Code Compliance Board
Regular Meeting Minutes

November 6,2025, at 3:00 PM

City Hall Commission Chambers
401 S. Park Avenue

Present
Doug Bond, Steve Heller, Wayne Johnson, Paul Mandelkern, Kristen Matt

Absent:
Carlos Diez-Arguelles
Melissa Blaney

Legal Representative for the City:
Assistant City Attorney Richard Geller

Staff Present
Building Official Gary Hiatt, Code Compliance Division Manager Susanne Porras, Code Compliance Officer Christina Busch, Code Compliance Officer Phillip Wade, Code Compliance Officer Cristopher Gomez, Board Secretary Susan Pruchnicki

1. Call to Order

The meeting was called to order at 3:00 PM.

a. Roll Call

b. Board Chair Wayne Johnson welcomed everyone and provided guidelines for all to follow during the meeting. He then read the Statement of Purpose.

2. Swearing in of Witnesses

Witnesses were sworn in by Board Secretary Susan Pruchnicki

3. Consent Agenda

a. Approve the Regular Meeting minutes from October 2, 2025

Board Member Kristen Matt made a motion to approve the minutes as amended. Board Member Paul Mandelkern seconded.

VOTE:
Doug Bond – Yes
Steve Heller – Yes
Wayne Johnson – Yes
Paul Mandelkern – Yes
Kristen Matt -Yes
Carlos Diez-Arguelles – Absent
Melissa Blaney - Absent

Motion passed 5-0.

4. Public Comments (for items not on the agenda): Three minutes allowed for each speaker.

None

5. Public Hearings (Public participation and comment on these matters must be in person.)

a. CCB# LDC-24-0336 1810 Barker Drive, Winter Park, FL 32789

***Massey* Hearing**

Mr. Johnson asked Assistant City Attorney Richard Geller about the Notice of Appeal filed on behalf of the Respondent that was received on November 5, 2025. Mr. Geller stated that Joseph Peckham, Counsel for the Respondent, who was present at this meeting, filed an appeal with the City Clerk but did not know if he had filed it yet in the Circuit Court. This appeal was in response to the Findings of Fact and Conclusions of Law entered at the Board Meeting on October 2, 2025. Board Member Kristen Matt stood in as Chair Pro-Temp and signed the Order. Mr. Johnson thanked Mr. Geller for his explanation.

Code Compliance Officer Christina Busch introduced herself and presented the Affidavit of Non-Compliance to the Board. She stated that she presented this case at the October 2, 2025, meeting and the Board found the property owner, Atlantic Oasis Trust, in violation. The Board issued an Order to Atlantic Oasis Trust to, within three days of the hearing date, cease the rental of the Subject Property for periods of less than one month. Failure to comply with the order would result in fines of up to $500.00 for each day the violation continues. The respondent was further ordered to contact the Safety & Code Compliance Officer and provide documentation of compliance by October 6, 2025. Officer Busch stated that she was not contacted.

Officer Busch stated that proper notice was given by posting the Notice of Hearing on the property on October 17, 2025, and at City Hall, and also by United States Certified mail to meet Florida Statute 162 due process requirements.

She conducted reinspection's on October 6, 12, 16, 17, 18, 19, 21, 22, 23, 24, 25, 29, 30, and 31, 2025 and also on November 3, 5, and 6, 2025. She stated that the October 12, 2025, reinspection confirmed that the property listing was not in compliance with the order.

CODES CITED: Chapter 58, Section 58-71 (z) Short-term rental of residential dwellings of the City of Winter Park Land Development Code.

VIOLATION DESCRIPTION: The City issued multiple Notices of Violation for the unlawful short-term rental of the Subject Property. The residential dwelling is being advertised short-term rentals on websites for less than one month, which rentals are in violation of the City Code.

Officer Busch certified that all photographs and documents presented were true and accurate representations of the violations of the Board's Order.

On October 17, 2025, the Notice of Hearing was posted on the Subject Property. She presented documentation of inspections conducted on October 12, 16, 17, 18, 19, 21, 22, 23, 25, and November 5, 2025, noting they were conducted during non-business hours; all were documented as advertising a two-night minimum stay on both Airbnb and VRBO. She conducted inspections on October 24, 29, 20, and 31, 2025 both during and after business hours. The documentation presented indicated that, during business hours, Respondent advertised the listing for 30 nights; however, during non-business hours she advertised the listing for a minimum of two nights. The inspections conducted on November 3 and 6 found the listings advertised for 30 nights. Officer Busch stated that she conducted the latter inspections during both business and non-business hours and that the listings were changed after business hours.

She provided the Board with a computation of fines incurred, based on the dates of non-compliance, which were determined to commence on October 12, 2025, through November 6, 2025, a total of 25 days. 25 days x $500.00 per day = $12,500.00.

Mr. Joseph Peckham of The Law Office of Joseph T. Peckham, PLLC, 7025 CR 46A, Suite 1071-333, Lake Mary, FL 32746, representing Atlantic Oasis Trust approached the podium. Board Chair Wayne Johnson pointed out that Mr. Peckham did not stand to be sworn in. Mr. Peckham responded that he was not providing factual evidence, only advocating on behalf of his client.

