rentals, but he was not aware of this property being grandfathered.

Mr. Miller questioned Mr. Joseph Pennacchia who was sworn for testimony. Mr. Pennacchia said he has resided in Charlotte for 33 years and he knows Ms. Myers well, that she is a childhood friend of his wife. Mr. Pennacchia said he knows the entire Medearis family and he had stayed, at no cost, at the house several times per year for several years since 1987. Mr. Pennacchia said he always stayed at the house with a member of the family, until their planned upcoming trip. Mr. Pennacchia said that he did not know of a time from 1987 when the house was not used for a 180-day period for short-term rentals.

Mr. Ranson questioned Mr. Pennacchia. Mr. Pennacchia said he was at the house frequently and did not recall a gap of 180-days. Mr. Pennacchia said he had not paid rent previously, but he is paying rent for his upcoming stay.

Mr. Moseley questioned Mr. Pennacchia. Mr. Pennacchia said all visits to the house were as a friend of the family and always accompanied by a family member.

Mr. Miller questioned Mr. Jeff Young, who was sworn for testimony for testimony. Mr. Young said he's lived in Charlotte, except for 10 years, and is not related to the Medearis family but has known them since grade school. Mr. Young said he has been to the house once beginning in 1983 and not in 1984. Mr. Young said the first time rent was paid was when his company rented it in 1985 and he continued using it personally in 1988 to the present at least more than once per year but never more than 28 days. Mr. Young said a local musician and his band would play at the house. Mr. Young said he did not pay the rent and he could not say to whom the money was paid.

Mr. Barbour questioned Mr. Young. Mr. Young said he was not involved in the rental of the house and had never signed a rental contract. Mr. Young said that he does not have physical proof that he rented the house. Mr. Young said that he did recall the house being listed for sale in the last 10 years. Mr. Young said he did not call the realtor to let them know that the house was occupied. Mr. Barbour said the house was listed for 177 days and again for 199 or 207 days. Mr. Barbour said the realtor was never contacted. Mr. Miller objected stating that Mr. Barbour was testifying. Chairman Springs sustained the objection. Mr. Young stated that he did not stay in the house in the absence of Mr. and Ms. Myers.

Mr. Moseley questioned Mr. Young. Mr. Young said he never paid rent for occupying the property, except four times. Mr. Young said that he would pay incidental costs and that his visits were because of his relationship with the Medearis family.

Chairman Springs questioned Mr. Young. Mr. Young said that he had visited the house several times from 2017 to the present and that he visited 2 or 3 times in 2017 and did not pay rent. Mr. Young stated his stays in 2018, 2019, and 2020 and that he had not paid any money, other than cleaning fees, for these stays.

Ms. Murphy questioned Mr. Young. He stated in the last 3 years he had always been the guest of Mr. and Ms. Myers. Mr. Young said that his son and daughter visited the house without Medearis family members. Chairman Springs asked if his daughter pays rent. Ms. Myers said she does not pay rent.

Mr. Miller showed Mr. Young a photo of a local band playing in the house. Mr. Young said he took the photo in the den and it dates from the late-1990s to the early 2000s.

Mr. Miller questioned Mr. Myers, who was sworn for testimony. Mr. Myers stated his name, Charles N. Myers, and that he has resided in Charlotte all his life, except during college. Mr. Myers said he and Ms. Elizabeth Myers started dating in the early 1980s and were married in 1990 for twenty years. Mr. Myers said they are presently divorced. Mr. Myers said they jointly own the house in question and purchased it as tenants-in-common, then transferred it to an LLC. Mr. Myers said he is in the mortgage and real estate business and operated Blowing Rock Mortgage in Blowing Rock from 1998 until 2008. Mr. Myers said he first met the Medearis family in 1975 and first visited the house in 1984 with friends, Ms. Myers, and her brother. Mr. Myers said his ownership interest in the home happened in May 2017. Mr. Myers said from 1984 until 2020 he stayed in the house as often as he could and when he was operating Blowing Rock Mortgage, he stayed in the house 6 times per year and averaged four times per year in other years. Mr. Myers said he was certain there was no time from 1984 to 2017 with a gap of 180-days where the house was not being used as a short-term rental.

Mr. Miller showed Exhibit A-3. Mr. Myers recognized the document as the general warranty deed from his and Ms. Myers purchase of the property. Mr. Miller asked to introduce Exhibit A-3. With no objections, it was introduced into evidence. Mr. Myers said he and Ms. Myers acquired the property after their divorce. Mr. Myers said they paid \$850,000 for the house. Mr. Myers said he helped negotiate the listing agreement for the Medearis family, but it has not been on the market since he has owned it, that it was on the market prior to May 19, 2017. Mr. Myers said he stayed in the house when it was on the market and he had a key. Myers said his plan when he bought the house was to preserve the home and keep it in the family. Mr. Myers said the only way to save the home was through short-term rentals and they placed it under an LLC operating agreement.

Mr. Miller showed Exhibit A-4 to Mr. Myers. Mr. Myers recognized the document as a very broad-brush outline of how they could keep the property in the family. Mr. Myers defined this document as a draft LLC operating agreement written in his hand. Mr. Miller asked to introduce Exhibit A-4. Mr. Barbour asked if any research was done prior to initiating this agreement to determine if this plan would violate any rules or regulations. Mr. Miller objected to Mr. Barbour's

question. Chairman Springs said this is a fair question and asked Mr. Myers to answer it. Mr. Myers said he was under the assumption that since the house was a short-term rental for 80 years, he did not need to research it. With no objections Exhibit A-4 was entered into evidence. Mr. Myers said he typed the document. Mr. Myers said the plan was to run the house as a true business and defray the expenses. Mr. Myers said he could not remember if they transferred the property to the LLC.

Mr. Miller showed Exhibit A-5 to Mr. Myers. Mr. Myers said he recognized the document by the heading and as an accurate representation of the operating agreement for the LLC. Mr. Myers said he prepared the document. Mr. Miller moved to introduce Exhibit A-5. With no objections Exhibit A-5 was entered into evidence. Mr. Myers said he and Ms. Myers signed the document titled 178 Norwood Circle, LLC. Mr. Myers said the purpose was to help them run it as a business while at the same time preserving as much personal use time possible without having to rent it. Mr. Myers said when Mr. Medearis, Jr., and his wife Ms. Elizabeth M. Medearis and Mr. Medearis's sister, Ms. Troutman owned the property, Ms. Medearis was the gatekeeper for the bookings and cleaning between occupancies and that Mr. Medearis, Jr. took care of the bookkeeping. Mr. Myers read the 'our operating plan' paragraph of the agreement, which included the intention to continue short-term rentals. Mr. Myers said the document is dated May 1, 2017 and this was between him and Ms. Myers. Mr. Myers said that he was not aware that Blowing Rock had an ordinance banning short-term rentals in certain areas when this was signed. Mr. Myers said he was not aware of the restriction until he received the violation notice in August 2020.

