

MEMORANDUM

TO: Board of Directors
Coolidge Homeowners' Association
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DATE: January 29, 2021

SUBJECT: Amendment to Coolidge Falls Declaration
Short-Term Rental Regulations
My File No. 03-004-10

TEXT

Following my telephone conversation with Association President John Prokos of January 25th, he forwarded to me a list, generated by the committee formed after the adjournment of last December's Annual Meeting, of "items that require further discussion." He referred me in particular to Issue 13, which reads "Original purpose of community is for 'non-commercial' use." Under the heading "Open Questions" pertaining to Issue 13, are these: "Does the original intent of the development matter? Regardless of the original purpose, is CHA free to choose its path forward by voting? Are STRs actually a 'commercial' use? Can it be a 'commercial' use if you're losing money?" Under the heading "Comments," it is stated: "If this continues to be a question, perhaps the Board can ask the CHA attorney to provide a short memo with legal support for the notion that STRs are a 'commercial' use of the property." He have asked me on behalf of the Board to provide such a memo.

Before I can answer the question properly, however, I have to restate it so that it reflects accurately the subject of the committee's study, which is Section 21 of Part C of the 2017 Amended and Restated Declaration for Coolidge Falls, which reads as follows: "*No structure other than residential dwelling units shall be constructed, placed or permitted in the Envelopes. No Owner shall use his dwelling unit for any purpose other than residential, except to rent or lease it for residential purposes.*" The critical word here is not "commercial," which nowhere appears, but "residential," as that word relates to rentals or leases of dwelling units.

My opinion on the scope and limitations of Section 21 as so worded, upon which I will elaborate, is as follows:

- Section 21 proscribes rental or lease of a dwelling unit for any purpose other than residential.
- When an Owner rents or leases a dwelling unit to another person, the use to which the Owner is putting the unit is, yes, “commercial,” but that is not a problem under Section 21 as long as the purpose for which it is rented or leased is “residential.”
- When another person rents or leases a dwelling unit from an Owner for vacation purposes, that person’s use is not “residential,” but “transitory.”
- Only when an Owner rents or leases a dwelling unit to another person in order to serve as that other person’s residence, rather than as a temporary place of abode, does that other’s use become “residential,” and therefore permissible under Section 21.

As was discussed in my letter of November 10, 2020, and stated by me to the Membership at last December’s Annual Meeting, these conclusions are consistent with the purposes for which the Coolidge Falls community was created. Coolidge Falls, I said, was not planned or intended for short-term rental of its houses. Indeed, the developer of Coolidge Falls - The Village at Loon Mountain Limited Partnership - had already made ample provision for short-term vacation dwelling unit use in the adjoining Village of Loon Mountain Resort to the east, and made provision for more such use shortly afterward in the adjoining Pollard Brook Resort to the west. The houses of Coolidge Falls, like all but 17 of the houses in the Village of Loon Mountain, were intended to be their owners’ primary or secondary homes. Accordingly, unlike the respective governing documents for the Village of Loon Mountain and Pollard Brook, no provision was made in those for Coolidge Falls to administer such transitory use, and no infrastructure was planned or constructed to accommodate it.

I note that elsewhere in the list of “items that require further discussion,” the Board’s proposed amendment to Section 21 is characterized as a ban on short-term rentals. This is misleading, by reason that, as shown above, short-term rentals are *already* banned as Section 21 now reads, as are all other rentals that fall short of meeting the statutory standard of residential use. What the Board is proposing is in actuality an *expansion* of permissible rental activity, by allowing some transitory occupancies of dwelling units by lease or rental, namely those for periods of more than 30 consecutive days.

In summary, although Section 21 as it presently reads in my opinion proscribes not only short-term but *any* transitory use, the balance of probabilities suggests to me that the provision for the kind of transient use of the dwelling units of Coolidge Falls as would be granted and limited by the Board’s proposed amendment to Section 21 would achieve the balance for which Coolidge Falls was designed and can accommodate.