

SHORT-TERM RENTALS: Part One



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MICHIGAN COURT OF APPEALS

Special Use Permit/Standing

To affirm a special use permit, there must be substantial evidence on the record to support the decision, not just conclusory statements. For standing there must be injury different than that of the general public. **Northern Michigan Environmental Action Council & Townsend v City of Traverse City & Pine Street Development One.** No. 332590. Decided October 24, 2017. Unpublished.*

The intervening defendant, Pine Street Development One (Pine Street), appeals a decision of the lower court which overturned the city's approval of their development. Pine Street proposed a 96-foot tall building. The city waived the maximum 60-foot building height requirement and approved the project. The plaintiffs challenged the decision claiming that there was an insufficient record to justify the decision. The lower court agreed and threw out the decision. Pine Street appealed; but the city did not.

Pine Street first challenges the standing of the plaintiffs. It argued that Northern Michigan Environmental Action Council (NMEAC) did not have damages different from the general public. The Court of Appeals explained: "A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant." **Lansing Sch Ed Ass'n v Lansing Bd of Ed**, 487 Mich 349, 372; 792 NW2d 686 (2010). With regards to zoning decisions "a party must be aggrieved and have suffered some special

damages not common to other property owners similarly situated." Michigan's standard is different from the federal rule. The Court noted that non-profit organizations like NMEAC may have a difficult time proving such special injury; but in this case the facts support their standing. It found that the possible environmental impacts, significant change in character of the area, and increased tax burden all justified their being uniquely impacted. With regards to the other individual plaintiff, Townsend, she demonstrated that the tall structure would specially impact her access to light, air flow, and views. Her other cited impacts such as additional traffic congestion and change in the neighborhood characteristics would not be different from the general public.

As to the merits of the case, the Court found that the city made no real finding of facts to justify the project. Its record was made up of unsupported and conclusory statements. The Court cited the standard of review of a ZBA's decision: "When reviewing a zoning board's decision whether to issue an exception to a zoning ordinance, this Court must review the record and . . . [the board's decision] . . . to determine whether it (1) comports with the law, (2) was the product of proper procedure, (3) was supported by competent, material, and substantial evidence on the record, and (4) was a proper exercise of reasonable discretion. . . ." The substantial evidence standard does not require a preponderance of the evidence, only that there be enough for a reasonable person to find it sufficient to support a conclusion.

Here, the Court did not find competent, material and substantial evidence in the city's various reports and finding to establish the conclusions. There was little factual evidence provided. Issues regarding parking, tax financing (TIFA), public safety, traffic, and other aspects of public impact were glossed over, inaccurate, or not determined relevant. Pine Street also argued that the lower court should have considered the request in relation to the height standard and not the entire special use request. The Court disagreed that this issue should have been addressed by the lower court; but rather, the city should address it on remand. The Court of Appeals remanded the case back to the city to make proper findings if it is to approve the project.

There was a concurring opinion that would hold the same; but would have denied standing to NMEAC. They were not

injured any different than the general public. Townsend would have standing and the court's holding could flow through her.

Sexually Oriented Business/Constitutionality/Planner's Expertise

Ordinances regulating SOB's are constitutionally sufficient, even when they deprive an existing operator of certain rights. A planner's professional credentials can establish expert authority. **Jon Jon's & Warren Property Investment Inc. v City of Warren.** No. 332504. Decided October 26, 2017. Unpublished.*

Plaintiffs owned a strip club, a sexually oriented business (SOB), in the city of Warren for many years as a nonconforming use under a 1986 ordinance and later a 2005 licensing provision. In 2009, they were granted a variance to modify the property. But the ZBA later withdrew the nonconforming status when the owners essentially demolished the building and rebuilt it. Later that year, the city amended the licensing provision to prohibit alcohol at SOB's. Plaintiffs sued, claiming the licensing ordinance was overbroad. The trial court found plaintiff's arguments did not reach to a constitutional violation.

There are two forms of overbreadth challenges: "where a law or ordinance sweeps too broadly, covering a substantial amount of protected free speech, and where every application of a law or ordinance creates an unreasonable risk of censorship." Plaintiffs' first claim that the zoning ordinance's prohibition of appearing semi-nude and touching someone is overbroad as it could include accidental touching. The Court rejected that analysis holding the ordinance addresses knowing and intentionally touching and does not prohibit accidental contact. Next, plaintiffs claimed that "lewdness" and "public indecency" were vague. "An ordinance is unconstitutionally vague if it (1) does not provide a fair notice of the type of conduct prohibited or (2) encourages subjective and discriminatory application by delegating to those empowered to enforce the ordinance the unfettered discretion to determine whether the ordinance has been violated." The Court explained that the referenced language was in the preamble and not part of the specified conduct, which was properly prohibited. The wording was irrelevant.

The challenge to First Amendment free-

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dom of expression was also denied. The Court cited the U. S. Supreme Court's determination that the governments interest "in combating the negative secondary effects associated with adult entertainment establishments . . . is unrelated to the suppression of the erotic message conveyed by nude dancing." **Erie v Pap's A M**, 529 US 277, 296; 120 S Ct 1382; 146 L Ed 2d 265 (2000). Plaintiffs claim that there was no evidence that their, and other similar businesses, caused negative secondary effects. But the Court explained the city had the right to draft an ordinance based on numerous earlier court decisions and it was not required to make its own independent findings. **Sensations, Inc v Grand Rapids**, 526 F3d 291, 299 (CA 6, 2008).

They next challenged that the ordinance's prohibition of alcohol in SOB's deprived them of their property interest in their liquor license without due process. The Court agreed that holding a liquor license was a property interest; however, their rights were not deprived. Plaintiffs still had the license; they just could not use it in that setting.

Their final challenge was the lower court's err in concluding there were adequate alternative locations for SOB's available. They protested the court's acceptance of the city planner's reports, claiming that the planner was not an expert. Both court's agreed that the planner who had a master degree in urban planning, was a seasoned professional, and held multiple certifications could address the zoning ordinance and the SOB's options. The planner held that there were multiple locations available for such a use. The fact there were no other SOB's in the city was not material, especially when there was no showing of a demand for SOB-type uses. The Court of Appeals affirmed the lower court. [NOTE: Leave to Appeal to the Michigan Supreme Court was filed; Case No. 156868.]

Short-Term Rental Use/ Deed Restrictions

Vacation rental use is commercial in nature and can be enjoined where commercial use is prohibited in deed restrictions. **Bauckham et. al. v Petter et. al.** No. 332643. Decided September 19, 2017. Unpublished.*

Defendants were advertising and renting out their vacation homes for short term rental. Plaintiffs sued to stop such activities and to have the use declared a nuisance per se under the local zoning ordinance. Plaintiffs relied on their subdivision's deed restrictions, which stated:

"1. No building shall be erected or maintained on any lot in Sunset Shore, sold by the grantor herein, other than a private residence and a private garage for the sole use of the owner or occupant, except those lots designated as

*Commercial on the plat map. * * * 3. No part of said premises shall be used for commercial or manufacturing purposes, except those lots designated as Commercial on the plat map."*

Plaintiffs complained the rental use was a commercial activity. Defendants responded arguing that the short-term rental was common and had been a long-standing accepted practice. They said the neighborhood's voluntary homeowner's association established rules suggesting renters were welcome. Defendant also counter claimed a trespass because some of the plaintiffs were improperly using the beach area.

The trial court found that defendants had knowledge of the deed restrictions; that they rented out the homes through commercial services for substantial amounts; none of the defendants made significant personal use (some lived out-of-state and some spent less than two weeks at their properties); none were present when rented; some used "concierge" services to maintain the properties; and all the defendants paid the Michigan 6% use tax for public accommodations, like that paid by hotels, motels and other vacation rentals. It found that defendant's use was commercial in nature and enjoined the rentals. It also held that defendants equitable defenses (long standing use by others) was not determinative. The short-term rental was a commercial use in violation of the zoning ordinance. Regarding defendants' counter claims, the court found that some of the plaintiffs were not properly using the beach area and ordered the fixtures on the beach (docks, stairs, storage buildings, etc.) must be shared by all the subdivision owners or removed. However, it also determined that certain actions were not improper or actionable. Defendants appealed.

The Court of Appeals first held that defendants' equitable defenses were moot. *"An issue is moot if its resolution in the aggrieved party's favor cannot for any reason have a practical effect on the existing controversy."* Here, regardless of whether there had been longstanding or even the tacit acceptance by some neighbors, the rental use violated the zoning ordinance and violated the unambiguous terms of the deed restrictions.

With regards to the deed restrictions, when they are clearly stated, as here, where all commercial use was prohibited, the Court found, *"the mere circumstances of the breach of the covenant affords sufficient grounds for the court to interfere by injunction."* The Court relied on the commonly held definitions for commercial:

"Commercial" is commonly defined as "able or likely to yield a profit." Random House Webster's College Dictionary (1991). "Commercial use" is defined in legal parlance as "use in connection with or for furtherance of a profit-mak-

ing enterprise." Black's Law Dictionary (6th ed). "Commercial activity" is defined in legal parlance as "any type of business or activity which is carried on for a profit."

The Court concluded that renting, for any length of time was a commercial activity and that the lower court's injunction was proper.

Regarding defendants' trespass claims; the Court also rejected them. Trespass cannot hold against a co-owner. A *"trespass requires proof of an unauthorized direct or immediate intrusion of a physical, tangible object onto land over which the plaintiff has a right of exclusive possession."* Here, since all the members of the subdivision were co-owners of the beach lot, it had to fail. There could be no exclusive possession as to those activities claimed since it was on land they co-owned. Other claims could have been alleged; but not trespass. Defendants also claimed waste by some of the plaintiffs; however, the Court of Appeals did not find their evidence credible.

There was also a cross appeal by plaintiffs regarding the effect of a settlement stipulation. The Court found ambiguity in the interpretation and ordered the lower court to resolve those matters. The lower court's opinion was reversed.

Short-Term Rental/Principal Residential Exception

A principal residential exception (PRE) to property is not lost if the residence is rented for more than 14 days a year. **Rentschler v Township of Melrose.** ___ Mich App ___ (2017). No. 336333. Decided November 28, 2017. Published.

Petitioner claimed a principal residential exception (PRE) on their property, which was denied by the respondent township and the Michigan Tax Tribunal. The township held that the property was not petitioner's personal residence, was rented for part of the year, and that the owner's employment was out of state; however, it did not contend that he had requested similar exceptions in Ohio or other properties. The Tribunal found that the petitioner did own the property, was registered to vote in the township, and had his Melrose Township address listed on his tax returns and driver's license. They also received petitioner's affidavit stating he had not claimed a substantially similar exemption in another state.