Mr. Miller showed Exhibit A-6 to Mr. Myers. Mr. Myers said he recognized the document as a request for an EIN, Federal Tax Identification Number. Mr. Miller moved to introduce Exhibit A-6. With no objections Exhibit A-6 was entered into evidence. Mr. Myers said he requested this for 178 Norwood Circle, LLL, the LLC which he formed. Mr. Myers said this document is dated October 4, 2017. Mr. Myers said you cannot open a bank account or file taxes in the name of a company without an EIN. Mr. Myers said his name is listed under 178 Norwood Circle, LLC on the document.

Mr. Miller showed Exhibit A-7 to Mr. Myers. Mr. Myers said he recognized the document as the legal format for a limited liability company in North Carolina. Mr. Myers said this is an accurate representation of the articles of incorporation for 178 Norwood Circle, LLC. Mr. Myers said he and Ms. Myers signed the document. Mr. Miller moved to introduce Exhibit A-7. With no objections Exhibit A-7 was entered into evidence. Mr. Myers said the document was signed, by him and Ms. Myers on May 4, 2017 and filed on May 19, 2017. Mr. Myers said the LLC is in good standing with the NC Secretary of State and that the business has a bank account and insurance on the property.

Mr. Miller showed Exhibit A-8 to Mr. Myers. Mr. Myers said he recognized the document as proof of homeowner's insurance for 178 Norwood Circle. Mr. Miller moved to introduce Exhibit A-8. With no objections Exhibit A-8 was entered into evidence. Mr. Myers said the policy began on

May 23, 2017 with him and Mr. Myers as the insured and the occupancy is for vacation and short-term rentals with loss of income coverage. Mr. Myers confirmed the same for subsequent years, still in effect and taken out before the notice of violation.

Mr. Miller showed Exhibit A-9 to Mr. Myers. Mr. Myers said he recognized the document as IRS Form 8825, Rental Real Estate Income and Expenses for 178 Norwood Circle for tax year 2018. Mr. Miller moved to introduce Exhibit A-9. Mr. Miller disclosed that this is just one page of the document. Chairman Springs asked that one copy of the complete document for years 2018 and 2019, with social security numbers redacted, be given to the Clerk. Mr. Myers agreed. Mr. Miller said he would provide full redacted copies. Exhibit A-9 was entered into evidence. Mr. Myers said that vacation and short-term rentals is the only business for Norwood Circle, LLC. Mr. Myers said this was not a money-making venture.

Mr. Miller showed Exhibit A-10 to Mr. Myers. Mr. Myers said he recognized the document as IRS Form 8825, Rental Real Estate Income and Expenses for 178 Norwood Circle for tax year 2019. Mr. Miller moved to introduce as Exhibit A-10 the entire document, but with just one page as part of the record. With no objections Exhibit A-10 was entered into evidence. Mr. Myers said that vacation and short-term rentals is the only business for Norwood Circle, LLC. Mr. Myers said this was a better rental year than 2018.

Chairman Springs recessed the hearing for a ten-minute break.

Mr. Miller showed Exhibit A-11 to Mr. Myers. Mr. Myers said he recognized the document as the 178 Norwood Circle Usage Analysis that he prepared for the years 2019 and 2020. Mr. Miller moved to introduce as Exhibit A-11. With no objections Exhibit A-11 was entered into evidence. Mr. Myers said the document shows total days occupied, total owner days, total friend days renting at a discount, total third-party referrals; that this information was from the booking calendars. Mr. Myers said during his ownership there has not been a 180-day gap in paid short-term rentals.

Mr. Miller showed Exhibit A-12 to Mr. Myers. Mr. Myers said he recognized the document as a written, notarized, affidavit signed by Mr. and Mrs. William F. Medearis, Jr. Mr. Miller moved to introduce as Exhibit A-11. Mr. Moseley objected. Mr. Miller said he has several affidavits to enter and his understanding is these affidavits can be entered into evidence per the Board's decision and NCGS 160-A. Mr. Miller and Chairman Springs discussed this. Mr. Moseley said the discussion was about witnesses. Mr. Moseley told Mr. Miller that witnesses had participated at prior hearings via telephone which afforded everyone the opportunity to cross-examine and ask questions of these witnesses. Mr. Moseley said he stated an affidavit can become part of the record but anyone can argue whether it constitutes substantial and competent evidence; that evidence is the term used in NCGS 160-A. Mr. Moseley said that affidavits have limited probative value. Mr. Miller said he does not dispute this. Mr. Ranson objected to affidavits being entered into evidence. Chairman Springs said he failed to advise during the previous hearing that if

anyone objected to entering affidavits into evidence, they would not be entered. Chairman Springs, referring to Mr. Moseley's comment said competency is a problem.

Chairman Springs made a motion that sworn affidavits be allowed as evidence due to his error and to afford the Myers due process. The Board discussed the motion. Chairman Springs said the Board can allow the affidavits to come in as part of the record, but what the Board makes if them is what they make of them.

Chairman made a motion, for the remainder of this hearing, the Board allow sworn affidavits to be part of the record, for what they are worth. Ms. Murphy asked if the correction be made and they more forward. Chairman Springs said this will be corrected moving forward, but this affects the Myers' due process as they came to this hearing tonight believing that sworn affidavits would be made part of the record. ***Being no second, the motion failed.***

Mr. Miller moved to continue to another date so that witnesses could attend via Zoom or in person. Chairman Springs asked to meet until 10:00 pm and then grant a continuance.

Mr. Campbell asked Chairman Springs to repeat his motion. *Chairman Springs made a motion for allowing, for the duration of the Myers' appeal hearing, sworn affidavits to come in as part of the record for the value they deserve, seconded by Mr. Campbell.* Mr. Rocamora confirmed that the Board makes the decision to their value. Chairman Springs said the Board in good faith will decide the competent value of the affidavits. Ms. Murphy asked if this motion passes will there be a continuance. Chairman Springs said no, this case will be finished tonight. ***All members were in favor of the motion.***

Chairman Springs advised that any party could object to these becoming part of the record as their right and they also have appeals rights. Chairman Springs asked Mr. Moseley if he objected. Mr. Moseley said no and read his statements on this from the minutes of the last hearing. Mr. Moseley said the Board must rely on substantial, competent evidence in rendering their decision. Chairman Springs agreed.

Mr. Ranson and Mr. Barbour objected to Exhibit A-12 being made part of the record.

Chairman Springs asked Mr. Miller to continue. Mr. Miller asked Mr. Myers to read Exhibit A-12. Mr. Myers read it.

