

1412 Kinross Ct.  
Walnut Creek, CA 94598

February 6, 2018

Via U.S. Mail

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FEB 8 2018 AM 11:16

Clerk of El Dorado County Board of Supervisors  
330 Fair Lane  
Placerville, CA 95667

RE: 2541 Copper Way, Vacation Home Rental #  
Appeal of December 14, 2017 Decision

To Whom It May Concern:

The purpose of this letter to provide a notice of and apply for an appeal with respect to the Decision and Order of the Administrative Hearing, dated December 14, 2017 (“the Decision”), attached hereto. (Note that all documents referred to herein were submitted to the County as evidence and will be brought to the appeal hearing, or if requested, the documents can be provided in advance.)

The Tax Collector’s Office initiated three cases against me, containing seven violations. I requested a hearing before the Code Enforcement Hearing Officer pursuant to El Dorado County Ordinances Section 5.56.150.A. Following the hearing, the Decision was issued, holding me responsible for just three of the seven violations:

4. Case No. 17-202 Noise – Section 5.56.090(A)(3)(4);
5. Case No. 17-202 Occupancy - 5.56.090(A)(1); and
6. Case No. 17-203 Noise – Section 5.56.090(A)(3)(4).

I appeal all three of the violations pursuant to Section 5.56.150.B, which states in part: “The decision may be appealed to the Board of Supervisors within 60 calendar days of the mailing of the notice.”

## **I. BACKGROUND FACTS**

The Decision states that a group of young men arrived at my house on Saturday, August 19, 2017, and it “appeared that the guests were going out to the casinos and night clubs and returning to the house in the early morning intoxicated and loud.”

According to the Sheriff’s report, case Number EG1707379, at 12:30 p.m. Sunday, August 20, 2017, the deputy was told about a potential over-occupancy issue at my vacation rental. The report states that the deputy arrived to speak to the renters, my local contact was notified about over-occupancy, and he came to the house to speak to the guests. There was nothing in the Sheriff’s Report about noise. In fact, I was not notified of an alleged noise violation in the early morning of August 20, 2017 until October 18, 2017, when I received a letter from El Dorado County, almost two months after the alleged violation.

According to the Sheriff's report, Case Number EG1707393, in the early morning hours of Monday, August 21, 2017, at 12:21 a.m., the Sheriff's deputies came to my house to investigate a noise issue, but when they arrived, they heard no noise. At 1:10 a.m., the Deputy called my local contact who then came to my house to talk with the guests. The guests left later that day around noon as scheduled.

**II. FOR "4. CASE NO. 17-202 NOISE," THE DECISION APPLIES THE WRONG STANDARD, AND WHEN THE CORRECT STANDARD IS APPLIED, THERE IS NO VIOLATION.**

In the discussion of Case No. 17-202 Noise, which concerned noise in the early morning hours of August 20, 2017, the Decision refers to Section 5.56.090(A)(3)(4). However, there is no single subsection by that designation; rather there are two separate subsections that concern the Owner's obligations concerning noise, 5.56.090(A)(3) and 5.56.090(A)(4), which provide:

3. The owner shall use best efforts to ensure that the occupants and/or guests of the vacation home rental do not use or operate any outdoor spa or hot tub after 10:00 p.m. and before 8:00 a.m. or create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of this Code or any State law pertaining to noise or disorderly conduct **by notifying the occupants of the rules regarding vacation home rentals and responding when notified that occupants are violating laws regarding their occupancy.** It is not intended that the owner, local agent or contact person act as a peace officer or place him or herself in harm's way;

4. The owner shall, upon notification that occupants and/or guests of his or her vacation home rental have created unreasonable noise or disturbances, engaged in disorderly conduct or violated provisions of this Code or State law pertaining to noise, or disorderly conduct, promptly use best efforts to prevent a recurrence of such conduct by those occupants or guests; (Bolding added.)

In sum, these two subsections require the owner or agent to notify the occupants of the rules regarding vacation home rentals and respond if the guests are, in fact, violating the law.