Notwithstanding those facts, the Tribunal denied the PRE based on petitioner's renting his home for more than 14 days during the year. The Tribunal relied on guidelines established by the Michigan Department of Treasury which states: *"[I]f an owner rents his property for more than 14 days a year, the property is not entitled to a principal residence exemption."* Both

the trial court and Tribunal recognized that guidelines do not have the force of law; however they are respected and should not be overruled without cogent reason – which they found. The petitioner appealed.

The PRE is also known as the “*homestead exemption*.” Michigan tax law creates an exemption from paying certain property taxes. To claim the exemption, the statute reads in pertinent part: “[A]n owner of the property may claim 1 exemption under this section by filing an affidavit The affidavit shall state that the property is owned and occupied as a principal residence by that owner of the property on the date that the affidavit is signed and shall state that the owner has not claimed a substantially similar exemption, deduction, or credit on property in another state. . . .” MCL 211.7cc(2). Here, the petitioner stated that he did not make a substantially similar request in another state and that he satisfied the other requirements under the tax act.

The Court analyzed the Tribunal’s arguments and held that they misapplied the law. The Tribunal had relied on a state law section pertaining to multiple residences or adjoining property, and neither of these circumstance were applicable. The Court also rejected the Tribunal’s reliance on another statutory definition of “commercial,” because it did not include any reference to the rental of residential property for more than 15 days in a calendar year. The Court also cited MCL 211.7cc(3), which listed the different circumstances that would disqualify a PRE if it involved other owned properties and properties in another state; and none applied here.

The Court also rejected the Tribunal’s reliance on IRS’ rulings regarding property rentals. It explained that the IRS’s provision that a rental of a home for 15 days or more brings it into a commercial status was not appropriate. The IRS uses that standard to apply to possible personal tax deductions not ownership. The IRS recognizes that rental for more than 14 days does not remove its personal use classification. And further, even if the taxpayer has more than one home, where they spend the most time would generally be considered their principal residence. The Court did rely on the IRS’ definition of a “principal residence” which identified these key factors include, but are not limited to: “(i) The taxpayer’s place of employment; (ii) The principal place of abode of the taxpayer’s family members; (iii) The address listed on the taxpayer’s federal and state tax returns, driver’s license, automobile registration, and voter registration card; (iv) The taxpayer’s mailing address for bills and correspondence; (v) The location of the taxpayer’s banks; and (vi) The location of religious organiza-

tions and recreational clubs with which the taxpayer is affiliated.” Under these circumstances, the Court reversed the Tribunal, holding that renting out a home for more than 14 days does not disqualify a PRE and ordered the granting of the PRE as requested.

Short-Term Rental

Short-term rentals can be prohibited where restrictive covenants (deed restrictions) bar commercial use and allow only private occupancy residences. Eager et. al v Peasley, et. al. ____ Mich App ____ (2017). No. 336460. Decided November 30, 2017. Published.

Plaintiffs sought to enforce their deed restrictions which prohibited short-term rental of homes in their subdivision. The defendants were owners in the subdivision and had been renting their homes through a vacation rental service for several years. The stipulated facts in the case documented vacation rentals during most of the summer months. There was no office, no B&B-type services, or cleaning and linen services while the renters were present. The deed restrictions provided in part: “the premises shall be used for private occupancy only; that no building to be erected on said lands shall be used for purposes otherwise than as a private dwelling and . . . that no commodity shall be sold or offered for sale upon said premises and no commercial use made thereof” The trial court found the restrictive covenants ambiguous and denied the requested injunction. Plaintiffs appealed.

The Court of Appeals began by analyzing restrictive covenants. It noted that they were contracts with a special standing. The courts support the rights of property owners to create and enforce those that affect their property. They are a property right with value, preserving both monetary and aesthetics characteristics. “If a deed restriction is unambiguous, we will enforce that deed restriction as written unless the restriction contravenes law or public policy, or has been waived by acquiescence to prior violations, because enforcement of such restrictions grants the people of Michigan the freedom freely to arrange their affairs by the formation of contracts to determine the use of land.” However, the Court also recognized that “[r]estrictive covenants in deeds are construed strictly against grantors and those claiming the right to enforce them, and all doubts are resolved in favor of the free use of property.” There are “two essential principles, which at times can appear inconsistent. The first is that owners of land have broad freedom to make legal use of their property. The second is that courts must normally enforce unwaived restric-

tions on which the owners of other similarly burdened property have relied.” The overriding goal is to determine the intent of the parties. If they are unambiguous they must be enforced as written. However, courts are warned not to overstep when interpreting them.

The Court of Appeals looked at the terms “private occupancy only” and “a private dwelling” in relation with the prohibition of commercial use. It cited the Supreme Court position from several cases that when reviewing a zoning ordinance a city “could not impair the right of the parties to enter into such a contract.” [and concluded that] “In building restriction cases involving covenants, the term ‘private dwelling house’ means a building designed as a single dwelling to be used by one family.” **Phillips v Lawler**, 259 Mich 571; 244 NW 165 (1932). This would exclude boarding and fraternity houses that were not intended for one single family. Those cases stood to bar transient arrangements, which the Court said applied to the deed restrictions in this case. It further cited **O’Connor v Resort Custom Builders, Inc.**, 459 Mich 335, 336; 591 NW2d 216 (1999), which held that interval or time-sharing violated similar “residence purposes only” restrictions. The Court stated that those who rent for a short-term do not have the same interests as those who reside in the residences permanently. It did soften its position if it were merely an incidental situation. But in this case, the rentals were continuous; and as such were commercial in nature. And since the restrictive covenants barred commercial uses, defendants’ activities violated those restrictions.

The lower court was reversed; however a dissenting opinion would have held otherwise. It found the terms ambiguous; and as such, the Court should have decided the case in favor of the free use of the property and against the enforcers. A dwelling’s use, whether by owners or renters was for a residential purpose, there was nothing in the restrictions that required only owner-occupancy, according to the dissenting judge.

* **Unpublished Opinions** are not precedent and not binding under the rule of *stare decisis* (MCR 7.215(C)(1)). See **People v Tanner**, 496 Mich 199 (2014). Unpublished cases need not be followed by any other court, except in the court issuing that opinion. But, a court may find the unpublished case persuasive and dispositive, and adopt it or its analysis. Unpublished cases often recite stated law or common law. You are cautioned in using or referring to unpublished cases; and should discuss their relevance with legal counsel. □

AN OVERVIEW OF SHORT-TERM RENTALS: Major Community Issues and How to Regulate STRs

By Kathy Egan, Networks Northwest, Traverse City

Introduction

At first blush, the topic of short-term rentals seems uncomplicated. What is it about the term “short-term rental” (STR) that provokes people? STRs exist everywhere, and they always have. What is all the recent controversy about?

In the last few generations, you had to know someone, or know someone who knew someone... to help you gain access to that vacation cottage on a lake. That is no longer the case; the middleman is no longer needed. With today's technology, everyone has instant access to listings all over the world. You could find a home, or a room in a home, to rent out for short stay in any town across the state, country, or globe. There may be more in the resort areas, clustered around sports and concert venues, or near hospital complexes, but they do exist everywhere. More may pop up for certain times of the year: football season, summer vacations, or during a popular festival, but they are always an option.

Welcome to the sharing economy where assets are shared directly and quickly between people, by means of technology. That's why there are more STRs available than ever before. For the people who have a spare bedroom or entire house, it is easy to find renters. For the renters, it is easy to find a place to stay. For both, fulfillment is just a click away.

There has been a tenfold increase in STR listings in the past five years.¹ This exponential increase in STR activity is creating friction in many communities. Some view it as being no different than any other residential activity in a home. Others see it as something else completely; they view it as a commercial venture, a hotel use in a residential area because the owner is being paid to rent out the room or dwelling.

Due to the ease of listing and finding STR space this estimated \$100 billion industry is not going to go away.² It is not a trend; this is the way business is now conducted. The time to examine the impact STRs are having on your community is now. Many of those impacts are positive. Some are not. Unless your community already has STR regulations, the zoning ordinance probably does not allow them. Are the residents of your community fine with that? Many residents may already be hosting STRs. Are the residents of your community fine with STRs everywhere, or just in some places? Or, not at all? This article provides an overview of important points to consider.

Are New STR Hosts Ready for New Obligations?

While bringing in a little extra money each month from an unused bedroom, or enough money to make payments on the mortgage for a second home are often strong motivators for people to get involved in STRs, there are a number of potential pitfalls and obligations that they may not aware of and that could turn into costly surprises at a future time. For example, insurance companies take the stance that any rental operation (long- or short-term) is a business and not a residential use, therefore they may require a special landlord insurance; as typical home owner's insurance will not likely cover damage or liability claims that are the result of renter activity. Airbnb and other online short-term rental companies will send the STR owner and the IRS a Form 1099 showing rental income for the year. IRS rules require all rental income be reported and some expenses may be deductible directly (such as cleaning, maintenance and advertising), or indirectly (like utilities, property taxes, mortgage interest). There are various thresholds for the owner based on whether they live on the property for a portion of the year or if it is purely used for income purposes.³ Michi-

gan categorizes rental income as either business or nonbusiness income, and to make it more complicated “nonbusiness income arising from the rental of tangible personal property is allocated according to a set of rules which depend primarily on where the property is used and whether the taxpayer is a resident.”⁴ There is also “a six percent Michigan use tax that applies to any stay of 30 days or less and includes the rental of vacation homes, second homes, townhouse condos and rooms in private residences. The tax is collected by the taxpayer from the renters and is required to be remitted directly to the state. Taxpayers must register with the state in order to remit use tax.”⁵ Fortunately local governments do not have to make accommodations for different taxing categories or authorities, but property owners involved in STRs need to be aware of all of their obligations here. Property owners that offer STRs through a private company can learn about such obligations there (as well as from accountants and attorneys), and those companies will often collect and remit required fees to the proper authority as part of the rental transactions. These private companies could be an Airbnb-type business, or a local property management company.⁶ Are prospective STR hosts in your community ready for these newfound obligations?

Gathering Local Opinion

There are many viewpoints to consider while working toward a decision that best meets the interests of the whole community. A committee or focus group that includes a variety of voices is a good first step. It can provide initial and continuing guidance. Some potential perspectives to include are:

- STR owners
- STR management company/operator
- Neighbors of STR operations
- An experienced Airbnb renter
- Local government officials/staff
- Realtor
- Local chamber of commerce/economic development interest
- Area B&B owner/operator
- Motel/hotel owner/operator
- Others as locally appropriate.

