Vol. 36 No.10, August 2018

SHORT-TERM RENTALS: Part Two

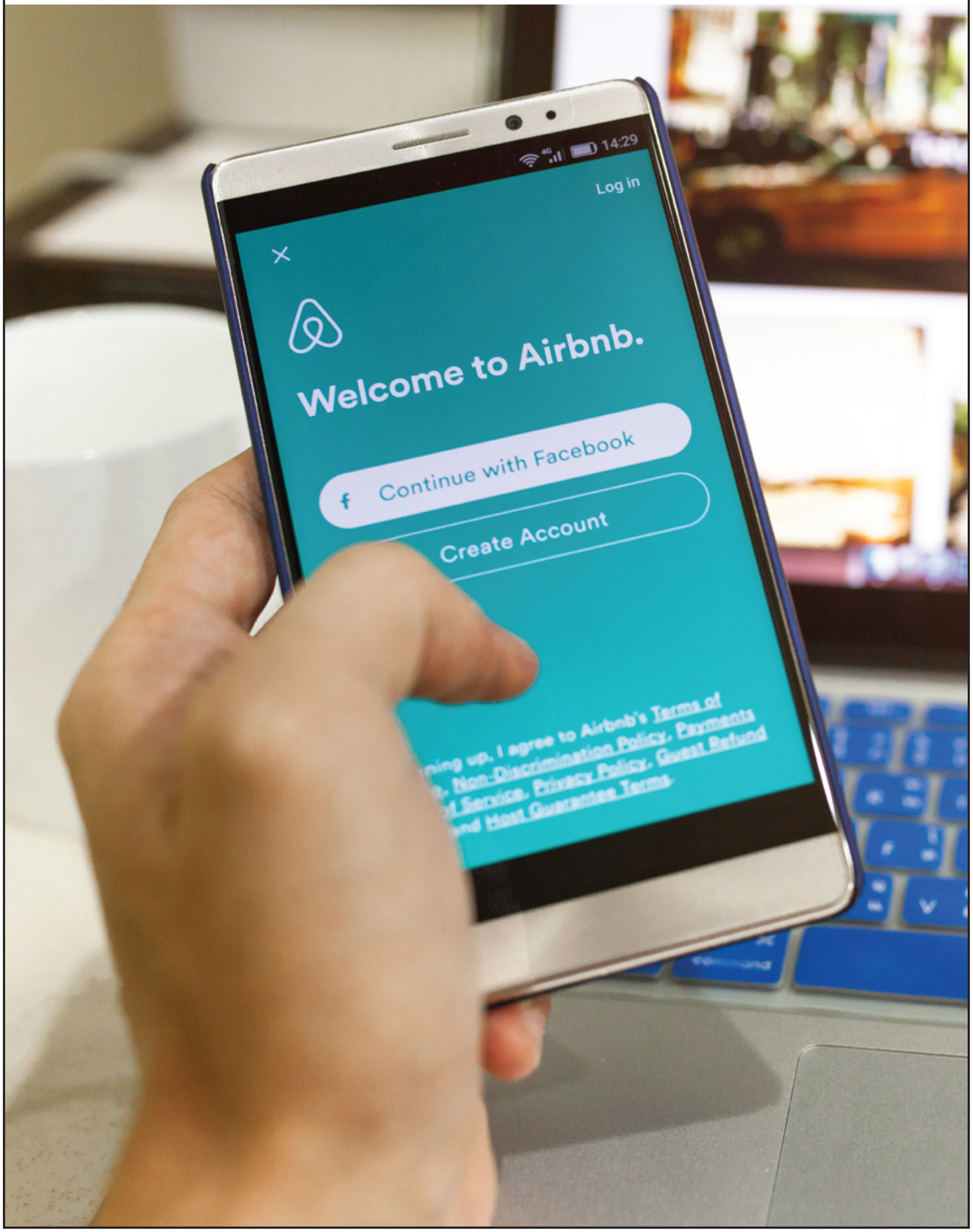

photo from Deposit Photos

INSIDE

Planning & Zoning News© (PZN) is published by the Planning & Zoning Center, Inc., 715 N. Cedar St., Suite 2, Lansing, MI 48906; ph. 517-886-0555.

PLANNING & ZONING NEWS
A Monthly Magazine
ISSN 0738-114X

Case Summaries

By **Marc Daneman,** *AT&T Mobility Corp, and* **Lisa A. Anderson,**
Johnson, Rosati, Schultz & Joppich, P.C., Farmington Hills

U.S. COURT OF APPEALS

Dog Ordinance/Constitutionality

Animal control ordinances cannot generally permit warrantless searches and seizures absent some established exception; and there is no procedural due process violation where animals become sick or die while in custody. **Hardrick, et. al. v City of Detroit et. al.** ____Fed 3rd ___ (6TH Cir 2017). No. 16-2704 / 17-2077. Decided November 22, 2017. Published.

Dog bite cases are never easy, so says the court (Justice Sutton). Plaintiffs challenge actions of the city to enforce its animal control ordinance. The city was seizing dogs that were unlicensed, running loose around the neighborhoods, were not properly vaccinated, or were injuring other people or animals. The ordinance which had been in place since 2004 authorized warrantless searches and seizures. It was never challenged until 2014 - 2015 when fourteen separate defendants challenged the ordinance and city actions which affected their 23 animals, in two different cases. They alleged that some were illegally seized, some of the animals died while in city custody, and others died shortly after being released due to unsanitary kennel conditions. The two cases were consolidated with plaintiffs claiming Fourth Amendment warrantless search and seizure violations and Fourteenth Amendment due process violations. The federal district court granted an injunction against the city because the ordinance allowed for warrantless searches and seizures; however, denied the procedural due process challenge. It awarded attorney fees under a federal **Civil Rights Section (§) 1983** to the plaintiffs for the injunction; but did not award specific damages to the plaintiffs under a § 1983 claim based on **Monell v. Dep't of Soc. Servs.**, 436 U.S. 658 (1978). Both parties appealed, although the city did not appeal the injunction.

Even though the lower court found that the ordinance was constitutionally deficient on its face, it held the dogs were properly seized because they were running loose, attacking others, or as a result of an eviction or other legitimate proceeding. All the dogs were held by the city, where several died while in custody or died shortly after being released, having been returned ill while being held by the city. For a § 1983 **Monell** claim, "*the plaintiffs must show (1) that they suffered a constitutional violation and (2) that a municipal policy or custom directly caused the violation*." Both standards must be met and here the Court found in all but two cases no constitutional violation since the dogs were seized properly. The Court analyzed each of the individual circumstances and found justification for the city's action or a lack of evidence to support a plaintiff's allegations. In some cases warrantless searches were valid or were part of another investigation. Some were justified under the exigencies of the circumstances. There were two plaintiffs whose situations did not justify the city's actions, and the Court reversed that part of the district court's judgement.

As to plaintiffs' due processes allegations, the Court rejected those too. The fact that an animal dies or becomes ill while in custody is not a constitutional due process violation; although, it may be a negligent action. "*Negligent conduct by a state official, even though causing injury, does not constitute a deprivation under the Due Process Clause*." **Daniels v. Williams**, 474 U.S. 327, 331 (1986). Plaintiffs did not allege a deliberate action to kill their animals. They could have brought a tort action for gross negligence; but did not. The plaintiffs also assert they had no way to appeal the seizures. This also was rejected. To appeal to the city, plaintiffs must to show a constitutional violation, which did not exist here (as to all but two plaintiffs).

The city appealed the award of attorney fees; however, the Court refused to alter the lower court's award. The lower court properly permanently enjoined the city's ordinance, which the city did not appeal. The Court also refused to adjust the award. In summary, the Court affirmed in large part; but reversed as to the two individuals whose dogs were improperly seized. [MD]

About the Authors

Marc Daneman is Manager of Lease Administration for the Michigan and Indiana Market of AT&T Mobility Corp. He is an attorney and has served public and private clients in zoning, land use and development, and wireless communications; as well as being a planning consultant and former municipal manager in the Grand Rapids area. He can be reached at md729r@att.com or at marcdaneman@cs.com. [MD]

Lisa A. Anderson is an attorney in the Farmington Hills office of Johnson, Rosati, Schultz & Joppich, P.C., where she serves as general counsel and specializes in trial court and appellate defense of municipalities on land use, zoning, and complex constitutional issues. Lisa may be contacted at landerson@jrsjlaw.com. [LA]

MICHIGAN COURT OF APPEALS

Open Meetings Act

A city did not violate the Open Meetings Act when a city council member had separate conversations with two members of city council outside of a public meeting, and separately polled the two council members how they would vote on a motion to terminate the city manager's employment. **Mullendore v City of Belding, et al.** No. 335510. Decided December 7, 2017. Unpublished.*

On November 4, 2014, the Belding City Council voted to extend City Manager Margaret Mullendore's contract for a one-year term to expire on April 8, 2016. That same day, the general election was held and defendant Cooper was elected to serve on the five-member city council. Shortly after the election, newly elected council member Cooper sent an email to council members Scheid and Jones expressing his desire to terminate Mullendore as city manager.

On January 20, 2015, council member Cooper met council member Jones at the Parts Plus store where Jones was employed, and discussed Cooper's intent to make a motion at the city council meeting to terminate Mullendore's employment. Council member Scheid was also employed at the Parts Plus store and was present in the building during Cooper's discussion with Jones but did not participate in the meeting. Scheid testified that he had previously spoken to Cooper about the motion on a prior date. Cooper moved to terminate Mullendore's employment during the January 20, 2015 city council meeting, though the motion was not on the agenda before council and Mullendore was not in attendance at the meeting. The motion passed with support from council members Cooper, Scheid, and Jones.

Mullendore filed a lawsuit against the city and the five city council members.

The lawsuit alleged that council members Cooper, Scheid, and Jones held a private meeting in a location not open to the public and failed to notice the meeting in violation of the Open Meetings Act. In response, defendants argued that Mullendore's allegations asserted nothing more than an informal poll by one council member to determine how other council members may vote on an issue, which was not a violation of law. The trial court dismissed the complaint on the ground that the claims were speculative. Mullendore appealed.

