Agenda Item 10
December 19, 2012
File No. 450-30

AGENDA BILL

Subject: Zoning Code Update: Report on Status of Work Program and Schedule, including Consideration of Work Program Options regarding Single Family Transient Rental, Commercial Zoning and Community Benefits/Incentive Zoning

Initiated by: Ellen Clark, Principal Planner

BACKGROUND:

The purpose of this agenda item is to provide an update to the Town Council on the current status of the Zoning Code Update (ZCU) project, and an opportunity to review and discuss the major work program items and schedule associated with this effort. Updating the Zoning Code has been identified as a high priority work program item for this fiscal year, and an essential step to "prepare for reinvestment."

While work has proceeded on many sections of the updated Code, and the remaining scope of work is well-defined, the scope and timing of some other components, including the Community Benefits/Incentive Zoning Ordinance, Commercial Zoning Chapters, and potential regulations for Single-Family Transient Rental, are currently under discussion by the Planning Commission and Town Council. This agenda bill forwards recommendations from the Planning Commission on these items for the Town Council's consideration.

ANALYSIS/DISCUSSION:

The Zoning Code Update process to date and going forward is divided into two phases:

- **Phase I** was the first phase of work, completed largely as an in-house effort, that occurred in 2010 and 2011.

- **Phase II** is the current phase of work, to address certain topics not addressed in the first phase, complete legal review, CEQA, and compile/reconcile and adopt the updated Code. This phase of work also includes development of a Community Indicators Reporting Framework.

1. ZCU Phase I

Work to complete a comprehensive Zoning Code Update was initiated in mid-2010, with the goal of updating the Code to achieve greater consistency with the General Plan adopted in 2007, eliminate inconsistencies, and make the Code more logically organized and user-friendly. Sustainability and support for economic development goals are key themes of the update, both in terms of promoting compact, walkable and attractive neighborhoods and districts, ensuring quality development, supporting businesses and the destination resort economy, and promoting protection of important environmental resources.

Throughout 2010 and 2011, staff worked with a Zoning Code Users Group (ZCUG), consisting of two Planning Commissioners), and four other members to develop, review, and provide input on draft chapters as they were developed. The Planning Commission then reviewed each draft chapter in a series of public workshops. The Planning Commission held joint workshops with the Town Council on some key topics, most notably height limits and building envelopes within the Commercial Zones, to help achieve consensus direction on more complex policy areas.

During Phase I, a total of 35 out of 36 chapters of the Zoning Code were drafted and reviewed by the ZCUG and Planning Commission. Background information, and all of the Zoning Code chapters drafted to date are posted on the Town's website:
http://www.ci.mammoth-lakes.ca.us/index.aspx?NID=384

The status of each of these chapters, and date of the Planning Commission's review is summarized in Attachment 1.

2. ZCU Phase II

In 2011, the Town applied for and received a $318,000 grant from the State of California's Sustainable Growth Council (SGC) to fund the Zoning Code Update. The work funded through the grant is focused on sustainability-oriented components of the Code, including additional technical consultant assistance to incorporate form-based standards into the code, to develop a more user-friendly landscaping ordinance, and to develop a Community Indicators Reporting Framework for the Town, among other components that were not addressed, or only partially addressed in Phase I. The grant funds have allowed for consultant services to be retained to assist with certain technical components of the Code, to allow for completion of the necessary legal review of the Zoning Code, and to bring the Code forward for public hearings and adoption. The work program of this "Phase II" effort is described in more detail below.

a. Work Program

Work began on Phase II of the ZCU in early 2012, and has primarily consisted of work "behind the scenes" with the staff and the consultant team to critique and develop initial draft chapters, many of which are now ready to be brought forward for review and consideration by the Planning Commission. The following tasks have been completed to date:

- Finalize grant scope and contract with SGC;
- Issue RFP, select, and contract with consultant;
- Consultant kickoff;
- Background research, issues identification, and initial draft revised zoning code chapters/sections including Water Efficient Landscaping, stream setback standards, tree preservation, and mobile businesses;
- Legal Review of Housing Ordinance and initiate legal review of code chapters developed in Phase I;
- Planning Commission and business owner workshops on mobile businesses, special events, outdoor sales; and
- Joint Planning Commission/Town Council workshop on CBIZ and Single Family Transient Rental.

Table 1 outlines the major tasks and proposed schedule to complete the ZCU, including remaining topics to address. As was the case with Phase I, staff proposes to phase the drafting and review of new and revised code chapters and deliver them in batches, with an effort to cover related and similar topics at the same time. Each group of chapters will first be reviewed by the Zoning Code Committee (ZCC) – Commissioners Brown and Harvey - and then by the Planning Commission at a public workshop.

Table 1: ZCU Phase II Schedule

Task	Schedule
Complete legal review of Phase I chapters	December 2012
Planning Commission/Zoning Code Committee review revised chapters/sections	January-March 2013 (See detail below)
○ Stream setbacks ○ Tree Preservation ○ Water Efficient Landscaping ○ Mobile Businesses ○ Adult Businesses/Offenses against Public Decency ○ Solid waste/recycling	January 2013
○ Revisions suggested as result of legal review, including	February 2013

Housing Ordinance o Temporary Uses/Special Events/Signs	
o Commercial Zones	March 2013
o Miscellaneous other revisions (e.g. definitions, revisions for consistency between sections and chapters, other minor updates and changes)	April 2013
Community Indicators Framework	February-March 2013
Compiled Public Review Draft Zoning Code	May 2013
Draft CEQA Negative Declaration	May 2013
Final Negative Declaration	July 2013
Public Hearings and Adoption	July – August 2013

b. Key Issues Currently Under Consideration

While requiring input and review from the ZCC, Planning Commission, and public, the majority of the topics remaining to complete the ZCU are not expected to be particularly controversial, and staff has already made significant process in reviewing background information, comparing codes, and outlining draft chapters and sections.

However, the work program for some key topics, including Commercial Zones, Community Benefits/Incentive Zoning (CBIZ), and Single Family Transient Rental is currently under discussion, and, depending on scope of that work, may have an impact on the schedule outlined above. The Planning Commission will be reviewing and providing recommendations on work program options for these topics at its December 12th meeting. The December 12, 2012 Planning Commission staff reports are included as Attachments 2 and 3 to this agenda bill, for the Town Council's information, and summarized below.

Commercial Zones Chapter and Community Benefits/Incentive Zoning

The Phase II scope of work includes work to further refine the initial draft commercial zones chapter, based on the building envelopes established by the Planning Commission and Town Council in 2011.

In its initial review of the most recent draft chapters, the ZCC suggested there may be a need to re-examine the Commercial Zoning density and intensity standards, to evaluate whether they can support the type of investment and change needed to accomplish the vision articulated in the Downtown Concept for Main Street. These standards also have a relationship to the CBIZ regulations, with the idea that if the zoning standards and requirements are appropriately set, then CBIZ may not be necessary.

As noted in Attachment 2, work is scheduled to begin on the Main Street Transportation Corridor and Implementation Plan, which is the grant-funded second phase of the Downtown District Plan, in early 2013.

There is a clear relationship between commercial zoning standards (which cover the Main Street and Old Mammoth Road corridors) and the physical environment of downtown and Main Street. Therefore, staff suggests that the commercial zoning standards (with or without consideration of density standards) could be looked at in conjunction with the early phase of the CBTP project, through an integrated "Downtown Working Group" that would include representatives from the Planning Commission, Town Council, and representative stakeholders.[1]

The ZCC requested input from the Planning Commission on December 12th as to whether staff should study this question, and if it should be incorporated as part of the Downtown Working Group's scope. The Planning Commission recommended unanimously that it should be considered as part of the overall review and update of the Commercial Zoning Chapter. It was also recommended that staff provide regular reporting of the Downtown Working Group's progress to the Planning Commission, and opportunities for broader public discussion as needed.

Depending on the outcomes of the Commercial Zoning study, further analysis or a more in-depth public process may be necessary to properly address this aspect of the Code. In this case, it may be advisable to place these issues on a separate track from the rest of the Zoning Code Update to avoid delay in adoption of the broader document.

The Planning Commission did not provide direction on the timing of the CBIZ ordinance in their formal recommendation. However, in the Commission's overall deliberations, there was consensus that it was logical to delay consideration of the CBIZ ordinance until after the Commercial Zoning chapter is updated, since the content of that chapter would dictate the necessity and components of an incentive zoning program.

Single-Family Transient Rental

On November 7, 2012, the Town Council and Planning Commission held a joint workshop to discuss key issues and a work program related to transient rental in single-family zones. No decision was made at that meeting as to whether or not this work program should proceed, and it was clear that ambiguity on some major topics, including treatment of existing CC&Rs, needs to be resolved first to determine if it is even feasible to develop a program.