Mr. Peckham stated that he wished to bring up legal points. He confirmed that he had filed a Notice to Appeal on November 5, 2025, for the underlying determination from the Board issued on October 2, 2025, and that the appeal was pending. He then stated that the matter should be stayed in its totality because the underlying fact finding, which would provide the basis of any fines is now under appeal. He said ordinarily that should be sufficient to stay the proceeding.

Mr. Peckham' second point was that the code officer testified that the Notice of the *Massey* Hearing was dated October 12, 2025, and that evidence presented was gathered well after that in violation of his client's due process rights. He objected to the Board even considering the evidence.

He contended that advertising is not the same as renting. He offered the example of people shopping on Amazon and receiving suggestions to buy something different from their search. He said the fact that his client may have advertised is not evidence of a rental. Even assuming the city's interpretation of the word "rental" was the dictionary definition, the code officer was offering evidence of advertising which is, generally speaking, a First Amendment issue. It constituted evidence that his client is intentionally soliciting for people to be at her property but not necessarily accepting them. As the Board heard, his client is bouncing the listings back and forth between offering the property for two nights and 30 nights, but he heard no evidence of an actual rental.

Finally, Mr. Peckham wished to revisit his prior contention that there is a distinction between someone who is a commercial renter and a member of a club, who is given guest rights at a property by the property owner. He stated that this is a matter for appeal, but that not all people who stay at the property can be deemed to violate Code 58-71(z), assuming the city is correctly interpreting its own ordinance. He stated the City did not demonstrate a commercial aspect that could be considered a rental; otherwise, everyone who had a guest at their property for less than 30 days would be violating the ordinance.

In summary, Mr. Peckham reiterated the failure to notify anything that happened after the Notice of the *Massey* Hearing should be stricken and not considered; the appropriateness of a stay of the proceeding pending the outcome of the appeal of the underlying ordinance; and the absence of actual evidence presented to the Board, assuming that the hearing goes forward and the Board makes a determination of rentals based on only screen captures of advertising. He then offered to answer questions the Board may have.

Mr. Johnson pointed out that Mr. Peckham did not identify himself or his relationship to the case for the record. Mr. Peckham responded as requested. Mr. Johnson then asked where Mr. Peckham filed the Notice of Appeal. Mr. Peckham responded that his assistant filed it with the Orange County Circuit Court on November 5, 2025, and that his office could not file it electronically. Mr. Johnson also asked Mr. Peckham to confirm that he received the Order via electronic mail on October 8, 2025. Mr. Peckham stated that he received the Order electronically on October 2, 2025, and also via regular and certified mail which was received on October 8th or 9th, 2025.

Mr. Mandelkern asked Mr. Peckham if it was his position that merely filing the Notice of Appeal stays the Board Order from October 2, 2025. Mr. Peckham responded yes. Mr. Mandelkern then stated that, because today's proceeding was a *Massey* Hearing, the Board is determining whether the property owner is in compliance with the Board Order, so he was not understanding why any evidence after October 12, 2025, should not be considered. Mr. Peckham replied this was a due process argument because his client was notified of the Notice of *Massey* Hearing through October 12, 2025, and in order for them to prepare, it was essentially unfair for his client to be held accountable and answer for anything after the date of the Notice of Hearing. Mr. Mandelkern asked Mr. Peckham if he was saying that, between October 2, 2025, and October 12, 2025, his client was in compliance with the Board's Order. Mr. Peckham replied that he made no reference to compliance because the Board Order was being appealed. His reiterated that it is unfair to consider evidence that falls after the date of Notice of Hearing. Mr. Mandelkern countered that filing the Notice of Appeal doesn't stay the Board's order if his client is in compliance with the Board's order. He then asked directly if Mr. Peckham's client has complied with the Board's Order, which is the purpose of the *Massey* Hearing. Mr. Peckham replied that his responding would be giving evidence, and that it would be a question for his client to answer, and she is not present. He stated that he is not in a position to announce compliance or non-compliance, that he is serving as an advocate on his client's behalf challenging the original determination, which is now a matter for the Circuit Court, and also challenging whether this is appropriate timing for a *Massey* Hearing considering the underlying appeal.

Mrs. Suzanne Tinkler of 1649 Lakemont Ave., Orlando, FL 32814 approached the podium. She stated that she was present at the October 2, 2025, hearing. She stated that, while she does not live on Barker Drive, her son and his family do, and she observed continuing short-term rentals, the parties held there, the street full of cars which are a hazard to the children of the community given the absence of sidewalks, and her concern for her son's property values. She stated that she came to this hearing because she thought the Board determined the owner was in violation at the October 2, 2025, and that the owner was to cease the short-term rental of the property. She testified that it has not ceased, that she has personally observed the continuation of short-term rentals of the property. She added that the neighbor at 1815 Barker Drive is now also advertising on Airbnb and VRBO for short-term rentals for less than 30 days. She stated her concern that this may become epidemic on the street and in the community and wanted to speak about the issue again. She said other residents who attended the last meeting could not attend today, but she saw the posted Notice of Hearing on the 1810 Barker Drive property again.