On appeal to the Michigan Court of Appeals, Mullendore argued that there was circumstantial evidence to show that council members Cooper, Scheid, and Jones either met together in a quorum or met in a sub-quorum to deliberate Mullendore's termination in violation of the Open Meetings Act. The Court of Appeals disagreed. The Court explained that the Open Meetings Act requires that all meetings of a public body at which a quorum is present to deliberate or decide a matter of public policy must be open to the public. In this case, three members of the five-member council were required to constitute a quorum. The Court concluded that because only two council members spoke to each other at any given time, the gatherings did not constitute a quorum and were not meetings subject to the Open Meetings Act.

The Court proceeded to explain that a sub-quorum meeting of a public body may violate the Open Meetings Act where the public body intentionally meets in groups smaller than a quorum outside of open meetings to deliberate and decide matters of public policy. The Court concluded that there was no evidence to suggest that Cooper and Jones or Cooper and Scheid intentionally met to deliberate or decide matters of public policy. There also was no proof of any intent to sway anyone's position or convince anyone to support the motion. The Court of Appeals found that Mullendore failed to establish a question of material fact that an Open Meetings Act violation had occurred and affirmed the trial court decision to dismiss Mullendore's claims. [LA]

Private Deed Restrictions/ Condominium Act

The trial court did not err in ruling that the restrictions imposed by a master deed are private deed restrictions that survive a tax foreclosure sale of condominium units. **Ferry Beaubien LLC v Centurion Place on Ferry Street Condominium Association.** No. 335571. Decided December 14, 2017. Unpublished.*

Centurion Place on Ferry Street, LLC ("Centurion") in Detroit, developed a condominium project under a master deed recorded July 26, 2006, with defendant Association administering the affairs of the condominium project. The condominium subdivision plan designated two units of the ten unit project as *"need not be built."* Under the terms of the master deed, the developer could withdraw land and contract the project to six units, provided that any undeveloped land not withdrawn from the condominium project within ten years of contraction would convert to general common elements and all rights to construct the units would cease.

On July 13, 2011, the master deed was amended to provide that the two *"need not be built"* units could be built, despite having not been built as of the date of the amendment. Sometime after the amendment, Centurion stopped paying property taxes and the two undeveloped units were auctioned as tax foreclosed property. Before the auction occurred, the Association recorded an affidavit with the Wayne County Register of Deeds, putting future purchasers on notice that the Association had taken the position that any purchaser of the units at auction would be required to complete construction of the two units before July 26, 2016, ten years after the recording of the master deed, or the units would cease to exist and become part of the project's general common elements.

The units were sold at public auction and were later conveyed to plaintiff Ferry Beaubien, LLC. In May 2016, a building permit was issued by the City of Detroit to allow plaintiff to build an urban garden on the undeveloped land. The Association objected and the building permit was withdrawn after the City of Detroit concluded that plaintiff did not have an ownership interest in the property.

Plaintiff filed a lawsuit against the Association and sought an emergency motion for declaratory judgment, claiming that it was the rightful owner of fee simple title to the property and seeking a declaration that any restrictions imposed by the master deed were extinguished in the tax foreclosure sale. In the alternative, plaintiff argued that it had amended the master deed as a successor developer and removed the property from the condominium project before it reverted to general common elements. The Association argued in response that the master deed restrictions were private deed restrictions that survived the tax sale under Section 78k(5)(e) of the General Property Tax Act, MCL 211.78k(5)(e). The trial court denied plaintiff's emergency motion for declaratory judgment and granted summary disposition in favor of the Association. Plaintiff appealed.

The issue before the Court of Appeals was whether the restrictions of the master deed were private deed restrictions that survived the tax sale pursuant to Section 78k(5)(e) of the General Property Tax Act, which states in pertinent part that the circuit court's judgment of foreclosure must specify that *"all existing recorded and unrecorded interests in [the] property are extinguished, except … private deed restrictions…."* On appeal, plaintiff relied on the definition of *"master deed"* contained in the Michigan Condominium Act, arguing that the statute does not define a master deed as a private deed restriction under the General Property Tax Act. The Court rejected plaintiff's claims and held that public policy favors restrictions and covenants on residential use to such a degree that the Legislature could not have intended to cancel those restrictions in a tax sale. The Court held that the master deed represented a restrictive covenant that constitutes a private deed restriction that survived the tax sale of the condominium units.

Next, plaintiff argued that it was a developer of the condominium project, and had timely amended the master deed to withdraw the property from the condominium within ten years of recording the master deed. The Court of Appeals disagreed and explained that the relevant date for withdrawing property from the condominium project was ten years after construction commenced as provided under the prior version of Section 167 of the Michigan Condominium Act, MCL 559.167. The Court recognized that Section 167 was amended to allow changes in a condominium project up to ten years after the master deed was recorded, but concluded that the amendment did not apply retroactively to the condominium project at issue.

The Court further concluded that the plaintiff was not identified as a developer under the master deed, and did not meet the definition of successor developer under the Michigan Condominium Act because plaintiff did not acquire title to 10 units or 75% of the units in the condominium project. The Court also found that plaintiff failed to provide evidence to show that it properly recorded an amendment to the master deed as required. The Court of Appeals declined to address defendant's claim for damages for vexatious proceedings, denied defendant's request for costs and attorney fees, and affirmed the trial court ruling. [LA]

Rental Housing

An ordinance regulating rental housing and prohibiting a person from accepting, retaining, or recovering rent without a current, valid rental permit did not create a private cause of action allowing a tenant to demand the return of rental payments made to a landlord. **McMillan v Douglas.** No. 335166. Decided December 14, 2017. Published.

Plaintiff Robert McMillan filed a lawsuit to recover more than $23,000.00 in rent paid to his landlord under his residential lease, claiming that a city ordinance prohibited the landlord from accepting, retaining, or recovering rent without a valid rental permit. Plaintiff paid his landlord $595 per month for 39 months to rent residential property in Battle Creek. During that time, the landlord did not have a valid rental permit for the property as required under Chapter 842 of the Battle Creek Code of Ordinances. On October 23, 2014, the City of Battle Creek issued an order to vacate the premises for failure to obtain a current, valid rental permit. Plaintiff vacated the premises and filed suit against the landlord, arguing that he was entitled to the return of more than $23,000 in rent paid over the course of the 39-month rental term because the landlord accepted and retained the rent in violation of Section 842.06(c) of the city's rental housing regulations. Section 842.06(c) provides that *"where there is no current, valid rental permit for a dwelling, no rent shall be accepted, retained or recoverable by the owner or lessor of the premises for the period."* Plaintiff argued that the ordinance created a private cause of action allowing him to recoup rental payments made to his landlord. The trial court disagreed and denied plaintiff's request to recover the rent. Plaintiff appealed.

On appeal, the Court of Appeals rejected plaintiff's claim that it should construe the ordinance as creating a private right of action in favor of a tenant. The Court observed that the ordinance imposed a public duty on landlords, not a private duty running from landlords to tenants. That public duty required landlords to obtain a rental permit to facilitate the inspection and policing of rental properties, not only for the welfare of the occupants, but also to confirm that rental properties are not a nuisance and do not present a hazard to the public. The Court concluded that the ordinance could not create a private right of action because it benefited the public as a whole.

The Court also observed that the city's rental permit regulations impose penalties against landlords and tenants alike for violations of the ordinance. The Court explained that just as a landlord was barred from receiving and retaining rents without a current, valid permit, so too was a tenant prohibited from renting unpermitted property. The Court concluded that it would be absurd to infer a private right of action in favor of a tenant that would allow a tenant to recoup rent paid during a time when the tenant lived on the property in violation of the City Code. The Court noted that the Battle Creek ordinance does not expressly provide a cause of action in favor of tenants or include any provision from which a private cause of action could be inferred. The Court of Appeals affirmed the trial court ruling denying plaintiff's claims. [LA]

Easements

A trial court did not err in ruling that an easement for ingress and egress to residential property could be used for reasonable business purposes. **Kovacs v Lesar, et al.** No. 334570. Decided December 19, 2017. Unpublished.*

Defendants Mark and Denise Lesar own a home and property in Albert Township which they access by way of a thirty-three-foot easement over plaintiff's property. A consent judgment between the parties established that the easement was for ingress, egress, and utilities. In July 2012, defendants opened a retail gun shop in their home and began making commercial use of the easement, serving no more than four or five customers per day.

In July 2015, Plaintiff filed a complaint for declaratory judgment, alleging that the easement was limited to residential purposes and was overburdened by the defendants' commercial use. Following a bench trial, the trial court concluded that the easement was for ingress, egress, and utilities, and was without any express limitation that the easement was limited to residential use or could only be used by defendants. The trial court ruled that the easement could be used for reasonable business purposes and found that use of the easement by defendants' customers did not impermissibly overburden the easement. In support of its decision, the court noted that the gun shop operated during reasonable business hours with no more than four or five cars passing over the easement each day. Plaintiff appealed.

The Michigan Court of Appeals rejected plaintiff's arguments that the easement was limited to residential purposes and was overburdened by the commercial use. The Court explained that the easement unambiguously allowed ingress and egress to the property without limitation. Absent express language limiting its use, the Court ruled that plaintiff's claims were best addressed in the context of determining whether the easement had become overburdened. The Court explained that a mere increase in the number of persons using an easement does not overburden an easement. However, use of an easement by heavy machinery may overburden the easement. The Court went on to note that the defendants' business operates during reasonable business hours and attracts less than four cars per day, with no evidence that the business attracts heavy trucks or machinery. The Court of Appeals affirmed the trial court ruling but did not preclude a future claim brought by plaintiff if the easement becomes impermissibly overburdened by defendants' use. [LA]

Nuisance Abatement/Exhaustion of Administrative Remedies

A circuit court erred when it ordered the demolition of a residential structure without making the necessary factual and legal findings that the structure created a nuisance. **City of Allen Park v Estate of Chester Gerisch, et al.** No. 334969. Decided December 19, 2017. Unpublished.*

The City of Allen Park brought a lawsuit to abate nuisance conditions in a residential building at 15073 Philomene, Allen Park in February 2016, and requested an order to show cause why the nuisance should not be abated. The property owner denied the allegations and argued that the city had bypassed the procedures established under its own ordinances and failed to exhaust its administrative remedies before filing suit.

