

**WINFIELD TOWNSHIP ZONING BOARD OF APPEALS  
MONTCALM COUNTY, MICHIGAN**

(Resolution No. 625-19)

At a special meeting of the Winfield Township Zoning Board of Appeals held at the Winfield Township offices on June 25, 2019, beginning at 7:00 p.m., Board Member Steve Cole moved to adopt this Resolution, which motion was seconded by Board Member Dan Canouse:

**A RESOLUTION UPHOLDING THE WINFIELD  
TOWNSHIP ZONING ADMINISTRATOR'S INTERPRETA-  
TION/DETERMINATION REGARDING SHORT-TERM  
RENTALS INVOLVING THREE PROPERTIES PURSUANT  
TO THE WINFIELD TOWNSHIP ZONING ORDINANCE  
AND DENYING ALTERNATE VARIANCE REQUESTS  
REGARDING THE SAME THREE PROPERTIES.**

1. General Background.

Earlier this year, the Winfield Township Zoning Administrator (the "Zoning Administrator") received citizen complaints about three lakefront properties within Winfield Township (the "Township") involving what is sometimes referred to as "short-term rentals" ("STR"). Those properties and situations include the following:

1. Two Brothers Properties, LLC - This case involves the property commonly known as 8840 W. Suwanee Trail, Howard City, Michigan 49329 and also as Permanent Parcel No. 59-020-183-211-00.
2. Randy and Joelle Wrona - This case involves the property commonly known as 8860 W. Suwanee Trail, Howard City, MI 49329 and also as Permanent Parcel No. 59-020-183-216-00.
3. Clarence Day - This case involves the property commonly known as 8776 Navaho Trail, Howard City, MI 49329 and also as Permanent Parcel No. 59-020-183-196-00.

All three situations involve lakefront and otherwise single-family designed dwellings or houses on Indian Lake within the LR Lake Residential zoning district ("LR") under the Winfield Township Zoning Ordinance (the "Zoning Ordinance"). The owners of each of the properties (the "Applicants") have advertised their respective properties for rent and the dwellings have been rented for short periods of time to third parties in the past. It appears that some or all of those properties are used periodically by the property owners themselves.

The Zoning Administrator determined that all three properties are being used for short term rentals and that such use violates the Zoning Ordinance. The Zoning Administrator noted that the LR zoning district allows only single-family residential use and not commercial uses. Furthermore, the Zoning Administrator cites the definition of "family" found in Section 2.07 of the Zoning Ordinance as disallowing situations that are of a "transient or seasonal nature." That section also prohibits motels, boarding houses and lodging houses. Therefore, the Zoning Administrator determined that the rentals of each of the dwellings or cottages at issue are prohibited under the Zoning Ordinance because they are commercial and also of a "transient or seasonal nature."

The Applicants appealed that interpretation/determination by the Zoning Administrator to the Winfield Township Zoning Board of Appeals ("ZBA"). The Applicants also alternately requested variances to conduct short-term rentals if the ZBA were to ultimately uphold the interpretation/determination by the Zoning Administrator that the properties involve prohibited short-term rentals.

## 2. The Zoning Ordinance.

The three cases that the ZBA addressed on May 21, 2019 involve so-called "short-term rentals." Unfortunately, there is no universally accepted definition of what constitutes an STR in

Michigan.<sup>1</sup> Where someone rents or leases their house, cottage or dwelling to a third-party single-family for a relatively long period of time (for example, six months, one year or longer), virtually no one considers such an arrangement to be an STR. Such rental situations tend to closely resemble a single-family occupancy of the dwelling or house involved and is rarely considered temporary, transitory, etc. Conversely, most legal authorities would consider the renting or leasing of a single-family home or dwelling to a third party (even involving only one family) for one week or fewer than seven days to be a STR. There appears to be no consensus with regard to whether the lease or rental of a house or dwelling to a single-family for between a few weeks and several months is an STR.

The Zoning Ordinance does not expressly address or define STRs. Instead, the ZBA reviewed three relevant provisions of the Zoning Ordinance. In the LR-Lakeside Residential zoning district pursuant to the Zoning Ordinance where the three properties at issue are located, the permitted uses include the following:

#### Section 6.02 Permitted Uses

No land or buildings in the LR District shall be used, erected, altered, or converted, in whole or in part, except for the following purposes by right:

- A. Single family detached dwellings.
- B. State licensed residential family care facilities.<sup>2</sup>

Commercial use is defined in Section 2.04 of the Zoning Ordinance as:

COMMERCIAL - Any use connected with, or work intended for financial gain.