Mr. Miller showed Exhibits A-13 through A-17 to Mr. Myers. Mr. Myers said he recognized Exhibit A-13 as a written, notarized, affidavit signed by Mr. William F. Medearis, Jr. Mr. Myers said Exhibits A-14 through A-17 help verify Exhibit A-13. Mr. Myers said he recognized Exhibit A-14 as old checkbook records that authenticates Exhibit A-13. Mr. Myers said he recognized Exhibit A-15 as more old checkbook records that authenticates Exhibit A-13. Mr. Myers said he recognized Exhibit A-16 as a 1982 tax return of Mr. William F. and Elizabeth M. Medearis and is mentioned in Exhibit A-13. Mr. Myers said he recognized Exhibit A-17 as a 1983 NC Individual Income Tax return for Mr. William F. and Elizabeth M. Medearis which is mentioned in Exhibit A-13. Mr. Myers said Mr. William F. Medearis verified the Exhibits as true and accurate copies. Mr. Miller

moved to introduce Exhibits A-13 through A-17. Mr. Moseley said his objection is the same general statement as before. Mr. Ranson and Mr. Barbour objected to Exhibits A-13 through A-17 being introduced.

Mr. Miller said he has the entirety of the 1982 tax records, Exhibit A-16, and the 1983 tax records, Exhibit A-17, with social security numbers redacted. Mr. Miller asked if the Board wished he submit the entire 1982 and 1983 tax records. Chairman Springs said no.

Mr. Miller asked Mr. Myers to read Exhibit A-13. Mr. Myers read and explained the Exhibit A-13. Mr. Miller asked Mr. Myers to find the deposits referenced in Exhibit A-13 in Exhibit A-14. Mr. Myers showed the deposits and length of stay to the Board, noting that one deposit reflected a 15-day occupancy in 1979. Mr. Miller asked Mr. Myers to find the deposits referenced in Exhibit A-13 in Exhibit A-15. Mr. Myers showed the deposits and length of stay to the Board, noting that two deposit reflected a less than 28-day occupancy and that a booking agent was being used. Mr. Miller asked Mr. Myers to look at Exhibit A-16 and turned his attention to the last page. Mr. Myers said the last page of Exhibit A-16 was the income worksheet for the house in Blowing Rock showing \$5,193 in rental income. Mr. Miller noted that Ms. Troutman was half-owner of the property and she would have had the same worksheet with her 1982 income tax return. Mr. Myers agreed. Mr. Miller asked Mr. Myers to look at Exhibit A-17. Mr. Myers advised that the 1983 income tax return included properties other than 178 Norwood Circle. Mr. Myers said the last page of Exhibit A-16 was the income worksheet for the house in Blowing Rock showing \$4,701 in rental income, which would be 50 percent of the total rental income; that Ms. Troutman would have the same amount on her 1983 income tax return. Mr. Myers said this is the only home that Mr. William F. and Elizabeth M. Medearis ever owned in Blowing Rock. Mr. Myers said Ms. Myers spent hours, days and nights looking for past records and found these.

Mr. Miller showed Mr. Myers Exhibit A-18. Mr. Myers said he recognized this document as the check-in and check-out instructions located on the refrigerator door and cabinet in 178 Norwood Circle. Mr. Miller moved to introduce A-18. Mr. Moseley said his objection is the same general statement as before adding that it is a handwritten document and the author is not present. Mr. Miller asked Mr. Myers if this is his handwriting. Mr. Myers said it is Mrs. Elizabeth M. Medearis's handwriting. Mr. Miller said he was entering this under the hearsay exception as a business document. Chairman Springs asked to see the document. Mr. Myers told Chairman Springs that he saw this in the house 2007 to 2008 and he recognized the handwriting as his mother-in-law's. Mr. Ranson and Mr. Barbour objected to Exhibit A-18 being introduced. Chairman Springs denied this being introduced due to too many hearsay problems. Mr. Miller asked that his objection be noted for the record. Mr. Miller said he wished to give a copy of the record to Madam Clerk. Chairman Springs agreed.

Mr. Miller showed Mr. Myers Exhibit A-19. Mr. Myers said he recognized this document as a picture of the guest book stand at 178 Norwood Circle. Mr. Miller moved to introduce Exhibit A-19. Mr. Moseley had no objection. Mr. Ranson objected to Exhibit A-19 being introduced. Mr.

Barbour objected to Exhibit A-19 being introduced as this is proof being offered by the accused and he doesn't think this is a good place to get proof.

Mr. Myers said people would record thanks to the Medearis family for allowing them to stay in the home. Mr. Myers said this has been in the home since the home was built and it matches the woodwork in the home, which is original wormy Chestnut. Mr. Myers said they looked for the guest books but could find only three and they did not cover from 1983 to the present. Mr. Miller showed Mr. Myers Exhibit A-20. Mr. Myers said he recognized this document as the guest book that was in the house until brought here. Mr. Miller moved to introduce this under Rule 803, Subsection 6 – A Record of a Regularly Conducted Business Activity. Mr. Miller showed the exhibit to Chairman Springs. Mr. Myers said the actual book is available as well. Mr. Moseley asked to see the book. Mr. Moseley did not object to Exhibit A-20 being introduced. Mr. Ranson objects simply because it showed someone stayed at the house but does not constitute rentals in his mind. Mr. Miller said this is not being offered to show rentals but is being offered under Rule 803. Chairman Springs said he understood. Mr. Barbour objected to Exhibit A-20 being introduced. Chairman Springs said Exhibit A-20 could be introduced as a business record. Mr. Myers went through the entries in the book beginning on the first page in 1987 and noted which constituted a short-term rental or use. Mr. Myers noted that there was no 180-day gap in short-term rental or use from October 23, 1987 through 1993. Mr. Barbour objected stating that Mr. Miller said this was not being offered as proof of rental. Chairman Springs said the value will be determined. Mr. Myers said the next entry are from 2017 to the present. Mr. Myers said the guest book is not being offered as a full accounting of who stayed in the house.

Mr. Miller showed Mr. Myers Exhibit A-21. Mr. Myers said he recognized this document as a page from the original guest book from 1940. Mr. Miller struck this Exhibit A-21 and showed Mr. Myers a new Exhibit A-21. Mr. Myers said he recognized this document as the original 1941 guest book. Mr. Myers said this is not a complete copy of the 1941 guest book. Mr. Myers said the original book contained more pages, but many are now missing, that this is a complete copy of the remaining pages. Mr. Miller moved to introduce Exhibit A-21. Mr. Moseley objected based on his prior reason. Mr. Ranson and Mr. Barbour objected to introducing it. Chairman Springs looked at the Exhibit. Chairman Springs asked if this if being introduced under Rule 803. Mr. Miller confirmed. Chairman Springs said this is now part of the record. Mr. Myers said he did not know whose handwriting was inside the wooden cover. Ms. Myers said it was that of her Aunt Mary Ann. Mr. Myers went through the entries beginning in 2004 through May 2018.

Mr. Miller showed Mr. Myers Exhibit A-22. Mr. Myers said he recognized this document as another guest book. Mr. Miller moved to introduce Exhibit A-22 based on Rule 803. Mr. Moseley objected based on his prior reason and because this exhibit is barely legible. Mr. Barbour objected to introducing this exhibit. Mr. Ranson objected to introducing this exhibit. Chairman Springs asked to see the exhibit and allowed it to be introduced. Mr. Myers said the handwriting is his and covers the dates May 1989 to September 1991. Mr. Myers said he brought these three guest books as further evidence that the home was used for short-term rental or use and there

was not a 180-day gap between such uses, especially when combined with the affidavits of people who stayed there.