The trial court held three show cause hearings on the nuisance abatement claim. During the first show cause hearing, the trial court viewed photographs of the property but returned the photographs to counsel without admitting them into evidence. During a second show cause hearing, the trial court instructed the property owner to make certain listed repairs within sixty days and obtain a certificate of occupancy or be ordered to demolish the structure. At the third show cause hearing, the trial court learned that the previously ordered repairs had not been made, and the court received testimony from the city's building official that the city had received phone calls about the property for four years. Based on this limited record, the trial court ordered the building demolished. The property owner filed a motion for reconsideration which was denied, and the property owner appealed.

On appeal, the property owner argued that the record contained insufficient evidence to support a finding that a nuisance condition existed that was subject to abatement by demolition. The Court of Appeals agreed and vacated the trial court order. The Court explained that circuit courts have broad equitable authority to abate nuisances under Michigan's general nuisance abatement statute found at MCL 600.2940, but before proceeding with abatement must first determine that a nuisance actually exists. The Court noted the limited evidentiary record made at the trial court level, observing that no motions for summary disposition had been filed, no evidentiary hearing had been held, and no trial had been conducted. In fact, the trial court made no factual or legal findings that could support its decision to order demolition of the structure and demonstrate that a nuisance condition existed. Without any legal or factual findings to establish the existence of a nuisance, the Court of Appeals was unable to determine the basis for the trial court's ruling and was left with no alternative but to conclude that the trial court erred by ordering the demolition of the structure.

The Court rejected the property owner's argument that the city was required to exhaust its administrative remedies under its own ordinances before filing nuisance abatement proceedings in circuit court. The Court stated that a claim that a party has failed to exhaust administrative remedies is a challenge to the circuit court's subject matter jurisdiction. The nuisance abatement statute at MCL 600.2940(1) provides that all claims to abate a nuisance may be brought in the circuit court, without regard to any local ordinance. The Court concluded that the clear legislative grant of jurisdiction under the statute vested the circuit court with subject matter jurisdiction over the nuisance abatement claim and defeated the property owner's allegation that the city was required to exhaust its administrative remedies under its ordinances before filing suit. The Court of Appeals vacated the order of demolition and remanded the case for further proceedings. [LA]

Homeowners Association Bylaws

A trial court did not err when it ruled that defendants violated their Homeowners Association Bylaws by painting the exterior of their home without the Association's pre-approval as required by the bylaws. **Hawthorne Ridge Homeowners Association v Wang, et al.** No. 336077. Decided December 26, 2017. Unpublished.*

In an unpublished opinion, the Michigan Court of Appeals upheld a trial court ruling that defendants Yan Weng and Hongyan Chen violated their Homeowners Association Bylaws when they painted the exterior of their home without getting prior written approval from the Association. The Association Bylaws permit only light earth-tones for exterior painting and require homeowners to obtain pre-approval from the Association before changing the exterior color of their home.

Defendants reviewed the Association Bylaws and after conducting internet research unilaterally determined that light blue qualified as a light earth tone and an acceptable exterior paint color under the bylaws. Without requesting prior approval from the Association, defendants began painting the exterior of their home. After the Association notified the defendants that the paint color was unacceptable, defendants applied for and were denied approval to use light blue as an exterior paint. Despite the denial, defendants completed painting their home and the Association filed suit.

The case proceeded to a bench trial. Defendants admitted at trial that they commenced painting their home before requesting or receiving approval from the Association. Defendants argued that pre-approval was unnecessary because light blue is a light earth tone acceptable under the bylaws and the Association was compelled to approve the color. Based on defendants' admission that they painted their home without the necessary pre-approval, the trial court asked the Association if it was moving for summary disposition. The Association answered in the affirmative and the trial court granted the motion. The court based its summary disposition ruling on the fact that the defendants did not get prior approval before changing the exterior color of their home and because the color they did select was not an earth tone. The court entered a stipulated order requiring the defendants to repaint their home a cream color. Defendants appealed.

On appeal, the Court of Appeals concluded that the trial court erred when it made a factual finding on a motion for summary disposition that the light blue color was not an earth tone. The Court agreed, however, that the defendants violated the Association Bylaws by painting the exterior of their home without first obtaining approval of the color from the Association. The Court ruled that the Association was entitled to have the color changed at the owner's expense and found that the trial court did not err by granting summary disposition in the Association's favor.

Defendants also argued that the Homeowners Association lacked legal authority to enforce its bylaws because the Association had failed to file annual reports under the Michigan Nonprofit Corporations Act, MCL 450.2925, and had been dissolved when the defendants repainted their home. The Court rejected the argument, finding that the Association was reinstated prior to the time the lawsuit was filed and had the same rights as if it had never been dissolved. Next, the Court dismissed defendants' argument that the Association's reinstatement was fraudulent because it was related to a different entity. Finally, the Court of Appeals concluded that it lacked jurisdiction to determine whether the trial court erred in awarding the Association attorney fees and costs because the issue had not been properly appealed. The trial court judgment was affirmed and the Association was authorized to tax costs as the prevailing party. [LA]

* **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. ❑

Photo by Deposit Photos

An idyllic vacation rental in a forest with no nearby neighbors does not have the nuisance impacts of the same weekly rental on a lake with wall-to-wall lake homes. Yet it is possible to accommodate both, as well as short-term rentals in apartments in a city as long as there is broad stakeholder input and careful public regulation. Starting on the next page is Part Two of a feature article on how communities can effectively regulate short-term rentals.

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

By **Mark A. Wyckoff,** *FAICP, Editor*

SUMMARY OF COURT CASES ON STRS

The principal Michigan appellate cases on STRs are listed in Table 3 (on next page) along with key relevant facts, and a summary of the holding. Thanks is extended to attorney/planner Catherine Kaufman [CK] for identifying and summarizing four of the cases below in a handout she prepared for an STR presentation at the Michigan Association of Planning in Oct. 2016. The other cases were added to Table 3 based on case summaries previously presented in ***PZN***. The three most recent cases are more thoroughly summarized by attorney/planner Marc Daneman [MD] on page 3-4 of the July 2018 issue. Daneman also prepared the original ***PZN*** summary on several of the other cases in Table 3.

Observations on Cases in Other States

While the cases on Table 3 show consistency to date by Michigan appellate courts in interpreting STRs as commercial uses in residential subdivisions and residential zones, in both deed restriction and zoning cases, that is not the way all courts in other states have ruled.

Commenting on the **Enchanted Forest Property Owners v. Schilling** case by the Michigan Court of Appeals in 2010 (see Table 3), Brian Lang of Warner Norcross + Judd made the following observations:

*"State courts in Maryland and Alabama have been the latest to rule that renting a residence as a vacation rental is not a commercial use of property. Those rulings are in stark contrast to a 2010 Michigan Court of Appeals ruling, which deemed vacation rentals a commercial use that could be banned via common deed restrictions. ****

The Alabama court focused its reasoning on the character of the use by the vacationers and found that the vacationers used the cabins in the same manner as other residents."

With regard to a decision by the Maryland Court of Appeals, Lang quoted the Court saying:

"The owner's receipt of rental income in no way detracts from the use of the properties as residences by the tenants. There are many residential uses of property which also provide a commercial benefit to certain persons. Both in Maryland and in a great majority of states, over 30 percent of homes are rented rather than owned by families residing therein, thus providing much rental income to landlords. In addition to conventional rentals, a commercial benefit may be realized from residential property by persons or entities holding ground rents, mortgages, or deeds of trust. When property is used for a residence, there is simply no tension between such use and a commercial benefit accruing to someone else." "Legal Cloud Looms Over Michigan's Vacation Rental Industry," on April 9, 2015, found online at: https://www.wnj.com/Publications/Legal-Cloud-Looms-Over-Michigans-Vacation-Rental-I.

Out of Court Settlement

While circuit court cases are non-precedential and there is no central repository for those decisions, occasionally they are noteworthy. According to an article in the Oct. 18, 2017 ***Herald-Palladium***, in December 2016, South Haven settled a lawsuit with a homeowner who was building a 7-bedroom home intended to be used as a STR and was hit by new STR regulations after the house was under construction. In the settlement, the city agreed to pay $75,000 and its insurance carrier $500,000 to the homeowner. For her part of the settlement, the homeowner agreed to conform with the STR ordinance requirements. More background on this case follows:

- The home began construction in summer 2015. When neighbors learned of its size, they appealed to the city to stop its construction claiming it was not in character with the neighborhood, and would lead to noise and traffic congestion because it was to be used only as a STR and not for full-time single owner occupancy.
- The city responded with an STR ordinance in May 2016, that among other things, restricted the number of people that could occupy rentals, how long homes could be rented to one party, and how many onsite parking spaces were required. The homeowner sued, claiming she started her house before the new regulations and should be exempt from them.
- South Haven has two neighborhoods with 22-30% of dwelling units used as STRs.

Note that in May 2018, a moratorium on new STRs in South Haven was adopted to give the city some time to refine its STR ordinance. Increased inspections, enforcement and higher fees are likely, according to the city manager in various online articles.

REGULATORY OPPORTUNITIES & WEAKNESSES

Based on material in the last few sections, this section focuses on strategic opportunities and weaknesses associated with typical STR regulatory approaches. These are important because of the risks they reduce (opportunities) or create (weaknesses) for potential legal challenges to local STR regulations.

Regulatory Opportunities

The key regulatory opportunities revolve around: the types of STRs; where to allow them; and the period of time they may be rented.