Finally, the Zoning Ordinance defines a “family” as follows:

#### Section 2.07 Definitions - F

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<sup>1</sup> Nor does the Zoning Ordinance define a short-term rental.

<sup>2</sup> Commercial uses are not allowed.

FAMILY - A person living alone in a single dwelling unit, or two (2) or more persons whose domestic relationship is of a continuing, non-transient character and who reside together as a single housekeeping unit in a single dwelling unit. "FAMILY" does not include a collective number of individuals occupying a motel, fraternity, sorority, society, club, boarding, or lodging house, or any other collective number of individuals whose domestic relationship is of a transient or seasonal nature.

3. The ZBA Proceedings.

The ZBA held a public hearing on the Applicants' appeal and variance requests on the evening of May 21, 2019. Virtually the entire ZBA meeting that night was devoted to the Applicants' case and the meeting lasted approximately 2 1/4 hours.

The ZBA received and reviewed a voluminous amount of materials before March 21, 2019, all of which were considered by the ZBA. Those materials include the following:

- a. The Applicants' applications.
- b. The Zoning Ordinance.
- c. A privileged and confidential opinion letter from the Township Attorney dated May 14, 2019.
- d. A legal brief/memorandum from attorney Gary Schenk dated March 28, 2019 on behalf of the Applicants.
- e. Numerous emails and several letters from members of the public.
- f. Miscellaneous other documents.

During the hearing on May 21, 2019, a petition signed by approximately 200 individuals was presented to the ZBA. The petition strongly opposed the Applicants' appeal and request for variances.

During the public hearing on May 21, 2019, the Applicants and other members of the public who spoke publically were placed under oath pursuant to MCL 125.3602(1) (Township officials and the attorneys were not put under oath). Attorney Gary Schenk made a substantial presentation to the ZBA on behalf of the Applicants. In addition, a number of the Applicants and other citizens spoke in favor of the Applicants' appeal and variance requests. Thereafter, many other members of the public spoke in opposition to the Applicants' appeal and requests for variances.

Once the public hearing was closed by the ZBA on May 21, 2019, members of the ZBA began deliberations. Ultimately, the following two motions passed unanimously by the members of the ZBA:

(a) Appeal of the Zoning Administrator's determination/ interpretation:

I hereby move to tentatively uphold the interpretation/determination by the Zoning Administrator that the renting or leasing of the property and dwelling is prohibited by Sections 2.04, 2.07 and 6.02 of the Winfield Township Zoning Ordinance contingent upon a resolution to that effect being drafted by the Township Attorney and Zoning Administrator and being approved by the ZBA at a subsequent meeting; and

(b) The use variance request:

I hereby move to tentatively deny the use variance request by the applicant for the use of the property as a short-term rental contingent upon a resolution to that effect being drafted by the Township Attorney and Zoning Administrator and being approved by the ZBA at a subsequent meeting.

The ZBA again addressed the Applicants' case at a special meeting on June 25, 2019. The Township Attorney and Zoning Administrator prepared this Resolution for review by members of the ZBA. The ZBA members were provided with the draft version of this Resolution for review well before the June 25, 2019 meeting of the ZBA.

At its meeting on June 25, 2019, the ZBA allowed limited public comment and deliberated regarding this Resolution.

4. Analysis – the Interpretation.

As an initial matter, it should be pointed out that STR cases involve the rental of a single-family house, cottage or dwelling to only one family at a time. If a house or dwelling is rented to two or more families at the same time, it would clearly constitute a prohibited multi-family use within the LR zoning district.

It is the ZBA's determination that the lake access or anti-funneling provisions of Section 3.23 of the Zoning Ordinance do not apply to the current cases (or STR's in general) so long as only one family is renting or using the single-family residential property and using the lake. However, if two or more families are renting, staying at or using the single-family residential dwelling at issue at one time, that would violate not only the anti-funneling provisions of Section 3.23 of the Zoning Ordinance, but also the single-family residential limitations of the LR zoning district as well.