Mr. Miller showed Mr. Myers Exhibit A-23. Mr. Myers said he recognized this document as a sworn affidavit from Phil Pierce and he has known him for about 50 years. Mr. Myers said that Mr. Pierce helped to open Blowing Rock Mortgage and run it from 1998 to 2008. Mr. Myers said he had Mr. Pierce cut the water on and off and walk through the house and make sure it was ready for guests. Mr. Miller moved to introduce Exhibit A-23. Mr. Moseley did not object to this being in the record but said that it has no probative value. Mr. Ranson objected because this is someone partial to the Myers. Mr. Barbour objected to this being introduced. Chairman Springs asked to see the exhibit and allowed it to be introduced. Mr. Myers read the affidavit.

Mr. Miller showed Mr. Myers Exhibit A-24. Mr. Myers said he recognized this document as a sworn affidavit from Mr. Jonathan Anthony Davis. Myers said Mr. Davis could testify in person and be here in 15 minutes. Mr. Miller made a motion to introduce Exhibit A-24. Mr. Moseley objected based on his prior reason. Mr. Ranson said he would not object if it saved time. Mr. Barbour did not object. Chairman Springs asked to see the exhibit and allowed it to be introduced. Mr. Myers read the affidavit.

Mr. Miller showed Mr. Myers Exhibit A-25. Mr. Myers said he recognized this document as a sworn affidavit from Mr. Michael Nevin Ebaugh. Mr. Miller made a motion to introduce Exhibit A-25. Mr. Moseley objected based on his prior reason and the fact that it is not an original. Mr. Ranson and Mr. Barbour objected. Chairman Springs asked for the original affidavit with the seal. Mr. Miller said he does not know that he has the original. Chairman Springs said they would accept this in good faith and allowed it to be introduced. Mr. Myers read the affidavit.

Mr. Miller showed Mr. Myers Exhibit A-26. Mr. Myers said he recognized this document as a sworn affidavit from Ms. Amy Pierce Holloway. Mr. Miller made a motion to introduce Exhibit A-26. Mr. Moseley objected based on his prior reason. Mr. Ranson and Mr. Barbour objected. Chairman Springs asked to see the exhibit and allowed it to be introduced. Mr. Myers read the affidavit.

Mr. Miller showed Mr. Myers Exhibit A-27. Mr. Myers said he recognized this document as a sworn affidavit from Mr. N. Douglas Beach, Jr. Mr. Miller made a motion to introduce Exhibit A-27. Mr. Moseley objected based on his prior reason. Mr. Ranson and Mr. Barbour objected. Chairman Springs asked to see the exhibit and allowed it to be introduced. Mr. Myers read the affidavit.

Mr. Miller showed Mr. Myers Exhibit A-28. Mr. Myers said he recognized this document as a sworn affidavit from Mr. Dean Burroughs. Mr. Miller made a motion to introduce Exhibit A-28. Mr. Moseley objected based on his prior reason. Mr. Ranson and Mr. Barbour objected. Chairman Springs asked to see the exhibit and allowed it to be introduced. Mr. Myers read the affidavit.

Mr. Miller showed Mr. Myers Exhibit A-29. Mr. Myers said he recognized this document as a sworn affidavit from Benjamin and Elizabeth Benson. Mr. Miller made a motion to introduce Exhibit A-29. Mr. Moseley objected based on his prior reason, adding that this is the least probative of all. Mr. Ranson and Mr. Barbour objected. Chairman Springs asked to see the exhibit and allowed it to be introduced. Mr. Myers read the affidavit.

Mr. Miller showed Mr. Myers Exhibit A-30. Mr. Myers said he recognized this document as a sworn affidavit from Ms. Linda Gilley Jeannette. Mr. Miller made a motion to introduce Exhibit A-30. Mr. Moseley objected based on his prior reason. Mr. Ranson and Mr. Barbour objected. Chairman Springs asked to see the exhibit and allowed it to be introduced. Mr. Myers read the affidavit.

Mr. Miller showed Mr. Myers Exhibit A-31. Mr. Myers said he recognized this document as a sworn affidavit from Ms. Katherine M. Wood. Mr. Miller made a motion to introduce Exhibit A-31. Mr. Moseley objected based on his prior reason. Mr. Ranson and Mr. Barbour objected. Chairman Springs asked to see the exhibit and allowed it to be introduced. Mr. Myers read the affidavit.

Mr. Myers said that he knew all the affiants personally and that this is just a small sampling of the people that he knows.

Mr. Moseley questioned Mr. Myers. Mr. Moseley asked Mr. Myers to confirm his testimony that there has been no time from 1985 to 2020 that the house was not occupied for less than 180-days as a short-term rental or use. Mr. Myers confirmed. Mr. Moseley referred to Mr. Rothrock's previous testimony regarding the 1984 ordinance and asked if Mr. Myers is basing his testimony on the 1984 definition of short-term rentals. Mr. Moseley gave Mr. Myers the definition and asked Mr. Myers to read Section 1.620. Mr. Myers read it. Mr. Myers said that the house was being rented by the day or week. Mr. Moseley asked if every affiant was a renter. Mr. Myers said no. Mr. Moseley asked if he had records to show which were rentals and if the rentals did not stop for a 180-day period. Mr. Myers said he did not have those records and the affidavits show that there was no 180-day gap in short-term rental or use. Mr. Moseley said the only documentation introduced that proves short-term rentals were tax returns from the 1980s and from 2017 forward and guest books with lapses of time. Mr. Myers said he wished he could find more documentation. Mr. Moseley said there are no rental contracts or occupancy tax paid. Mr. Myers said they never used rental contracts and did not know about the occupancy tax. Mr. Moseley asked if it was not his duty to know about the occupancy tax. Mr. Myers said they were continuing short-term rentals that had been established by Ms. Myer's parents. Mr. Moseley asked Mr. Myers if he knew about the occupancy tax. Mr. Myers said he did not until Mr. Miller informed him, adding that they would be glad to catch that up and asked if it even applied if the use is grandfathered. Mr. Moseley said payment of occupancy tax is evidence of short-term rentals. Mr. Moseley referred to Mr. Myer's testimony that he first visited the property as a friend of the Medearis family in 1985, came often and had a business in Blowing Rock from 1998 until 2008. Mr. Moseley noted that Mr. Myers and Ms. Myers married in 1990

and divorced in 2010. Mr. Myers confirmed. Mr. Moseley asked Mr. Myers how often he visited after the divorce. Mr. Myers said at least twice a year to stay. Mr. Moseley asked to what extent he was involved in the rentals after the divorce. Mr. Myers said he was in contact with Mrs. Elizabeth M. Myers regarding using the house. Mr. Moseley asked if Mr. Myers if he had presented all the evidence. Mr. Myers said yes, but he wished that he knew that his affiants could have testified. Mr. Myers said they have looked for records and asked at which point they should stop looking and said they have proved short-term rental or use and no gap for 180 days.