Mr. Johnson asked Mrs. Tinkler if she had dates after October 2, 2025, that she contended the property was in violation. She responded that she didn't write them down, but they occurred on the weekends. She stated that she could speak for the neighbors who live on the pool side of 1810 Barker Drive, that they have a small child and are disturbed every weekend by the activity. Mr. Johnson then asked if the posting she saw was for 1815 or 1810 Barker Drive. She replied 1810 Barker Drive. She also called Code Compliance to report the activity at 1815 Barker Drive but wasn't sure what the City was doing about that property. Mr. Johnson asked Mrs. Tinkler if she checked Airbnb and VRBO herself regarding the 1810 address. She responded no but had done so for the property at 1815 Barker Drive. She asked about the posting at 1810 Barker Drive and was told that the city was having another hearing for 1810 Barker Drive and was welcome to attend.

Assistant City Attorney Richard Geller informed that Board that the city had quite a bit of rebuttal to present, but first Officer Busch would go on the internet to show reviews from stays posted since the date of the Board's order from October 2, 2025. He said the reviews would provide the Board with substantial competent evidence that short-term rentals have continued in addition to the testimony from Ms. Tinkler, who observed the continuation of short-term rentals.

While Officer Busch was accessing the internet Mr. Geller offered the following rebuttal:

First, a litigant appeal from the decision of a lower tribunal may file a motion to ask the lower tribunal for a stay. The lower tribunal is not obligated to grant a stay of proceedings pending appeal. If Mr. Peckham were to ask the Board for a stay, that would fall under the Board's discretionary powers to set the rules., Mr. Geller stated he did not hear a request for a stay, but only an argument that the Board must stay the proceeding, which is not what the law requires. The city's position is that the Board is to hear the evidence and the argument in this *Massey* proceeding, that there are continuing violations. He said, assuming the Atlantic Oasis Trust will appeal whatever decision the Board may make at this hearing, the Circuit Court can consolidate the appeals and handle them in an expeditious manner. The City does not see any reason why the Board should not impose fines when evidence shows continuing violations.

Mr. Geller then addressed the contention that it is unfair to present evidence of violations after the date of the Notice of Hearing on October 12, 2025. The notice is just that; it gives notice that the City will conduct a hearing under *Massey vs. Charlotte County* to determine whether there is continuing non-compliance and whether fines ought to be imposed. The owner received notice, she had and still has the opportunity to be heard. Her counsel is here, and you are hearing the arguments. There is no cut-off for evidence. Any non-compliance after the date of the Board's order is fair game for the Board to consider. If the Board determines that if the evidence is substantial and competent, of the sort that a prudent person would normally rely on, the Board can issue a fine.

Ms. Matt referred to the Statement of Purpose, where it says an aggrieved party may file an appeal within 30 days of the Administrative Order, and asked what date is used to determine the 30 days. Mr. Geller responded that when the Order is reduced to writing, signed and presented to the City Clerk for filing in the City's records it is considered rendered. The 30-day period begins upon the Order being rendered. He stated that, by his recollection, Mr. Peckham timely filed the appeal. Ms. Matt thanked Mr. Geller for his explanation.

Mr. Geller continued the rebuttal by stating there is no right under the First Amendment to advertise for unlawful activity, which is what the Code Officer demonstrated here, along with an element of deceit, established by a consistent pattern of the listing the Subject Property for rental for 30 nights during business hours then changing to a two-night minimum stay during the evening and on weekends, then changing back to 30 nights again during business hours. The supposition was that the city will only check during business hours; but the city has a very diligent Code Officer who has been checking the listings in the evenings, early mornings, and on the weekends. The advertising itself is evidence that the unlawful conduct is continuing.

Mr. Geller continued that the City has not infringed on the right of the Atlantic Oasis Trust to have guests at the house who are non-paying, who are not paying rent for occupancy. He stated he would have more on this after Officer Busch finished her presentation of rebuttal evidence.

Officer Busch identified herself and displayed reviews from the Airbnb listing for the property. The two most recent are from October 2025, and the other from three weeks ago, confirming that the continuing short-term stays were within the timeframe after the Board's Order.

Ms. Matt offered to the Board members who were not present at the October meeting that she asked a question about the timing of submitting a review, and it was determined to be within two weeks of the stay on the property. Mr. Peckham interjected, he wanted it on the record that it was a Board Member that made that determination, it wasn't actually evidence that was presented by any witness testifying. Mr. Geller noted that the Board was permitted to rely on their common experience. Division Manager Porras stated to the Board that what Officer Busch just shared would be added to the evidence of record in addition to what she presented earlier.

Ms. Matt asked Officer Busch about evidence presented during the last Board meeting of screen captures made with some sort of receipt she had found. Officer Busch responded that in the Agenda Packet, a Host Compliance report has the recorded night stays on it under the Activity Area.