Types of STRs

In many communities the biggest concern with STRs are negative impacts on nearby residential dwellings. Since not all STRs are alike, there is an opportunity to separate regulations based on the type of the STR. The principal differentiation is rental of one or more rooms/beds in an existing single family detached home or apartment, and rental of the whole unit. This presents a strategic regulatory opportunity. Since sharing a part of an existing dwelling dramatically reduces potential negative impacts outside the unit, because the owner is present, the door is open to only allowing STRs in some zones where the owner is present. While slightly different, the benefits are likely also present where the STR is an accessory dwelling unit (like an apartment over the garage or a tiny house in the backyard, or a cottage behind the main house on a waterfront lot), or even just renting a parking space for an RV where the host provides a cemented pad, electricity, water, and refuse disposal. The community probably already has some experience with this type of option through bed and breakfasts (B&Bs) and that experience could help inform the local regulatory approach and considerations to use with STRs. In contrast, where the whole dwelling is rented and the owner is not present, the community could consider allowing STRs only when managed by a property management firm that is available 24/7.

Table 3
Michigan Appellate Court Decisions on Short-Term Rentals

Case Name & Citation	Relevant Facts	Holding
O'Connor v. Resort Custom Builders, Inc., MI Supreme Court, 459 Mich 335 (1999), published [CK]	Deed restriction case: Concerned interpretation of *interval ownership* (time-sharing), *short-term rentals* and *residential use* in covenant restricting use of property to *single family use.*	Interval ownership of a single family dwelling is not a residential purpose within meaning of the covenant; short-term rentals were not a waiver of enforcement against interval ownership.
Torch Lake Protection Alliance v. Ackerman, MI Court of Appeals No. 246879, 11/30/04, unpublished [CK]	Deed restrictions & zoning: Interpretation of *short-term rentals*, *private residence purposes*, and *commercial use.*	Short-term rentals violated deed restrictions that only allowed private residence purposes; and rose to the level of a commercial use in violation of the zoning ordinance.
Laketon Twp. v. Advanse, Inc., MI Court of Appeals, No. 276986, 3/24/09, unpublished [MD]	Zoning case: 4 cottages, a guest house and main residence were purchased that were originally zoned commercial, then rezoned residential, and then short-term rentals were prohibited in the residential zone. The units were rented as STRs after they were zoned residential, but before STRs were prohibited.	Continued short-term rental of a nonconforming residence is permitted even though there is a revision of the zoning ordinance that prohibited the use.
Laketon Twp. v. Advanse, Inc., MI Supreme Court, 773 NW 2d 903, 2009, published court order *reversing* the MI Court of Appeals decision above [MD]	Zoning case: The 2004 amendment clarified that STRs was not considered a residential use under the definition of *dwelling or residence.* While the renting by the plaintiff occurred before the clarifying 2004 amendment, it was long after the 1979 rezoning from commercial to residential.	The short-term rental of a residence is not a valid nonconforming use when the zoning district is restricted to only *single family dwelling.* By renting the main residence short-term, it was an expansion of a nonconforming use that was not allowed under the zoning ordinance.
Enchanted Forest Property Owners Assn. v. Schilling, MI Court of Appeals, No. 287614, 3/11/10, unpublished [ME]	Deed restrictions: Defendants property was rented about 31 days each in 2005-7 and between January and March of 2008. The property owners association filed suit saying the "Supplementary Declaration of Building and Use Restrictions" (a part of the deed restrictions) included a provision that said *"No part of said premises shall be used for commercial or manufacturing purposes."*	The Court of Appeals said the trial court did not err when it ruled that the occasional rental of defendant's residence violated the subdivisions deed restrictions and bylaws which prohibited commercial use of a residence. *"There is no dispute that defendants contracted with an agency to advertise their property as a vacation rental and did, in fact, rent the property for a fee. Although the financial documentation submitted by defendants' shows that defendants did not make a profit when renting their property, this is not dispositive of whether the commercial purpose prohibition was violated. Defendants clearly indicated that they rented out the property to transient guests. Use of the property to provide temporary housing to transient guests is a commercial purpose, as that term is commonly understood."*
Saugatuck v. John Breen, et al, MI Court of Appeals, No. 297530, 4/28/11, unpublished [CK]	Zoning case: Defendants rented out part of their home for vacation rentals (the upstairs) while the property owner(s) lived in the other part of the home (downstairs). This was alleged to be a violation of the zoning ordinance which only allowed one *family* to occupy the home at a time.	Property owner's short-term rental of single family zoned home to more than one family, violated the city's zoning ordinance.
Soechtig v. Greenbush Twp. ZBA, MI Court of Appeals, No. 301757, 6/12/12, unpublished [SJ & DK]	Zoning case: Plaintiff's family alleged it had rented out a cottage every summer since 1957. In 1984 the property was rezoned to R-1 which prohibited weekly rentals. The Twp. requested rental receipts for every year prior to 1984 and each consecutive year through 2009. While the plaintiff could supply some evidence, it could not for every year and appealed to the ZBA. The ZBA held the plaintiff did not prove continuous rental use every year since 1984 and denied the request for a variance. The trial court affirmed.	The Court of Appeals ruled that the ZBA and the trial court misapplied the law. The Court explained that a prior nonconforming use is a vested right in the use of particular property that does not conform to zoning restrictions, but is protected and allowed to continue because it lawfully existed (or vested) before the zoning regulation's effective date. The issue isn't what happened after 1984, it is what happened before 1984. The Court went on to indicate that abandonment of a nonconforming use must involve something more than a mere nonuse – there must also be an intention to abandon the right to the nonconforming use, such as some act or omission that clearly manifests the owner's voluntary decision to abandon. Importantly, the Court found that the burden of proving abandonment falls on the local government, which it failed to show, so the Court of Appeals reversed the trial court decision.
Mirabella v. Twp. of Au-Train, et al, MI Court of Appeals, No. 320191, 6/9/15, unpublished [CK]	Zoning case: Property owners sued the Twp. concerning ordinance amendments to allow STRs in residential zoning districts in resort areas by SLU permit, claiming they had a vested right in the old ordinance which did not allow STRs	Following previous litigation where a circuit court held STRs were illegal nonconforming uses, the Twp. prepared a new master plan, and regulatory structure to allow STRs by SLU in resort areas. The Court of Appeals held that property owners had no vested right in the prior zoning classification and the Twp. had the right to change zoning.
Christians v. Twp. of Clark, MI Court of Appeals No. 327519, 10/20/16, unpublished [CK]	Zoning case: Property zoned single family residential was periodically used for STRs for over a decade. The Twp. issued a violation because STRs were only allowed in a resort that required a SLU permit. Landowners appealed to ZBA that ruled that SLU only applied to an existing resort that wanted to expand and the property was not a resort. Trial court upheld ZBA.	The Court of Appeals examined the definition of *dwelling unit* and *permanent dwelling* and found the main house on plaintiffs' property was a dwelling unit, but that the uninsulated cabin was an *accessory building* subordinate to the principal use of the parcel. The Court upheld ZBA decision indicating there was an appropriate distinction between a single family property owner allowing a guest to stay in the cabin (no rental) versus rental of one or both of plaintiffs buildings to unassociated renters (which was a commercial/resort use).

Table 3 continued

Case Name & Citation	Relevant Facts	Holding
Bauckham et al v. Petter et al, MI Court of Appeals, No. 332643, 9/19/17, unpublished [MD]	Deed restrictions & zoning: Defendants were advertising and renting out their vacation homes as STRs. The subdivision deed restrictions prohibited commercial use. 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 also a commercial use in violation of the zoning ordinance.	The Court of Appeals ruled with regards to the deed restrictions, when they are clearly stated, as here, where all commercial use was prohibited, "*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-making 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.
Rentschler v. Twp. of Melrose, MI Court of Appeals, _____ Mich App ____, No. 336333, 11/28/17, published [MD]	Tax exception: Petitioner claimed a principal residential exception (PRE) on their property, which was denied by Melrose Twp. and the Michigan Tax Tribunal. The Twp. held that the property was not petitioners' personal residence (who lived in Ohio), was rented for part of the year, and that the owner's employment was out of state. The Tribunal denied the PRE based on Petitioner's renting his home for more than 14 days during the year.	The Court of Appeals analyzed the Tax Tribunal's arguments and held that they misapplied the law by relying on internal guidelines that were written for different purposes. The Court concluded a principal residential exception (PRE) to property is not lost if the residence is rented for more than 14 days a year and that the IRS rulings regarding property rentals for 15 days or more were not relevant to Michigan tax law.
Eager et al v. Peasley et al, MI Court of Appeals, ____ Mich App ____, No. 336460, 11/30/17, published [MD]	Deed restrictions: Plaintiffs sought to enforce their deed restrictions which allowed *private occupancy only* of *private dwellings* and no *commercial use* in their subdivision. The defendants were owners in the subdivision and had been renting their homes through a vacation rental service for several years during most of the summer months. The trial court found the restrictive covenants ambiguous and denied the plaintiffs request for an injunction.	A majority of the Court of Appeals reversed, deciding a *"private dwelling house means a building designed as a single dwelling to be used by one family."* The Court said that those who rent for a short-term do not have the same interests as those who reside in the residences permanently. Thus, short-term rentals can be prohibited where restrictive covenants bar commercial use and allow only private occupancy residences. The dissenting opinion would have ruled otherwise indicating that a dwelling's use, whether by owners or renters was for a residential purpose, and there was nothing in the restrictions that required only owner occupancy.

*There have also been a number of circuit court opinions ruling that weekly rentals are not allowed under the single family zoning provisions in Torch Lake Twp. (***Torch Lake Twp. v Browne***, Antrim County Circuit Court, Case No. 93-5936, 1993), and in Benzie County (***Pethke v Ruark***, Benzie County Circuit Court, Case No. 98-5187-CZ, 1999). These and other circuit court opinions were not appealed and thus are not summarized above.*

Where to Allow STRs

Most of the controversy is over locating STRs in R-1 or other single family zones. However, most communities have a large number of residences in commercial zones, and in transition zones like office or commercial/residential zones. This presents a strategic opportunity to try STRs in those zones and measure the impacts without committing to allowing them in most, if not all of the residential districts. This approach also reduces the potential number of nonconforming uses if the community decides to cut back on where they are allowed after the experiment. It is also an opportunity for the community to test out its administrative preparedness for STRs. If the results show that the impacts are not as severe as the opponents claim, and the community has the resources to properly run a regulatory program, then it could move to expanding allowance of STRs. For example, Traverse City and Torch Lake Township allow STRs in at least some commercial zones.