Mr. Ranson asked Mr. Myers how it is possible that they have been in Blowing Rock for so many years and not know about short-term rental rules and he has lived here nine months and knows it. Mr. Myers said he did not know about it.

Mr. Barbour said that Mr. Myers stated he had no knowledge of short-term rental rules. Mr. Myers confirmed. Mr. Barbour referred to Mrs. Elizabeth M. Medearis's affidavit and stated that she stated she knew fully all the rules and asked how Mr. Myers could not know this based on his 30-year relationship with Mrs. Medearis. Mr. Barbour said the Mrs. Medearis states in her affidavit that 'I am sure that I never went over 28 days and I followed the rules'. Mr. Myers said she knows that now. Mr. Barbour said he is referring to her affidavit. Mr. Myers said the affidavit did not state that and read item 10, page 2 from the affidavit. Mr. Myers said he typed the affidavit and asked Mrs. Medearis for some notes. Mr. Barbour said Mrs. Medearis knew the rules. Mr. Miller objected as the question was asked and answered. Chairman Springs sustained the objection.

Mr. Ranson asked Mr. Myers if he knew any of the neighbors that he was negatively impacting. Mr. Myers said one neighbor is his girlfriend and he recognized Mary. Mr. Myers said that short-term rental/stay is a slippery slope.

Mr. Lance Campbell referred to the rental checks from Blowing Rock Realty in Exhibit A-5 and said he is curious why Blowing Rock Realty was not aware of the ordinance. Mr. Myers said the ordinance was not adopted when Blowing Rock Realty managed it. Mr. Campbell asked about the Myers' daughter managing the property. Mr. Myers said they were just putting together notes. Mr. Myers said that she never did that, and they hoped to pay her to manage the property instead of simply giving her money. Mr. Myers said it was not listed with a third party online until October 1, 2020 and that has since been removed.

Dr. Lee Rocamora asked Mr. Myers if there was any other documentation of short-term rentals besides 1982 and 1983 and 2017 to the present. Mr. Myers said they could continue to look and find more and referred to the 15 affidavits introduced. Dr. Rocamora asked why there were no signatures in the guest book from October 7, 1990 to September 13, 1991. Mr. Myers did not know. Dr. Rocamora noted the Board deals with facts. Mr. Myers said he understands that, and he may be able to get more tax return records. Mr. Ranson interjected to which Mr. Miller objected. Chairman Springs sustained the objection.

Ms. Sarah Murphy asked Mr. Myers if there is any more detail to the IRS worksheets. Mr. Myers said there is not and added that they have maintained detailed records since they have owned the house. Ms. Murphy asked if they had an agent when they bought the house. Mr. Myers said they did not have an agent; that he is a realtor and acts as his own agent.

Chairman Springs asked Mr. Myers if he could provide detailed rentals records for 2019 and 2020. Mr. Myers said he has one spreadsheet and the data that feed that spreadsheet. Mr. Myers detailed the rentals for January, June, July, and August 2019. Mr. Myers said Ms. Myers kept these records. Mr. Myers said the daily rental amount varied based on the guest's ability to pay. Mr. Myers said they do not have a set daily rate as they knew most of the guests. Mr. Myers said the daily rate averages \$250 plus the cleaning fee.

Mr. Moseley asked Mr. Myers, between 1985 and 2000, excluding members of the Medearis family, what percentage of the other guests paid rent and not just a cleaning fee. Mr. Myers did not have those records, that Mrs. Medearis would have those records. Mr. Moseley asked the same question from 2000 to 2010. Mr. Myers said he could probably get that information, but he does not have it now.

Mr. Myers thanked the Board for hearing him out.

Mr. Miller said this the evidence of the Appellant.

Mr. Ranson testified. Mr. Ranson asked the Board to look at the Zoom participants, the majority of whom are residents who are negatively impacted by this and he hopes the Board will value the community as a whole versus the Myers' for-profit operation. Mr. Ranson said this home is being used as more of a hotel than a home. Mr. Ranson said he has testified to the noise, the drunkenness, the loud music that this is bringing into the neighborhood. Mr. Ranson said he believes the reason the rules were put in place in the 1980s were to make the community more of an owner-occupied one. Mr. Ranson said the spirit of the law is to preserve the community for the actual residents and homeowners of Blowing Rock. Mr. Ranson said the Myers are turning a home, which they value sentimentally but cannot afford on its own, into a commercial business to the detriment of the community. Mr. Ranson said he is concerned that others migrating to Blowing Rock will want to do the same. Mr. Ranson implored the Board to take a stand tonight in favor of the community rather than one person's rental or for-profit operation.

Mr. Miller noted that Mr. Ranson had become an intervenor, taken the oath at the last hearing and testified to a loud party or noise. Mr. Ranson confirmed. Mr. Miller asked Mr. Ranson if he testified about one instance when he made a noise complaint. Mr. Ranson said he did not recall. Mr. Miller said he will represent to Mr. Ranson that he did make a noise complaint. Mr. Miller said Mr. Ranson stated in the last hearing that he heard a loud noise and made a complaint. Mr. Ranson asked to whom. Mr. Miller said Mr. Rothrock. Mr. Ranson confirmed and said they watched what was going for months and months and reached out to Mr. Rothrock at the suggestion of some neighbors to try to put a stop to it. Mr. Miller asked why he did not reach out to the Myers. Mr. Ranson said he had been trying to meet the Myers for months. Mr. Miller said

Mr. Ranson testified that he did not have the Myers' phone number. Mr. Ranson confirmed. Mr. Miller said Mr. Ranson's wife had their number, that she was texting with the Myers on Wednesday July 8th at 12:36 p.m. Mr. Ranson said he thinks that is incorrect, but maybe she did text them, but he does not have their number. Mr. Miller asked if Mr. Ranson lived in the same household as his wife. Mr. Ranson confirmed. Mr. Miller said he could have asked his wife for the Myer's phone number. Mr. Ranson asked for what purpose. Mr. Miller said that Mr. Ranson testified under oath that he did not have access to the Myer's phone number, but someone in his household had it. Mr. Miller showed Mr. Ranson text messages between the Myers and someone in Mr. Ranson's household in Exhibit A-32. Mr. Ranson said he thought a tenant gave his wife the number. Mr. Miller asked Mr. Ranson whose number is 512-913-4778. Mr. Ranson said he had no idea. Mr. Miller said it came up as Paige Ranson. Mr. Ranson said that is not her number. Mr. Miller showed Mr. Ranson another text that showed as being from Paige Ranson. Mr. Ranson said it doesn't give her phone number. Mr. Miller said he understands. Mr. Miller showed Mr. Ranson other text messages from his wife to the Myers. Mr. Ranson asked his point. Mr. Miller said that he is showing that Mr. Ranson was not forthcoming with the Board in his earlier testimony. Mr. Ranson said he had been forthcoming with the Board. Mr. Miller asked Mr. Ranson if he stayed at his property for more that 28 days. Mr. Ranson said yes, they had spent a ton of time here because of Covid.