Mr. Geller resumed his rebuttal, stating that he would be over inclusive because there is already one appeal and he assumed Respondent would make a second appeal of the Board's decision today. He wanted to make sure not to waive any arguments. He stated that, in that vein, his associate Ms. Ruiz assisted him in preparing a Memorandum of Law which was included in the Agenda Packet, and that he would go through some of the high points of the Memorandum.

One of the arguments made at the last meeting was that the short-term rental ordinance was void for vagueness. He then quoted the ordinance, "Short-Term Rental of Residential Dwellings," Section 58-71(z): "The rental use or occupancy of any residential dwellings for less than one month shall be prohibited." The city interprets that to mean 30 days, except for February which is 28 days. He reiterated that he has been attending the Code Compliance Board meetings for at least eight years and that at least a couple of the current Board members had served during most or all of his tenure. During that time, no one had previously come before the Board, before Atlantic Oasis Trust last month, and stated that they did not understand the language of the Code. No one has ever claimed they did not know what it meant until now. He stated that there is no evidence of arbitrary or discriminatory enforcement, and that the language is reasonably precise and clear; it is not void for vagueness.

The standard for "void for vagueness" appears in Mr. Peckham's Memorandum, which was in last month's agenda packet, and correctly cites *Wyche vs. State*, 619 So. 2d 231, 236 (Fla. 1993). "An ordinance is void for vagueness because of its imprecision, it fails to give adequate notice of what conduct is prohibited, which invites arbitrary and discriminatory enforcement." Mr. Geller submitted that Respondent presented no evidence to the Board, last month or today, establishing discriminatory enforcement. He stated that ordinances are presumed to be valid, and the burden of proof is on the party attacking the ordinance to show that it is unreasonable and bears no relationship to health, safety or general welfare. The city's short-term rental ordinance protects the tranquility of residential zoning districts. Mr. Geller pointed out that the Board heard testimony today about the disruption to this particular neighborhood; therefore, certainly the prohibition relates to the general welfare.

As to the allegation that the ordinance does not define the word "rental," as he pointed out last month, the Florida Supreme Court has stated that, where the Legislature has not defined the words used in a statute, the language should be given its plain and ordinary meaning. Everyone understands what it means to rent an apartment or a car, but the case law says you can always look at the dictionary. Mr. Geller provided a definition from the *Webster's Encyclopedic Unabridged Dictionary* in his office as follows: "Rent is defined as consideration paid, usually periodically, for the use or occupancy of property, especially real property." The word "rental," which appears in the ordinance, means "*an amount paid or received as rent*" as a noun, or also as a verb meaning "the act of renting." He said everyone understands that, including the people who are renting the Subject Property. He gave examples from reviews: Amy, saying "Caitlyn (the Trustee) has thought of everything for *renters*!" Jennifer, saying "Caitlyn was the perfect host, if only all of my Airbnb *rentals* were this pleasant and smooth," and Reid stating, "Beautiful home in a perfect location, Caitlyn has thought of everything for *renters*," and finally one reviewer whose name was cut off said, "They would definitely *rent* again if they were back in the area."

Mr. Geller said the Board told the Trust this is a rental. The written Order stated that the Trustee reasonably understood the meaning of the words "residential" and "rental" used in the ordinance and in the multiple educational notifications and Notices of Violation. The ordinance is understandable; it is not vague. Mr. Geller stated that, after the October hearing, it occurred to him that the property is advertised on VRBO, which stands for *Vacation Rentals by Owner*. VRBO advertises as having over 2,000,000 bookable vacation rentals, homes and rentals of all types. Mr. Geller submitted to the Board that the Respondent's temporary compliance demonstrates understanding of the ordinance and reminded the Board that this case goes back to 2023; the city has been dealing with it for almost two years.

Mr. Geller stated that, on November 3, 2023, the Trustee informed the city that she had updated the Airbnb listing to specify the 28-day minimum requirement, showing that she understood the requirement.

Florida Statutes § 509.2421 (c) defines "vacation rental" as "a house or dwelling unit that is also a transient public lodging establishment but not a timeshare." A definition for "transient public lodging establishment," at Florida Statutes § 509.0134 (a) (1), states "Any building which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests." Mr. Geller said the City has presented tons of evidence about the advertising and, of course. evidence of the actual rentals through the reviews and through the citizen's testimony.

The other issue that came up last month was an argument of preemption. The Florida Statute that prohibits local governments reads as follows:" A local law or ordinance may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals." Mr. Geller argued, if that is all the statute said, then Winter Park's short-term rental ordinance would be invalid, and we would not be here. However, the second sentence says, "this paragraph does not apply to any local law adopted on or before June 1, 2011." The city's short-term rental ordinance was adopted on February 2, 2010, before the date preemption takes effect. Mr. Geller displayed a screenshot of City's Ordinance 2796-10, noting that, at the time of adoption it was codified at paragraph (aa), then moved to paragraph (z), always stating "The rental use or occupancy of any residential dwelling for less than one month shall be prohibited."