The second step in considering whether the community needs an STR ordinance is to gather information. Given that the number of STRs in Michigan has grown from about 13,000 listings in 2016 to about 30,000 listings in mid-2018, a 233% increase⁷ it may be safe to say that the number of STRs operating in your jurisdiction has also grown, but what was that number seven years ago? How many are operating now? Conducting a quick search on several of the more popular platforms will give an idea of the local activity. (See sidebar on next page.) Are the listings for entire houses or just bedrooms?

About the Author

Kathy Egan has served as a land use planner for over ten years, has walked a township through the STR ordinance process, and has organized an educational session on this topic. She holds a B.A. in Environmental Studies from the University of Michigan and is a Community Planner at Networks Northwest.

Short-Term Rental & STR Ordinance Compliance Websites

It is difficult to determine exactly how many short term rentals are operating in one's community. People used to advertise by word of mouth, in local advertisers and newspapers, and by signs in front to the dwelling; some still do. Today there also are dozens of websites that people use to list properties. While some listings are on only one site, others are on many, and most do not list addresses, which makes it nearly impossible to know which are within your borders. You can, however, get an overall picture of the situation by conducting a quick search. Some of the most active websites are listed below.

- Airbnb.com
- Expedia.com
- Flipkey.com
- Homeaway.com
- Orbitz.com
- Travelocity.com
- TripAdvisor.com
- Vacation Rental By Owner, vrbo.com
- Vacationrentals.com.

Other STR websites include: Boutique Homes, HouseTrip, Inclusive (formerly NoirBnB), Overnight, VacayHero, Tripping, VayStays, Craigslist, and probably more.

The increase in STRs is creating new business opportunities for other industries. Companies offering their services to help municipalities with STR data gathering, ordinance compliance and monitoring are popping up across the country. Some Michigan municipalities are already using such companies to assist with ordinance enforcement. Here are some to check out:

- Harmari by LTAS Technologies; harmari.com
- Host Compliance; hostcompliance.com
- STR Helper; strhelper.com
- Vacation Rental Compliance; vacationrentalcompliance.com.

According to Host Compliance, 84% of the 2018 listings in Michigan are entire home rentals (traditional vacation rentals), while 16% are partial home rentals (room rentals, private rooms or shared rooms); and 70% are in single family homes, while the rest are multi-family or unknown from the listing.⁸ Beth Milligan of the **Traverse City Record Eagle** reported on Feb. 1, 2018 that according to Airbnb,

*"Traverse City had 29,300 Airbnb guests in 2017, making it the second-most popular destination in Michigan (Detroit was number one). That usage was nearly double the volume from the previous year's numbers. Traverse City hosts earned a total of \$4.38 million in income through Airbnb in 2017. (In a new agreement signed with Michigan last summer, Airbnb started paying state taxes; the deal brought in \$1 million in taxes within its first three months)."*⁹

There are other important questions: What are people charging/paying? Are STRs just in the shoreline/tourist area? Downtown? Only during certain times of the year? Near specific venues? Or scattered throughout? Are long-term renters being displaced by short-term renters? Is affordable housing in the area being affected? How do you know the answers to these questions? Maybe a community survey is in order. They can be quick, cheap, and easy to do these days with online resources like Survey Monkey (<https://www.surveymonkey.com/>), Zoho (www.zoho.com) and Qualtrics (www.qualtrics.com).

Third, now that you have insights from a stakeholders group, solid information about what is happening, and the results of an initial public opinion survey, it is time to formally share this information at public forums. Give people an opportunity to react to what has been learned and to share their opinions.

By now the planning commission and governing body have sent the message to the whole community that this issue is being taken seriously and is being addressed thoroughly, carefully and

transparently. Be open to public input, invite it, and be prepared to do a lot of listening. People will need to feel that they are heard on this topic. Let them express their opinions. Let them rant if needed and some will likely need to. Do not verify or refute their opinions. Listen and look for underlying concerns and patterns so that the root issues that are affecting the community are the focus. And all the while, be aware of bias. As is often the case in public forums, one side of the issue may be more vocal than the other, keep that in mind because all sides need to be represented at the table and in the public deliberation that leads to new policy.

This is also a great time to educate the public about what is really involved in opening a home to a STR and for a community to regulate them. This will dispel unrealistic ideas and ground everyone in practical considerations. Dwight Merriam, a prominent attorney/planner writes that communities should educate

*"potential hosts to the need for proper code compliance, fire prevention, emergency response, following rules for rent controlled units, first aid, protecting privacy (e.g. disclosing security cameras), insurance coverage, parking, noise, pets, childproofing, operation of heating and ventilation systems (including fireplaces and heating stoves), safe access, occupancy limits, deciding what to tell neighbors, home owners association approval, tax obligations, and any required zoning approvals. These sessions may also provide an opportunity to learn who is renting and to connect with them. Consider establishing a section of your municipal website as a resource portal."*¹⁰

Members of the advisory group could help prepare content and presenters for these educational sessions.

The fourth task is to determine if public sentiment requires a public policy response, or is doing nothing (keeping the status quo), what most people want? If the public wants regulation, what is/are the reason, or reasons, to consider an STR ordinance? What does the public want to be regulated? Why? This is important because if the consensus is to permit STRs, from that point on the focus should be on addressing identified concerns and only drafting regulations that authorize what is desired to be achieved while protecting what needs to be protected. Communities, even those adjacent to each other, may differ in their priorities and each should determine for itself what is important. Some potential concerns (which could be turned into major goals or opportunities) include:

- Protecting neighborhood character – concern that STR activity will dominate or change the atmosphere or even the physical character of a neighborhood/zoning district;
- Improving quality of life – lack of community involvement/investment by permanent residents with greater investment by outsiders to their benefit, as opposed to the benefit of people who already live there;
- Increasing housing pressures – more competition for houses in some areas driving prices up, higher rents;
- Escalating nuisance issues – such as excessive partying, noise, parking, and trash;
- Jeopardizing community safety – changes in the frequency and degree of 911 calls, concern over fire safety of some structures;
- Regulatory consistency and fairness – especially between traditional lodging providers and STRs, and
- New tensions between owners of STRs and neighbors.

Fifth, a new round of public input will be needed to share alternative goals and objectives, as well as alternative regulatory approaches for public feedback. Look for opportunities for consensus around a common plan of action and regulatory scheme. These are not public hearings, those will come when ordinance language is finalized and nearly ready for adoption. This is when regulatory ideas can be tested. A new online public opinion survey may also be appropriate.

Ordinance Considerations

Once all the homework has been done and if the decision to draft an ordinance for the community has been made, the work

has only begun. What does the master plan say? Will it also need to be amended? If so, that needs to occur before the zoning changes, but both could be adopted in the same meeting with the master plan changes first.

There is an extensive list of considerations that may be included in an STR ordinance. All the options need to be weighed, and decisions made as to which apply to the community's specific concerns. It is more than discussing parking, noise and trash issues, it also includes deciding what activities the ordinance applies to, defining the terms, setting the standards, working through the administrative concerns, outlining enforcement procedures, and setting any new violation and penalty provisions.

Keep in mind that the focus should remain on achieving what the community wants to achieve. Efforts to engage in mission creep should be avoided where balanced input across the community was thoroughly obtained, or at the end, what is produced may no longer match what was desired.

Applicability

If the community decision is to clearly permit STRs or to regulate type, place, frequency and/or other factors, the first effort must be to clearly articulate which STR operations will be affected by the ordinance. Options include:

- No limits: Do not set a limit on the number of STR operations in the community and let the market dictate the final number of operations.
- Limit the number of permits: Allow for a set number of permits for STRs which can be based on a percentage of the total number of residential units, or a certain number a year, or by means of a lottery, or any number of other considerations. Consensus will be needed to determine what percentage or total number of permits/year is an acceptable number for the community.
- Set a distance between rentals: Require a set distance between STR operations as a means of limiting them (example: 200 feet between STR operations).
- Certain zoning districts: Allow STR operations only in certain zoning districts or conversely, require permits only in certain zoning districts while allowing without restriction in other districts.
- Limit number of rental nights per year: This could help keep housing available for long-term renters and also deter those purchasing multiple units solely as an investment opportunity.

The next effort is to determine how many and where STRs are allowed to operate per parcel and how many per operator:

- Number per parcel: Choices include limiting the operation to one per parcel regardless of the number of dwelling units on a parcel. On one hand, this would prohibit a parcel with an accessory dwelling unit to rent out both as STRs; on the other hand in a situation where there is a duplex or multi-family building on the site only one owner would have access to a permit.
- Type of structure: Will they be allowed in single-family dwellings and multi-family units? Furthermore, if STRs in temporary housing types (trailers, RVs, yurts and tents) are not desired, then a statement that they are only allowed in permanent dwellings/structures will need to be included.
- Number of permits per applicant: If the goal is an ordinance that addresses the availability of housing for local, year-round families consider allowing only one permit per applicant. This could serve to discourage those who purchase several houses as an investment thus reducing the supply of affordable housing, which is a factor that is becoming more common. Some communities are even considering only allowing STR operations in property classified as "homesteads" which would deny the ability for "non-homestead" owners to rent out their units while not living in them. This approach is contrary to past practice in much of the tourist areas in northern Michigan, but reflects the growing concern among year-round residents to STRs.

Definitions

Close attention should be paid to defining the terms used in the ordinance. Although it has become relatively standard to define a Short-Term Rental as a rental period of 30 days or less, there are more factors to consider. Does it apply only to situations where the entire dwelling is rented or also when a bedroom is rented while the homeowner stays on site? Should all situations be treated the same or differently? Every community needs to examine which situations require what level of regulation.

Furthermore, by defining an STR as a "commercial" operation it strengthens the ability to have regulatory differences between short-term and long-term rental uses; but it may undermine other ordinance distinctions related to the sanctity of especially, single family districts.

Make sure the terms and their definitions are consistently used throughout the ordinance and line up with other ordinances already in effect. For example, if the definition of STR includes anything from a single bedroom and up to the entire dwelling, make sure it does not conflict with the definition of "Bed and Breakfast" found in the zoning ordinance, or with provisions in a separate noise, sign, trash or parking code.