Mr. Barbour testified. Mr. Barbour said he and his wife decided to retire to Blowing Rock in what they thought would be their dream home. Mr. Barbour said things changed and they could sit on their deck and hear music from the Myers' deck and people yelling and screaming with each other in the Myers' front yard. Mr. Barbour said he didn't call the police, but maybe should have, because he did not want to get anyone in trouble. Mr. Barbour said if it happens again, he is going to call the police to make a record. Mr. Barbour said he thinks he has the right to live a quiet, peaceful life like his neighbors down the street who aren't near this house and don't hear this. Mr. Barbour said that he has earned that kind of life; that he has earned it and worked hard for it. Mr. Barbour said this is now being thrust upon him for a profit to pay for a house and he thinks Mr. Myers, if in the same position, would be here just like he is. Mr. Barbour said he honestly believes that he deserves the same rights that Mr. Myers has. Mr. Barbour said that there were 7 motorcyclists at the property having a big party. Mr. Barbour said this is next door and he doesn't think this is what Blowing Rock wants for its citizens.

Mr. Moseley said some of the residents of the neighborhood wanted to testify and one has been present since 5:30 p.m. via Zoom but has now dropped off.

Ms. Ginny Starnes was sworn for testimony. Mr. Moseley asked Ms. Starnes to state her name and address. She responded that her name is Ginny Starnes and she lives at 204 Hill Top Way. Mr. Moseley asked Ms. Starnes to describe where her residence is in relation to 178 Norwood Circle. Ms. Starnes said she was about six houses away and if you drove straight from her house you would end up at the Myers' house. Mr. Moseley asked Ms. Starnes if she could approximate the distance in yards or feet to the Myers house. Ms. Starnes said about 500 and added that she

has lived here for 20 years and has been coming here for 50 years and her husband's family has lived there for 62 years. Mr. Moseley asked if she lived here year-round. Ms. Starnes confirmed. Mr. Moseley asked if she could state, from her own personal observations and experiences, that the Myers' residence has been continuously occupied. Ms. Starnes said she could not state that; that there have been times when the home was abandoned, that there was no activity at all. Mr. Moseley asked if she could be specific in times it was not occupied at all. Ms. Starnes said she could not, but the most activity has been since they bought the house. Mr. Moseley asked if she could state whether the house has ever been unoccupied for a timeframe of 180 consecutive days. Ms. Starnes said yes, to her observation. Mr. Moseley asked if that observation is based on the fact that she drives by the house on an ongoing basis. Ms. Starnes said yes that she drives by 4 times per day. Mr. Moseley noted that she drives by 4 times per day. Ms. Starnes replied at least 2 to 4 times a day every day. Mr. Moseley asked Ms. Starnes to be as specific as possible in her observations regarding the occupancy. Ms. Starnes said she has seen what she assumes are family cars during holidays and leaf season, but she would does not believe that the house has been a vacation rental for the last 20 years. Mr. Moseley asked what she is basing her observations in terms of rentals versus family gatherings. Ms. Starnes said because the occupancy seemed to occur around holidays or certain times of year when you would expect families to be here. Ms. Starnes said she could not be certain it was family. She also said short-term rentals have not been going on as presented, that there might have been some use by family, but not in the way it has been presented. Ms. Starnes said there is a difference between rentals and use. Mr. Moseley asked her to tell him what the difference is and why she can state that. Ms. Starnes said because you receive money for rentals; you don't charge your family. Mr. Moseley asked how she would know from just observing the occupancy as to whether they were renting or just using the house. Ms. Starnes said she did not know, and she objects to the terminology. Ms. Starnes said there has not been what she considers to be constant vacation activity as is being presented. Mr. Moseley said he was not trying to belabor the point and asked how she can determine the difference between usage and rental. Ms. Starnes said you tell me. Mr. Moseley replied, no, I'm asking you. Ms. Starnes said she thinks there is a difference, but she cannot specifically say that someone she saw there over the period of a day or two or week is renting. Ms. Starnes said she never really saw people there for weeks on end, except for years-ago when a family rented the house in the summertime and those people were renters. Mr. Moseley asked what year she moved into her house. Ms. Starnes said 2000. Mr. Moseley asked from 2000 to 2010 how often the house was occupied. Ms. Starnes not often to her observation; that it looked abandoned. Mr. Moseley asked why it looked abandoned. Ms. Starnes said there were no cars there, no activity and no improvements. Ms. Moseley asked if the inactivity was for months at a time. Ms. Starnes said yes. Mr. Moseley asked for years at a time. Ms. Starnes said not years at a time, but months at a time as there were no cars in the driveway. Ms. Starnes said this is very disconcerting to her, that this is a quiet neighborhood and they do not want a commercial property in their neighborhood, this is not a commercial property neighborhood and it should never be allowed. Ms. Starnes said she does not like the strangers walking up and down the streets, motorcycles revving up and down the neighborhood. Ms. Starnes said it is not conducive

to happy family living. Mr. Miller objected to Ms. Starnes opinion, stating she is not an opinion witness. Chairman Springs sustained the objection.