There was a claim that, when the city amended its zoning code in 2022, it repealed and then re-adopted the short-term rental prohibition, so therefore preemption applies. The recodification in 2022 only moved the language from paragraph (aa) to paragraph (z); the language never changed. The short-term prohibition has been the law in the City of Winter Park since February 2010, continuously. Mr. Geller said he went into more detail last month, adding that the Attorney General of the State of Florida agrees with the city that a short term rental originally enacted, and then re-enacted by amendment is considered the law since the first enactment.

Mr. Geller then presented *City of Miami vs Airbnb Inc.* 260 So. 3d 478, 482 (Fla. 3d DCA 2018). The City of Miami comprehensively rewrote its zoning code in 2009 and called it "Miami 21." In 2009, their short-term rental prohibition for a zoning district called "T3" said short-term rentals could not cause a change from predominately permanent housing. The point of bringing the case to the Board's attention is that Miami adopted the language in 2009 and then they recodified it in a revised "Miami 21" in 2016. The Third District Court of Appeal held the state statute did not preempt the short-term rental prohibition, because the 2016 version of prohibition was materially identical to the language adopted in 2009. Mr. Geller said his office advised Ms. Pyle in 2023 that short-term rentals were prohibited and that the preemption did not apply.

Mr. Geller then addressed the notion of infringing on the rights of guests to stay at the house as members of a "club." The Trustee added a Notice and Declaration on her Airbnb listings, stating the following to who would rent her property: "This property is currently the subject of an ongoing legal challenge regarding a decades-old city ordinance from the 1980's (Mr. Geller noted that it doesn't go back that far) that is unlawfully being applied to modern-day home sharing of a private residence." She is telling the people who rent her home, "You are not a transient or commercial customer. You are here by private license granted at her sole discretion. Any attempt by the city to interfere with this private arrangement constitutes a violation of both my constitutional rights as a resident and your protected right to associate with others under Federal law."

Mr. Geller repeated the "you are not a transient or commercial customer" language, stating it doesn't matter what it is labeled; it is what it is. If it looks like a duck, waddles like a duck, and quacks like a duck, chances are it is a duck. In this case it is waddling and quacking like a short-term vacation rental. He characterized Respondent's statement as asserting, "You can't interfere with me, I can do whatever I want." He continued that the Trustee added, "as an additional layer of legal protection, all individuals who stay must be members of the **Self Transformation.com** private membership association. Membership is free and can be initiated by simply sending a message. This ensures that your presence here is fully private, non-commercial, and constitutionally protected under the First Amendment right to freedom of association."

Mr. Geller stated there are three items to address. First, labels do not control; substance does. The fact that an agreement is called a license, or to state that the relationship is one of licensor or licensee is not determinative. The proper characterization of the agreement is discerned by the actual terms, conditions, rights and obligations expressly set forth in the agreement, as stated in *Nazia, Inc. v. Amscot Corp.*, 275 So. 3d 702, 706 (Fla. 5th DCA 2019). Mr. Geller explained that a license is not an interest in real property; it merely gives one the authority to do a particular act on another's land. Mr. Geller gave an example of going to a baseball game or a theater, where a person is getting license to enter the land to watch the performance or athletic event. There is no exclusivity, given the crowd in attendance, nor is the person obtaining any property interest; there is no conveyance of the land to attendee in any respect.

Nazia defined a lease as "a conveyance by the owner of an estate to another of a portion of his interest therein for a term less than his own," so the owner is giving up some right of occupancy to a person when leasing property. Generally, whether an agreement is a license or a lease hinge on whether it is exclusive. Exclusive use establishes a lease.

The listings for the property states that "you have access to the entire house except for a few locked rooms and cabinets where I store my things. This is my primary residence, but I travel a lot."

When renting from Airbnb or VRBO, you select your dates and book them. The platforms do not allow double bookings, so when one person rents another person cannot show up and claim they are staying too; there is exclusive occupancy of the property, and that is an attribute of a lease.

Looking through the record of evidence, there are nightly rental rates charged, there are check-in and check-out times, there are cancellation fees, and a special amenity charge if you want the pool heated. Mr. Geller noted the marketing of the property: "Welcome to your dream getaway in the heart of Central Florida. You will have resort-style comfort, and you are just minutes away from Universal Studios and Disney" which are two of the largest tourist attractions in town.

Mr. Geller stated that the private membership association that the Trust has purported to establish is not exactly constitutionally protected as a relationship under the law, reiterating the need to obtain membership to rent the property. He stated there are two kinds of constitutionally protected associations. First are intimate relationships such as marriage, the bearing and raising of children, and cohabitating with relatives. The city could not pass an ordinance prohibiting relatives from staying on your property; that would be a violation of the right to association under the First Amendment. The second is expressive association, meaning a person can gather with whomever they like to advocate for or express views on a particular subject. The city is not prohibiting the Trustee from associating with anyone; she can have anyone she wants visit her property. The prohibited activity is when she starts charging rent as consideration for occupancy for less than 30 days. He stated again that the city is not infringing on her right of expressive activity and noted that Memorandum of Law cited *Kuvin v. City of Coral Gables*, 62 So. 3d 625, 629 (Fla. 3d DCA 2010) (citing *Proctor v. City of Coral Springs*, 396 So. 2d 771, 772 (Fla. 4th DCA 1981), for the proposition that, to be constitutionally protected, "A group must engage in some form of expression whether it be public or private," and there is no evidence of that in the record.