The Decision rightly notes that pursuant to subsection 5.56.090(A)(3), "the owners are required to use best efforts to ensure the guests do not create unreasonable noise or disturbances." But the Decision fails to note that the subsection specifically identifies how the owner should do that: "by notifying the occupants of the rules regarding vacation home rentals and responding when notified that occupants are violating laws regarding their occupancy." Thus, the owner is required to notify the occupants of the rules and respond if notified that the occupants are violating the rules. This section does not require that the owner do anything proactively to avoid noise violations other than to notify the occupants of the rules. This section does not require that owners check on the guests preemptively or to monitor them. If the drafters of these ordinances wanted the owner or his local contact to repeatedly monitor the situation, the drafters could have easily stated that. In fact, the drafters stated just the opposite by stating that "It is not intended that the owner, local agent or contact person act as a peace officer or place him or herself in harm's way." Accordingly, the owner or his agent are not required to investigate, monitor, or check up on guests; rather, that is a job for a peace officer. There is simply no open-ended obligation by the

owner to use best efforts in every way to ensure compliance with rental rules. On a practical level, if one had an unlimited obligation to use best efforts to ensure compliance with rules regarding noise, where would the obligation end? Go once to check on the guests? Twice? Three times? If the law was truly going to impose “best” efforts to prevent noise, one would need to station someone at the house at all times. Anything else would not be best efforts.

Thus, the Decision applies the wrong standard and goes too far when imposes an obligation not found in the ordinances. The Decision states that there “is no evidence that the owner or the owner’s local contact had any system in place to check on the guests or to monitor their behavior” and that my “best efforts should include some manner of verifying whether an extended party is taking place at the residence.” But that is simply not required by the ordinances, and such a requirement should not be read into them. California Code of Civil Procedure § 1858 states in relevant part: “In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted.”

When the proper standard is applied, the evidence establishes that there was no violation: the guests were notified of the rules, and there was no violation regarding the response to the noise as there was no complaint about noise until well after the guests had left the house.

As to notification concerning noise, I warned the guests three times not to be noisy. First, our VRBO website states: “While the house is surrounded by forest in the back and on one side, we do have neighbors on the other side and across the street. They do not like noise. If you want to have a crazy, loud party (and when I was young, that's was the way I liked it), for your sake and ours, please don't book this house.” Second, the House Rules state: “REASONABLE CONDUCT – RENTER agrees not to create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of the El Dorado County Code or any applicable law pertaining to noise or disorderly conduct (5.56.090 (A-3)).” (Note that on VRBO, guests check a box stating they have read and agree to the Rules, rather than sign the Rules.) Third, the House Guide that we email to guests and which is in a binder at the house states,

#### NOISE

The neighbors across the street hate noise. Please be reasonably quiet when you are outside. If you are arriving late at night, try to whisper and close your car doors quietly. If you make a lot of noise, the neighbors across the street will complain to El Dorado County. Don't be paranoid about making noise, but be reasonable and use common sense and common courtesy.

The House Guide also states: “El Dorado County prohibits the use of hot tubs after 10 pm and before 8 am.”

As to responding to a noise complaint, I was not notified of an alleged noise violation until October 18, 2017, almost two months after the alleged violation. By then, the incident was over, and the guests have not responded to my attempts at communication.

In sum, when the proper standard is applied, there was no violation.

**III. FOR “5. CASE NO. 17-202 OCCUPANCY,” THE DECISION APPLIES THE WRONG STANDARD, AND WHEN THE CORRECT STANDARD IS APPLIED, THERE IS NO VIOLATION.**

In the discussion of Case No. 17-202 Occupancy, the Decision refers to Subsection 5.56.090(A)(1), which provides: “A. All permits issued pursuant to this chapter are subject to the following standard conditions: 1. The owner shall, by written agreement, limit overnight occupancy of the vacation home rental to the specific number of occupants designated in the permit;” The Decision does not address whether I limited the overnight occupancy by written agreement with the guests; rather, the Decision focuses on whether there was, in fact, a violation of the limit, stating, “We find that an occupancy that exceeds the allowable number of occupants violates the ordinance.”

First, I did limit the overnight occupancy by written agreement with the guests. The evidence submitted to the Hearing Officer established that guests are told in writing that occupancy is limited to 12 people three times. First, the print-out of our VRBO website submitted to the Hearing Officer states that the maximum occupancy is 12 in two places. Second, the House Rules submitted to the Hearing Officer state: “MAXIMUM OCCUPANCY – The maximum number of guests is limited to twelve (12).” Third, the Permit, which was posted by the front door according to the Sheriff’s Report, states that maximum occupancy is 12 persons.

According to the Sheriff’s report, case Number EG1707379, early in the morning of Sunday, August 20, 2017, the deputy was told about a potential over-occupancy issue at my vacation rental. The report states that the deputy arrived to speak to the renters, and a renter “admitted there were portions of the contract that outlined rules or expectations and he admitted this included an overnight clause allowing only 12 persons.” The renter admitted he knew he was bound by the rule limiting occupancy to 12 persons, but he violated it anyways.