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[1] A separate agenda item provides an overview of the Main Street project, and requests the Town Council to make an appointment to the Downtown Working Group to assist with this process.

Based on the joint workshop and follow-up direction provided by the Planning Commission at its November 14, 2012 meeting, the Town Attorney has provided a memorandum addressing two key issues for transient rental – relationship to CC&Rs and consideration of economic impacts. This memorandum is included in Attachment 3 to this Agenda Bill as an attachment to the Planning Commission Staff Report.

The Planning Commission reviewed this information at their December 12th meeting, and by a 3-2 vote, approved a motion to:

> *Forward a recommendation to Town Council that staff should move forward to complete the necessary analysis in Spring 2013, to consider development of a single family transient rental work program for the review and consideration of Town Council:*
>
> *If the Town Council directs work to proceed, further recommend:*
>
> - *That Memorandum Option 3 as recommended by the Town Attorney, requiring HOA's to affirmatively agree that transient rental are allowed in single family neighborhoods should be included as a component of the program.*
> - *That Staff should work with the Planning Commission and key stakeholders to develop the framework and draft regulations to allow transient rental, including the appropriate zoning changes, and performance and permitting requirements necessary to minimize and avoid impacts to existing neighborhoods.*
> - *That economic benefits and/or impacts, while a factor, should not be the sole or controlling consideration in determining whether single-family transient rental should be allowed.*

If the Town Council concurs with the Planning Commission's recommendation, the following steps would occur:

- Starting in Spring 2013, staff would complete further analysis to determine the feasibility of adopting regulations to allow single-family transient rentals, and bring this information back to the Town Council for direction on whether to move forward to develop an ordinance or regulations. If directed to move forward, staff would then develop a more detailed work program.
- Based on the work program, staff would then proceed to draft single-family transient rental regulations, incorporating the guidance suggested in the Planning Commission's recommendation.

- The draft regulations would be reviewed and considered for adoption by the Planning Commission and Town Council

OPTIONS ANALYSIS:

Option 1: Affirm the Planning Commission's recommendations of December 12, 2012 and:

- Direct staff to move forward to complete necessary analysis in Spring 2013, to consider a work program for development of single-family transient rental regulations, for review and consideration by the Town Council. If a work program is approved and regulations developed, incorporate the three points recommended by the Planning Commission with regard to treatment of CC&Rs, planning commission and stakeholder involvement, and consideration of economic benefits and impacts.

- Direct staff to proceed with the work program outlined in the December 12, 2012 Planning Commission staff report, to examine more closely the existing development intensity standards for Commercial Zones, alongside other updates to the Zoning Code.

Option 2: Affirm the Planning Commission's recommendations with regard to single-family transient rental and Commercial Zones work program, with modifications suggested by the Town Council to provide additional guidance to staff on work program scope, schedule and priority for either or both items, and/or with regard to the Zoning Code Update as a whole.

Option 3: Do not affirm the Planning Commission's recommendations, and provide alternate direction to staff.

Option 1 would direct staff to proceed as recommended by the Planning Commission on both the single-family rental analysis and with regard to the update of the Commercial Zones chapter.

Option 2 would incorporate modifications to the Planning Commission's recommendations, for example, to revise the timing or priority of these items, not move ahead with one or the other, or discuss the scope and timing of other components of the Zoning Code update, such as CBIZ.

Option 3 would provide alternate direction to staff and the Planning Commission.

VISION CONSIDERATIONS:

Updating the Zoning Code to implement the General Plan, codify accepted neighborhood district plans, and to substantially implement the permit streamlining process will ensure the provision of the very highest quality of life for our residents and the highest quality of experience for our visitors.

FINANCIAL CONSIDERATIONS:

This phase of the Zoning Code Update is funded by a State of California Strategic Growth Council Grant. All grant funds must be expended by August 2013. Work completed after this time will need to be separately funded.

STAFFING CONSIDERATIONS:

Staffing for the Zoning Code Update is reflected in the 2012-13 work program and budget. Some of the work program items that could be included in the ZCU, and discussed in this staff report were not anticipated in the staffing assignments made at the start of the fiscal year. Staff has re-allocated funding among the consultant team to provide additional resources in some areas, but it will still be challenging for staff to meet ZCU deadlines, particularly in light of other staffing reductions.

Nonetheless, addressing some of these topics is seen as important to encouraging new investment and/or increasing revenues. Consideration of these benefits needs to be weighed against impacts on other work program items, if direction is given to address these new issues.

ENVIRONMENTAL CONSIDERATIONS:

None at this time. The Zoning Code Update, in its entirety, will be subject to CEQA review.

LEGAL CONSIDERATIONS:

None at this time. The Zoning Code Update, in its entirety, will be subject to legal review.

RECOMMENDATION:

It is recommended that the Town Council choose either Option 1 or Option 2:

Option 1: Affirm the Planning Commission's recommendations of December 12, 2012 and:

- Direct staff to move forward to complete necessary analysis in Spring 2013, to consider a work program for development of single-family transient rental regulations, for review and consideration by the Town Council. If a work program is approved and regulations developed, incorporate the three points recommended by the Planning Commission with regard to treatment of CC&Rs, planning commission and stakeholder involvement, and consideration of economic benefits and impacts.

- Direct staff to proceed with the work program outlined in the December 12, 2012 Planning Commission staff report, to examine more closely the existing development intensity standards for Commercial Zones, alongside other updates to the Zoning Code.

Option 2: Affirm the Planning Commission's recommendations with regard to single-family transient rental and Commercial Zones work program, with modifications suggested by the Town Council to provide additional guidance to staff on work program scope, schedule and priority for either or both items, and/or with regard to the Zoning Code Update as a whole.

Attachments

Attachment 1: Zoning Code Update Chapters: Status and Review Chronology

Attachment 2: Planning Commission Staff Report, December 12, 2012. Zoning Code Update: Commercial Zoning Standards.

Attachment 3: Planning Commission Staff Report, December 12, 2012. Transient Rental in Single Family Zones: Work Program Options.

Attachment 1

Zoning Code Update
Chapter Status and Review Chronology
(Highlighted chapters are those that may be revised, updated, or will be developed in Phase II)

Chapter Number (Updated ZCU)	Title	Article Number	Review Date	Status/Notes
17.04	Purpose & Effect of Zoning Code	Article I	10-27-10	No significant changes expected
17.08	Development and Land Use Approval Requirements	Article I	10-27-10	No significant changes expected
17.12	Interpretation of Zoning Code Provisions	Article I	10-27-10	No significant changes expected
17.16	Establishment of Zoning Districts, Adoption of Zoning Map	Article II	6-22-11	No significant changes expected
17.20	Residential Zones	Article II	5-25-11	May be modified to address Single Family Transient Rental
17.24	Commercial Zones	Article II	6-8-2011 6-29-2011 Plus Additional Meetings to discuss height held with TC	Will be significantly updated and revised
17.28	Industrial Zones	Article II	5-11-11	Minor revisions/update to table of permitted uses
17.32	Special Purpose Zones	Article II	4-13-11	No significant changes expected
17.36	Standards for All Development and Land Uses	Article III	2-23-11 3-23-11 (Height) 4-27-11 6-8-11 (Height)	-Modify to add new/more detailed standards for tree removal and stream setbacks -Some revisions for consistency with Commercial Zones chapter

Chapter Number (Updated ZCU)	Title	Article Number	Review Date	Status/Notes
17.40	Water Efficient Landscape Ordinance	Article III	6-22-11	Will be significantly updated and revised
17.44	Parking and Loading Standards	Article III	4-13-11 6-22-11	No significant changes expected
17.48	Signs	Article III	Adopted 6-1-11	No significant changes expected
17.52	Standards for Specific Uses	Article III	5-25-11	- Update to conform to Commercial Zones chapter - Modify Outdoor Display requirements - Add Mobile Business regulations
17.56	Temporary Uses	Article III	10-27-10	Revise/update special event regulations
17.60	Applications, Processing and Fees	Article IV	11-17-10	No significant changes expected
17.64	Permit Implementation, Timelines and Extensions	Article IV	12-8-10	No significant changes expected
17.68	Use Permits	Article IV	12-8-10	No significant changes expected
17.72	Variances	Article IV	11-17-10	No significant changes expected
17.76	Adjustments	Article IV	12-8-10	No significant changes expected
17.80	Reasonable Accommodation	Article IV	12-8-10	No significant changes expected
17.84	Administrative Permits	Article IV	4-13-11	No significant changes expected