Administrative Concerns

STR regulations have been adopted either as part of the zoning ordinance or as a separate police power ordinance, or both. If STR provisions are incorporated into the zoning ordinance this approach allows for grandfathering of the existing, lawful STR operations and none of the new zoning standards will apply to those operations. If all existing STR operations are operating illegally (in conflict with the zoning ordinance) then the new general ordinance standards would be applicable equally to everyone. A combination of both allows the zoning ordinance to define where STRs are allowed and whether by right or by special land use, while all the registration, fees, and enforcement matters could be handled under the separate general police power ordinance. As always, consult your municipal attorney to help consider and define all the options and to get the language right.

Should the STR operation require a simple registration or the issuance of a permit/license? Should there be a fee? Will it be a one-time fee? Will the permit/license need to be renewed? Annually, or every few years? Keep in mind that fees can cover the expected administrative expenses, but cannot over-charge the applicant to create a funding source for other municipal expenses.

Some STR ordinances create a minimum threshold of when a permit is required. They allow for the renting of the dwelling for a period of time (example: 0-30 days per year) before a permit is required.

Another rental period option is to institute a minimum length of stay (example: 7 nights). This would reduce the rate of turnover of guests and ensure that there was only one group of guests per week, regardless if they stay all seven nights or not.

Violations and Enforcement

The most important provision to include in the violation section is a statement that any advertising of the STR without conformance with the ordinance is a violation of the ordinance. Without this statement a loophole for operators is formed; they can easily claim that the family in their rental was extended family – Auntie Lucy and her family just came by for a few days; and the next time it will be Cousin Joe...

Make sure any fines will be an appropriate deterrent, and that they accrue each day of a violation. A fine of \$100 is nothing to an operator who charges thousands of dollars per week for a rental, but \$100 per day will soon add up and get their attention.

Only adopt what can and will be enforced. Consider the available time of the administrative and enforcement staff (planning, building and zoning), and ask for their input while drafting the ordinance. Only incorporate provisions that can be supported. If the administrative resources to conduct annual inspections of the rentals does not exist in the community, do not include the need

for inspections in the ordinance. Keep in mind that the more complex the ordinance the more difficult the enforcement.

Have the applicant sign an affidavit that states they are aware of all the applicable rules and will ensure their renters are as well. While applicants will declare that there is no way they can be responsible for the behavior of others, by holding the applicant ultimately responsible they will take care to ensure their clients know and follow the local rules. Failure to follow the rules, risks continued ability to rent out their STRs.

Other Standards to Consider

The argument is likely to be raised that all residences should be held to the same standards as STRs and that there should not be provisions that apply solely to STRs. Although that sounds like a solid argument, consider that there is the possibility for some of these activities to occur weekly or even daily and that they may be in direct conflict with the schedule and daily life of the long-term residents of the neighborhood. That potential for conflict is, in fact, the crux of many ordinances overseeing STRs.

Each community needs to consider all possible standards thoughtfully and carefully and apply those that address their specific concerns and needs. If local ordinances are already in place that would apply, such as a noise or sign ordinance, refer to them directly.

- **Require a local contact person:** this could be the owner, a neighbor, or a local property management company – someone who will be available 24/7 to respond to calls or come to the site within a certain period of time (usually a response time of 30 – 60 minutes is required).
- **Notify the neighbors:** include a provision that the neighbors (within a specified distance) will be given notice that an STR approval or permit has been granted. The notification should include the address and the name and contact information of the local contact.
- **Maximum occupancy:** this would apply to the number of people staying overnight.
- **Maximum number of people on site:** this total would also include daytime visitors.
- **Events:** some STR listings may promote themselves as ideal settings for events such as weddings, consider this and specifically allow (or disallow) events such as weddings, parties, or group gatherings. These may be covered in a different section of the ordinance or in a separate ordinance or code.
- **Sewer/septic system:** consider requiring a statement from the applicable department of the maximum number of people expected that can be served by the sewer or septic system.
- **Fire standards:** if the unit is large or frequently rented, a separate inspection by the fire department may be appropriate.
- **Signage:** be sure there is conformance with the local sign ordinance and that standards are content-neutral, as standards based on the content of the sign are not enforceable.
- **Parking:** if this is an issue require that it be off-road, not in yards/lawns, or limit the number of vehicles and trailers on site.
- **Pets:** could allow, disallow, or leave the decision to the STR operator.
- **Fireworks:** if allowed, cite the days and times they are allowed. If there is a local ordinance on this topic, refer to it.

- **Campfires:** may regulate where, when, frequency, size, and what can be burned.
- **Trash:** require that the operator provide trash collection services so that trash is not left behind or dumped unlawfully elsewhere. Consider requiring closed receptacles to avoid problems with vermin.
- **Watercraft:** if excessive watercraft is a local issue, a limit may need to be set for the number of motorized watercraft.
- **Post the standards:** a requirement that the ordinance standards be supplied to each renter and/or posted on site can be part of the ordinance.
- **Maintain a log:** a log of renters may be required for the government's administration purposes.

Conclusion

There is no denying that STRs are now a part of the landscape, and will remain so in the future. They may be considered a beneficial service to the local economy, an invasive creep of commercial activity into residential zones, or a bit of both. Regardless, they cannot be ignored and each community should be having the conversation about whether and in what form regulation is warranted. The article by Mark Wyckoff beginning on page 9 examines technical and legal issues associated with regulation of STRs in more detail.

FOOTNOTES

1. Binzer, Ulrik "Whitepaper: A Practical Guide to effectively Regulating Short-Term Rentals on the Local Government Level," www.hostcompliance.com Retrieved from <https://hostcompliance.com/resources-gallery/a-practical-guide-to-effectively-regulating-short-term-rentals-on-the-local-government-level>
2. Binzer, Ulrik. Proprietary information from Host Compliance.
3. Department of the Treasury Internal Revenue Service, "Publication 527 Residential Rental Property (Including Rental of Vacation Homes)," <https://www.irs.gov/pub/irs-pdf/p527.pdf> and Topic Number 415 – Renting Residential and Vacation Property <https://www.irs.gov/taxtopics/tc415>
4. State of Michigan Department of Treasury, "Revenue Administrative Bulletin 2017-16, Income Tax – Treatment of Rental Income as Business or Nonbusiness Income," https://www.michigan.gov/documents/treasury/RAB2017-16RentalIncome_577793_7.pdf
5. Jennifer Carmody-Stiebel, "The Tax Implications of Short-Term Rentals," *The Traverse City Business News*, June 2017. <https://www.tcbusinessnews.com/2017/05/31/the-tax-implications-of-short-term-rentals/>.
6. Stephen Fishman, "Sales Taxes Due When You Rent Out Your Vacation Home," *NOLO*, provides the following additional guidance: "You can find summaries of the local short-term rental taxes charged in many areas, along with helpful links, on the Airbnb website (<http://www.airbnb.com/help/article/653/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available>). This list is helpful whether or not you use Airbnb to rent your property. Useful summaries are also available on the Avalara website (<https://mylodgetax.avalara.com/taxcenter/usa>). There is a list of website links for all state sales tax agencies (<http://www.salesandusetax.com>)." <https://www.nolo.com/legal-encyclopedia/sales-tax-due-when-you-rent-out-your-vacation-home.html>.
7. Binzer, Ulrik. Proprietary information from Host Compliance.
8. Binzer, Ulrik. Proprietary information from Host Compliance.
9. Beth Milligan, "Residents Push for City to Allow Airbnb, Other Vacation Rentals," *The Ticker*, Feb. 1, 2018. <https://www.traverseticker.com/news/residents-push-for-city-to-allow-airbnb-other-vacation-rentals/>.
10. Dwight Merriam, "Short-Term Rentals," *Zoning Practice*, Issue 10, Oct. 2015, American Planning Association, p. 5. □



Photo by Deposit Photos

Next Month - Part Two

The first one-third of the article on legal and technical issues associated with regulating STRs starts on the next page. The rest of the article appears in the August 2018 issue of *PZN* that is being printed at the same time as the July issue, so look for it soon in your mailbox.

REGULATING SHORT TERM RENTALS: Legal and Technical Issues (Part One)

By Mark A. Wyckoff, FAICP, Editor

The introductory article by Kathy Egan on pages 5 - 8 provides a great overview of the rapid growth of short-term rentals (STR) and the basic issues and elements often associated with regulating their impacts. This article focuses on a variety of legal and technical issues that present challenges for those communities contemplating new or revised STR regulations. Many of these issues make both the process of creating and then defending STR regulations problematic as they expose growing inconsistencies in what communities say they mean in their zoning and related ordinances and what the ordinances actually permit when examining all relevant provisions. Such inconsistencies can undermine the best defenses available to communities whose STR regulations are challenged. The issue is also complex because there is a wide variety in the structure and scope of local zoning ordinances in Michigan. These differences address local context, culture and unique circumstances, and what may be problematic related to STRs in one type of ordinance and locale is of no consequence in another. For these and many other reasons discussed at the end of the article, a one-size-fits-all approach to local regulation of STRs is unlikely to be effective, and highly likely to create unintended consequences for everyone involved. The purpose of this article is to bring these issues to light and overtime improve the quality of local STR regulations so that they embody fewer elements that expose risks for court invalidation or loss of a desired regulatory outcome, and to expose other related areas in the zoning ordinance that may need attention when STRs are addressed.

PZN has published 4 previous articles on STRs, including case studies in the mid-1980's, April 1996 (New Buffalo), October 2003 (Milton Twp., Torch Lake), and information materials available from Airbnb, Dec. 2016. In addition, **PZN** has published case summaries on about a dozen STR cases since 1982. A summary of all relevant appellate court decisions on STRs is found on Table 3 (next month). This is the first comprehensive issue on STRs in **PZN**.

An important part of this article is a short table (Table 2) on the characteristics of six local STR ordinances. Table 2 is a summary of a much more comprehensive 17 page table. Both tables were prepared by Jake Parcell, a planner in East Lansing. The longer table includes 21 columns in summary of the provisions of nearly 30 local STR ordinances (including four from out of state). Readers interested in the more detailed version of Table 2 can contact Jake at: jake.parcell2@gmail.com.

Please note that there are substantive reasons why some communities have decided to regulate STRs, while others have decided not to regulate them, or have very limited restrictions in place. This article focuses more on the issues facing communities with strong public opposition to STRs or demands for a better balanced regulatory framework. However, it should be useful to any community contemplating options related to STRs and all communities should provide for STRs somewhere in the community. The article is organized as follows:

1. What is at stake with five major competing private and public interests.
2. Evolution of protections afforded by single family residential zoning districts.
3. Distinctions between deed restrictions, zoning and general police power ordinances as relates to STRs.
4. Basic structure of local zoning as it relates to STRs.
5. Comparison of Local STR ordinances.
6. Summary of existing Michigan appellate cases related to STRs.
7. Regulatory opportunities and weaknesses.
8. How to increase regulatory success.