The simple solution of allowing STRs in R-1 and related districts may undermine the integrity of that zone, since STRs are so clearly a commercial use. It may also be that a different simple solution is to create a new sub-district of one or more residential districts that allows STRs by right with conditions and then rezone an area that already has vacation rentals to that new sub-district.

Time STRs are Allowed

The third strategic opportunity is to focus on the length of time to allow STRs. Some communities regulate the length only if over a certain number of days and less than another (like over 3 and less than 30) and/or cap the total number of days that a dwelling may be used as an STR each year (such as 30 or 60). These periods could vary for STRs that were allowed with the owner present, and those where the owner was not present. Another part of the Traverse City approach is to allow STRs in individual rooms in registered homes, but no more than 3 rooms nor for longer than seven-nights, and never the entire premises or longer stays. TC also allows accessory dwelling units like a garage, basement or attic units to be rented, but only for longer stays, like 3-months.

Regulatory Weaknesses: What to Avoid

While the industry prefers a single standard that applies to all residences in all districts, that may not be workable in many communities for a lot of different reasons. At the same time though, communities need to be careful with their distinctions so as to not make legal defenses or administration unnecessarily difficult. Some of the most important weaknesses to avoid include: failing to clearly lay out the intent and objectives of the STR regulations;

failing to adequately define what an STR is for regulatory purposes; ignoring inconsistencies in the ordinance that undermine the objectives of the regulatory approach; and ensuring that other related definitions in the ordinance do not need tweaking.

Unclear Intent and Objectives of STR Regulations

In the first regulatory section addressing STRs it is important to clearly describe the intent of the STR regulations and the objectives to be achieved. The intent should speak to the biggest STR issues as defined by the community. For example: protecting single family homeowners from negative impacts associated with transient short-term renters, while providing a limited number of homeowners with opportunities to share unused rooms in exchange for rent during major festivals in the city; or providing waterfront land owners the option to rent their primary or accessory dwellings as part of a broad mix of tourist opportunities in the community. Specific objectives should also be listed. Egan's article provides a sample list of common public health and safety objectives. By listing these clearly and simply up front, any court that is asked to review the regulations does not have to speculate as to the reasons for the ordinance. Of course it is important for local municipal counsel to be satisfied as to the legal validity of any public purposes stated in intent sections, and for the rest of the regulations themselves to reflect and support the language in the intent section.

Defining STRs

Many ordinances do not define STRs or just use a very simple definition related to rental of a dwelling for not more than 30 days at a time. Simplicity and clarity are good, but an STR definition should reflect what that use is in the community. If the community only embraces very short rental periods in single family homes where the STR owner is present and not more than a certain period each year, then the definition should reflect such parameters. Of course later amendments may allow more expansive use of STRs; in which case the definition should be updated. Try to avoid putting actual regulations in the definition, as that may create more nonconforming uses over time. Again, be sure to involve the municipal attorney in the drafting of the STR regulations.

Preventing Inconsistencies

Try to prevent inconsistencies between existing ordinance provisions and new ones for STRs. Common problems include:

- The Intent Section of the existing residential district(s) may say no commercial uses are allowed and fail to note that existing temporary use provisions, home occupation provisions and/or some special land uses may already allow limited commercial uses in residential zones. Try to eliminate these inconsistencies by amendments wherever possible at the same time as adopting new STR regulations.
- If a regulatory scheme will result in creating a large number of legal nonconforming uses, it is important to reexamine the scheme to see if many of those nonconforming uses can be made conforming by changing the proposed regulations. If the scheme cannot be changed because those new nonconforming uses are the problem the community is trying to correct, then make it easy to identify nonconformities and their characteristics so as to ensure slow and careful elimination of them over time.
- Communities without traditional R-1 and similar zones, that use RR (rural residential or resort residential) or WFR (waterfront residential) types of classifications and who want to restrict STRs may find it hard to do so given the range of commercial uses already allowed in those residential districts. They would probably have to first amend the master plan and then create some new residential zoning districts for residential units that STRs were not allowed in. Those districts should not have many nonconforming uses, or the intent of the new districts would not be credible.

Photo by Deposit Photos

Checking/Tweaking Related Definitions

Addition of STR regulations should trigger a careful review of many zoning definitions including: detached dwelling, attached dwelling, family, single family, multi-family, commercial, principal use, accessory use, home occupation, nonconforming use and perhaps others. Be sure that all terms used in the STR regulations are not in conflict with these defined (and other related defined) terms. Conflicts should be resolved by tweaking the STR regulations, or those already in the zoning ordinance (but be extraordinarily careful to not create unintended consequences if that approach is followed).

Unresolved Legal Issues

Proponents of STRs argue that they are residential uses of property indistinguishable from any residential use. Opponents have successfully argued in Michigan courts that as far as deed restrictions and local zoning ordinances, STRs are commercial uses of land (see summary of 12 cases in Table 3). However, the issue is far from final as SB 329 and HB 4503 propose to have the Legislature declare that STRs are residential uses (not commercial uses of property). Opponents say this flies in the face of legal precedent and common sense. Consider the following.

Proponents of the legislation say that anyone can rent their home now for a long-term and that there is right to do so, and that right is no different from repeated short-term rents. But there are important differences in the characteristics of the use and its impacts, and these differences provide a reasonable basis for local regulation.

For example, renting a detached SFR home that is on the *"for sale"* market, or off the market during down economic times, does not make the rental activity a commercial activity or convert the home from an owner-occupied home to a permanently rental home, it is just a temporary state until a sale can be consummated and a permanent owner or occupant can be found again. A need to rent may also be driven by the death of a partner or spouse and the need to make house payments so one or two roommates may be taken on until a thoughtful decision on the property can be made. These situations are usually allowed by local zoning as long as key definitions are not violated (like that of *"family"*). This is because the use is not considered changed as there is no commercial activity. Income is being received in order to meet expenses, not to generate a continuing new revenue stream as is the case with a commercial use of land. By analogy, consider the difference between tax classes. The residential class applies to dwellings that are owner occupied, but in addition to applying to retail and hotel businesses, the commercial class applies to multi-family dwellings because they provide an income stream to their owner. Another example, a standard business sign is not in a separate tax class, it is an accessory to the principal use in the tax class of that use; in contrast, billboards are taxed as commercial property because they provide an income stream to their owners.

A STR is not a typical SFR use of a dwelling, as defined and regulated by local zoning; it is very different because of the transience of the occupants. As discussed earlier, different issues are apparent, including: security concerns over many transients in the area; a renter's (as opposed to owner's) concern about the house, property and neighborhood; various public health and safety issues concerning the house and property (like deck supports, fire access and egress, and septic system adequacy from increased use); competition with established lodging establishments; additional taxes and fees that apply; different insurance that applies; different income taxes that apply, etc. And what if the STR occupant sublets further?

So in the context of local zoning and STRs, the residential use becomes commercial at the point in time a short-term rental of the dwelling starts to deliver an income stream to the owner on a regular (although it could still be intermittent or seasonal) basis; whether the owner remains an occupant or not. This analysis of commercial use is more nuanced than previous Michigan appellate court decisions to date (see for example **Bauckham, et al v. Petter** (2017), summarized on Table 3).

Long-term rentals, especially by absentee landlords, have long created problems for neighbors, neighborhoods and communities. This is why they have been the target of local regulation for decades in an effort to keep housing conditions up (and safe for the occupants), while preventing a downward spiral in the whole neighborhood. But longtime renters can and often do become a part of the framework of the neighborhood, because they are long-term. This does not, and cannot be the case with short-term renters whose transiency prevents that.

Thus, there are substantial reasons for communities to regulate both short- and long-term rentals, but different approaches and tools are used because the characteristics of the use and its impacts are different. STRs are the "new" use and the focus of current efforts to prevent, and where necessary mitigate, negative impacts in neighborhoods.

HOW TO INCREASE REGULATORY SUCCESS

Principal Regulatory Alternatives

So the necessary background information is behind us and it is time to more systematically examine the principal regulatory alternatives from a zoning perspective. That begins by first acknowledging that in the most general context, a STR is a lawful use of land that should be provided for in the community. But like all lawful land uses, it need not be permitted everywhere, nor subject to the same regulations everywhere. Regulation takes all existing STRs out of the *"black market"* so to speak (since in ordinances that do not address them, they are not permitted uses) and makes them subject to local regulation, and once in conformance, lawful land uses in that ordinance.

Second, by following the steps Kathy Egan previously outlined in the July issue, you already know where STRs are in your community and public opinion about them, you can now offer alternative approaches for allowing them. Table 4 on pages 11-12, presents the pros and cons of primary alternatives. Note in each alternative the specific zones, and specific conditions, or standards would have to be specified for a particular community, many of the items in Kathy Egan's list will be of particular value when you get to that point. Typically either one alternative would be selected, or a combination that applied in different zones based on what the community was trying to accomplish. Please note that *doing nothing is probably not a viable alternative* because most zoning ordinances are structured to not allow STRs as described earlier, and the community probably does not want to face an exclusionary zoning lawsuit.

Putting it All Together

It appears from widespread news articles that a lot of communities feel pressured to *"get it all right"* the first time, and then some have to revisit the STR policy and make major revisions to the regulatory scheme a year or two later – with more conflict and animosity in the meantime. If the community does not coalesce around a single regulatory scheme right away, but there is enough support to try something, then consider a <u>phased series of steps</u> to an acceptable set of STR regulations. The steps should include a transparent process with progress evaluation, and sincere opportunities for public review and comment at least annually. One example of a three phase process in a single community over three years is described below. Many other, or different regulatory elements could be involved (see Kathy Egan's article), and all the time frames could be different. This example is intended to illustrate how a community could move from limited STRs in private dwellings in a few nonresidential zones with the owners present a few times a year, to a more expansive scheme – if that is what the community was comfortable with and wanted to achieve. There are plenty of opportunities for adjustment or ending the experiment with STRs if the community wanted to, with few residual costs (like nonconformities, or related legal issues).