Chapter Number (Updated ZCU)	Title	Article Number	Review Date	Status/Notes
17.88	Design Review	Article IV	4-13-11	-No significant changes expected. - Potential modifications to streamline process for certain matters subject to design review
17.92	Incentive Zoning	Article IV	Not Yet Drafted or Reviewed by PC	Will be significantly updated and revised
17.100	Nonconforming Uses, Structures and Parcels	Article V	10-8-10	No significant changes expected
17.104	Appeals	Article V	11-17-10	No significant changes expected
17.108	Development Agreements	Article V	11-17-10	Minor revisions to reflect cancellation of Hot Creek DA
17.112	General Plan, Zoning Map and Zoning Code Amendments	Article V	11-17-10	No significant changes expected
17.116	Specific Plans	Article V	4-13-11	No significant changes expected
17.120	Master Plans	Article V	4-13-11	No significant changes expected
17.124	Public Hearings	Article V	11-17-10	No significant changes expected
17.128	Revocations and Modifications	Article V	12-8-10	No significant changes expected
17.132	Enforcement	Article V	1-26-11	No significant changes expected
17.96	Administrative Responsibility	Article V	11-17-12	No significant changes expected

Chapter Number (Updated ZCU)	Title	Article Number	Review Date	Status/Notes
17.136	Housing	Article VI	12-8-10 6-22-11	Some additional revisions necessary to reflect legal review
17.140	Affordable Housing Density Bonuses and Incentives	Article VI	6-22-11	No significant changes expected
17.144	Definitions	Article VII	Not Yet Complete or Reviewed	Will be significantly updated and revised
N/A	Zoning Map Amendments	N/A	6-22-201	No significant changes expected

Attachment 2

Town of Mammoth Lakes
Planning Commission Recommendation Report

Date:	December 12, 2012	**Case/File No.:**	NA
Place:	Council Chambers, 2nd Floor Minaret Village Shopping Center Mammoth Lakes, CA 93546	**Project:**	Zoning Code Update: Commercial Zoning Standards
Time:	After 2:00 p.m.	**Location:**	NA
Agenda Item:	4	**General Plan:**	NA
Appeal Status:	NA	**Specific Plan:**	NA
Applicant/ Owner:	Initiated by Vice Chair Brown and Commissioner Harvey	**Zoning:**	NA
Environmental Review:	NA		

A. EXECUTIVE SUMMARY

1. Subject/Requested Actions
Provide direction to staff to incorporate a review of Commercial Zones development intensity standards in the Zoning Code Update work program

2. Required Findings to Support Requested Actions
No specific findings are required in conjunction with this action.

3. Report Summary
This agenda item has been initiated by the Zoning Code Committee (ZCC) (Commissioners Brown and Harvey) to request direction from Planning Commission on the work program for update of the Commercial Zones Chapter. In particular, the ZCC suggests that there is a need to look more carefully at the standards governing development intensity in commercial zones, and particularly the downtown core, to evaluate whether they are conducive to achieving the vision for these areas.

No recommendation is provided by staff on this topic.

Report Prepared By:	*Report Approved By:*
	Commissioner David Harvey
Ellen Clark, Principal Planner	Vice-Chair Madeleine "Mickey" Brown

B. ANALYSIS

1. Background

Staff has been actively working on a comprehensive Zoning Code Update since 2010, and in recent months has begun to focus on finalizing certain key Zoning Code chapters, including those for the Commercial Zones and for Community Benefits/Incentive Zoning.

In 2011, the Planning Commission and Town Council developed and recommended a series of changes to the physical development standards (building envelopes, including heights and setbacks) in Commercial Zones. The proposed changes are intended to help articulate the vision for the commercial areas articulated in the General Plan and in District Planning Studies for Downtown and South Old Mammoth Road, which focuses higher intensity development and building heights, mixed use and pedestrian oriented development in these areas.

A joint workshop was held with the Town Council on November 7, 2012 to get direction on a number of key policy questions related to the Community Benefits/Incentive Zoning Ordinance. At the workshop, the Town Council and Planning Commission emphasized the need to be "development ready" by creating zoning guidelines that were clear and predictable in their outcomes for developers, and set incentives and requirements at the correct levels to encourage desired investment, particularly in commercial areas.

Since that meeting, the Zoning Code Committee has met with staff to discuss next steps to bring the commercial zoning regulations forward. The Committee has suggested that there is a need to take a closer look at the existing framework that regulates development intensity for commercial, hotel and residential uses, alongside the physical development standards articulated through the Code. The goal of this exercise would be to evaluate whether the Commercial Zoning standards can help achieve the desired outcomes for the districts, and particularly, if they can support the type of investment and change needed to accomplish the "Downtown Concept" which calls for a revitalized and attractive commercial core.

2. Relationship to the Main Street Transportation Corridor and Implementation Plan

As noted in Agenda Item 3, staff and the consultant team will shortly be initiating work on the Main Street Transportation Corridor and Implementation Plan. This project focuses on the next steps needed to implement the Downtown Concept for Main Street, including refinement of the concept design, financing, phasing and implementation recommendations. Because of the clear relationship between the two projects, coordinating between them is both logical, and critical. Formation of a unified working group for the two projects is a strategy that can help coordinate these efforts and ensure that information is successfully shared between stakeholders, the consultant teams and staff. Section 3 outlines an initial work program that includes a coordinated early work program, and Section 4 describes the joint working group in greater detail.

3. Work Program/Next Steps

Staff is working with the Zoning Code Committee to refine the overall work program for the Zoning Code Update as it evolves, including the additional steps that may be needed to more fully vet potential changes to commercial zoning standards. A preliminary work program is outlined below, which would coincide approximately with Steps 1 and 2 of the Main Street work program described in Agenda Item 3.

- **Downtown Working Group "Kick-off" meeting** (December 2012) to introduce both the Main Street and Commercial Zones update projects and bring the group up to speed, including work completed to date, and recap of previous efforts and "foundational" documents.

- **Planning Commission/Town Council Joint Workshop** (Early February 2013) to provide more direction on work scope and issues based on an initial analysis and critique of the Commercial Zones chapter. The analysis would consider the rationale for re-looking at development intensity standards, and initial options for how these standards may be changed (for example, shifting to a Floor Area Ratio-based intensity standard), as well as potential implications of such changes in other areas including PAOT, General Plan consistency, etc.

- **Main Street Introductory Workshop** (Mid-February 2013). Initial workshop with Main Street consultants to introduce Main Street project and goals, and gather input on physical design and implementation issues.

- **Downtown Working Group Meetings** (February-March 2013) to review additional analysis and develop recommendations to Planning Commission and Town Council, based on direction from the joint meeting. The timing and scope of these meetings would be developed to coincide with planned public workshops for the Main Street project, to ensure that the group's input can be incorporated into these meetings, and to make best use of consultant time. Additional Planning Commission workshops may also be scheduled during this time, depending on the scope of issues that emerge.

- **Community Charette** (Late March/Early April 2013). Develop initial concepts, refine ideas and consolidate plan elements for Main Street, including relevant concepts/components of draft Commercial Zones chapter.

- **Planning Commission Workshops: Draft Commercial Zones and CBIZ Chapter** (Late April 2013)

The sequence of meetings proposed provides an opportunity to thoroughly vet and discuss all of the critical issues, get input from the Planning Commission and Town Council at an early stage on key policy questions, and then engage the stakeholders group to work through and refine these items in more detail. The goal will be to bring forward a revised Commercial Zones and CBIZ chapter for review by the Planning Commission and Town Council that will have been informed by, and will inform, the recommended direction for the Main Street Transportation Corridor and Implementation Plan.

During this process, staff will continue to work to develop other sections of the Zoning Code, which will be brought forward for review by the Zoning Code Committee and Planning Commission at regularly scheduled meetings. Commissioner Brown has suggested that, starting in January, the Commission hold two meetings per month (on the second and fourth Wednesday of each month), to ensure there is sufficient time to work through all of the information.

4. Main Street/Commercial Zoning and Implementation Working Group

As noted above, it may be beneficial to form a unified stakeholder/working group (tentatively, the Downtown Working Group) for the two projects. This group would work with staff and the consultant

teams to resolve particular issues and questions focused on the Downtown and Commercial Zoning standards, and provide recommendations that would be brought back to the Planning Commission and/or Town Council at appropriate points in the process.

Preliminarily the group could consist of 8-9 members, including the Zoning Code Committee members, one Town Council member, members of the former Zoning Code Users Group, and 2-3 property/business owner representatives from Main Street and Old Mammoth Road.