Finally, Mr. Geller wanted to put to rest some objections raised at the October meeting. The City Code states that formal rules of evidence shall not apply, but there must be due process under the law, and the Board may rely on all other evidence commonly relied on by reasonable, prudent persons in the conduct of their affairs. He argued, if you believe that reasonably prudent persons can look at an Airbnb or VRBO site and rely on the information provided, you can consider it as evidence. Florida Statutes § 162.07 says the same thing.

In short, the short-term rental prohibition is not void for vagueness, you must presume it to be valid. There is no preemption of the city's short-term rental prohibition under Florida Statutes § 509.32(7)(b). The recodification of that prohibition from paragraph (aa) to paragraph (z) did not trigger preemption because the short-term rental prohibition has continually been the law since 2010. The city has not limited the Trustee's ability to associate with whomever she wants on the property so long as she is not charging rent for less than one month. The private membership association to pay rent for exclusive occupancy does not give rise to a constitutionally protected intimated or expressive

relationship. The Board may rely on any evidence that reasonably prudent persons would commonly rely on.

Mr. Geller thanked the Board for their indulgence for his lengthy presentation and offered to answer any questions they might have. Mr. Johnson noted that he was not present for the previous meeting, but asked about the citing of *Miami vs Airbnb*, that it held that the Florida Statute did not preempt the Miami code, and approved of Miami's prohibition against short-term rentals. Mr. Geller responded that the case held that Miami's short-term rental prohibition was enforceable. The question of whether short-term rentals were changing the character of the housing from predominantly permanent housing was an issue of fact that the appeals court sent back to the lower court to figure out; but the short-term rental prohibition was not preempted. The short-term rental prohibition in "Miami 21" was enforceable even though it was recodified and moved because the language had not changed. Mr. Johnson then asked Mr. Geller if there were any reported cases regarding Winter Park's prohibition on short-term rentals. Mr. Geller responded that he was unaware of any court decisions.

Mr. Mandelkern apologized that he was absent for the October proceeding but asked if these issues were not raised and determined by the Board as rejected. Mr. Geller responded yes. Mr. Mandelkern then asked about a *Massey* Hearing, which is a due process type of hearing, requiring that, before fines can be imposed on the property owner the local government must demonstrate non-compliance with the original order. As such, the Board's task today was fairly narrow, that the Board is not ruling on the legal issues but determining whether Respondent has complied with the October 2, 2025, order. Mr. Geller responded that the Board is determining if there was compliance with the October 2, 2025, Order. He added that all the legal issues pertained to objections raised by the other side, and that he wanted those Board members not in attendance at last month's meeting to have the benefit of his arguments on them. He did not want to waive any of these arguments insofar as this proceeding will be appealed and probably consolidated with the earlier proceeding. He wanted to cross the T's and dot the I's. Mr. Mandelkern thanked Mr. Geller for his presentation and clarification. Mr. Geller responded that it is a limited scope to the extent that any of these issues are contested by the Trust, that they be given some kind of consideration. Mr. Mandelkern rephrased his question that the Board did not need to consider the legal issues raised by Mr. Geller and Mr. Peckham from the prior proceeding. Mr. Geller responded that, to the extent they are raised again, it would behoove the Board address them again. He noted that the proposed motion dealt with a lot of the issues and the Board can pick and choose what to include. Mr. Mandelkern pointed out that the proposed motion in the packet did not address the legal issues. It was found that a previous version of the motion was inadvertently placed in the agenda packet. Staff provided the Board was provided with the correct recommended motion.

Mr. Johnson noted that the Respondent's counsel has not asked for a stay of the order by motion and asked Mr. Geller what factors would go into a decision to stay. Mr. Geller stated if some type of undue prejudice would happen, then a lower tribunal might stay. More typically in a court setting when there is a money judgement with very serious alleged infirmities at issue, then you would ask the court to stay the enforcement of the judgment so that proceeds or bank accounts are not seized. The court may grant a stay, but a motion must be brought to the lower tribunal. Mr. Geller stated that this scenario does not apply in this case because there is no current money judgement unless fines are imposed.

Mr. Peckham stepped to the podium again. He complimented Mr. Geller on his presentation but respectfully disagreed with some of his interpretations. Mr. Peckham repeated his due process argument because the very fundamental notion of due process is an opportunity of notice and an opportunity to be heard. He felt that he and his client were being presented with a moving target, which is a fundamental contradiction of due process. He contended that, when people are allowed to come in as fact witnesses and testify that there are cars parked and that the pool noise is loud, it does not translate into evidence of a rental. That could be anyone's car; nothing ties it to the property; nor did he believe the City prohibits parking on the street, and similarly there is no prohibition against kids being loud in a swimming pool. He respectfully requested that, under the fundamentals of due process, the Board not consider this evidence.

