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Coastal Commission decision a blow to Pacific Grove short-term rentals



William and Susan Hobbs, left, leave Monterey County Superior Court with their attorney Christina Sandefur. Christina Sandefur, right, walks out of Monterey County Superior Court with her clients Susan and William Hobbs who are suing the city of Pacific Grove over a denial of their short-term rental license. (Dennis L. Taylor/Monterey Herald)

PACIFIC GROVE — A recent decision by the California Coastal Commission can have a significant effect on a pending lawsuit against Pacific Grove over its method of reducing short-term rentals.

The Nov. 15 decision approved Pacific Grove's Local Coastal Program, an objective that allows the city far more control over its development processes in an area of land called the Coastal Zone. Included in the city's plan was a "zone of exclusion" rule that limits the density of short-term rentals.

So in approving the entire coastal plan the commission also OK'd the zone of exclusion rule that requires short-term rentals to be at least 55 feet apart. In May 2018, the city conducted a lottery using the zone of exclusion as a criteria, which resulted in 51 "over-dense" short-term rentals (22 within the Coastal Zone) losing their licenses on May 1, 2019.

Therein lies the lawsuit. Attorneys for short-term rental owners William and Susan Hobbs, and Donald and Irma Shirkey, sued in Monterey County Superior Court alleging that the city was denying them due process rights and that the ordinance that created rental regulation inside the Coastal Zone was not submitted to the Coastal Commission for approval.

In March, the attorneys from the Goldwater Institute, an Arizona conservative think tank that represents the Hobbs and Shirkeys, filed a motion for summary judgment on the allegations, in effect asking the court to side with them and against the city without a trial.

Superior Court Judge Lydia Villarreal denied the motion on the due process allegation, which set it up for a trial. She did grant the motion on the Coastal Commission claim, requiring the city to obtain approval from the commission.

The commission's ruling provided tacit approval for the regulation in the zone of exclusion. It did not come as a surprise for Pacific Grove officials. City staff had been working with Coastal Commission staff along the way to developing the program.

Christina Sandefur, who is representing the Hobbs and Shirkeys for Goldwater, declined to comment.

A trial date has been set for Dec. 16.

The Coastal Commission's decision is just the most recent blow to the Goldwater case. Last month, Goldwater attorneys tried to have city evidence excluded from ongoing proceedings. But on Oct. 22, Judge Villarreal denied the motion, allowing the city to introduce the evidence and removing the last hurdle before the case goes to trial on Dec. 16.

The evidence Sandefur wanted to be suppressed included the city administrative record, which includes such things as minutes of City Council meetings and city emails.

It is a complex case but in its simplest form short-term rental owners filed a lawsuit in June of last year alleging the city's method — via a lottery — to phase out the practice of renting out homes for less than 30 days was a violation of their due process rights guaranteed by the U.S. Constitution.

In essence, the short-term rental supporters allege that the lottery randomly singled them out without providing a cause for why their licenses to operate short-term rentals were not renewed. The city counters that it was stated in writing when the property owners signed the license application that it was good for only 12 months and might not be renewed.

Case watchers agree that Goldwater wants to lose as soon as possible so they can then appeal the verdict to the federal Ninth Circuit Court of Appeals.

The case is more far-reaching than just Pacific Grove. If successfully appealed to the Ninth Circuit, then the outcome of that court's decision, one way or the other, could have significant ramifications for cities' ability to legislate short-term rentals up and down California.

However, the Ninth Circuit earlier this month upheld the city of Santa Monica's ban on short-term rentals. That decision can now be cited in lower court cases such as the lawsuit against the city of Pacific Grove.

The Dec. 16 trial is set for 9 a.m. in Dept. 1A in the Salinas Courthouse. Judge Timothy P. Roberts will preside.

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