9. State role in regulating STRs (HB 4503 and SB 329).

This issue of **PZN** includes the first five parts of this feature. The balance are presented in the August issue of **PZN** that will be distributed at nearly the same time as this July issue.

WHAT IS AT STAKE

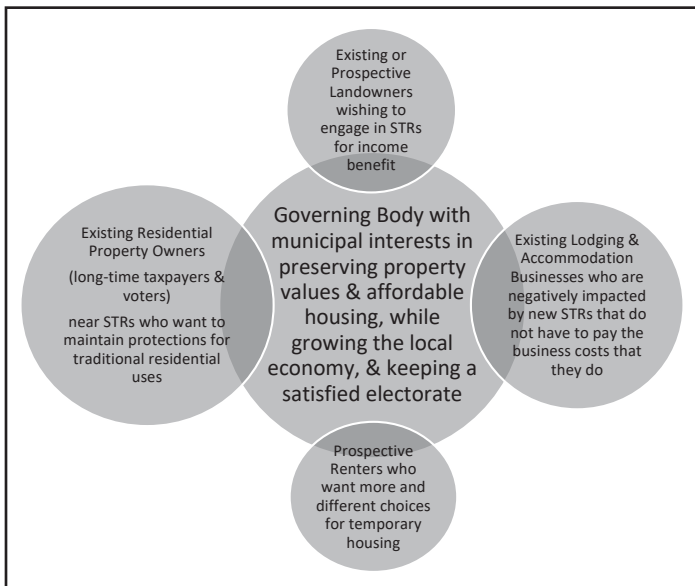
In the aggregate, STRs are big business. Consider the numbers for Michigan reported in **Bridge**, by Leslie VanHulle, on Oct. 17, 2017 for just Airbnb, the largest of over a dozen online companies supporting STRs (see sidebar on page 6).

"San Francisco-based Airbnb, a home-sharing company that matches travelers with homeowners who are renting out space in their homes, says it has 4,900 active hosts in Michigan who earned a combined \$25.2 million from listing their properties on Airbnb in 2016. The usual host can earn \$4,800/year. The company says 188,000 guests booked Michigan stays last year, and that 33 percent of listings are unused rooms in a home. The typical listing in the state is rented out through Airbnb for fewer than three days each month."

Deciding what to do with STRs presents a very difficult job for members of a local governing body (city or village council, township board of trustees, or county board of commissioners in counties with county zoning). They hear about issues and concerns related to STRs from many residents and businesses (and increasingly from people and businesses outside the community) and are asked to make decisions that may not affect everyone equally or fairly. Community planners and planning commissions are often asked to study the issues and recommend alternative solutions. If consensus emerges around a preferred alternative, then master plan and zoning amendments are prepared and subjected to public hearings before approval, disapproval or approval with amendments. Egan's article advises broad public participation through a transparent process as the preferred process for deciding first whether to regulate, and if the decision is to do so, how, and I wholeheartedly agree.

Figure 1 attempts to illustrate the five sets of major interests elected officials must attempt to balance while making decisions about whether, and to what extent to regulate STRs. The largest set of interests (middle circle) often reflect those goals of the "silent majority" (of voters), and whether the silent majority is happy or not, elected officials must attempt to balance the short- and long-term interests of the whole community and may hear from this group at the next election if it fouls up badly. That is why it is better to get them to express their opinions early in the process (and not stay silent). Most commonly, the largest interest group on STRs, whether loud or not, is the existing residential property owners (illustrated on the left). They have enjoyed the benefits of residential zoning for decades and often do not take kindly to new land uses which they perceive as threatening the quiet use and enjoyment they presently have in their homes and their neighborhoods. They view zoning as an important tool to protect the investment they already have in their homes (usually the largest investment a family has) and the large number of anecdotal complaints about STR "party houses" locally or that they have heard or read about in other parts of the state have made them very concerned. The commercial nature of STRs is especially troubling to this group.

Figure 1
Five Sets of Interests to Balance



The next significant set of interests are those illustrated in the right circle by existing lodging and accommodation businesses. While the number of these businesses is not large in most communities, they are often prominent businesses that contribute to the community in many more ways than simply by the rooms they let and the taxes they pay. They are an integral part of important events in people's lives, including banquet facilities for weddings, graduations, anniversaries, and accommodating families for any of these events or for funerals of friends and family. They are also usually organized members of local visitors and convention bureaus who often pay separate fees or taxes to help promote the community, and tourism, and opportunities for new businesses to locate there. That makes their voice a powerful one in the local dialogue, especially when they complain that STRs do not have to play by the same rules (regulations and taxes) that they do. This fairness issue is very important to most elected officials.

The third set of interests (top circle) is commonly the property owners who presently operate STRs or want to operate them in the community. This is often more people than the community realizes, but is still a small fraction of residential and business owners in most communities. However, if their supplemental income or in some cases, their entire livelihood is threatened, they could be a loud and frequent voice in the public dialogue running up to a public decision on STRs.

The last set of interests (bottom circle) represents prospective renters of STRs. While they are usually a small voice in the public dialogue, increasingly they are represented by a loud and sometimes very assertive voice of the STR industry—Airbnb. Since more and more people have used STRs in their travels, local residents may report their experiences adding to a richer understanding of what is involved than just the voices of the other interested parties.

Make no mistake, all of the people with these interests have a legitimate claim to voice their opinions as a part of the local debate over whether or how to regulate STRs. Not separately represented by a circle on Figure 1 is presently the loudest voice in Michigan on STRs. It is the voice of the Michigan Association of Realtors because of two bills they are advocating on behalf of (HB 4503 and SB 329). Their interests align with both prospective landowners who want to offer STRs and prospective renters of STRs. The outcome of this legislation locally and statewide, affects how property can be listed/sold, what income opportunities it presents to buyers, or in some cases to renter-occupants.

Another group with a strong interest in the outcome of the local and statewide debates that is not illustrated on Figure 1 are firms that offer services to landowners who rent out their dwellings—

this includes everything from businesses that handle advertising, cleaning, maintenance or management, including those that offer some or all those services under one roof. These businesses play a critical role in many markets ensuring that many of the bad things that can go wrong with STRs don't go wrong because the firms are available 24/7 to deal with them. These firms have not had a strong voice in the state dialogue to date, but occasionally have at the local level. At the present time, the state legislature is considering whether to carve out a superceding role on the issue of STRs with HB 4503 and SB 329. These bills are discussed in detail at the end of this article in the August issue.

Table 1 attempts to compile the common pros and cons of STRs as viewed from the perspective of the various interests reflected on Figure 1. While persons in support of STRs may (and sometimes do) argue that these perceptions are false, they are widely represented in news and magazine articles, and very similar to views of these interests on other land use topics facing municipalities. Unless one attempts to "walk in the shoes" of others with different points of view on a topic, it is hard to really understand the other perspective. Local elected officials on the other hand, are usually skilled at viewing issues from a variety of perspectives and critically attempt to find a balance among the views that best fits the community interests at that time.

From the perspective of some land use planners and lawyers, there is something different at stake. That is the legal integrity of the traditional single family residential (SFR) zone. This is close to the argument of some single family homeowners who declare that what is at stake is the *sanctity of the SFR zone*. This is no small threat in communities with traditional R-1 zoning, where only single family (and no commercial) uses are permitted, because many institutions are built around this sanctity, including the premise of residential insurance and bank mortgages for many single family dwellings. There is less threat to the structure of zoning in communities where a broader range of uses are already permitted in residential zones, but we will come back to that.

Another way of stating this concern is that what is at stake is *justice for law abiding SFR home occupants who have followed the zoning law and supported it because it has protected them*. Why should they continue to support SFR zoning if it does not protect them from the misdeeds and bad behavior of transients who occupy neighbors dwellings intermittently without adhering to established norms and local ordinances related to noise, traffic, parking, security, privacy, and too often leave a lot of garbage. That protection in zoning is in the form of *prevention*. Preventing such nuisances in the first place by not allowing them.

The whole problem exists with some STRs because some people who pay for the privilege of using another person's property can be very inconsiderate of neighboring property owners by doing something on the rented property they would never do on their own property, nor tolerate on their neighbors property. But because enough persons have done so often enough, there is conflict and controversy in some communities over STRs – especially when vacation properties are involved.

There is nothing inherently wrong with STRs as a land use. But as with everything in zoning, it is where (in what zone) and when (frequency of use) that are main issues. When an STR is one or two rooms in a dwelling that are occupied when the owner is present, there are far fewer nuisance problems than when a vacation home is rented without the owner present. Dwelling units rented through established property management companies are often operated quite differently than those rented through individual property owners, because the reputation of the management company depends on renters that follow the rules and do not create problems for neighbors. This occurs because the local property management company enforces those rules and is available 24/7 to do so.

SFR zones are built around 100 year old notions of the nuclear family and support it through strategic public investments like school and park location and regulatory protections like zoning. This is done to protect the family unit (see definition of "family" in the zoning ordinance), and also to protect the tax base from

Table 1
Pros & Cons of STRs from the Perspective of Interested Parties

Interested Parties (see Fig. 1)	Pros	Cons
Existing or Prospective Landowners who want STRs	- New income opportunity to help pay taxes or home improvements - A chance to meet new people - Opportunity to try running a small business from home	- Uncertainty as to what they are into - Potentially unhappy neighbors - May have to make some home improvements to meet codes or be competitive - Have to get good ratings to remain viable - New insurance to buy and taxes to pay
Existing Lodging and Accommodations Businesses	- Competition is opportunity to differentiate your services - Chance to get owners of motel/hotel to invest more to remain competitive	- Uneven playing field as many STRs don't pay taxes or regulation fees or areawide tourist promotion fees, meet same labor laws, or fire or ADA codes, or carry the same insurance liability, but may be charging about the same price per bed - Is a cheap and extensive advertising platform available to STR hosts and customers
Prospective Renters (customers/clients) of STRs	- Chance to save money on rooms - Another accommodation option - A more authentic travel experience - A wider geography within which to rent a room or dwelling	- Concerns over legitimacy, privacy, security of STR host and quality of room/accommodations - Concerns over access to provider in event help is needed while there - Concerns over whether the accommodations are worth the amount charged compared to traditional accommodations
Existing Residential Property Owners	- If it works for neighbors, maybe it will be an option they want to try - Maybe property values will rise because of "proof" of desirability of the location, or because of new investment (repairs or improvements) in existing STR properties, or because of new buildings erected solely for STR	- Could undermine quiet use and enjoyment of one's home - Brings transient people into the neighborhood which raises concerns about security, privacy, traffic, parking - If STRs are large dwellings or in prime vacation spots and used frequently they could become a party place with lots of people beyond the renters, with associated noise, alcohol or drug use, bad behavior, and waste issues - Fear renters will not be monitored/controlled by the owner (especially if absent) and neighbors will be powerless to get bad behavior quickly under control by asking, or through law enforcement
Governing Body with broad municipal interests at stake	- Another way for some homeowners to generate income that could be used to keep property in good shape - Could raise property values and taxes collected in some areas - Could attract more people/tourists to the area who spend money there - Could expose more people to the area who move or start/bring businesses there	- Existing homeowners could be very unhappy if negative impacts are common or significant - Existing lodging and business operators could be very unhappy - Could require more regulation and more enforcement time and expense - Could lower property values and tax collections in some areas if long-time residents are displaced and STRs later face reduced demand - Could reduce the supply of affordable housing if investors buy up homes in STR areas for STR use

erosion from incompatible land uses. Commercial uses have long been viewed as incompatible with residential neighborhoods and is the reason that they have been allowed to exist only on the edge of residential neighborhoods, often with buffers like multi-family, mixed residential/commercial or office uses between commercial and residential zones.