<u>Phase One</u> (for one year, in a community not in a major tourist area, or with no long prior history of STRs)

- Allow short-term rentals as an accessory use in all dwellings in all commercial zones by right for less than 30 days/year, in not more than two bedrooms only when the owner was present. No registration with the municipality would be required, but each STR must comply with all applicable codes and ordinances. Hosts would not be allowed to rent for more than 30 days/year unless the owner can show a history of having rented the unit for longer than that in the three prior years, and then limit rentals to that period for the next year in those units.
- Evaluate at nine months into the one-year period and transparently use what was learned to inform next steps: a) either leaving the scheme the same for another year, or with tweaks, b) eliminating the option and trying something altogether different, or c) expanding the option into other zones with more or fewer standards (if appropriate) as described in Phase Two.

<u>Phase Two</u> (keep all of Phase One, and expand STR opportunities to all mixed residential/commercial zones)

- Expand Phase One parameters to include mixed residential/commercial zones with any necessary tweaks and eliminate the number of bedroom requirements for dwellings in pure commercial zones and limitations on the number of rental days by SLU permit if the STR unit is managed through a local private professional management company; and institute a registration and life/safety inspection program for all dwellings used for STRs in commercial and mixed residential/commercial zones. All units rented for more than 30 days would be required to demonstrate that all required state and local taxes were annually paid, and to pay a fee equal to ½ that paid by hotels and accommodations businesses to the local visitors and conventions bureau (if lawful to so require, check with the municipal attorney).
- Evaluate at nine months into the second year and use what was learned to inform next steps: a) either leaving the same for another year, or with tweaks, b) eliminating the option, or c) expanding the option into other zones with more or fewer standards (if appropriate) as described in Phase Three.

<u>Phase Three</u> (keep all of Phase Two, and expand STRs to some residential zones)

- Refine Phase Two parameters for all commercial and residential/commercial zones based on what was learned.
- Expand STRs by right in dwellings renting not more than two bedrooms with the owner present in most residential zones if for less than 15 days/year with a requirement to conform to all applicable codes and regulations, but without a registration or inspection requirement; and permit for more than 15 days/year but less than 30 days if registered and life/safety inspected.
- Expand STRs by SLU for more than 30 days as a principal

Table 4
Pros and Cons of Typical STR Regulatory Alternatives
Selecting Among the Alternatives Would be Based on Local Objectives

Alternative	Pros	Cons
Allow STRs in all dwellings in **all zones**	- Simple, could be done with single change in General Provisions in the zoning ordinance and if necessary, handle administration/licensing through a general police power ordinance - Uniformity, ease of administration	- May not be consistent with intent sections of residential zones - May be wiser to try in a few zones first because would have to protect nonconforming uses if community later rolled back its approach to dwellings in only a few zones
Allow STRs in dwellings in no **residential** zones This would mean not allowing under any circumstances or after any separate procedure like a special land use procedure. This is unlike the next row which would allow STRs that meet an ordinance definition (like not more than 7 days/time, nor more than 14 days a year in one or two bedrooms of an owner-occupied home) by right; or by right with conditions (like meeting an STR definition but for a longer period of time); or in the following row, by meeting a SLU set of standards (like not having to be owner occupied and permitted to operate all year long through a private dwelling rental management company)	Ex. Situation A: -There are virtually no STRs in the community now, and a thorough community survey with a high return rate reveals virtually no interest in allowing STRs in residential zones Ex. Situation B: - Some high value or bedroom only residential communities (or subdivisions) that do not allow any commercial activities (by right or by SLU) within dwellings in residential zones may want to exclude STRs from residential zones to keep their regulatory structure intact; however, to not violate exclusionary zoning principles they would likely have to allow STRs somewhere, such as in commercial or mixed residential/commercial districts - These communities/developments may already prohibit STRs and other commercial uses of residential property by deed restrictions, but municipalities cannot enforce those.	Ex. Situation A: - Actions that appear exclusionary may attract a lawsuit, even where there is a rational basis for the distinction; but if there is clear historical evidence of not allowing any commercial uses in residential zones, and STRs are allowed in other nonresidential zones, like mixed use residential/commercial zones, or commercial zones, such a distinction may be defensible [please consult your municipal attorney on all exclusionary zoning matters]. Ex. Situation B: - Actions that appear exclusionary may attract a lawsuit, even where there is a rational basis for the distinction; but if there is significant demand in the area for STRs as evidenced by existing STRs in the community in violation of the ordinance, such a distinction may be difficult to defend [please consult your municipal attorney on all exclusionary zoning matters].
Allow *by right* or *by right with conditions* in dwellings in all **residential** zones	- Simple solution if there are not many STRs now and unlikely to be many in the near future; allows experimentation - Uniformity, ease of administration	-- May not be consistent with intent sections of residential zones - May be wiser to try in a few nonresidential zones first because would have to protect nonconforming uses if community later rolled back its approach to only a few zones
Allow some *by right* or *by right with conditions* in dwellings in some **residential** zones and all others by special land use (SLU)	- Multiple zone approach where provisions could be different between zones; would allow addressing concerns in different neighborhoods differently	- More difficult to set up as more care is needed - If not carefully done, could set up lawsuit related to reasonableness of the distinctions
• *By right* residential zones • By *SLU* residential zones	- For example in R-1 or MF zone STRs could be allowed only with the owner present in one or two bedrooms, and not more than 14 days a year; but in a WFR or RR zone they could be allowed continuously by SLU	- There will be people in each zone that wish the other option, or neither option existed in their zone. This may create a political problem for governing body.
Allow *by right* or *by right with conditions* in dwellings in all **mixed use residential/commercial** zones	- An easy place to start regulation and measure the effectiveness of the regulation before allowing in other residential zones	- Many communities have few or no mixed use residential/commercial zones so it may not be a viable option for them
Allow *by right* or *by right with conditions* in dwellings in some **mixed use residential/commercial zones** and all others by *special land use permit*	- A small refinement from the cell above that is pertinent if some mixed use residential/commercial zones are in or near prime vacation or tourist parts of the community and others are near more traditional residential neighborhoods	- More difficult to set up as more care is needed - If not carefully done, could set up lawsuit related to reasonableness of the distinctions
• *By right* mixed use zones • By *SLU* mixed use zones	- For example in MRC zone by a large public beach may allow by right if much of the area is already multi-family or condominiums rented to tourists and vacationers and allow by SLU near traditional residential neighborhoods	- There will be people in each zone that wish the other option, or neither option existed in their zone. This may create a political problem for governing body.
Allow *by right* or *by right with conditions* in all dwellings in all existing **commercia**l zones	- This may be a "no brainer" in many communities as there may be few dwellings in commercial districts near residential zones minimizing the potential for negative impacts and providing a good place to test the idea and develop administrative procedures	- Depending on the number and location of dwellings in existing commercial districts there may be few STR locations available, or they may not be deemed desirable places by those who want to rent an STR ,and if so, the option may not yield much in the way of useful information

Table 4 continued

Alternative	Pros	Cons
Allow *by right* or *by right with conditions* in some **commercial zones** and all others by special land use	- In communities with many dwellings in commercial districts adjacent to traditional single family districts (like many R-1 zones) this provides a place to try STRs and keep the negative impacts contained while testing various administrative procedures	- If there are a large number of dwellings concentrated in a commercial zone, it may be better to rezone them into a mixed residential/commercial zone, or perhaps a separate STR zone so as to not incompatibly mix other commercial uses in the district
• *By right* commercial zones • By *SLU* commercial zones	- Allow by SLU where the STR abuts a block of R-1 homes, and potentially allow by right in the rest of the commercial zone	- May be more administratively cumbersome than necessary if the negative impacts are few (e.g. if the lots are large in size and dwellings widely spaced)
Allow in *PUD*s/Condominiums	- Same as mixed use residential/commercial zones	- Same as mixed use residential/commercial zones

TERMS & ABBREVIATIONS used in Table:

By right = principal use is allowed with no conditions or special requirements beyond Schedule of Regulations requirements related to lot size, setbacks, structure height, etc.

By right with conditions = same as by right, but a few nondiscretionary standards could be imposed like limits on the number of bedrooms/beds, number of rental days/year, etc.

By special land use (SLU) = both nondiscretionary and discretionary standards (like must be compatible with adjacent uses of land) could be imposed to minimize site-specific negative impacts on abutting parcels

PUD = planned unit development which links a site plan to discretionary standards on specific parcels; may be handled like a SLU or require a rezoning.

R-1 = typical exclusive single family detached residential zone

MF = typical multi-family residential zone (apartments or condos)

MRC = mixed residential/commercial zone (single and multi-family plus related service, entertainment and retail uses)

WFR = typical waterfront residential zone (large lot single family residential on prime river, lake or Great Lake property, or sometimes time-share condo or multi-family developments)

RR = typical rural residential or resort residential zone in low density forested areas, river or lake areas

STR= short-term rental

use in dwellings in some residential zones (like a waterfront residential zone for time shares, or large lot residential properties) without the owner present, if in conformance with all applicable codes and regulations, if the STR unit is managed through a local private professional management company, and if registered and inspected. All units rented for more than 30 days would be required to demonstrate that all required state and local taxes were annually paid, and to pay a fee equal to ½ that paid by hotels and accommodations businesses to the local visitors and conventions bureau (if lawful to so require, check with the municipal attorney).

- Evaluate at nine months into the third year and use what was learned to inform next steps: a) either leaving the same for another year, or with tweaks, b) eliminating the option, or c) expanding the option into other zones or with more or fewer standards (if appropriate).

Be sure to keep track of nonconforming uses from the start, and separately map both new and pre-existing STRs (whether lawful when they were begun or not). Areas with concentrations of STRs may present important opportunities, and possibly special challenges to be addressed going forward.

Of course if you want reduced risk and enhanced chance of success with your STR ordinances, before you start a phased process like that described above, it is important that the community is sure it knows want it wants to achieve by the regulations and where they should apply and why. It needs an approach that is both enforceable and sustainable. It should take a long-term strategic view but not be afraid of short-term policy steps if community consensus is not clear, but some problems demand immediate attention. Whatever is done, the policy action should not be more than necessary to achieve community goals as it will not be sustainable, it will be too expensive (time and resources), or it will attract lawsuits or all three. The entire process needs to be open and transparent to all parties and the public.