As to the notion of preemption, Mr. Peckham pointed out for the record that the City Commission did not recodify; they repealed and replaced the ordinance in 2022. If indeed labels do not control substance, he could not think of anything more substantive than the notion of repealing, not recodifying, not amending, but repealing and replacing the underlying ordinance.

Mr. Peckham then addressed "VRBO" being an acronym for "Vacation Rental by Owner." He wished to add that Airbnb has a notion of hosting and home sharing. If the use of these platforms was evidence of rentals, he begged the Board's indulgence to consider the underlying principle that people host others as guests in their home all the time through the platforms where the host remains on the property. He then stated that this comes back around to the notion of a "lease vs. a license." If someone is remaining on the property or has secured things against licensees using them, he would submit that the transaction is not a lease but is indeed a license.

With regard to the First Amendment argument, Mr. Peckham cautioned the Board that obviously they were not talking about an intimate relationship, but the Board should tread very lightly on evaluating the sufficiency of why people are assembling, that people can assemble for all sorts of reasons and have the First Amendment protect them by their freedom of association.

Finally, just as Mr. Geller made statements for the protection of the record, Mr. Peckham noted that the Board just received a document that was not a part of the publicly noticed meeting; therefore, he submitted there was not sufficient notice of the public meeting by amending the packet "on the fly."

Mr. Johnson asked Mr. Geller if as a quasi-judicial body does the Board have the authority to strike a statute or code provision as unconstitutional. Mr. Geller responded that, if something were truly unconstitutional (which he would submit there was not in this case), the law would not expect the Board to act in an unlawful manner. If something is truly unconstitutional you do not have to enforce it. Mr. Johnson stated he asked because he and Mr. Bond practice workers compensation law and the judges there do not have the authority to strike a statute that is unconstitutional. Mr. Geller replied that, if a statute were unconstitutional, the Board can choose not to impose fines. He again submitted there is no constitutional infirmity in this case whatsoever. There is nothing that prohibits the city in its police powers as they are known, to have a zoning code and to protect neighborhoods, and to say that there will not be short-term rentals in a residential neighborhood because it is disruptive, or whatever the reasons may be.

Mr. Mandelkern asked Mr. Geller if the Board had the power to make legal decisions, such as if the ordinance was preempted by state law. Mr. Geller responded it would be an implied power for the Board to adjudicate that, but that he would encourage the city to appeal such a decision because it is not legally tenable.

Mr. Geller asked the Board permission to make one more point. He stated that staff can give you a recommendation at any time, including one second before deliberations begin. That is not a matter of due process. Due process is notice of what has been charged here, the violation of the short-term rental prohibition, and an opportunity to be heard. There is no violation of due process for staff to recommend how the Board should make its motion, and the Board may use its discretion to accept or reject as much of it as you would like.

Board Discussion:

Ms. Matt offered an amendment to the recommended motion, noting that the original order had two elements. First, the Respondent had to cease the rental of the property for periods of less than one month; and the second element was to contact the City Safety and Code Compliance Officer and provide documentation of action taken by October 6, 2025. Any motion should include a finding that, not only has the Respondent not ceased the rental or occupancy of the property for less than one month and remains in violation of the city code, but also that the Respondent has not contacted the code officer or provided the documentation.

Mr. Johnson stated there was a violation based upon Office Busch's testimony and review of the listings on Airbnb and VRBO, and not necessarily the guest reviews posted on the Airbnb site which can come up. He also stated that he agreed with Mr. Geller's definition of rental, that the act of attempting to rent does qualify as a rental under the Florida Statute.

Ms. Matt agreed that the Respondent was in violation of the Order from October 2, 2025.

Mr. Mandelkern agreed that the property owner has not complied with the October 2, 2025, Order with her continuing violations.

Mr. Heller stated he is also in agreement. He did not understand the Respondent's contention that advertising on VRBO was not necessarily soliciting rentals. If this was a private club, as the Respondent was insinuating, why would it be advertised on a public website? It made no sense to him.

Mr. Johnson said he felt inclined to leave out the part in the recommended motion about the First Amendment. The Board can choose not to enforce an item, but he did not think they had the authority to say if there is an issue with such constitutional rights. Ms. Matt agreed, stating that the scope of today's hearing was to determine whether or not the Respondent was in violation of the Board Order, and the motion should reflect that. She stated other items should be reserved for the appeal.

Motion:

Mr. Johnson proposed a motion:

From the evidence presented today, I move to issue an Order finding the Respondent, Atlantic Oasis Trust, owner of 1810 Barker Drive, Winter Park, Florida 32789 (the "Subject Property"), in violation of the Order issued by the City's Code Compliance Board, dated October 02, 2025, to comply with Section 58-71(z) of the City Code.