The fundamental problem is that STRs are often not the same intensity of use as typical SFR uses. Most permanent residents do the same things on their property that transient residents do, but the transient users may do so with much more frequency and intensity – such as every week or weekend in vacation areas, and often with many more people involved). The fact that transients have no relationship with neighbors like typical residential owners do, where tolerance and respect is built up over time, definitely plays a part. Everyone can be tolerant of one noisy party a year when a neighbor celebrates an important birthday, anniversary or reconnects with long lost friends. But those activities destroy the pleasant use and enjoyment of residential living if they occur with any frequency and intensity, and are NOT the reason that people buy homes in quiet residential neighborhoods. When people buy a home they usually have a choice about whether to live next to a family of eight with four teenagers, but if the zoning ordinance did not allow STRs when they bought in the zoning district (as most do not), they no longer have a choice about whether the current neighbor or a new owner purchases a home as a second home and begins to rent it out as a STR. While not every renter will increase the frequency or intensity of impacting activities, the fact that they do not own the property nor carry the weight of such ownership, “frees” them from traditional neighborly norms, and the renter is less likely to be respectful if he believes the activities he wants to engage in are acceptable, not realizing the continued impact week after week of such use which is more intense than that of full-time residents. Again, renters are often more likely to be respectful and less impactful if an outside rental agency or the STR owner monitor the renters because a local ordinance requires them to.

What is happening with STRs is not like transferring occupancy from a permanent resident who owns the property to a permanent resident that rents the property long-term. It is of course always possible to get a bad renter, but the impacts are often not the same as weekend after weekend with STRs in vacation areas. Short-term renters may not share the same values/norms of a neighborhood, or understanding of ordinance requirements as owners do.

The STR owner is commercializing the amenity value of the homes' characteristics such as its location on a body of water; or near a downtown, university stadium, hospital or cultural area; or its large number of bedrooms; or its views. Those amenities are already captured in the value of the property and paid for by the property owner AND all the other people who live nearby who chose to pay for those values for their own enjoyment. Nearby owners do not deserve to be negatively impacted by the actions of transients who do not care about their feelings or opinions and who are not paying those who are impacted for the transgressions and negative impacts they create. An economist might say the solution to the problem is simply to make the transients pay those impacted for the impacts they sustain, but that misses the point of why most single family homeowners live where they do. It is for the amenities, location and quiet use and enjoyment they desire and expect from a particular location. Those are long protected rights of single family ownership that zoning protects, and that nuisance law has extended protection to for centuries.

A STR is a different use than a traditional single family dwelling because of the typical increase in the frequency and intensity of activities that create negative impacts (like partying); just as a 20-table mom and pop sit-down restaurant is a different use than a 20-table drive through chain restaurant. They are both residences and restaurants respectively, but each is typically defined as a different use in the zoning ordinance and regulated differently because they have different operational characteristics (although on the surface they may look similar or even the same). While it is true that many (probably even most), Airbnb

and similar renters do not trash property or cause problems for neighbors because they would not be able to rent through Airbnb again, there are hundreds of online complaints and newspaper and other media complaints about the increased frequency and intensity of negatively impactful activities that take place in STRs. That is why it is such a controversial issue in some localities. It is probably most problematic in vacation settings, especially where water and boats are involved, but can be problematic anywhere. The local response needs to be nuanced based on the characteristics of the local landscape and zoning districts, the history of such rentals, and local attitudes about them. That requires a tailored, thoughtful response and not a one-size-fits-all response.

EVOLUTION OF SINGLE FAMILY ZONES

Let's examine a bit more the evolution of protections afforded by single family residential zoning districts and then look at myriad changing circumstances.

History

Before zoning there were only deed restrictions and nuisance laws to protect against negative impacts from abutting land owners. Nuisance law protects the right to the quiet use and enjoyment of your property by nuisance actions of others on nearby property. A problem with nuisance law was that it was too cumbersome to rely upon because one had to go to court to protect your common law right, and wealthier parties had an advantage over the poorer one (ability to hire an attorney or better legal counsel, ability to pay for experts and appeals, etc.). Deed restrictions could also be effective if clear and unambiguous, but again you had to go to court and wealthier parties had an advantage.

Municipalities created zoning as a way to plan for and regulate land uses in ways to first prevent, and where not possible, to mitigate predictable negative impacts of one land use on another. Zoning led to the actual separation of different land uses. It had the effect of shifting the burden off most landowners to defend themselves from nuisances by requiring adherence to minimum use standards on all users within a zone, and then separating incompatible land uses between zones. Essentially property owners gave up some privileges in how they could use their land in return for protections from the municipality they could not easily ensure themselves. Despite disgruntlement over specific zoning standards when applied to individual properties, there is and has been broad public support for local zoning, principally because it is perceived as protecting the value of individual properties. Zoning in Michigan will be 100 years old in 2021, just 2.5 years from now.

There are always conflicts when the financial interests of individual property owners intersect with broader community goals, especially as new opportunities to gain income without a lot of investment arise – such as with many STRs. As accommodation choices for travelers/visitors increase, especially if at lower prices, there is an incentive for more people to “cash in” by renting a room, or the whole dwelling during periods of high market demand; or regularly, if it is a second residence that is not often used. If the new temporary users had the same use characteristics as the average permanent resident, then there would not likely be much of an issue, but too often that is not the case. The transient occupant may wish to have a party, or share the dwelling with many other people, stay up much later, and make more noise, generate more waste and take up more parking spaces than a permanent resident. When that happens over and over, it is clear that the characteristics of the use are not the same, and when the owner is being paid to permit it as with an STR, the use changes from purely residential to a commercial operation, only instead of being in a motel, hotel, cabin or B & B, it is in a single family dwelling. The fiscal gain of the renting landowner may be at the value loss of abutting owners if the nuisance impacts are too great, or too frequent.

Zoning is all about protecting properties by protecting the character of zoning districts. The concern with STRs is that by concentrating them in a traditional SFR district the character of those districts changes, especially when they are vacation rentals that result in frequent party scenes.

Changing Circumstances

But all institutions must confront changing circumstances, and as Bob Dylan sings, “*the times, they are a-changin’*.” Zoning is no different. Consider for example:

- ***Changing composition of families.*** As reported in the June 2018 issue of *PZN*, according to the U.S. Census Bureau, “households have grown smaller over time, reflecting the decrease in family size and rise of living alone. The average number of people living in each household has declined from 3.7 people in 1940 to 2.5 today. In 2017, there were 35.3 million single-person households, composing 28% of all households. In 1960, single-person households represented only 13% of all households. Today only 9% of households have five or more people living in them, a decrease from 23% of households in 1960.” The traditional nuclear family of two parents and 2-3 children is no longer common, and families are smaller, and households are much smaller.
- ***Changing nature of travel.*** More people are able to travel further and more often than ever before. Many want cheaper accommodations, and/or more local experiences, that they believe are possible by living in dwellings of people who live in a particular area. Many people want to try out different experiences, like waterfront living with its water skiing, tubing, fishing, and campfires, and STRs often present an authentic opportunity more readily than even time shares in condos or apartments at marinas on a river, lake or ocean.
- ***Sharing economy.*** Private autos have been turned into taxis (Uber, and Lyft) and extra bedrooms or second homes/dwellings have been turned into rental accommodations (Airbnb, etc.) and it is very easy to do. Some people are willing to share rooms with an owner in a dwelling, while others will share a whole dwelling by renting it for a short period of time.
- ***Changing definition of family.*** Many communities no longer use the traditional definition of family that focuses on blood relationships, and the Michigan Supreme Court ruled in 1984 in *Dinolfo v Delta Township* (419 Mich 253), that communities had to provide for nontraditional family units that permanently lived together in committed relationships, for religious or other serious reasons. Many rural communities have no traditional single family residential zone and use RR (rural residential or resort residential) as a basic residential zone. The major difference is that the RR zone allows some commercial uses (like resorts), often by right, and other times by special land use permit.
- ***Adult foster care homes and day care facilities.*** The legislature changed the zoning enabling acts in the early 1980s to allow single family residences to be used for adult foster care homes for 6 or less persons, and for child day care facilities to be run out of single family homes. These are both commercial uses of residentially zoned property and most communities acted to allow these uses by special land use permit in single family districts and often by right in multi-family and commercial districts as a way to encourage them to locate there instead of in the single family zones. Some communities took action to prevent concentration of these uses in small areas of the community by means of spreading them out. Each use also has to meet stringent licensing requirements administered by the state which serves to limit some negative impacts from these uses.
- ***Changing work at home environment and role of the internet.*** The line between work and home continues to blur as more and more people work from home. Some are tied to phones, but most rely on the internet to connect with the business, office or customers. Many if not most communities allow this by right, and some by home occupation regulations. But what if

that work takes on a commercial dimension where the home worker exchanges products with customers for money? That is often not allowed.

- Home deliveries. Originally home deliveries were just milk, bread, and newspapers. Now whole grocery orders, fast food, and UPS product deliveries are common. These activities increase outsider travel through neighborhoods, but there are usually far fewer trips by dwelling occupants in neighborhoods than before because of smaller average household size.

So the SFR neighborhood is changing, and so is local zoning. But there remains an inherent contradiction when there is a commercial use in a residential zone, in a regulatory system designed to separate uses, principally because of the incompatible nature of the uses. While on the surface, STR and SFR appear the same as both are residential, but in reality, as noted earlier, the use characteristics are quite different. As a result, they are often treated as separate uses in zoning ordinances.