Second, there was no failure to respond. According to the Sheriff’s report, the renter “admitted he had 15 persons remain in the home overnight. He was apologetic and assured me that he would not allow this to continue tonight.” The Deputy states the renter “was admonished on not to have overnight occupancy exceeding 12 persons.” The local contact was notified, and Reed Hughes of Vacation Rental Assistance came to the house. After that interaction, there was no report or any evidence of another over-occupancy violation.

Third, nowhere in Chapter 5.56, Vacation Home Rentals, of the El Dorado County Code does it state that owners are responsible for their guests’ actions. The drafters of these ordinances were clearly capable of making owners responsible for other people’s actions. Section 5.56.060, entitled “Agency,” states:

An owner may retain an agent, representative or local contact person to comply with the requirements of this chapter, including, without limitation, the filing of an application for a permit, the management of the vacation home rental and the compliance with the conditions of the permit. The permit shall be issued only to the owner of the vacation home rental. The owner of the vacation home rental is responsible for compliance with the provisions of this chapter and the failure of an agent, representative, or local contact person to comply with this chapter shall be deemed noncompliance by the owner.

The purpose of this section is to assign responsibility to an owner for the actions of his agent, representative or local contact, not for the actions of the guests. If the drafters wanted the owner to be responsible for the guests' actions, the drafters clearly knew how to say so. But they did not.

**IV. FOR "6. CASE NO. 17-203 NOISE," THE DECISION APPLIES THE WRONG STANDARD, AND WHEN THE CORRECT STANDARD IS APPLIED, THERE IS NO VIOLATION.**

In the discussion of Case No. 17-203 Noise, which concerned noise in the early morning hours of August 21, 2017, the Decision again refers to Section 5.56.090(A)(3)(4). However, as noted above, there is no single subsection by that designation; rather there are two separate subsections that concern the Owner's obligations concerning noise, 5.56.090(A)(3) and 5.56.090(A)(4). In sum, these two subsections require the owner or his agent to notify the occupants of the rules regarding vacation home rentals and respond if the guests are, in fact, violating the law.

The Decision, however, does not discuss notifying the guests of the rules or the response to the noise. Rather, the Decision focuses solely on whether, there was, in fact, excessive noise. The Decision notes that there was a noise complaint by the neighbors, the Mapes, and that the Sheriff came to investigate but "they did not hear any noise" according to their report. The Decision states, "Because we do not know what occurred during the hours the Sheriff was not there, and the Mapes testified under penalty of perjury that excessive noise did occur on this date, we sustain this allegation and find that substantial evidence exists to support this allegation."

But as discussed above, the issue is not whether there was noise; rather, the issue was whether I as the owner, notified the occupants of the rules regarding vacation home rentals and responded if the guests were, in fact, violating the law. As discussed above in Section II, proper notification was given. In addition, the local contact properly responded when called. According to the Sheriff's report, Case Number EG1707393, in the early morning hours of Monday, August 21, 2017, at 12:21 a.m., the Sheriff's deputies came to my house to investigate a noise issue, but they heard no noise upon arrival. At 1:10 a.m., the Deputy called my local contact who then came to my house to talk with the guests. His email to me stated,

So I went to the house and it was completely silent. The sheriff had mentioned that it was silent when he arrived too and agreed with my suggestion that neighbor is trying to get houses license revoked or make owner not want to rent anymore. Anyways it was silent and I knocked on door and guest came to the door and expressed that they were very frustrated and were being really quiet and trying to follow the rules but neighbor is sitting in her window watching everything they do (I can't confirm that) So I reminded guest of quiet hours and asked them to make sure when outside after 10pm they are extra quiet.

The guests left later that day around noon as scheduled. The local contact had been informed of the guests' schedule. The local contact is Vacation Rental Assistance. I inform them of every guest arrival and departure as VRA does both pre- and post-stay inspections and cleans the house. It is absurd to suggest that VRA, after speaking with the guests early Monday morning, should have gone out there again later on Monday when the guest were leaving that very same day and there were no further noise complaints.

Finally, as discussed above in Section III, nowhere in Chapter 5.56, Vacation Home Rentals, of the El Dorado County Code does it state that owners are responsible for their guests' actions. Accordingly, if there was excessive noise, the guests should have been cited.

For these reasons, I respectfully ask that you reject the findings of Decision.

Very Truly Yours,

  
Richard Young

cc: Karen Coleman, Tax Collector's Office (by email)  
William Wright, Hearing Officer (by email)