5. Business Owner Focus Group

Outdoor sales, signage standards, special events and animation are important aspects of the vitality, success and character of the town's commercial zones. Commissioner Tenney recently initiated a business owner focus group to discuss these topics, with the group's first meeting held on November 20. The group plans to meet again in January to continue to identify issues and possible approaches to more successful regulation of these types of activities. Input from this group will be reported to the Planning Commission and the working group, and incorporated into the Commercial Zones and other Zoning Code chapters as appropriate.

6. Environmental Analysis

None at this time. The Zoning Code Update, in its entirety, will be subject to CEQA review.

7. Legal Considerations

None at this time. The Zoning Code Update, in its entirety, will be subject to legal review.

8. Financial and Staffing Considerations

The proposed work program (as currently conceived) can be accommodated within the scope and schedule for the Zoning Code Update and the Main Street Transportation Corridor and Implementation Plan projects. However, it will be necessary to monitor the overall workload associated with this effort. Should it become apparent that a more extensive public process or CEQA analysis is needed to resolve questions associated with potential zoning changes, it may be necessary to place this component of the Zoning Code on a separate track to avoid substantial delays or a failure to meet grant deadlines for the remainder of the Update.

C. OPTIONS

Option 1: Direct to staff to proceed with the work program outlined in this staff report, to examine more closely the existing development intensity standards for Commercial Zones, alongside other updates to the Zoning Code.

Option 2: Do not direct staff to proceed with the work program outlined in the staff report at this time.

Option 1 would allow staff to engage with a working group of stakeholders, the Planning Commission and Town Council, and the public to consider if changes to the development intensity standards in commercial zones are necessary and/or desirable.

Option 2 would direct that the current intensity standards should not be re-considered at this time or as part of the Zoning Code Update.

D. RECOMMENDATIONS

This agenda item has been brought forward at the request of Commissioner Brown and Commissioner Harvey as representatives of the Zoning Code Committee. No recommendation is provided by staff on this topic.

Attachment

Town of Mammoth Lakes
Planning Commission Recommendation Report

Date:	December 12, 2012	**Case/File No.:**	NA
Place:	Council Chambers, 2nd Floor Minaret Village Shopping Center Mammoth Lakes, CA 93546	**Project:**	Transient Rental in Single Family Zones: Work Program Options
Time:	After 2:00 p.m.	**Location:**	NA
Agenda Item:	2	**General Plan:**	NA
Appeal Status:	NA	**Specific Plan:**	NA
Applicant/ Owner:	NA	**Zoning:**	NA
Environmental Review:	NA		

A. EXECUTIVE SUMMARY

1. Subject/Requested Actions
Consider and provide a recommendation to Town Council on whether staff should proceed with study and development of a program that could allow transient rental in single-family neighborhoods, reflecting information provided by the Town Attorney with regard to treatment of existing Covenants, Conditions and Restrictions (CC&Rs) and consideration of economic factors.

2. Required Findings to Support Requested Action
No specific findings are required to support the requested action.

3. Report Summary
On November 7, the Town Council and Planning Commission held a joint workshop to discuss key issues and a work program related to transient rental in single-family zones. No decision was made at that meeting as to whether or not this work program should proceed, and it was clear that ambiguity on some major topics, including treatment of existing CC&Rs, needs to be resolved in order to move the debate forward. Based on the joint workshop and follow-up direction provided by the Planning Commission at its November 14 meeting, the Town Attorney has provided a memorandum addressing two key issues for transient rental – relationship to CC&Rs, and consideration of economic impacts - that may inform a Planning Commission recommendation to Town Council on whether, and how, to proceed on this matter.

Report Prepared By: Ellen Clark, Principal Planner	*Report Approved By:* David Wilbrecht, Town Manager

Staff recommends that the Planning Commission choose either Option 1 or Option 2:

Option 1: Provide a recommendation to the Town Council that staff should move forward to complete necessary analysis and develop a program that would potentially allow for transient rental within single-family zones, for future review and consideration by the Town Council.

If the Town Council directs work to proceed, further recommend (with or without modifications by the Planning Commission):

- That Memorandum Option 3 as recommended by the Town Attorney, requiring HOA's to affirmatively agree that transient rental are allowed in single family neighborhoods should be included as a component of the program.
- That Staff should work with the Planning Commission and key stakeholders to develop the framework and draft regulations to allow transient rental, including the appropriate zoning changes, and performance and permitting requirements necessary to minimize and avoid impacts to existing neighborhoods.
- That economic benefits and/or impacts, while a factor, should not be the sole or controlling consideration in determining whether single-family transient rental should be allowed.

Option 2: Provide a recommendation to Town Council that staff should not move forward to complete necessary analysis or develop a program that would potentially allow for transient rental within single-family zones at this time.

B. ANALYSIS

The purpose of this agenda item is to allow the Planning Commission to consider and provide a recommendation to Town Council on whether staff should proceed with study and development of a program that could allow transient rental in single-family neighborhoods. The Town Attorney has provided some additional information and analysis, intended to inform this discussion (see Attachment 1) with regard to treatment of existing CC&Rs and the question of the extent to which consideration of potential economic impacts or benefits should be a factor in the Town's decision-making.

1. Background

Current zoning regulations limit transient (sometimes referred to as nightly or short-term) rental activities to certain zones, including the two Commercial zones, Residential Multi-Family-2, Resort, and Specific Plan zones. Short-term rental is generally not permitted in other residential zones, including Residential Multi-Family (RMF-1), Residential Single Family (RSF) or Rural Residential (RR) zones.

The question of whether or not transient rental should be allowed elsewhere in Mammoth Lakes has come forward a number of times in the past, including in 2009 when the Planning Commission and Town Council considered, but decided not to proceed with, a work program to study changes to existing regulations. The issue has arisen again in conjunction with the Town's current restructuring and financial settlement discussion, and proponents on both sides have come forward with arguments both in favor of and against this change, citing a range of data and case studies to support their positions.

Those in favor suggest that it may be a way for the Town to raise new TOT revenues in light of current financial challenges, as well as an opportunity to broaden the range of short-term rental product for visitors, and to legalize and therefore capture revenue from the illegal transient rental activity that is already occurring in many neighborhoods.

Those against the change cite a variety of concerns, ranging from potential effects on neighborhood character and quality (nuisance, noise, parking, etc.), economic effects on existing condominiums and lodging units, long-term economic effects, and inconsistency with neighborhood CC&Rs.

On November 7, 2012, the Planning Commission and Town Council held a joint workshop to consider potential issues associated with making this zoning change, and a work program to further analyze the pros and cons of these various issues. One of the major items under discussion was the relationship of potential zoning changes to existing CC&Rs, with the suggestion that this fundamental question needs to be resolved in order to determine if a program to allow single family transient rental can, or should even be developed. The Planning Commission held a follow-up discussion on the joint workshop at their November 14 meeting, concluding that it would be beneficial to obtain input from the Town Attorney on this matter, and make a recommendation to the Town Council on how to proceed.

2. Summary of Town Attorney Memorandum and Recommendations

In response to the direction provided by the Planning Commission, staff requested the Town Attorney to prepare a memorandum that analyzes the CC&R issue, and provides options on how the Town might proceed in its consideration of this important policy question, should it decide to move ahead and develop a program or ordinance to allow for transient rental.

Staff also requested input from the Town Attorney regarding the extent to which economic issues (short-term and long-term benefits and impacts of allowing transient rental in single family-zones) can or should be considered as a basis for decision-making.

a. Treatment of CC&Rs

The Town Attorney completed a review of approximately a dozen CC&Rs from different single family neighborhoods in Mammoth Lakes, concluding that the language in each varies widely, and is often unclear (i.e. subject to interpretation) as to whether or not transient rental is permitted. The memo notes that the Town has no legal obligation to interpret or enforce CC&Rs; this responsibility generally falls to the individual HOA for which such regulations were drafted.

Based on this analysis, the Town Attorney provides three options regarding treatment of CC&Rs that could be reflected in the Town's program if it decides to move forward:

1. Amend the Zoning Code to allow transient rentals in some or all zones that currently do not permit such activity; this would place the responsibility on to HOAs for enforcement, and would ignore any potential inconsistencies between zoning and CC&Rs.

2. Utilize CC&Rs (through the Town's interpretation) to determine which HOAs allow, or do not allow transient rental, and then implement zoning changes accordingly. This option accounts for the intent of the CC&Rs, but would be time-consuming and offer potential legal liabilities for the Town, if there was disagreement with the interpretation.