The issue of Indian Lake being private and the associated deed restrictions and bylaws for the lake community also came up. Many members of the public who spoke in opposition to the Applicants' appeal and variance requests cited the claim that Indian Lake is a "private" lake and claimed that STRs would violate various property owner association bylaws, deed restrictions, etc. (collectively, the "Deed Restrictions"). However, as the ZBA stated publically, the ZBA

cannot consider the Deed Restrictions, which are private contractual or property matters for the parties involved. In Michigan, a township cannot enforce, recognize, etc. private deed restrictions/restrictive covenants unless the township involved is an express beneficiary of such deed restrictions or contractual matters. Furthermore, whether Indian Lake is a private or public lake is irrelevant to the ZBA's analysis of the STR issue as it relates to the relevant portions of the Zoning Ordinance.

Until recently, the Michigan appellate case law had not definitively addressed STRs in the zoning context. There have been a number of Michigan appellate court decisions regarding deed restrictions/covenants, but until recently, the appellate courts generally had not definitively addressed STRs as regulated by zoning ordinances. Interestingly, the Michigan Court of Appeals did decide a similar short-term rental case in the zoning context in 2018. Unfortunately, however, it was an unpublished decision and accordingly, is not technically binding precedent within Michigan. In *Concerned Property Owners of Garfield Township, Inc. v Charter Township of Garfield* (an unpublished decision by the Michigan Court of Appeals dated October 25, 2018; Case No. 342831; 2018 WL 5305235), the plaintiffs operated a number of short-term rentals around Silver Lake which they alleged were a "grandparented" use under new Garfield Township Zoning Ordinance amendments. In 2015, the township passed an amendment to the Garfield Charter Township Zoning Ordinance explicitly prohibiting short-term rentals. Prior to that time, the zoning ordinance did not expressly address short-term rentals. Before the zoning amendments in 2015, a "single-family dwelling" was allowed in the zoning district at issue. The zoning ordinance defined a single-family dwelling as a "dwelling unit designed for exclusive occupancy by a single-family which may be detached or semi-detached" and "dwelling unit" as a "building or portion thereof designed exclusively for residential occupancy by one (1)

family, and having cooking facilities.” The zoning ordinance also defined “family” to include relationships of a “non-transient domestic character,” and expressly excluded those “whose domestic relationship [was] of a transitory or seasonal nature or for an anticipated limited duration of a school term or other similar determinable period.” Given that the zoning ordinance had always expressly prohibited transitory uses, the Court of Appeals agreed that short-term rentals were not allowed under the zoning ordinance prior to 2015 and hence, plaintiffs did not have a lawful nonconforming use under the new post-2015 ordinance amendments. Judge William B. Murphy filed a concurrence in the lawsuit. Although Judge Murphy vigorously dissented in the case of *Eager v Peasley*, he agreed with the decision in the current case because the Garfield Township Zoning Ordinance prohibited transient or transitory uses. Judge Murphy also noted that short-term rentals do not involve a domicile. Although *Concerned Property Owners of Garfield Township, Inc.* is not binding precedent, it does serve as a good indication of what the Michigan courts might do with regard to short-term rentals in Winfield Township.

Ironically, on the very day of the earlier May 21, 2019 ZBA meeting, the Michigan Court of Appeals issued a published decision in *Reaume v Township of Spring Lake*, \_\_\_\_ Mich App \_\_\_\_ (2019). That case involved an STR. That court decision involved a number of procedural and other issues not applicable to the Winfield Township situation. However, the Court of Appeals also did address whether STRs were lawful under the Spring Lake Township Zoning Ordinance, given that the zoning regulations did not expressly define or regulate STRs. In that case, the Court of Appeals stated:

Finally, “family” is defined under Section 207 as:

A single individual or individuals, domiciled together whose relationship is of a continuing, non-transient, domestic character and who are cooking and living together as a single, nonprofit

housekeeping unit, but not including any society, club, fraternity, sorority, association, lodge, coterie, organization, or group of students, or individuals whose relationship is of a transitory or seasonal nature, or for anticipated limited duration of school terms, or other similar determinable period of time.

We note that R-1, R-2, R-3, and R-4 zones all permit "Dwelling, Single-Family" use, but only in R-4 zones are "Dwelling, Two-Family" and "Dwelling, Multiple-Family" uses permitted. The described "intent" of R-4 zoning notes that such zoning "is dispersed throughout the Township to avoid pockets of rental or transient housing."