Photo by Deposit Photos

Review of Important Steps to Take

Following is a summary of the key steps to take to decide whether to regulate STRs and if so, what regulations to put in place, and how to adopt them. After that are observations that address in more detail some considerations behind some of these process steps to ensure that important considerations are not overlooked.

1. Planning/zoning staff on behalf of planning commission and governing body:
   - Identifies characteristics of existing STRs in the community. Questions to consider: What types of STRs are already operating in the community? Where are they? How long have they been operating? Has the number, form and location changed over time? Why? Are they concentrated in particular areas or at particular times? Have they been widely acquiesced to by the public for cultural reasons (such as during local festivals)? What are these reasons? Are STRs negatively impacting local businesses? Is that new? Are STRs paying all required local fees, taxes and related monies?
   - Surveys residents and businesses to find out their attitudes about pros, cons, problems, opportunities, and general regulatory options.
   - Clearly articulates what the community wants to achieve without or with regulation (see Kathy Egan's list): What goals does the community want to achieve? How do STRs fit in to the broader goals? What matters most? Are they the goals for STRs the same in every district and every part of the community? What changes to the master plan are necessary to incorporate these goals in a manner consistent with broader public objectives?
   - Analyze and prepare alternatives for consideration. Questions to consider:

○ What alternative regulatory schemes should be considered to meet those goals? How well does each alternative meet established goals?
○ Which alternatives parallel (or at least do not conflict) with existing temporary use and home occupation regulations, where relevant?
○ Do the alternatives include a range of options from simple, to more complex? Do the differences satisfactorily reflect the different circumstances in each district? Are they easy to understand and fair to both the STR landowner, and to abutting landowners?
○ If there are differences in regulatory approaches, do they clearly reflect the circumstances and do they remain fair to everyone involved?
○ Who is going to enforce, how? Who is going to monitor websites and local advertisement circulars to see what STRs are being offered and whether they are registered? How will the community find out how frequently the rental units are offered? Does the community have the necessary resources to adopt and enforce the proposed regulations? If not, what can it adopt that it can afford (in time and resources) to enforce? [Some communities cannot adequately enforce noise, public gathering, parking, and signage ordinances without STRs in the community. How will they enforce an STR ordinance?] Will one of the new private entities (in the sidebar on page 6 of the July issue) be able to adequately handle enforcement? Some of these companies already have Michigan community clients.

- Hold public forums to present the results to surveys and answers to questions above, and get public feedback on both master plan changes and zoning changes; perhaps survey the public a second time on detailed regulatory options.
- Select a single preferred alternative or a phased approach; but only recommend adoption of what the community can (and is willing to) enforce.
- Draft formal master plan changes and seek assistance from the municipal attorney in drafting the zoning ordinance and any general police power ordinance regulations to be sure they are clear and enforceable.

2. Planning commission holds public hearings on the master plan changes and the preferred zoning ordinance and general ordinance alternative(s) and makes recommendations for action (adopt, with or without revisions, or to not adopt). If permitted by the governing body, the planning commission adopts the master plan changes.
3. Governing body takes action to approve master plan (if necessary), as well as the zoning ordinance and general police power ordinance after the municipal attorney approves any changes based on planning commission recommendations.
4. Monitor results and modify approach based on what is learned at specific intervals (like six months, one year, and two years; which is already built into the phased approach example earlier).

Following is more detail on considerations behind some of the steps above:

- Decide and put in the master plan the basic approach and rationale to STRs in the community.
- In the zoning ordinance, clearly define what a STR is in the community, what zones they are allowed in, what standards must be met and what additional ordinances/requirements apply. Be sure to check for conflicts with other ordinance provisions and fix them.
- In the zoning ordinance, consider adding a provision that clearly states that residential zones are structured for permanent use and occupancy by owners, but that it is lawful for a SFR owner to rent his/her dwelling not for economic gain (but to cover direct expenses) during the period of actively attempting to sell the property (which could be an extended period during a down economy); provided rental it is for periods exceeding that of STRs (such as 30 (or more) days at a time), and that occupants meet the ordinance definition of "family" or "functional family" (if the ordinance is structured that way).
- In a separate ordinance establish:
  ○ The administrative system with adequate information and procedures to ensure ease of understanding by applicants, and smooth operation by staff and any outside firms hired to assist with enforcement.
  ○ A requirement for administrative personnel to provide educational information to applicants on their responsibilities as STR hosts, information on local property management firms that can help them, the basic process the community will use to monitor advertising of STRs, as well as the structure of fines for violations.

HOUSE BILL 4503 (SB 329 has the same language, it was introduced by Sen. Joe Hune and is in the Senate Committee on Local Government)

April 25, 2017, Introduced by Rep. Sheppard and referred to the Committee on Tourism and Outdoor Recreation.

A bill to amend 2006 PA 110, entitled "Michigan zoning enabling act," (MCL 125.3101 to 125.3702) by adding section 206b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 206B. (1) FOR THE PURPOSES OF ZONING, ALL OF THE FOLLOWING APPLY TO THE RENTAL OF A DWELLING, INCLUDING, BUT NOT LIMITED TO, SHORT-TERM RENTAL:

(A) IT IS A RESIDENTIAL USE OF PROPERTY AND A PERMITTED USE IN
ALL RESIDENTIAL ZONES.

(B) IT IS NOT SUBJECT TO A SPECIAL USE OR CONDITIONAL USE PERMIT OR PROCEDURE DIFFERENT FROM THOSE REQUIRED FOR OTHER DWELLINGS IN THE SAME ZONE.

(C) IT IS NOT A COMMERCIAL USE OF PROPERTY.

(2) THIS SECTION DOES NOT PROHIBIT REGULATION APPLIED ON A CONSISTENT BASIS TO RENTAL AND OWNER-OCCUPIED RESIDENCES FOR NOISE, ADVERTISING, TRAFFIC, OR OTHER CONDITIONS.

(3) AS USED IN THIS SECTION, "SHORT-TERM RENTAL" MEANS THE RENTAL OF ANY SINGLE-FAMILY RESIDENCE OR 1-TO-4-FAMILY HOUSE OR DWELLING UNIT, OR ANY UNIT OR GROUP OF UNITS IN A CONDOMINIUM, FOR TERMS OF LESS THAN 28 DAYS AT A TIME.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

STATE ROLE IN REGULATING STRS

Traditionally there has been no state role in land use issues like this. They have been considered matters of strictly local concern. However, the growing ubiquity of online short-term rental opportunities has pointed out the wide range of regulations local governments have put in place, based on local considerations, and in some cases those regulations have limited new business opportunities for realtors to sell homes based on their STR potential, and subsequent value capture for homeowners. But expanding local zoning to allow more local accommodations by means of STRs, while providing more choices for short-term renters, also reduces potential customers for existing accommodation providers (B&Bs, hotels, motels, campgrounds, etc.), and may result in less sales tax and other local hotel and overnight accommodation fees collected—unless STRs also pay those fees. Clearly the state and local governments have an interest in collecting these fees which are used to provide a range of services to accommodation providers and the public at large. Perhaps the need for state regulation is ensuring that existing lodging providers are not undercut by competitors that are not playing by the same rules and paying all the relevant state and local fees (note that Airbnb recently starting paying state taxes in Michigan). Beyond this, is there is a broader need for state regulation; if so, what form or shape should it take?

HB 4503 and SB 329 have been introduced to define a state role for STRs in Michigan (see sidebar on page 13). Legislation sponsors say they want uniformity in regulation, with some ability for local control. The legislation would prohibit most of the approaches described in this article. Michigan is not the only state where similar legislation is under consideration. According to an article in ***Bridge*** by Amy VanHulle, Oct. 17, 2017

> *"Bills addressing regulation or taxation of short-term rentals have been introduced this year in 28 states and the District of Columbia, according to data compiled by Alexandria, Va.-based lobbying firm MultiState Associates and shared with the National Council of State Legislatures. Four states – Idaho, Nevada, Utah and Virginia – have approved legislation, according to the group."*

Michigan Association of Realtors
Support STR Legislation

Michigan Realtors® believes that vacation rentals and the strength of the second-home market in Michigan are essential to the health of Michigan's economy. As we enter the summer months, this fact has never been more pressing.

Michigan has been a vacation and tourism destination for decades. The short-term rental of a fully furnished vacation home has long been a valued option for vacationers in Michigan. It is also a significant property right for those homeowners that choose to open their homes to visitors. Oftentimes, these properties are second homes. As such, these owners pay non-homestead property taxes, contributing to state and local property tax support for both school operating and debt expenses, often with higher taxable values. For many owners, purchasing these homes and maintaining them would not be possible without the ability to rent them for a portion of the year. This property right goes back generations – and this property right is currently under attack. **#preservationofpropertyrights**

This legislation [SB 329 and HB 4503] would do the following:

- Ensures that Michigan homeowners can maximize the value of their property through the use of short-term rental arrangements;
- Provides clarity for and protects a practice that has long been permitted and is essential to the viability of local resort economies;
- Provides for uniform and fair treatment of residential properties in all residential zones.

This legislation does not prevent local government enforcement. Local governments currently possess the tools – in their nuisance ordinances and housing codes – to protect public safety and address any discourteous behavior – whether from a year-round occupant or a short-term rental.

Michigan resort communities thrive on short-term rentals. Local restaurants, art, book, and gift shops, and other businesses dependent on vacationers are the heart of resort business communities. Further, the right to continue lawful use of property is at the heart of zoning and constitutional protections for property owners, and *"local control"* should not be a cover for taking those rights away.

Protect this fundamental property right and support Michigan's tourism industry.

Michigan Realtors® encourages you to Support SB 329 and HB 4503.