3. Allow HOA's to affirmatively "opt-in" to allowing transient rental (BB&K suggests that each HOA, if it desired to do so, would adopt language suggested by the Town to confirm that such use is allowed). This would require action on the part of each HOA, but doing so would relieve the Town of the obligation to interpret each Association's rules.[1]

The Town Attorney recommends Option 3, should the Town move forward with drafting an ordinance.

b. Treatment of Economic Issues

The memorandum from the Town Attorney also discusses whether or how economic benefits or impacts of allowing transient rental, particularly the effect on existing condominium owners, should be considered. The memorandum notes that analysis of the effects on TOT revenue collection and on existing condo rentals will be very difficult to accurately assess; the effect on long-term investment in the Town (positive or negative) is even more problematic due to the large number of internal and external factors that influence such investment decisions. The memo also suggests that protecting the welfare of one group of property owners over another, based on their private economic interest, may not be an appropriate or sufficient basis for decision-making. Therefore, while recognizing that economic factors are among those that will inform the discussion, the Town Attorney cautions against making such factors the sole or controlling consideration in the Town's decision-making.

Staff would also suggest that, to the extent estimates of TOT revenue are developed, they are based on known, local data and information. For example, through the TOT enforcement process, staff has a database of known existing illegal single family rental activity, nightly rates and occupancy, as well as information on costs associated with TOT enforcement and revenue collection, that may be useful indicators of potential revenue and costs if existing illegal rentals were to be legalized.

3. Next Steps

At today's meeting, the Planning Commission is requested to consider and provide a recommendation to Town Council on whether or not staff should to move forward to study and develop a program that could allow for transient rental in single-family zones. It is proposed that this recommendation be forwarded to Town Council at the January 16, 2013 meeting.

If the Planning Commission recommends, and the Town Council agrees, that this work effort should proceed, more specific and detailed aspects of the program and related analysis (in addition to that related to CC&Rs) would need to be developed. These would likely include:

- Approval by the Town of a process and the sample language to be adopted by HOAs, and determining the process for property owners in areas where no CC&Rs exist (if the Town Attorney's recommended approach is taken).
- Determining the appropriate zoning mechanism to allow for transient rental (e.g an overlay, versus a simple amendment to land use tables in certain zones).
- Determining the specific permitting and regulatory requirements for such zones (e.g. special licensing; inspections for building, fire and and zoning conformance; local manager/contact requirements, etc.).

[1] It should be noted that many HOAs are inactive, and so would need to be re-formed at the initiative of individual property owners, or a ballot be conducted by an independent party to confirm or reject proposed changes.

- Determining if all or only some single family zones or neighborhoods should be initially eligible to allow transient rental - e.g. some have suggested focusing this activity in the "resort core" adjacent to ski portals, where demand for such rentals is greatest.

It is expected that key stakeholders, Town Attorney and Planning Commission would continue to work closely with staff to develop detailed program recommendations. Once developed, any ordinance changes or new regulations proposed would be subject to environmental review and to thorough consideration and review through a public hearing process, prior to their adoption.

4. Environmental Analysis
None at this time. If directed to move forward with developing a program, as suggested in the options below, CEQA review of the proposed program and any associated zoning requirements would be necessary.

5. Legal Considerations
None at this time. Staff expects that it will continue to work closely with the Town Attorney to assist with the development and review of single-family transient rental regulations and/or programs.

6. Financial and Staffing Considerations
See discussion of economic issues related to this topic above. The development of regulations for single family transient rental could be developed within the current scope of work of the Zoning Code Update, although would be an additional work item that would require staff time and effort.

C. OPTIONS

Staff recommends that the Planning Commission choose either Option 1 or Option 2:

Option 1: Provide a recommendation to the Town Council that staff should move forward to complete necessary analysis and develop a program that would potentially allow for transient rental within single-family zones, for future review and consideration by the Town Council.

If the Town Council directs work to proceed, further recommend (with or without modifications by the Planning Commission):

- That Memorandum Option 3 as recommended by the Town Attorney, requiring HOA's to affirmatively agree that transient rental are allowed in single family neighborhoods should be included as a component of the program.
- That Staff should work with the Planning Commission and key stakeholders to develop the framework and draft regulations to allow transient rental, including the appropriate zoning changes, and performance and permitting requirements necessary to minimize and avoid impacts to existing neighborhoods.
- That economic benefits and/or impacts, while a factor, should not be the sole or controlling consideration in determining whether single-family transient rental should be allowed.

Option 2: Provide a recommendation to Town Council that staff should not move forward to complete necessary analysis or develop a program that would potentially allow for transient rental within single-family zones at this time.

Option 3: Do not provide a recommendation at this time, and direct staff to return with additional information, as directed by the Planning Commission, upon which to base a recommendation.

Option 1 would provide a recommendation that staff should move forward to further study and develop a draft program or regulations that could allow for transient rental in single-family zones. Approval or adoption of such a program would be subject to review and consideration by the Planning Commission and Town Council, in a future public hearing process.

Options 2 would recommend that staff not move forward with such a work program; if the Town Council agreed with this recommendation, no further work would occur to bring this issue forward until so directed by the Town Council.

Option 3 would direct staff to return to the Planning Commission with additional information or analysis that may help to further inform a recommendation on this topic.

D. RECOMMENDATION

Therefore, it is recommended that the Planning Commission choose either Option 1 or Option 2.

Attachments

Attachment 1: December 5, 2012 Memorandum from BB&K: Re Transient Rental of Single Family Homes in Residential Zones

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Memorandum

To: Dave Wilbrecht, Town Manager
Ellen Clark, Principal Planner
From: Andy Morris, Town Attorney
Date: December 5, 2012
Re: Transient Rental of Single Family Homes in Residential Zones

BACKGROUND

As part of its review of Town operations, the Town Council is considering allowing the transient rental of single family homes in all residential zones. The Town currently prohibits these rentals in most residential zones. This proposal has raised a number of questions, especially concerning how it may impact existing homeowner association ("HOA") restrictions on transient rentals. To assist the Town's consideration of allowing transient rentals, we have prepared this memorandum analyzing the Town's options.

BRIEF OVERVIEW

The Town has three main options: (1) allow transient rentals throughout the Town and permit HOAs to enforce their own restrictions on transient rentals, (2) allow transient rentals only where rentals are permitted under current HOA covenants, conditions and restrictions ("CC&Rs") and (3) allow transient rentals if HOAs adopt a Town-approved CC&R provision that permits transient rentals. While there is no clearly right or wrong answer, I recommend the third option. This option will ensure HOAs retain the flexibility to permit or prohibit transient rentals and will avoid concerns regarding Town staff attempting to enforce or interpret existing CC&Rs.

ANALYSIS

Existing Prohibitions on Transient Rentals in Single Family Homes

Section 17.16.030 of the Mammoth Lakes Municipal Code ("MLMC") currently prohibits transient rentals (i.e., rentals of thirty days or less) in the Rural Residential ("RR"), Residential Single Family ("RSF") and the Residential Multi-Family-1 ("RMF-1") zones. These zones include almost all single family homes within the Town.[1]

In addition to the express Town prohibition, a number of CC&Rs also prohibit transient rentals or operating a business from a single family home. As most of these CC&Rs were

[1] Transient rentals are permitted in RMF-2 with a use permit. This includes some single family homes.

adopted a number of years ago, they can be difficult to interpret and somewhat ambiguous. For example, Tyrolean Pines requires that lots generally only be used for private residence purposes. It is unclear whether that authorizes transient rentals. Similarly, a number of CC&Rs prohibit all business and commercial uses, including a "hotel," "lodging house," "rooming house," or "boarding house." It is also not clear whether this would include transient rentals of single family homes. Notably, only one set of CC&Rs we have reviewed expressly allows transient rentals. Below is a chart with a sample of CC&Rs and their treatment of transient rentals.

Development	**Transient Rentals of Single Family Homes**	**Home Businesses**	**Other Special Issues**
Tyrolean Pines	No express provision and/or not applicable ("N/A")	N/A	Excepting some identified lots, lots only for "private residence purposes."
Mammoth Slopes No. 4	Permitted as long as entire dwelling is rented; no room by room rentals.	N/A	N/A
Mammoth Knolls No. 1	N/A	Not permitted, including "hotel," "lodging house," "rooming house," or "boarding house."	N/A
Majestic Pines	N/A	Not permitted, including "hotel," "lodging house," "rooming house," or "boarding house."	N/A
Mammoth Slopes No. 3	N/A	N/A	Only residential uses permitted.
Mammoth Heights	N/A	Prohibits some certain kinds of businesses (i.e., repair, trade and manufacturing).	N/A
Mammoth Slopes No. 1	N/A	Excepting some lots, not permitted,	N/A

		including "hotel," "lodging house," "rooming house," or "boarding house."	
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Sierra Vista	N/A	Not permitted, including "hotel," "lodging house," "rooming house," or "boarding house."	N/A
Timber Ridge	N/A	N/A	N/A
Trails	N/A	Not permitted.	N/A

As you can see, the CC&Rs vary widely, and the language in the CC&Rs simply is not very clear in addressing transient rentals.