Read as a whole, the definition of "Dwelling, Single-Family" unambiguously excludes transient or temporary rental occupation. Plaintiff focuses on the word "temporarily" in the overview definition of "Dwelling." Plaintiff fails to note that although *some* kinds of dwellings permit temporary occupancy, *single-family* dwellings do not. The definition of single-family dwelling emphasizes one family *only*, and "family" expressly excludes "transitory or seasonal" or otherwise temporary relationships. Notwithstanding the possibility of some temporary occupancy, *any* kind of "dwelling" excludes a "motel." "Motels" expressly provide transient lodging, or "tourist rooms," which are undefined but reasonably understood as also referring to transient lodging. Plaintiff's use of her property for short-term rentals seemingly fits the definition of a "motel." Finally, it is notable to contrast the descriptions of the R-1 through R-3 zones with the description of R-4 zoning, which suggests that some kind of temporary occupancy might be permitted in two-family or multiple-family dwellings. The Ordinance clearly forbids short-term rental uses of property in R-1 zones, irrespective of whether the Ordinance does so in those exact words. *Reaume* slip opinion at p. 6.

The Applicants' attorney argued that the permitted uses found in Section 6.02 for the LR zoning district simply indicates that single-family residential dwellings are allowed and that his clients' dwellings qualify. However, he omitted mention of the introductory paragraph for Section 6.02 which states that "no land or buildings. . . shall be used. . . except" for "single family detached dwellings." These short-term rentals are commercial in nature, and as such, do not constitute a single-family residential dwelling use.

Attorney Schenk also criticized the fact that the Zoning Ordinance does not define what constitutes a "short-term rental." He asked hypothetically how someone could know if the length of a given rental is a prohibited short-term rental or what is allowable – two weeks, six months, a year, etc? Happily, the ZBA does not need to answer such hypotheticals. The Applicants in this case have indicated that they have rented to different families for varying time periods such as a long weekend, one week or similar relatively short periods of time. The ZBA hereby finds that whatever such commercial rentals are called (whether they are called "short-term rentals" or something else), it violates the Zoning Ordinance.

The members of the ZBA have also carefully considered Attorney Gary Schenk's admonition that the relevant portions of the Zoning Ordinance must be interpreted or construed pursuant to certain court recognized rules of interpretation, including that any ambiguities in the Zoning Ordinance must be construed in favor of the Applicants, the plain meaning of language and words should normally be observed, the Township's own repeated interpretations of language over the years should generally be honored, and other rules of construction/interpretation. Nevertheless, even applying those rules of construction, the combination of Sections 2.04, 2.07 and 6.02 of the Zoning Ordinance mandate the interpretation that STRs are not allowed within the LR zoning district.

The Applicants also assert that short-term rentals have been going on within the Township (particularly at the lakes) for many decades. And, some of the citizens who spoke at the public hearing agreed. The Applicants appeared to be asserting that there has been disparate or unequal treatment regarding enforcement efforts by the Township regarding short-term rentals. However, it was also pointed out that the Township generally utilizes the citizen complaint process for investigating violations of the Zoning Ordinance. The Zoning

Administrator confirmed that he began an investigation of the Applicants' short-term rentals based on a citizen complaint or complaints. Furthermore, the current Zoning Ordinance has only been in effect since 2000. There was no evidence presented that the Township was aware of other short-term rentals or that Township officials gave them a "pass" while pursuing the Applicants.

In many ways, the STRs in this case resemble a motel, lodging house or bed and breakfast. Families are moving in and out constantly – sometimes, as often as every two to three days during the summer season. Furthermore, a cleaning person or crew visits and cleans the dwelling in between short-term tenants. The "turnover" is frequent. Such frequent "comings and goings" by third parties is not the same as or consistent with a single-family residential use.

Another characteristic of many short-term rentals is the "friends and family effect." Given that most short-term renters are on vacation and paying a significant sum of money for a relatively short period of time (often on a lake or in an area with recreational facilities), it is only natural that short-term renters will invite family and friends over to pack as many activities as possible into a short period of time. Such use is more akin to a multi-family or resort use than a single-family residential use. While it is true that single-family owners also can invite friends and family over, it likely does not occur with the intensity and frequency of a short-term rental situation.

The ZBA determines that Sections 2.04, 2.07 and 6.02 of the Zoning Ordinance must be read together regarding the issue of STRs. Furthermore, any of those Sections by itself would be sufficient to find that STRs are not allowed in the LR zoning district.