DEED, ZONING, AND GENERAL ORDINANCE DISTINCTIONS

For those unfamiliar with the terms “*deed restrictions*,” “*zoning*,” and “*general police power ordinances*,” they are names of different legal tools to restrict or regulate various land uses and related activities, including STRs. Each is briefly described below.

Deed restrictions are often called covenants that are included in property deeds, especially those that apply to subdivisions of land. They include restrictions on how land and buildings within the subdivision (or condominium development) may be used. Deed restrictions often prohibit ALL commercial use of dwellings/ lots in a subdivision or condominium development unless those lots are separately designated for commercial use. Deed restrictions apply in addition to zoning restrictions, and both must be conformed with by the landowner. A community cannot enforce deed restrictions unless it is an owner of property covered by the deed, and then it has no more rights than any other owner of property covered by the deed. Deed restrictions are enforced through homeowners, or condominium associations, and in the event of nonconformance, by resort to the state court system. There has been a lot of litigation on deed restrictions in Michigan, and generally it seems, where the deed restrictions are clear and unambiguous, Michigan appellate courts have generally upheld them. Three recent deed restriction cases involving STRs are summarized on pages 3 and 4, and about a dozen are summarized in Table 3 next month. Most older subdivision regulations are not current (have not been maintained by the owners), and thus do not apply, so leaving the matter up to private parties to litigate based on old deed restrictions is not an effective solution for most persons aggrieved from commercial operations of STRs. That means the issue falls back on the shoulders of local zoning.

Zoning has been legally authorized for use in Michigan cities and villages since 1921. The present enabling act allows zoning in cities, villages, townships and counties and is called the Michigan Zoning Enabling Act (MZEA), PA 110 of 2006, as amended, MCL 125.3101 et seq. It authorizes the adoption of a zoning ordinance, based on a plan, to guide land development into various zones, or districts, that allow certain uses, but not all uses in all zones. Land uses not specifically listed are usually prohibited. That is the first regulation that prevents most STRs. However, communities have an obligation to provide for all lawful uses somewhere in the community. If a lawful use is proposed, a community should go through a process to plan for that use, develop appropriate regulations consistent with that plan, and then zone land accordingly. That may involve changing not only the text of the zoning ordinance, but also the zoning map (which is an integral part of the zoning ordinance).

Zoning is adopted by the governing body of a local government and enforced by a zoning administrator or other local official designated in the zoning ordinance. There are fees for permits

and fines for violations. Involuntary compliance usually results in a lawsuit in circuit court. Decisions can be appealed to first the Michigan Court of Appeals, then the Michigan Supreme Court, and on federal constitutional issues to the U.S. Supreme Court. The MZEA provides broad authority to zone and providing that regulations meet reasonableness tests as adopted and as applied, are often sustained when challenged.

General police power ordinances are also often used to regulate STRs and many other land or building activities. They are enacted under the general authority of a city, village or township to protect or advance the public health, safety or general welfare. They usually involve defining permitted activities and operational standards, and require registration and payment of a fee to handle administration. Often a license is issued for business uses, but many police power ordinances are in place to restrict specific nuisances like loud noise at night, or outside music concerts to ensure property security, parking, waste disposal and the like. Unlike zoning, general police power ordinances do not have to recognize or permit land uses that existed before a new zoning regulation (called nonconforming uses) went into effect, nor are they subject to referendum like zoning provisions are. They permit much more flexibility in regulating operational characteristics of a business or activity than zoning, and can be enforced through the state court system in a similar manner.

Often zoning and general police power ordinances are used together. For example, the zoning ordinance may specify the districts in which STRs are allowed, and whether they are allowed by right or through a special permit process, while the general police power ordinance deals with day-to-day operational aspects of the use. Some communities may have numerous separate ordinances that apply to STRs (and many other land uses and activities) including noise ordinances, property maintenance codes, outdoor gathering ordinances, housing rental codes, and the like.

Please consult an attorney for more detailed information on deed restrictions, zoning or general police power regulations.

RESIDENTIAL ZONING STRUCTURE

The basic description of zoning above, should help the reader distinguish between it and other forms of public and private regulation over land and buildings, but there is more to zoning that is relevant when considering its application to STRs. Following is a more detailed discussion of the structure of residential zoning as found in many zoning ordinances in Michigan. Note the large number of terms (in *italics*) that have special meaning in zoning ordinances.

Zoning regulates the use of land, not the type of ownership (fee simple, condominium, via partnership, etc.), nor whether the use is owner-occupied, or not (while other ordinances under different statutes do, like rental housing codes). But zoning is structured to address uses on land as permanent, unless separate provisions are made for temporary uses or for other temporary use of the property by a different class of users. Seasonal activities like holiday tree sales, or fireworks sales, or carnivals, are classic temporary uses subject to separate and special regulations in specific districts. Similarly, temporary uses like signs advertising the construction and financing of a new building, or allowing modular units on property for contractors to work out of while a building is being erected are typical temporary uses for which separate zoning permits are often issued. Short-term occupancy of single family dwelling units by people other than the owner or his/her family whether they meet the zoning definition of “*family*” or not, is a temporary use of the property and could be regulated under the temporary use provisions. STRs could also be regulated under zoning as a “*home occupation*,” depending on whether the use met the criteria for a home occupation under the ordinance. The key in the latter case is that the owner would have to be living on the property as well. Under both cases, separate ordinance provisions would apply. Most zoning ordinances define the char-

acteristics of STRs that are allowed, and the standards that must be met, and then allow them as either “by right,” “by right with conditions,” or “by special land use permit” under the ordinance; and then in many communities a separate licensing permit (under a separate police power ordinance) is required to address issues that extend beyond the zoning ordinance and help ensure public health, safety and general welfare considerations are all being met. If the ordinance is silent on STRs, then it usually means they are not an allowed use (as unlisted uses are typically not permitted; although it is unlawful in Michigan to exclude a lawful use in the face of demand for that use in the area—more on that below).

Another important distinction is that of “principal uses” versus “accessory uses.” A principal use is a primary permitted use of property. In an R-1 residential zone, that is a detached home for a single family. An example of an accessory use would be a detached garage or a permitted home occupation.

The terms “family,” “single family,” and “multi-family” are important as residential zones are separately established to support those uses only, or in some cases just primarily. They reside in “dwellings” that are either “detached” or “attached.” They are presumed to be occupied continuously, but is not illegal if a dwelling is not occupied for parts of the year (as when vacant and for sale, or when used seasonally). And, if a dwelling unit were occupied as a long-term rental, then it would have to meet the definition of family. But if it were occupied by multiple parties over time as a short-term rental, then it probably would not meet one or more of the definitions above, and hence would not be permitted, unless there were separate STR regulations allowing them, as has been the case for many years in communities that allowed specific structures to be built or converted for time-share dwellings (one type of present day STRs).

Perhaps the most important structural consideration is that the zoning structure in many ordinances is hierarchical and based on the structure in the zoning ordinance upheld in the landmark Euclid, Ohio case by the U.S. Supreme Court in 1926. That case upheld the constitutionality of zoning. The structure of the Euclid ordinance is called “pyramid zoning” with single family residences at the top in an exclusive use classification where other uses were not permitted. Under that were two-family, then multi-family, then office and commercial zoning classifications, and last was industrial. In each case all the uses allowed in the zone above, were also allowed in the zone below, so single family dwellings were allowed in all districts (and are often found in all districts). But by being at the top of the pyramid, that was exclusive to detached single family uses, and no multi-family or commercial uses were allowed. This is where the sanctity of the single family home came into play. As mentioned earlier, many rural zoning ordinances do not follow this scheme.

As you might imagine, the “Intent Sections” of each zone are important. This is the first section in each zoning district and spells out what the community is trying to achieve in that zone. Exclusive single family uses, and no commercial uses were common elements of those Intent Sections. This is another reason why STRs are often interpreted as not allowed in a zoning ordinance when they are not specifically mentioned. Most SFR districts also allowed by right, some public uses such as parks, playgrounds and schools, which is further support for the notion of the ordinance supporting traditional families. STRs may be contrary to that intent and usually are not a listed use. However, even in old ordinances, sometimes sub-districts appeared that mimicked the main R-1 district in all ways, except for some parcels that had a few different characteristics. An example might be an R-1S district that had the same use and lot characteristics as R-1, but which allowed by right, second homes on waterfront lots (normally only one dwelling is permitted on each SFR lot). These were initially seasonal cabins, or dwellings connected to or above the carriage house (or garage), and were permitted as accessory to the principal use. They were typically used to accommodate visiting family and friends in the summertime. These structures sometimes evolved into short-term rentals over subsequent decades.

R-2, R-3 and up residential uses often varied from R-1 only by

lot size and setback, until you got to two to four family dwellings, and then multi-family (MF) apartments. All other residential uses that were allowed by right were often in the MF zone or commercial zones. That would include boarding houses, fraternity and sorority houses, and a variety of short-term room rentals for travelers that did not have the means to stay in local motels or hotels (that were usually in commercial or highway service zones).

A little more on home occupations is appropriate. Communities often allow persons in residential districts to engage in a home occupation that meets narrowly defined characteristics, sometimes by right, but more often by right with conditions or by special land use permit. Once allowed, they are commercial uses in residential zones. There are a very wide range of home occupation provisions that range from not allowing them at all, to even allowing commercial activities and employees, but the former are largely in R-1 zones in cities and the latter are usually in rural agricultural and forestry districts on very large lots. There are often nuisance characteristics with home occupations that are addressed by specific ordinance standards. Originally home occupation provisions only addressed professionals like doctors, lawyers and tax accountants who usually worked out of a spare bedroom near an entrance to the house and who actually saw clients in their home. Most ordinances require the home occupation to not occupy more than a specified amount (say 25%) of one floor of the house, although some allow them in garages or elsewhere on the property. Some allow only a limited number of clients to visit the home (like a barber or hairdresser who may be allowed 2-3 chairs), while others permit no sales at all at the home. Parking and signage are usually strictly regulated. Home occupation provisions often stimulate as much public discord as STR and sign regulations and are often tough to get enacted and to enforce.

While not usually stated, residential zoning usually focuses on owner-occupied dwellings and related principal and accessory uses because of the long history of concentrations of rental properties seriously hurting neighborhoods when absentee owners fail to adequately take care of them. This usually starts during an economic downturn, and is a reason why rental housing ordinances that target absentee owners are often established. By requiring that rental housing be maintained to community standards, the rental housing does not bring down the value of owner occupied housing in the neighborhood.