Options for Allowing Transient Rentals

The Town has three main options if it wishes to allow transient rentals within single family homes. First, it could simply authorize these uses without regard to whether any particular set of CC&Rs allow or prohibit transient rentals. Second, the Town could authorize transient rentals if that use complied with the applicable CC&Rs, or if a particular property is not subject to CC&Rs.[2] Third, the Town could authorize transient rentals provided that HOAs amended their CC&Rs with Town-approved language to expressly authorize transient rentals.

The first option is the simplest. The Town would simply amend MLMC section 17.16.030 to allow transient rentals in RR, SFR and/or RMF-1. HOAs or affected property owners with CC&Rs prohibiting transient rentals could then decide whether to privately enforce their CC&Rs. The main benefit of this approach is its simplicity. The Town would simply not

[2] Although we understand that most of the single-family homes in town are subject to CC&Rs, there may be some that are not. A property owner wishing to demonstrate that his or her single-family property is not subject to CC&Rs could furnish the Town with a copy of a title report showing the absence of CC&Rs. All CC&Rs are required to be recorded, under Civil Code § 1352.

consider the CC&Rs, since it has no legal obligation to do so. The drawback would be that the Town would be ignoring the expressed preference of the property owners in the CC&Rs and creating inconsistencies between the MLMC and CC&Rs. In some cases, property owners who support the existing CC&Rs may lack the resources to effectively enforce them.

The second option would permit HOAs to decide whether or not transient rentals will be permitted, subject to the Town's interpretation of the CC&Rs. This approach will respect the owners' stated preference to either allow or prohibit transient rentals. The drawbacks of this approach are that it requires the Town to interpret the CC&Rs to determine whether or not they actually allow transient rentals. As noted above, the existing CC&Rs are ambiguous in some cases regarding whether or not transient rentals are actually permitted. For example, if the CC&Rs prohibit business and commercial uses, including hotels or lodging rooms, a property owner wishing to rent his or her property may argue that a transient rental is not a hotel or lodging room and not a true business or commercial use. Unfortunately, the meaning of some of the CC&Rs is not entirely clear, and the Town would be placed in the position of trying to interpret these ambiguous CC&Rs, which might lead to litigation. This approach would require a significant amount of staff time to administer and potentially legal fees to defend.

The third option is similar to the second but avoids concerns regarding interpreting the CC&Rs. HOAs would be required to essentially opt-in to the transient rental program. If they adopted Town-approved amendments to their CC&Rs, transient rentals would be allowed. If not, transient rentals would be prohibited. The benefit of this approach is that it respects HOAs' and property owners' decisions to allow or prohibit transient rentals in their subdivision. It will also be easy to administer as the Town will review and approve each CC&Rs amendment. The drawback is that all HOAs will need to affirmatively amend their CC&Rs to permit transient rentals.

While this is certainly a policy decision for the Town Council, I recommend the third option. It respects the ability of HOAs and property owners to decide whether or not to allow transient rentals in their subdivision while avoiding the administrative burden and difficulty of interpreting and enforcing existing CC&Rs.

Concerns Regarding Effect on Condos

One common concern raised by the proposal is the economic impact it will have on condominium owners. Some condo owners are concerned that allowing transient rentals in single family homes will not result in new or more transient occupancy tax ("TOT") to the Town. Specifically, they believe that the proposal will simply result in lower occupancy rates and/or rental payments for condo owners.

As an initial matter, I understand that staff has considered the possible economic impacts of the proposals and that they simply are not knowable at this time. It is possible that the proposal will simply divert renters from condos to homes, resulting in little to no TOT increase.

It is also possible that the proposal will legitimize existing transient rentals in single family homes without changing rental patterns, but generating additional TOT revenue. Lastly, it is also possible that the proposal will result in a net increase of renters with little impact on condos. As many have noted, some prefer renting a single family home and may be vacationing in other similar resort communities given the lack of available home rentals. If transient rentals were permitted in single family homes, these vacationers might begin staying in Town. Unfortunately, it is simply not possible to accurately assess the likely economic impact of the proposal. Assessing this affect vis a vis the likely effect on future development or investment is even more problematic; such investment is based on a multitude of factors, only one among many of these factors is the profile and availability of different forms of transient rental product.

In addition, it is important to note that condo owners do not have a legal right to be the sole source of transient rental housing in Town. Rather, they have historically enjoyed this privilege. This situation should be distinguished from situations where the Town contracts with a single solid waste hauler or similar provider for a single service. In those situations, the Town is actually awarding a monopoly. Here, the Town has simply determined to concentrate transient housing in condos, but it is under no obligation to continue doing so.

Moreover, I would respectfully suggest that concerns regarding the economic impact to condo owners of allowing transient rentals in single family homes should not be a controlling consideration. The Town is considering this proposal as part of its restructuring necessary to ensure the Town can meet its obligation under the bankruptcy settlement. This restructuring may require increased TOT revenue. As noted above, the TOT impacts of this proposal cannot be accurately assessed. Accordingly, any concerns regarding the impact to condo owners is based on their private economic interest. While the Town certainly wants and needs all property and business owners to thrive and succeed, staff is concerned that it may not be appropriate for the Town to decide to continue prohibiting transient rentals in single family homes to ensure one segment of property owners maintain an advantage over others. However, as with all matters of Town policy, this is a decision for the Town Council.

Overview of Conclusions

Below is a summary of our conclusions:

1. There are three main options for allowing transient rentals in single family homes: (a) simply allow them, (b) allow them when permitted by current CC&Rs and (c) allow them if HOAs amend their CC&Rs to permit transient rentals.

2. Staff recommends the third option as it respects HOAs' and property owners' ability to decide that transient rentals are not appropriate in their subdivision while avoiding the administrative burden and expense of interpreting current CC&Rs.

3. The impacts of the proposal on Town TOT revenues cannot be accurately assessed at this time. Accordingly, while it is a policy decision for the Town Council, staff

recommends not basing the decision on the potential private economic impact of the proposal on condo owners that may result from allowing transient rentals in different types of housing.

CONCLUSION

We hope this memorandum has been helpful in explaining the potential options for allowing transient rentals in single family homes. Please let us know if we can do anything else.

Public Comments Re Agenda Item 10
12/19/12

Dear Sir:

A great deal of emotion has clouded the consideration of rentals of Single Family Residences overnight. Please consider:

1. Mammoth has 9,240 homes, of which full time residents occupy only 3,140. With only 4599 TOT permits in town, there are 1506 homes that could be used for short-term rentals. The town struggles to create new investment in hotels or condos while ignoring a $500 million existing asset base that can generate millions of dollars of revenue annually with no new investment.
2. The town budget needs to raise at least $ 2 million of revenue annually, and our well-researched TOT revenue estimates indicate that this amount is a conservative estimate of potential TOT revenue for SFR's. Town Staff estimates are a minimum of $500,000 annually.
3. Proposals under consideration by the town to legalize rentals DO NOT ELIMINATE EXISTING CC&R's. So the families in the Trails or Knolls will not be impacted by rental activities.
4. The numbers estimated are real. A single homeowner wrote to Town Council members that over the last 12 months she has reported receiving 547 inquiries to rent her 4 bedroom single family home for an average of $900 per day- this is $317,000 in lost TOT revenue alone, and does not consider local service providers and visitor spending.
5. The town's budget to cut expenses has gutted policing, recreation, and many of the other attributes that make Mammoth a safe, enjoyable Resort Town to live in. This hurts our ability to attract both residents and visitors
6. In our extensive survey of other ski towns, 95% of Western Ski towns allow short-term rentals of homes and use SFR properties to attract larger groups of visitors. Visitor groups are estimated to be more than double what condos attract.
7. Local lodging operators claim that visitors will simply use their properties. This simply hasn't happened, as the homeowner who provided date in # 3 above saw her historic bookings going to Park City, Tahoe and elsewhere for this reason. A study of finance directors at 7 major ski towns found no evidence that single-family homes were competitive, existing as a completely separate class of lodging. Finally, why should one class of citizens (lodging operators) receive preferred treatment over other taxpayers?
8. Enforcement is simple- require appropriate licenses and require that the numbers be shown on Internet and other advertising. Homeowners will leap at the chance to legally rent their homes.
9. The effort is a simple adjustment of zoning, and does not require voter approval.
10. Time is of the essence- the 2013 ski season is off to a great snow start, and the town is turning away visitors. The council should act immediately to stabilize its revenue sources and prevent the drain of visitors to other resorts.