Mr. Miller introduced himself to Ms. Starnes as representing the Appellants. Mr. Miller asked Ms. Starnes if she could point to a 180-day period where she saw no activity at the house. Ms. Starnes said specifically no that she did not carry a notebook or camera with her, but she noticed it with her eyes, and this is her testimony. Mr. Miller asked if she had lived there the last 20 years and her husband's family has lived there for 60+ years. Ms. Starnes confirmed. Mr. Miller asked if she drove by the house 4 times a day. Ms. Starnes said yes, sometimes 6, sometimes 2 times; that 4 times is an average. Mr. Miller asked if she was employed. Ms. Starnes said she is retired now. Mr. Miller asked if there are 2 ways to get to 321 from her house. Ms. Starnes said yes that she takes Norwood Circle because Skyland View is dangerous. Mr. Miller noted that Ms. Starnes generally takes Norwood. Ms. Starnes confirmed. Mr. Miller said this house is not directly off Norwood, but on a small service road. Ms. Starnes said no that she can drive right into the house. Mr. Miller said as you round the curve on Norwood the house is on the right. Ms. Starnes said the house is directly in front, that she would run into the driveway if she did not turn. Mr. Miller said the house has two garages. Ms. Starnes said it has one that she can see. Mr. Miller said it's your testimony that the house does not have 2 garage doors. Ms. Starnes said she has no idea, that there is one she can see. Mr. Miller said he understood but she is the one testifying about driving by and seeing all the activity at the house. Ms. Starnes said she is seeing lack of activity at the house. Mr. Miller said he is trying to ascertain what she is actually looking at. Mr. Miller said if there were cars in the garage, she would not know. Ms. Starnes said she would does not know if it is a four-car or two-car garage. Mr. Miller asked her if she has seen the second door. Ms. Starnes said no. Mr. Miller said she would not know if there were cars in the garage. Ms. Starnes said they don't use the garage, that it's not relevant. Mr. Miller said that she did not know if they use the garage or not. Ms. Starnes said as often as she is by the house that she does. Mr. Miller asked her if she stopped and knocked on the door to ascertain if there was anyone at the house. Ms. Starnes said she didn't think that you can get a car in that garage. Mr. Miller said it is your testimony that you drive by this house that you say has only one garage door, that you couldn't get a car in, and they are supposed to rely on her testimony that nobody is ever there. Ms. Starnes said he is absolutely correct and added that she has no idea if anybody is in the garage or not. Ms. Starnes said she doubted anyone was in the garage, that most people park outside including the 7 motorcycles parked in the driveway. Mr. Miller said they were Honda Goldwings, not Harley Davidson's, correct. Ms. Starnes said she was not a motorcycle expert. Mr. Miller asked what type vehicle she drives. Ms. Starnes said a Mercedes SUV which affords her great vision. Mr. Miller said but you only see one garage door versus two. Ms. Starnes said she thinks she has made that perfectly clear. Mr. Miller said she can't point to a single period in time from July 1, 2010 to December 31, 2010 where the place was not utilized at all, correct. Ms. Starnes said her observations are over 20 years, there have been times for more than a month, two, three, four, five or six months that it has not appeared to be occupied. Mr. Miller asked if she could give specific dates. Ms. Starnes said she could not.

Chairman Springs thanked Ms. Starnes. Ms. Starnes thanked Chairman Springs for the opportunity to speak.

Chairman Springs said he had a note from a citizen who wanted to testify. Chairman Springs said the citizen could testify as long as the testimony is confined to short-term rentals at 178 Norwood Circle. Chairman Springs said the citizen is Mr. Charlie Sellers who is also the Mayor of Blowing Rock.

Mr. Sellers was sworn for testimony. Mr. Sellers introduced himself as Charlie Sellers and said he lives at 137 Hill Top Way. Mr. Sellers said he and his wife bought the place at Hill Top Way three or four years ago, that he grew up in Blowing Rock and left for corporate America. Mr. Sellers said he returned to take over a family attraction, The Blowing Rock. Mr. Sellers said his grandfather was instrumental in tourism in this town. Mr. Seller said he has watched the Norwood Circle house and he had friends that did construction there and they were there for many, many months. Mr. Sellers said he cannot say whether the property was rented, but he can say that he saw construction vehicles there during the week almost every week for many months. Mr. Sellers said this was also while he was having construction done on his house having it renovated. Mr. Sellers said as a citizen he feels like we have regulations. Chairman Springs reminded Mr. Sellers to keep his comments relevant to whether there are short-term rentals there. Mr. Sellers said he purchased his home with the intention of not short-term renting his home and that's what he expected of the neighborhood. Mr. Sellers said we welcomes everybody to the neighborhood, but he thinks everyone should follow the guidelines.

Mr. Miller asked Mr. Sellers if he could give a year the construction was taking place. Mr. Sellers said two years ago that it went many months without being painted and there was lots of carpentry work going on. Mr. Miller asked two years ago, 2018. Mr. Sellers said 2018. Mr. Miller asked if he knew what months. Mr. Sellers said he did not. Mr. Sellers said the construction seemed to go on for many months. Mr. Miller asked if it was two, three months. Mr. Sellers said it was well over four months. Mr. Miller asked Mr. Sellers if he knew the contractor. Mr. Sellers said it was Nevin Ebaugh. Mr. Miller said he would represent that Mr. Ebaugh gave an affidavit, Exhibit A-25, in which he said that between March 2018 and January 2020 he worked on the house off and on doing cosmetic repairs. Mr. Miller said Mr. Ebaugh further testified that on occasion he was asked to stop working on the home on Friday or Monday because people were staying at the home, that he did not recall anyone staying at the home during the week, that it was mostly long weekends. Mr. Ebaugh also stated during that time there was not a 6-month time period when no one was there. Mr. Sellers said he bought in the neighborhood because he doesn't like short-term rental, that he works in the tourism business and deals with it every day and he likes to go home and have quiet time. Mr. Sellers said he did not know the home was a short-term rental. Mr. Miller said you understand there are ordinances that govern this, including grandfather clause. Mr. Sellers said that is correct. Mr. Miller said Blowing Rock would be taking a property right if they didn't have the grandfather clause. Mr. Sellers said that is correct. Mr. Sellers said we need actual records and at such time that those records come through, as a

citizen, he would like to see the taxes paid on all these rentals that have been done over the course of the last 40 years. Mr. Miller said he did not think the town has had the occupancy tax for 40 years. Mr. Sellers said to pay for the number of years the town has had occupancy tax. Mr. Sellers said he keeps tax records for all his businesses and earlier this evening, he was watching from home and it was stated that an LLC was started to rent the house, which requires that tax records be kept. Mr. Sellers said he still can't understand how you can start a business and not know the laws. Mr. Miller said when Mr. Sellers bought his house, if this house was a grandfathered rental there would be no record of it and you couldn't call Mr. Rothrock and ask him about it, correct. Mr. Sellers asked what constitutes a grandfathered rental. Mr. Miller said if they had been renting it since 1984. Mr. Sellers thanked everyone for their time and for the long evening.

Mr. Moseley said they had a witness who stayed on the Zoom call the entirety of the last three hour meeting, and he stayed on this Zoom call more than 5 hours tonight and he would like to give him the opportunity to testify and thinks it is unfair not to give him the opportunity to testify. Mr. Moseley said he has lived in the neighborhood for 20 years and he was very intent on testifying and he probably thinks that he will have another opportunity to testify. Chairman Springs said he understands but they are not going to continue the case.