The definition of "Commercial" found in the Zoning Ordinance is also quite broad. Section 2.04 indicates that a commercial use is "any use connected with, or work intended for

financial gain.” The Applicants all admit that they are renting their cottages for financial gain. And, commercial uses are not allowed within the LR zoning district.

Finally, the definition of “family” found in Section 2.07 of the Zoning Ordinance prohibits all of the following:

- (a) A motel.
- (b) A boarding or lodging house.
- (c) A domestic relationship of a transient nature.
- (d) A domestic relationship of a seasonal nature.
- (e) Any arrangement that is not a single housekeeping unit.

Section 2.07 clearly prohibits short-term rentals.

5. Summary and Conclusion – the Interpretation.

Based on all of the above, the ZBA hereby upholds the interpretation/determination of the Zoning Administrator that the STRs of the Applicants violate the Zoning Ordinance, including Sections 2.04, 2.07 and 6.02 of the Ordinance.

6. The Use Variance Request.

The Applicants not only appealed the Zoning Administrator’s interpretation/determination regarding STRs to the ZBA, but also asked alternately for variances to be able to continue the STR use. The Applicants’ attorney and a number of members of the public also addressed the variance issue during the public hearing.

The ZBA hereby determines that the variance requests by the Applicants involve requests for a use variance, not a dimensional or non-use variance. In essence, the Applicants seek to engage in a use that is prohibited by the Zoning Ordinance.

The standards for a use variance are found in Section 15.06C of the Zoning Ordinance. The members of the ZBA carefully reviewed each of those standards before a tentative motion was made and adopted by the ZBA to deny the variance request.

The ZBA finds the following with regards to the use variance standards contained in Section 15.06C of the Zoning Ordinance:

C. Granting of Use Variances - A use variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of unnecessary hardship in the official record of the hearing that all of the following conditions are met:

1. That the building, structure, or land cannot yield a reasonable return if required to be used for a use allowed in the zone district in which it is located;

ZBA Finding – This is similar to a “taking” analysis. The Applicants’ properties can reasonably and productively be used for uses currently allowed by the Zoning Ordinance. No evidence was presented by the Applicants that they could not use their dwellings or cottages themselves without renting them to third parties. The sole reason that the Applicants desire a use variance is for financial gain. Under this standard, the zoning regulations do not prevent the Applicants from obtaining a reasonable rate of return for their properties. The zoning regulations advance several reasonable government interests. To the extent that there is any “hardship” in this matter, it is entirely self-created by the Applicants.

2. That the condition or situation of the specific piece of property or the intended use of such property for which the variance is sought is unique to that property and not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations. Such unique conditions or situations may include:
  - a. Exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter;
  - b. Exceptional topographic conditions or other extraordinary situation on the land, building or structure;
  - c. the use or development of the property immediately adjoining the property in question.

ZBA Finding - There is nothing unique or unusual about the Applicants' properties. They are lakefront properties with a cottage or house on Indian Lake, which are similar to well over 100 other lakefront lots on lakes in Winfield Township. The Applicants did not allege that their cottages or houses were built specifically for short-term rental or cannot be used for the Applicants' domicile or non-commercial residential use only. The Applicants simply chose to rent out their house or cottage to third parties.

3. That the proposed use will not alter the essential character of the neighborhood or the intent of the Master Plan.

ZBA Finding - The Winfield Township Master Plan designates the Indian Lake area for lakeside residential use, not commercial use. Granting a variance for a short-term rental would violate the intent of and interfere with the Zoning Ordinance, as discussed in the interpretation/determination portion of this Resolution. The STR use would also change the essential character of the neighborhood involved due to commercial use, overcrowding and conflict and would negatively affect area property values.

The ZBA finds that the Applicants' use variance requests do not meet any of the standards for a use variance found in Section 15.06C of the Zoning Ordinance. In fact, the ZBA believes that it is not even a "close call."

The vote to adopt the above Resolution was as follows:

YEAS: three, 3 Steve Cole,  
Dan Kanouse & Chaelene Kohl

NAYS: zero, 0

ABSENT/ABSTAIN: zero, 0

RESOLUTION DECLARED ADOPTED.

### CERTIFICATION

I hereby certify that the above is a true copy of a Resolution adopted by the Winfield Township Zoning Board of Appeals at the time, date and place specified above pursuant to the required statutory procedures.

Respectfully submitted,

By: Charlene M. Kohl  
Charlene M. Kohl  
Secretary of the Winfield Township  
Zoning Board of Appeals