A few other important structural elements of zoning remain. Among its purposes, zoning is designed to prevent negative impacts from incompatible land uses, by not allowing them in the first place, or by imposing requirements that minimize nuisance impacts from the use once it is in operation. A lot of nuisance impacts are often covered in other regulations like noise, or sign, or waste disposal ordinances, but practically, small cities and villages and rural townships may not have the enforcement personnel or the political will to properly enforce such ordinances, so such standards are at least minimally included in the zoning ordinance.

Regulations have to be uniform within a district or sub-district, but can (and usually do) differ between districts. There does have to be a clear rationale for the difference and that is often addressed in the Intent Section. The degree of local regulation of any land use needs to fit the zone, the circumstances, and community tolerance level (that may be none in some places, and considerable in others). Generally regulations should not be more than minimally necessary to achieve community objectives, and not more than the community has the capacity (and political will) to enforce.

Nonconforming uses are also important to understand. Land uses that lawfully exist prior to the adoption of zoning or the amendment of zoning that makes them unlawful, are permitted to continue in the future to the same extent and in the same manner as they existed at the time they became nonconforming. However, if the nonconforming use was not lawful when it was established, then it has no continuation rights. This is the case with many STRs because most zoning ordinances that do not specifically allow them, are usually structured to prohibit unlisted land uses. If a nonconforming use is abandoned on a property, it cannot be

Table 2
Short Term Rental (STR) Regulatory Approaches

Name of Municipality	Definition	Registration	Zoning Districts	Local Contact Person	Maximum Occupancy	Parking Requirements	Noise Requirements	Code Inspection
Police Power Ordinance								
Three Oaks Village	Short-Term Rental: the rental of any dwelling unit for a term of less than one month.	Owner must register it with the Village within 10 days after the date of acquiring ownership of a previously registered short-term rental unit or, in the case of a new rental unit, before the unit is occupied.		There must be a designated local agent to oversee the rental unit in accordance with the ordinance who lives within 45 miles of the rental unit.	No more than 4 occupants per bedroom shall be included in the calculation of the maximum occupancy load.	Units must have a minimum of one off-street parking space for each occupants vehicle in addition to any other spaces required under applicable laws or rules.		Before issuing a permit the Village shall inspect the unit. Additionally between each rental to a different tenant the local rental agent shall inspect the premises
Zoning, by right								
City of Charlevoix	Short-Term Rental: Any dwelling or condominium or portion thereof, excepting boat docks, that is available for use for a fee or other compensation for a term of less than 30 consecutive days.	All dwelling units used for short-term rentals for a total of 2 or more weeks shall be registered with the City.	Any dwelling in any district.	Applicants need to establish a local agent for the dwelling unit.			Quiet hours shall be from 11:00 PM to 7:00 AM. The City of Charlevoix Noise Control Ordinance shall apply.	The dwelling unit must meet all applicable residential building, health department, nuisance, and safety codes. Upon written complaint the Zoning Administrator may make a periodic inspection.
Zoning, by right with conditions								
Traverse City	Tourist Home: a single-family building owned and occupied by a person renting out not more than three rooms for compensation to persons who do not stay for more than seven consecutive days.	No person can operate a tourist home without obtaining a license to do so. There is an annual license fee established by City Commission.	In R-9, R-15, and R-29 Multiple-Family Dwelling Districts a "tourist home" may be considered a home occupation subject to the condition that it maintains a tourist home license from the City.		No more than 3 occupants per room is allowed. The owner may rent out no more than 3 rooms.			There shall be an annual inspection by the City.
Zoning, special land use								
City of Grand Haven	Short Term Rental: a dwelling unit providing transient accommodations for periods of less than 1 month, more than 3 times per year.		Southside (only properties that front on Franklin between 5th and Harbor), Old Town (only on Key Street segments subject to special use approval), Central Business District, Dune Residential (subject to SUP approval), and Waterfront-2.		The maximum number of occupants permitted for sleeping purposes is listed on the Rental Certificate of Compliance.	The minimum number of parking spaces is 2.		
City of St. Joseph	Short-Term Rental: the rental of any rental unit for a term of less than one month.	Owner must get a permit with the City. The permit specifies if it is being used as a short-term rental.	Short-term rental establishments are allowed as a special use in the R-3 district and as a conditional use in the R-3 district and W-Water Recreation district.	If the owner does not qualify as the local agent, a local agent must be designated to act on behalf of the owner.	No more than 4 occupants per bedroom shall be include in the calculation of the maximum occupancy load.	Units must have a minimum of one off-street parking space for each occupants vehicle in addition to any spaces required under applicable laws.		Between each rental to a different tenant the local rental agent shall inspect the premises with a city-designed checklist.
Torch Lake Township	Short Term Rental: the renting of a premise to a 3rd party(-ies) for a period of less than 30 consecutive days, regardless of the term of renter occupancy during any 30 day period.		Short term rentals shall not be allowed in the R-1, R-2, or R-3 districts. Allowed as a special use in the VB (Village Business) zone.					

This Table was created by Jake Parcell, a city planner in East Lansing, and is a summary of a much longer and more detailed table he prepared that includes 30 jurisdictions. For a copy of that table, contact Jake at: jake.parcell2@gmail.com.

(continued on Backcover)

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MASTER CITIZEN PLANNER (MCP) WEBINAR SERIES. This webinar series is designed to offer participants the latest updates and information on current topics. Using [Zoom Webinar](#), webinars are the third Thursday of August, October and December from 6:30-7:30 p.m. Each session is available individually or participants can register for all at once. MCPs will earn one hour of continuing education per webinar. Cost per webinar: \$10 for MCPs; \$20 for Regular Registrants. Contact: Janean Danca, 269-657-8213, cplanner@msu.edu. Topics, dates and locations include:

- **Planning for Agricultural Lands in the New Economy - AUGUST 16** - Agriculture is a dynamic industry experiencing demands and opportunities that impact why and how local decision-makers should protect working lands. This webinar will explore the importance of agricultural land use policies in the mutually beneficial relationship between resilient rural areas and sustainable cities and towns.
- **Land Division Basics for Planning and Zoning Officials - OCTOBER 18** - David Rowley; Splitting or dividing land may be considered an important part of the growth and economic development of a local community. While land division is generally an assessing function, this webinar will provide an overview of the division process for other local officials. Topics will include a discussion of the various types of divisions and some suggestions for local planning or zoning officials to consider when they are reviewing a development project.
- **The Redevelopment Ready Communities Program - DECEMBER 20** - Harmony Gmazel, AICP; Administered by the MEDC, the Redevelopment Ready Communities® (RRC) program is available to communities across the state. It's a voluntary, no-cost certification program designed to promote effective redevelopment strategies through a set of best practices. The program measures and certifies communities that integrate transparency, predictability and efficiency into their daily development practices. The RRC certification is a formal recognition that your community has a vision for the future - and the fundamental practices in place to get there. This webinar will take you step by step through the process for getting Redevelopment Ready.

Also note that classroom based (six sessions) **Citizen Planner Training** is being offered in the following counties this fall: Ingham County (Sept. 20-Nov. 1); Isabella County (Sept. 27-Nov. 1); Benzie County (Sept. 19 – Nov. 7); and Cheboygan County (Oct. 1 – Nov. 12). Contact: Janean Danca, 269-657-8213, cplanner@msu.edu.

20-21

GIS TRAINING. RS & GIS at MSU are offering the day-long Introduction to ArcGIS Class and ArcGIS II – Beyond the Basics at the MSU Geography Building, 673 Auditorium Road, Room 219, East Lansing. Fees: \$700 and \$350, respectively. Contact RSGIS.Info@msu.edu or call 517-432-0446 for more information; or register at: http://www.rsgis.msu.edu/education/instructor_led_training.php.

SEPTEMBER

11-13

ECONOMIC DEVELOPMENT BASIC COURSE. Crowne Plaza Lansing West, 925 S. Croyts Rd. Sponsored by the Michigan Economic Developers Assn. and accredited by the International Economic Development Council (IEDC). MEDA members \$625 and non-members \$850. For more information visit www.medaweb.org or call 517-241-0011.

17-18

GIS/DRONE TRAINING. RS & GIS at MSU are offering the two-day Hands-On Drone-to-GIS Workflows training at Northwestern Michigan College, Parsons Stulen Building, 2731 Aero-Park Dr. Traverse City. Fees \$700. Contact RSGIS.Info@msu.edu or call 517-432-0446 for more information; or register at: http://www.rsgis.msu.edu/education/instructor_led_training.php.

20 – 22

MAP PLANNING MICHIGAN CONFERENCE Joint with MICHIGAN MUNICIPAL LEAGUE ANNUAL CONVENTION. Amway Grand Plaza Hotel and Devos Place, Grand Rapids. Full conference: \$390. <https://www.planningmi.org/planning-michigan-conference>.

(continued from page 15)

reestablished except in a manner that conforms with the ordinance, but the burden of proving abandonment falls upon the municipality.

Last, a few more words on exclusionary zoning is pertinent. MCL 125.3207 prohibits a zoning ordinance or a zoning decision from totally prohibiting the establishment of a particular land use in the community if there is a demonstrated need for that land use in the community or the surrounding area. While there are exceptions, they are not likely relevant with regard to STRs. The practical meaning of this clause is that it is not permissible for a municipality to exclude a lawful land use completely from the community in the face of demand for that land use. Since STRs are not specifically permitted in most zoning ordinances, there is an obligation for communities to provide for them somewhere as they are a lawful use of land. If the community does not provide for them, in the face of demand for them, it can be sued under this provision. That is one reason why *it is incumbent on communities to not ignore requests for authorization of STRs in some reasonable zone or geographic location, but that does not mean they have to be provided for everywhere*. That is why there are so many guidelines in this article on how to go about making the decision about where and under what standards to allow STRs. It is critical for a community to get the municipal attorney involved early on any discussions about exclusionary zoning and new regulations to prevent exclusion on this or any land use.

COMPARISON OF LOCAL STR ORDINANCES

Table 2 on page 15, presents examples from six communities that cut across most of these alternatives. Included is a police power ordinance approach, a by right zoning approach, a by right with conditions zoning approach, and three special land use approaches. A table containing a summary of nearly 30 different community approaches in much more detail, is available from the creator of this table, Jake Parcell at jake.parcell2@gmail.com.

Egan's article on pages 5 - 8 presents a long list of elements to consider in local STR ordinances. Only some of those elements are reflected on this table, many more of those elements are included on Jake's longer table. □