On October 02, 2025, this Board entered the following Order:

> The Respondent is **ORDERED**, within three days of the hearing date, to cease the rental of the Subject Property for periods of less than one month. Failure to comply with this Order will result in fines of up to $500.00 for each day a repeat violation continues. The Respondent is further Ordered to contact the City Safety & Code Compliance Officer and provide documentation of action taken by October 6, 2025, to comply with this Order.

As of the date of today's hearing, November 06, 2025, the Board finds by a preponderance of the evidence: The Respondent has not ceased the rental, use or occupancy of the subject property for periods of less than a month and remains in violation of Section 58-71(z) of the City Code and, further, that the Respondent has not contacted the City Safety and Code Compliance Officer to provide documentation of action taken to comply with the Board Order.

The Ordinance is not Void for Vagueness

Section 58-71(z) of the City Code states, "*Short-term* rental *of residential dwellings.* The rental, use or occupancy of any residential dwellings for less than one month shall be prohibited." This language is clear and not void for vagueness. "Rental" is a commonly used and well-understood word, defined in *Webster's Encyclopedic Unabridged Dictionary* as, "An amount received or paid as rent," or "the act of renting." The word "rent" is also commonly used and well-understood, meaning "Consideration paid, usually periodically, for the use or occupancy of property (especially real property.)"

The Transactions Are Short-Term Rentals

Respondent cannot evade the City Code by calling her short-term rental transactions a "license" or "house sharing" for a "Private Membership Association." Respondent is renting her house for short-term exclusive occupancy or use on VRBO ("Vacation Rentals by Owner") and Airbnb for nightly rates with stated check-in and check-out times. Respondent is marketing the house for use as a "dream getaway in the heart of Central Florida." The transactions are short-term rentals under the dictionary definitions above.

State Law Does Not Preempt the City's Short-Term Rental Prohibition

Florida Statutes § 509.032(7)(b) does not preempt the City's short-term rental prohibition, adopted on February 22, 2010, before the statute's preemption date for ordinances adopted on or after June 1, 2011. The recodification of the City's short-term rental prohibition in 2022, from paragraph (aa) to paragraph (z) of Section 58-71 of the City Code changed no words. The short-term rental prohibition has been in continuous effect since its adoption on February 22, 2010, and is not preempted. *City of Miami v. Airbnb*, 260 So. 3d 478 (Fla. 3d DCA 2018).

Notice

The Board finds that Respondent received all required notice of the October 02, 2025, Order and of this hearing in accordance with Section 2-109 of the City Code, and Florida Statutes § 162.12, and was given a full and fair opportunity to be heard and was represented by counsel at the hearing on the issue of her continued non-compliance with Section 58-71(z) of the City Code and the Board's October 2, 2025 Order.

Assessment of Fines and Lien

In accordance with the requirements of *Massey v. Charlotte County*, 842 So. 2d 142 (Fla. 2d DCA 2003), the board hereby assesses a fine against Respondent in the sum of **$500** per day, running from **October 12, 2025**, the day non-compliance was discovered. As of November 6, 2025, the fine accrued is $12,500.00 and continues to run at $500 per day as repeat violations. In determining the amount of the fine in accordance with Section 2-107 of the City Code and Florida Statutes § 162.09, the Board considered the gravity of the violations, Respondent's failure to correct the violations permanently, and Respondent's history of prior violations.

The lien recorded in connection with this Order shall constitute a lien against any real or personal property owned by Respondent.

Mr. Geller suggested that the motion should state the amount of the accrued fines as of today, which was calculated to be $12,500.00. Mr. Johnson amended that portion of the motion.

Mr. Mandelkern seconded the motion as amended.

VOTE:
Doug Bond – Yes
Steve Heller – Yes
Wayne Johnson – Yes
Paul Mandelkern – Yes
Kristen Matt -Yes
Carlos Diez-Arguelles – Absent
Melissa Blaney - Absent

Amended Motion passed 5-0.

6. Non-Action Items

None

7. Staff Updates

Division Manager Susanne Porras advised the Board of two cases:

a) Case BLDG-25-0019, 143 Oak Grove Rd., Winter Park Florida 32789. This case came into compliance prior to this meeting with the issuance of a permit for a fence that was installed

b) Case OVR-25-0204, 1019 W. Fairbanks Ave., Winter Park, FL 32789. This case was tabled on October 2, 2025, and is currently on hold.

8. City Attorney Reports

None

9. Board Comments:

None

10. Upcoming Agenda Items

Division Manager Susanne Porras informed the Board there are currently two cases on the schedule for the December meeting.

11. Adjournment

Board Member Steve Heller made a motion to adjourn. Kristen Matt seconded.

VOTE:
Doug Bond – Yes
Steve Heller – Yes
Wayne Johnson – Yes
Paul Mandelkern – Yes
Kristen Matt -Yes
Carlos Diez-Arguelles – Absent
Melissa Blaney - Absent

Motion passed 5-0.

ATTEST:

Approved by the board on December 4, 2025

Susan Pruchnicki

/s/ Susan Pruchnicki, Board Secretary