Michigan Association of Realtors website (http://www.mirealtors.com/Advocacy-Initiatives/Preserve-Private-Property-Rights)

Indiana and Wisconsin also recently adopted STR laws. According to an article by Richard Moore in the ***Lakeland Times***, Oct. 13, 2017, entitled *"Short-term Rentals Now Legal Through Wisconsin,"* the following are characteristics of the new Wisconsin law:

- It was included in a budget bill instead of the normal bill process.
- It generally allows homeowners to rent out their homes for seven consecutive days or longer in a manner consistent with local regulations (which cannot prohibit the STR, although local regulations can prohibit short-term renting for more than 180 days/year).
- Realtors, and 2nd homeowners are happy; single family homeowners in vacation areas are not (some are demanding their taxes be lowered since they are now in commercial districts); and Airbnb and similar businesses, and their dwelling rental agents are very unhappy, as they may be prohibited in more places (and believe the Legislature acted to satisfy the complaints of lodging businesses).

As noted earlier, HB 4503 and SB 329 are strongly advocated by the Michigan Realtors Association. What do realtors want to accomplish? Why? The bills seem to conflict with realtors long stated goal of protecting property rights of landowners as it pits one set of residential owners against another. But we do not have to look very far. The sidebar to the left is content from the Michigan Association of Realtors website and offers their rationale in support of the legislation.

Editorial

From a local government planning and zoning perspective, and over 40 years of experience all across the state with this and many other land use issues, there are many problems with this proposed legislation and the Michigan Association of Realtors' basic arguments. I have huge respect and admiration for the Michigan Association of Realtors for all it has done, in especially the last decade, to advance a number of important public policy issues, including local Placemaking which is very dear to my heart and critical to the long term economic vitality of Michigan. But consider the following:

1. The legislation, if enacted, would affect STRs everywhere in Michigan, not just in vacation communities.
2. The legislation fails to adequately consider the negative impacts on and real property interests of existing nearby landowners, who are effectively being left out of this dialogue if local governments cannot use conditional use or special use permits to regulate (at least some) STRs.
3. STRs are not playing by the same rules as other accommodation businesses. As mentioned earlier, they often do not pay state sales/use taxes and local visitor and convention bureau fees/use. They often are not required to abide by stricter building codes related to safe emergency fire access and egress, deck standards, and waste disposal. They often do not effectively ensure 24/7 access to someone who is onsite or quickly available to handle any issues that arise, unless the individual STR owner hires a firm to do so.

HB 4503 and SB 329 propose to authorize STRs in ALL residences.

- That is contrary to good public policy for many reasons, including its failure to adequately consider the interests of other property owners nearby an STR who by choice live in areas that do not permit such uses, and who support the existing zoning scheme prohibiting or restricting them in certain zones. This is a nuance that a one-size-fits-all state law cannot adequately address.
- By preempting local regulation of STRs as a land use that is subject to reasonable local zoning restrictions that are established based on the unique circumstances of the particular community, the state would be changing the basic premise of local zoning for all other land uses. State law provides that even day care facilities and adult foster care facilities which

can be allowed in residential districts, can also be locally regulated by conditional and special use permit when they exceed certain sizes, because at that point they often have negative impacts on neighbors that need mitigation.

- Communities need the flexibility to decide where STRs can appropriately be located (which in many communities will be in all residential zones, but in some communities will not). Communities cannot exclude a lawful land use now, and thus have an obligation to reasonably provide for STRs if there is a demand for them in their community or area (as described earlier).

The current bills go too far. As a lawyer friend of mine often says *"it is a sledge hammer instead of a scalpel."* The bills undercut longstanding municipal practices to stratify residential uses into types and to preserve some residential areas with no commercial activities, if the community wants to. For all the reasons cited earlier in this article, STRs do not have the same characteristics as owner-occupied single family homes and as such, some communities are regulating them as different uses, in large measure because of the commercial characteristics of STRs. The bills are overreaching.

Arguably, no legislation is needed on STRs because authority to act under local zoning is adequate and the language excluding lawful land uses is adequate if someone feels a community is illegally banning STRs in the face of local demand for them – *to my knowledge no exclusionary zoning lawsuits have been filed*. Local control and flexibility in dealing with different circumstances in different towns and even different parts of the same town are critical to local quality of life as relates to STRs and all other land uses.

The characteristics of STRs and the interests affected strongly suggest the importance of protecting bottom up approaches that allow extensive experimentation between jurisdictions instead of a one-size-fits-all, top down approach whose only certainty is to create extensive unintended consequences. In this case, that means no statewide legislation is necessary at this time, and probably for a very long time; and local governments should be encouraged to take responsible actions that address the issues related to STRs in their community as they arise. Traditional local planning, zoning and general police power authority is adequate to the task if local governments are left alone to use them.

If politically it was deemed necessary to enact some legislation in this arena at this time, the following may be useful to all parties, if carefully worded to:

1) establish that short-term rentals of land are lawful activities and could not be prohibited by a community, but could be locally regulated in ways that fairly balanced the interests of existing residents, lodging businesses and transient renters; and
2) that local authority to regulate includes allowing or not allowing short-term rentals in one or more zoning districts, under potentially different sets of requirements including by right with conditions and by special land use permit, but within individual districts they must be regulated uniformly.

This approach would make STRs lawful uses of land while preserving the wide range of regulatory approaches communities could use to prevent negative impacts from STRs on adjoining uses. It would also preserve longstanding zoning schemes that focus on preservation of residential property, including its physical value and quiet use and enjoyment characteristics.

The Michigan Municipal League, Michigan Townships Association and presumably the Michigan Association of Counties (I have not checked with them) are carefully monitoring this legislation, but the chatter in Lansing is that these bills will come up for consideration this fall. If you have a strong opinion on HB 4503 or SB 329, please communicate that to your legislator and let your state association know as well. ❑

BIG CITIES TAKING ACTION TO SHARPLY RESTRICT SHORT-TERM RENTALS IN EFFORT TO PROTECT AFFORDABLE HOUSING

By **Mark A. Wyckoff,** *FAICP, Editor*

As ***PZN*** went to press, the editor discovered that after months of debate, two more large cities voted to protect affordable housing by restricting short-term rentals.

The **San Diego Union Tribune** reported on July 16 that the San Diego City Council voted to *"outlaw vacation rentals in secondary homes, limiting short-term stays to one's primary residence only."*

This action was reportedly taken by the Council contrary to a widely supported balanced approach to regulation that had been developed with input from many stakeholders, because of widespread *"complaints from residents that rotating cycles of vacationers are disrupting their quiet neighborhoods and depleting the supply of long-term housing."* The latter problem is aggressive investors buying up whole houses and apartments in popular areas and converting the entire home or apartment building into short-term rentals.

The **New York Times** reported on July 18th that in New York City (NYC) the City Council voted unanimously on a bill to impose new short-term rental requirements. *"Online rental services like Airbnb and HomeAway would be required to provide the addresses and names of hosts to the city's Office of Special Enforcement every month, and to note whether rentals are for a whole apartment or just a room."*

> *"New York City is Airbnb's largest domestic market, but under state law, it is illegal in most buildings for an apartment to be rented out for less than 30 days unless the permanent tenant is residing in the apartment at the same time. The new disclosure requirements would make it much easier for the city to enforce the state law and could lead to many of the 50,000 units rented through Airbnb in the city coming off the market. After similar rules went into effect in San Francisco, listings fell by half."*

An advocacy organization, airbnbwatch.org representing a variety of community nonprofits and hotel/motel interests, reported July 20th that if the NYC bill is voted into law, *"New York will join cities like San Francisco, New Orleans, Barcelona (Spain), Vancouver (British Columbia, Canada)"* to impose significant restrictions on short-term rentals.

Please note that the scale of short-term rentals in these large cities is far in excess of what it is in Michigan, but most of the same issues are being debated, and many of the same techniques are under consideration in those cities as in various cities, villages and townships in Michigan. Just as these large cities have all reached different conclusions on what should be regulated, the same is happening in Michigan. This is because the problems are not the same, and what communities want to achieve are not the same, and because community consensus on a course of action is not the same. These are strong arguments in support of local control to shape solutions that fit local circumstances.

PLANNING & ZONING NEWS©
Mark A. Wyckoff, FAICP, Editor
715 N. Cedar Street, Suite 2
Lansing MI 48906-5275
PH (517) 886-0555
www.pznews.net

FIRST CLASS MAIL

AUGUST

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. Creyts 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. The first joint MML and MAP conference combines the best of both organizations to present a stellar educational and networking event. This could be the collaborative community-building event of the year. There are over 40 breakout sessions, more topics, and more mobile tours to choose from than ever before. There is something for everyone from the smallest village or township to largest cities. As an added bonus, the renowned ArtPrize international art competition will be in full swing! Artists from around the world will exhibit their works throughout downtown Grand Rapids—in museums, public parks, restaurants, bridges, and everywhere in between. Last year 1,512 artists competed for more than $500,000 in prizes. The Amway Grand Plaza Hotel is filling up quickly - and you must be registered for the MAP conference to book your hotel room. Key speakers include Bruce Katz on his book The New Localism: How Cities can Thrive in the Age of Populism, or Patrice Frey, President and CEO of the National Main Street Center, or Deb Brown from SaveYour.town. Workshop sessions on topics like: Amazon-Michigan's Wakeup Call or the Beginning of the End?; Complete Streets and Green Infrastructure = Vital Streets; Small Scale Manufacturing; Sustainable Retail Districts; New Urbanism in Practice; Citizen Planner Training (all six sessions); Ten Ways Zoning Discourages Quality Development; Game of Floods; The Need for More Parking (Really?); Improving the Tone and Quality of Civic Discourse; Trail Towns; The Power of the Wind; Short-Term Rentals: Trends, Impacts & Options; Restoring the Rapids: A Tour of Grand River Restoration Efforts; Smart, Accessible, Connected; The Keys to Putting Ethics into Action; Master Planning: The Critical Role of Elected Leaders & the Planning Commission; and two-dozen more. Get the details and register today! Full conference: $390. https://www.planningmi.org/planning-michigan-conference.

FOR A COMPREHENSIVE LISTING OF CALENDAR EVENTS, VISIT THE PLANNING & ZONING NEWS WEBSITE AT: http://www.pznews.net.

Please Send Us Your Events For Inclusion On The Calendar!

Printed on recycled paper.