Sincerely
Jeff Weinhuff

Jamie Gray

From: Sandra Moberly
Sent: Thursday, December 13, 2012 4:00 PM
To: Jamie Gray
Subject: TC Resolution

Hi Jamie,

I'm trying to find the final conditions of approval for the Shilo Inn. It looks like it was approved by the Town Council on May 25, 1988. Can you look in your files and see if you have the final conditions of approval? If we have a copy of the recorded document that would be great.

Thanks,

Sandra Moberly
Senior Planner
Community Development Department
P.O. Box 1609
Mammoth Lakes, CA 93546
Phone: (760) 934-8989 ext. 251
FAX: (760) 934-8608
Email: smoberly@ci.mammoth-lakes.ca.us

Jamie Gray

From: David Page <davidtpage@earthlink.net>
Sent: Thursday, December 13, 2012 6:15 PM
To: Matthew Lehman; Michael Raimondo; Rick Wood
Cc: Marianna Marysheva-Martinez; David Wilbrecht; Jamie Gray; Jeff Weinhuff; Ellen Clark; Dave Harvey; mickey@rpexperts.com; colin@blacktieskis.com
Subject: Re: Consideration for SFRs
Attachments: Agenda_Item_2_attachment.pdf; ATT29014.htm

Hi Matthew et al.,

In an effort to facilitate communication (see email exchange below): in fact, per Council's request, Town Attorney Andy Morris has already prepared a detailed and thoughtful memo to Town Staff regarding the interpretation of individual neighborhood CC&Rs as well as his professional analysis of three possible avenues for allowing the transient rental of single family homes in Mammoth. This memo is dated December 5 (last Wednesday) but was not made available to the public until after last week's Council meeting. I'll attach it here in case it hasn't yet made it to your desks.

As you may be aware, Ellen Clark made a presentation of this memo at yesterday's Planning Commission meeting. I'm afraid its most salient points were either ignored or drowned out by a now-familiar vocal audience of folks who have decided that allowing short term SFRs in any form runs counter to their own personal interests--and so have proven unable to look at the issue in practical terms. Unfortunately, I had other responsibilities at 2pm on Wednesday afternoon, as did many hundreds of other people who for a variety of reasons which have been stated on the record and on numerous occasions over the last few months are very much in support of changing the town zoning code to allow for the short term rental of single family homes in a responsible manner.

In light of the Planning Commission's 3-2 vote yesterday in favor of recommending that Council direct Town Staff to continue to analyze the issue throughout the coming months, I would like to reiterate the Town Attorney's point that, no matter how much time, energy and resources we put into studying this issue, we are not likely to come up with any tangible answers. "Unfortunately," he writes, "it is simply not possible to accurately assess the likely economic impact of the proposal."

Furthermore, with regard to the oft-raised concern about the potential impact on the existing lodging community or other future developments (again in the words of the Town Attorney):

> ...it is important to note that condo owners do not have a legal right to be the sole source of transient rental housing in Town. Rather, they have historically enjoyed this privilege. This situation should be distinguished from situations where the Town contracts with a single solid waste hauler or similar provider for a single service. In those situations, the Town is actually awarding a monopoly. Here, the Town has simply determined to concentrate transient housing in condos, but it is under no obligation to continue doing so.

What we do have (already at Ellen's fingertips) is a wealth of information and specific code language from other resort towns (our direct competitors) who have managed to successfully implement programs for the short term rental of single family homes--to satisfy a huge and growing market, to capture significant new revenue, to codify and enforce a range of quality of life issues that will otherwise continue to be unenforceable, to cater more directly to the longer-stay destination visitors that we all know we need to work toward in this town (and whom we are at this moment actively driving away), and thus to increase occupancy rates town-wide--to everyone's benefit.

We also already have a good range of potential new TOT revenue estimates--starting with Town Staff's very conservative estimate of $500,000 annually--which as we all know the Town could make good use of.

Please consider this yet another plea to not delay further on this important issue, but rather to take action as soon as possible so that we can all move forward together to make this coming season the best, most profitable season in Mammoth's history. And to continue to make this town the best mountain resort in the American West.

Cheers,

David Page

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Memorandum

To: Dave Wilbrecht, Town Manager
Ellen Clark, Principal Planner
From: Andy Morris, Town Attorney
Date: December 5, 2012
Re: Transient Rental of Single Family Homes in Residential Zones

BACKGROUND

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BRIEF OVERVIEW

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ANALYSIS

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adopted a number of years ago, they can be difficult to interpret and somewhat ambiguous. For example, Tyrolean Pines requires that lots generally only be used for private residence purposes. It is unclear whether that authorizes transient rentals. Similarly, a number of CC&Rs prohibit all business and commercial uses, including a "hotel," "lodging house," "rooming house," or "boarding house." It is also not clear whether this would include transient rentals of single family homes. Notably, only one set of CC&Rs we have reviewed expressly allows transient rentals. Below is a chart with a sample of CC&Rs and their treatment of transient rentals.

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Timber Ridge	N/A	N/A	N/A
Trails	N/A	Not permitted.	N/A

As you can see, the CC&Rs vary widely, and the language in the CC&Rs simply is not very clear in addressing transient rentals.

Options for Allowing Transient Rentals

The Town has three main options if it wishes to allow transient rentals within single family homes. First, it could simply authorize these uses without regard to whether any particular set of CC&Rs allow or prohibit transient rentals. Second, the Town could authorize transient rentals if that use complied with the applicable CC&Rs, or if a particular property is not subject to CC&Rs.[2] Third, the Town could authorize transient rentals provided that HOAs amended their CC&Rs with Town-approved language to expressly authorize transient rentals.

The first option is the simplest. The Town would simply amend MLMC section 17.16.030 to allow transient rentals in RR, SFR and/or RMF-1. HOAs or affected property owners with CC&Rs prohibiting transient rentals could then decide whether to privately enforce their CC&Rs. The main benefit of this approach is its simplicity. The Town would simply not

[2] Although we understand that most of the single-family homes in town are subject to CC&Rs, there may be some that are not. A property owner wishing to demonstrate that his or her single-family property is not subject to CC&Rs could furnish the Town with a copy of a title report showing the absence of CC&Rs. All CC&Rs are required to be recorded, under Civil Code § 1352.

consider the CC&Rs, since it has no legal obligation to do so. The drawback would be that the Town would be ignoring the expressed preference of the property owners in the CC&Rs and creating inconsistencies between the MLMC and CC&Rs. In some cases, property owners who support the existing CC&Rs may lack the resources to effectively enforce them.

The second option would permit HOAs to decide whether or not transient rentals will be permitted, subject to the Town's interpretation of the CC&Rs. This approach will respect the owners' stated preference to either allow or prohibit transient rentals. The drawbacks of this approach are that it requires the Town to interpret the CC&Rs to determine whether or not they actually allow transient rentals. As noted above, the existing CC&Rs are ambiguous in some cases regarding whether or not transient rentals are actually permitted. For example, if the CC&Rs prohibit business and commercial uses, including hotels or lodging rooms, a property owner wishing to rent his or her property may argue that a transient rental is not a hotel or lodging room and not a true business or commercial use. Unfortunately, the meaning of some of the CC&Rs is not entirely clear, and the Town would be placed in the position of trying to interpret these ambiguous CC&Rs, which might lead to litigation. This approach would require a significant amount of staff time to administer and potentially legal fees to defend.

The third option is similar to the second but avoids concerns regarding interpreting the CC&Rs. HOAs would be required to essentially opt-in to the transient rental program. If they adopted Town-approved amendments to their CC&Rs, transient rentals would be allowed. If not, transient rentals would be prohibited. The benefit of this approach is that it respects HOAs' and property owners' decisions to allow or prohibit transient rentals in their subdivision. It will also be easy to administer as the Town will review and approve each CC&Rs amendment. The drawback is that all HOAs will need to affirmatively amend their CC&Rs to permit transient rentals.

While this is certainly a policy decision for the Town Council, I recommend the third option. It respects the ability of HOAs and property owners to decide whether or not to allow transient rentals in their subdivision while avoiding the administrative burden and difficulty of interpreting and enforcing existing CC&Rs.

Concerns Regarding Effect on Condos

One common concern raised by the proposal is the economic impact it will have on condominium owners. Some condo owners are concerned that allowing transient rentals in single family homes will not result in new or more transient occupancy tax ("TOT") to the Town. Specifically, they believe that the proposal will simply result in lower occupancy rates and/or rental payments for condo owners.