Mr. Moseley said we've looked at all evidence and documents they've presented, which are sparse. Mr. Moseley said we've looked at a couple of tax returns from the 1980s and a couple from after 2017 when the Myers acquired the property, but there is a huge gap in between. Mr. Moseley said the burden is on the applicant, not on the Town, and that the applicant has to come forward with competent, substantial evidence. Mr. Moseley said the stack of affidavits does not constitute competent, substantial evidence. Mr. Moseley said there is no opportunity for the Board, himself, or the interveners to ask questions of the affiants. Mr. Moseley said the affidavits were all, with no offense to Mr. Myers, in his own words and drafted by him to be signed which is rather self-serving. Mr. Moseley said most of the affidavits speak to Mr. Myers position that as long as friends or family are using the property that constitutes a short-term rental. Mr. Moseley said it does not and said the definition of a short-term rental that was created on the books in 1984 speaks specifically about rentals, not use. Mr. Moseley said the ordinance that was adopted by the Town in 2000 in its preamble makes it quite clear that the Town interpreted temporary residences as renting by the day or week to include all residential dwellings, including single family dwellings that would be available for rent by the day or week. Mr. Moseley said the next paragraph in the preamble states that the community-wide survey indicated that short-term rental, defined as a rental of less than 28 consecutive days and be prohibited in the single-family residential districts. Mr. Moseley said the definition of short-term rentals, which is really the foundation of their argument, has to be read in the context of the entire 2018 and 2019 ordinance; that it can't be read in a vacuum. Mr. Moseley said if you read the entire ordinance it is quite clear what that ordinance is, and the purpose and intent of the ordinance is to prohibit the activity that is going on now. Mr. Moseley said this is not to keep anyone living in Blowing Rock from allowing guests to stay in their home, and the records, the guest books and testimony

evidence shows from very early on all the way up to 2017 the occupancy of this dwelling was by friends and family. Mr. Moseley said it's not the intent and purpose of the ordinance to stop people from letting friends and family from staying in their home. Mr. Moseley said the purpose and intent is to prohibit the activity that has been going on for the last three years.

Mr. Miller said the set-up of this is unfortunate, that he doesn't expect the Board to act on this, and that he finds it awful that Mr. Rothrock can send a notice of violation with no investigation with the burden shifting upon them. Mr. Miller said he finds the short-term rental ordinance unconstitutionally vague and it should be stricken and rewritten. Mr. Miller said the 2000 short-term rental ordinance is wrong and needs to be redefined. Mr. Miller said this ordinance says use and rental; that it doesn't matter if rent was being paid or the use was by close family. Mr. Miller said it is arbitrary and capricious for the Planning Director to decide who close family is and enforce as to some and not others.

Mr. Miller said the evidence presented was the best they could find for an operation that has been going on for longer than 40 years, but 1984 is when it matters. Mr. Miller said tax records show that the property was being rented. Mr. Miller said they can't show exact dates as they don't have the calendars. Mr. Miller said their burden of proof is not beyond a reasonable doubt, but by the greater weight of the evidence. Mr. Miller said the Board has heard that in 1982 and 1983 that the Medearis family was renting this and paid taxes on the rent. Mr. Miller said nobody, but a fool tells the federal government that they earn income that they don't earn.

Mr. Miller said he knows Mr. Moseley read the definition as 'a tourist home or other temporary residence renting by the day or week', but there is no definition of a tourist home and no definition has been offered. Mr. Miller said that no evidence has been offered to that this was in R-15 in 1984. Mr. Miller said that he knows it's in R-15 now. Mr. Miller said they are going back to 1984, but he doesn't know if they have to go back to 1984. Mr. Miller said that they have given eyewitness evidence. Mr. Miller said that affidavit testimony is not ideal, nor is Zoom, but this testimony has been unrefuted that there was never a 180-day period that this was not used as a rental. Mr. Miller said the Myers weren't the owners until 2017, but whenever they stayed there, they counted. Mr. Miller asked why operating agreements matter. Mr. Miller said if they had rented on Airbnb three years ago the software would have caught the rental. Mr. Miller said the language in the operating agreement said they were going to continue the short-term rentals and they did not know they were going to get in trouble with the Town. Mr. Miller said this helps corroborate their story. Mr. Miller said they have the Myers' taxes and insurance and that they are admitting to renting. Mr. Miller said they are admitting to the rental aspect, that what they are arguing is that they are grandfathered in and no evidence has been shown to refute that. Mr. Miller said it is impossible to go back 40 years and show every rental. Mr. Miller said they don't have all the guest books, but the guest books they have show rentals and testimony from people who aren't family who stayed. Mr. Miller said they have showed that the grandfathered status has been maintained. Mr. Miller said he understands why the neighbors are upset, but this activity had been going on for 40 years, before the neighbors moved there, and they can't

complain now. Mr. Miller said that is unfortunate for them and maybe they should have done a better investigation. Mr. Miller said the evidence they provided is the best evidence that exists and proves that there was a rental and it never ceased during a 180-day period since 1984. Mr. Miller said Ms. Starnes did not have dates or know how many garage doors there were, which lacks credibility to the 6-month period. Mr. Miller said Mr. Sellers mentioned the work being done which helps to verify that affidavit. Mr. Miller said the contractor's affidavit squares that people were coming in during the 6-month period. Mr. Miller asked that the Board overturn the Department's decision and allow this house to be grandfathered in.

*Chairman Springs made a motion to close the evidentiary part of the hearing and move on with their deliberations, finding of facts and conclusions of law, seconded by Dr. Rocamora. **All members were in favor.***

Chairman Springs gave the findings of fact from his notes and asked the Board to interrupt him if anything needed to be added.

Chairman Springs said there needs to be a paper copy of the ordinance signed by the Mayor on August 13, 2019 in the record. Chairman Springs marked his copy of the ordinance Board's Exhibit B for the record.

Chairman Springs gave a list of abbreviations for the Decision Document. A copy of these abbreviations, in the Decision Document, is attached.

Chairman Springs advised the Board that their standard - their job is to decide whether the final violation notice by the Planning Director is correct and the Myers have been doing illegal short-term rentals, or he was wrong. Chairman Springs said they have to base their decision on substantial, competent, and material evidence. Chairman Springs said substantial evidence has been defined as evidence such that a reasonable mind might accept as adequate to support a conclusion. Chairman Springs said material evidence is evidence having some logical connection with the consequential facts, relevant. Chairman Springs said that competent evidence is generally defined as synonymous with admissible evidence. Chairman Springs said they cannot base their decision on speculative assertions or expressions of opinion.

Chairman Springs read the finding of facts. The findings of fact are included in the attached Decision Document.

*Chairman Springs moved to adopt the findings of fact as stated, seconded by Dr. Rocamora. Mr. Campbell asked Chairman Springs to reread fact 19. **All members were in favor of adopting the findings of fact.***

Chairman Springs moved to the conclusions of law. Chairman Springs said the ordinance is applicable to this case and the facts. Chairman Springs reiterated that the Board must base their decision on substantial, material, and competent evidence as required by NCGS 160A-388, paragraph e2, subparagraph 1, which has been upheld many times by the NC Court of Appeals.

Chairman Springs read the conclusions of law. The conclusions of law are included in the attached Decision Document.

*Chairman Springs made a motion to adopt the conclusions of law as stated, seconded by Mr. Campbell. **All members were in favor of adopting the conclusions of law.***

Chairman Springs said the decision will become final upon filing with the Clerk of the Board of Adjustment. Chairman Springs said the Board orders that the property not be used for the nonconforming use of short-term rental of a residential dwelling unit. Chairman Springs said the Board does affirm the Planning Director's final notice of violation and finds that there were illegal short-term rentals at this property.

*Chairman Springs made a motion to adjourn, seconded by Mr. Murphy. **All members were in favor.***

The Board adjourned at 12:41 a.m.

Chairman E. B. Springs

Hilari Hubner, Town Clerk

Attachment: Decisions Document