As an initial matter, I understand that staff has considered the possible economic impacts of the proposals and that they simply are not knowable at this time. It is possible that the proposal will simply divert renters from condos to homes, resulting in little to no TOT increase.

It is also possible that the proposal will legitimize existing transient rentals in single family homes without changing rental patterns, but generating additional TOT revenue. Lastly, it is also possible that the proposal will result in a net increase of renters with little impact on condos. As many have noted, some prefer renting a single family home and may be vacationing in other similar resort communities given the lack of available home rentals. If transient rentals were permitted in single family homes, these vacationers might begin staying in Town. Unfortunately, it is simply not possible to accurately assess the likely economic impact of the proposal. Assessing this affect vis a vis the likely effect on future development or investment is even more problematic; such investment is based on a multitude of factors, only one among many of these factors is the profile and availability of different forms of transient rental product.

In addition, it is important to note that condo owners do not have a legal right to be the sole source of transient rental housing in Town. Rather, they have historically enjoyed this privilege. This situation should be distinguished from situations where the Town contracts with a single solid waste hauler or similar provider for a single service. In those situations, the Town is actually awarding a monopoly. Here, the Town has simply determined to concentrate transient housing in condos, but it is under no obligation to continue doing so.

Moreover, I would respectfully suggest that concerns regarding the economic impact to condo owners of allowing transient rentals in single family homes should not be a controlling consideration. The Town is considering this proposal as part of its restructuring necessary to ensure the Town can meet its obligation under the bankruptcy settlement. This restructuring may require increased TOT revenue. As noted above, the TOT impacts of this proposal cannot be accurately assessed. Accordingly, any concerns regarding the impact to condo owners is based on their private economic interest. While the Town certainly wants and needs all property and business owners to thrive and succeed, staff is concerned that it may not be appropriate for the Town to decide to continue prohibiting transient rentals in single family homes to ensure one segment of property owners maintain an advantage over others. However, as with all matters of Town policy, this is a decision for the Town Council.

Overview of Conclusions

Below is a summary of our conclusions:

1. There are three main options for allowing transient rentals in single family homes: (a) simply allow them, (b) allow them when permitted by current CC&Rs and (c) allow them if HOAs amend their CC&Rs to permit transient rentals.

2. Staff recommends the third option as it respects HOAs' and property owners' ability to decide that transient rentals are not appropriate in their subdivision while avoiding the administrative burden and expense of interpreting current CC&Rs.

3. The impacts of the proposal on Town TOT revenues cannot be accurately assessed at this time. Accordingly, while it is a policy decision for the Town Council, staff

recommends not basing the decision on the potential private economic impact of the proposal on condo owners that may result from allowing transient rentals in different types of housing.

CONCLUSION

We hope this memorandum has been helpful in explaining the potential options for allowing transient rentals in single family homes. Please let us know if we can do anything else.

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To Mammoth Lakes Town Council:

Dear Honorable Council Members:

There has been much discussion about amending the current zoning code to allow nightly transient rentals in the single family zoned areas of the Town. While there is disagreement among various parties as to whether there is a need for doing so, it seems clear to me that to do so will not benefit the Town as a whole or the majority of the Town's residents (whether they be permanent residents or second homeowners).

The Council has seemed to put forth two reasons to possibly allow nightly rentals in the single family zone, i.e. (i) purportedly to obtain substantial new TOT's, and (ii) to provide a different type of product which is not currently available. As discussed below, neither of these reasons provide a basis for opening up nightly rentals in a single family zone.

Obtaining Additional TOT's.

The claim is that by opening up a new product (i.e. single family homes) the Town will obtain new visitors it is now not getting and, thus, the collection of TOT's will increase. However, as noted in the recent memo from the Town attorney to the Planning Commission, the CC&R's in a majority of the single family areas prohibit nightly rentals. The sample of CC&R's that the Town attorney reviewed clearly prohibit "business" uses and "hotels, lodging houses, rooming house and boarding houses" in the majority of the single family subdivisions. Since if the zoning is changed, the party interested in renting will have to obtain a permit to do so along with a business license and will have to file TOT returns, it is clear such conduct is a "business." Thus, such would not be allowed in all of the areas wherein business use of the home is prohibited by that subdivisions CC&R's. Additionally, one subdivision (i.e. the Trails (see Article XVI, Section 8, which was missed by the Town attorney in his summary) prohibits leases of less than 30 days (consistent with the Town's current zoning)) has a clear prohibition on renting less than 30 days.

Further, once can argue that by the addition of the prohibition on lodging houses, boarding houses, hotels, and rooming houses, the intent of these CC&R's is to prohibit transient occupancy.

Also, the majority of the other subdivisions do not have a specific prohibition arguably because (i) there was no need to do so since the Town zoning code already prohibited transit nightly rentals or (ii) the drafters believed that the above prohibitions were sufficient.

As a result, even if the Town adopts a change in the zoning ordinance to allow nightly rentals, such will still be prohibited in a majority of the single family neighborhoods. Therefore, there will not be a flood of new product on the market and the Town will not realize any substantial increase in TOT's.

Even if the Town follows the Town attorney' advice as to amending the ordinance so as to allow nightly rentals only if the various HOA's adopt an amendment fashioned by the Town to specifically allow such rentals, it is unlikely that there will be a significant change in the availability of single family homes because most, if not all, HOA's will have no one to spear head approval of such an amendment, and will not want to change the character of their neighborhood. Moreover, it will be very difficult if not impossible to get the requisite percentage of votes for such an amendment (many of the CC&R's require 75% approval with some requiring 90% approval). Also, if such amendments were adopted, enforcement by the Town would be a nightmare. Every time there was a call or complaint about nightly rentals, the Town would have to review to see if there was a TOT permit on file and, if not, whether the HOA had adopted the required amendment before the Town could determine if there was a violation. Adding substantial stress on an already overworked Town staff.

It seems that everyone is ignoring the prohibition in the CC&R's since they are continually calling for additional study to gather more data etc. The fact is that even if additional data is gathered, it will make no difference. The majority of the CC&R's prohibit nightly rentals and no amount of additional data will change this fact.

While the Town may not have any legal obligation to consider the prohibition in the CC&R's in deciding whether to amend the zoning ordinance (a position I do not necessarily agree with), it is morally irresponsible for the Town to ignore the prohibition of the CC&R's and amend the zoning code thereby pushing the problem onto the various HOA's. This is especially true when, as pointed out in this letter, there is no real benefit to the Town by such an amendment.

Thus, even if the Town were to amend the zoning ordinance, there would be few additional homes available for nightly rentals except in areas that allow it by their CC&R's (which are very few) or which would be rented in violation of their subdivisions CC&R's, which a change in the Town ordinance might spur people on to do so since they may believe, and perhaps rightly so, that the HOA is powerless to stop them and the Town has no interest in doing so. The Town should not be engaging in acts that might encourage property owners to violate their CC&R's (such may be grounds for a lawsuit and, thus, the position that the Town can ignore the CC&R's since the Town has no legal obligation to consider them may not be correct).

<u>Need for Additional Product.</u>

The second purported claim as to the reason why a zone change is needed is that there are no large "trophy" single family homes available for rent and, thus, the Town is losing visitors to other resorts.

First, this will not change just by changing the zoning code due to the prohibition in the various subdivision CC&R's (my guess is that many of the areas where these large trophy homes are located, except for the resort corridor homes discussed below, would have CC&R's that prohibit nightly rentals).

Second, there is no evidence whatsoever to support this claim.

Third, there are large "trophy" homes in the resort corridor that already allow nightly rentals (e.g. 109 located in areas such as Stonegate, Timbers, Juniper Crest, Tallus). The occupancy rate of these homes is no better than the rest of the Town (i.e. 36% or so) and, thus, supports the position that there is no need for additional large homes and that the Town is not losing visitors because there is no product that allows for large groups to be in a single unit.

While one may argue that some of these projects are not "single family homes" that is a mere technicality. Stonegate, for example, while classified as a condominium project, has free standing, large, beautiful homes available for nightly rentals. Talus also, while a fractionalized share project, has stand alone homes for rent. The fact that they may be legally classified as something other than single family home is irrelevant to the visitor so long as they appear to be single family homes, which they do.

Because of all the other problems which have been outlined in other papers given to the Town Council by the group objecting to opening up nightly rentals in the single family zones and the prohibition in the majority of the CC&R's, it seems to be a waste of the Town's staff time, as well as the time and efforts of concerned citizens, to move forward with this proposed zoning change. To do so will NOT get the results wanted as set forth in the above purported reasons for making the change.

Thank you.

Gregg P. Martino
Permanent resident of Mammoth Lakes