

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
corporation,

Defendant.

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**PLAINTIFF PARK TOWNSHIP NEIGHBORS' BRIEF IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)**

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I. INTRODUCTION

For at least 50 years, single-family dwellings could be used for short-term rentals in Park Township. Discovery confirmed that numerous Township Zoning Administrators—the officials tasked with formally interpreting the Zoning Ordinance on behalf of the Township—repeatedly and consistently told citizens they could use a single-family dwelling as a short-term rentals in residential districts. Consequently, approximately 250 property owners used their single-family dwellings as rentals because of the Township's interpretation.

Recently, however, the Township Board decided that it did not want any short-term rentals in residential districts. The problem with the Board's decision, however, is that existing short-term rentals constitute a nonconforming use, which means the existing short-term rentals can continue notwithstanding zoning changes. To overcome this obstacle, the Township now takes the retroactive position that the use of single-family dwellings as short-term rentals has never been allowed, and therefore the existing short-term rentals are not entitled to nonconforming use protection. Nonsense. In addition to the Township's repeated interpretation that the short-term rental of a single-family dwelling was permitted, the Township had not issued a single citation for an activity that the Township now says 250 property owners were doing illegally for 50 years.

In the face of such government overreach, Plaintiff Park Township Neighbors ("Plaintiff") filed a Complaint and thereafter moved for a preliminary injunction. Plaintiff argued, among other things, that Plaintiff was likely to prevail on Count III, which sought a declaratory judgment that the use of single-family dwellings as a short-term rental constitutes a permissible use under the Township's Zoning Ordinance. This Court granted Plaintiff's motion. The Court found that Plaintiff is likely to prevail on the merits and enjoined the Township "from enforcing its ban on short-term rentals" and from "enforc[ing] . . . its Zoning Ordinance insofar as the Township claims

it prohibits the use of short-term rentals in residential districts." Order Granting Pl's Mot for Prelim Inj at 2, **Exhibit 1**.

Discovery only further confirmed the strength of Plaintiff's claim and that no genuine issue of material fact exists on Count III. Plaintiff therefore moves for summary disposition on Count III. This Court should enter a declaratory judgment, declaring that the use of single-family dwellings as a short-term rental was a permissible use under the Township's Zoning Ordinance enacted in 1974.

II. STATEMENT OF RELEVANT FACTS

Plaintiff is a 501(c)(4) non-profit organization established to advocate for reasonable rules and regulations in Park Township that lawfully allow property owners to continue renting their single-family homes on a short-term basis. First Am Ver Compl ¶ 18, **Exhibit 2**. Plaintiff has approximately 135 members, 122 of whom own property in Park Township. Allen 2d Aff ¶ 4, **Exhibit 3**. All but one of the properties owned by Plaintiff's members are single-family dwellings that are rented on a short-term basis. First Am Ver Compl ¶ 20, Ex 2; see also Allen Aff ¶ 10 (Mr. Allen's AirBnB listing), **Exhibit 4**.¹

A. PARK TOWNSHIP'S EXISTING ZONING ORDINANCE

In 1972, the Township examined its current land use and future zoning goals. First Am Ver Compl ¶ 28, Ex 2; Answer ¶ 28 (admitting), **Exhibit 5**. The Township "recognized its status as a popular vacation destination, with many residential properties being used on a temporary" basis. First Am Ver Compl ¶ 29, Ex 2; Answer ¶ 29 (admitting), Ex 5. The Township's plans recognized the existence of "rental cottages" and "seasonal homes" as "dwelling units." 1972

¹ Other listings of Plaintiff's members include: <https://www.airbnb.com/rooms/53590286>, <https://www.airbnb.com/rooms/52283317>, and <https://www.airbnb.com/rooms/792798594298885688>.

Comprehensive Plan at 12, **Exhibit 6**. The Township adopted its Zoning Ordinance in 1974 in accordance with the plan (hereafter, the "Zoning Ordinance"). Answer ¶ 31, Ex 5.

The Zoning Ordinance permits "single-family dwellings" in each residential district. See ZO §§ 38-214(4), 38-244(1), 38-274(1), 38-304(1), & 38-334(1), **Exhibit 7**. To constitute a "single-family dwelling," a property must satisfy two requirements: (1) the use must fall under the definition of a "dwelling" for a "single-family" and (2) the use cannot be a "motel" or "tourist room." See ZO § 38-6 (*dwelling*), Ex 7.

The crux of this lawsuit is the latter requirement, whether the use of a single-family dwelling as a short-term rental constitutes either a "motel" or a "tourist room." A "motel" is defined as "[a] commercial establishment consisting of a building or group of buildings on the same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment. Access to the lodging facilities is generally from the outside." ZO § 38-6 (*motel*). *Id.* A "tourist home" is defined as "[a] building, other than a hotel, boardinghouse, lodging house, or motel, where lodging is provided by a resident family in its home for compensation, mainly for transients." ZO § 38-6 (*tourist home*). *Id.*

Importantly, in 2003, the Township amended the definition of a "motel" to include the requirement that it be a "commercial establishment." See Original Definition, **Exhibit 8**, with ZO Amendment No ZA 51, **Exhibit 9**. **According to the then Zoning Administrator, by adding the phrase "commercial establishment," the Township excluded a short-term rental from the definition of a "motel."** Briggs Dep 57:5-16, **Exhibit 10**.

B. PARK TOWNSHIP'S INTERPRETS ITS ZONING ORDINANCE TO ALLOW SHORT-TERM RENTALS.

Pursuant to the above definitions, for nearly fifty years, the Township's officials have consistently interpreted the Zoning Ordinance to permit the use of single-family dwellings as short-term rentals.

1. The Zoning Administrator

The Zoning Administrator's interpretation is the most important because the Zoning Ordinance is "administered and enforced by the Zoning Administrator." ZO § 38-31.² The Zoning Administrator also issues infractions for a violation of the Zoning Ordinance. ZO § 38-7. It is the Zoning Administrator's duty to interpret the Zoning Ordinance for the Township and its citizens. Briggs Dep 20:3-11, Ex 10; de Vries Dep 11:9-22, **Exhibit 11**; Posillico Dep 16:9-11, **Exhibit 12**; Township Manager Howard Fink Dep 14:24-15:1, **Exhibit 13**. For example, "if a citizen had a question about whether something was or wasn't allowed under the zoning ordinance," the Zoning Administrator was "the person to answer that question." Briggs Dep 21:23-22:6, Ex 10. Furthermore, the Zoning Administrator always had access to legal counsel to obtain answers if the Zoning Administrator ever had a question about an interpretation. *Id.* at 23:1-7; de Vries Dep 20:22-21:4, Ex 11.

The Township's Zoning Administrators have consistently and unequivocally interpreted the Zoning Ordinance to permit the use of single-family dwellings as short-term rentals, leaving no doubt that this practice as long been recognized and accepted under the Township's ordinances.

² All provisions of the Zoning Ordinance cited herein are attached as Ex 7.

a. Kirk Briggs

Kirk Briggs served as Zoning Administrator from 1992 to 2008. Briggs Dep 16:19-17:23, Ex 10. He "read every portion of the zoning ordinance." *Id.* at 27:13-20. During his entire 16-year career, he never issued a citation to someone for using their house as a rental, despite knowing that rentals existed in the Township. *Id.* at 33:11-19, 35:20-36:7.

Mr. Briggs expressly informed a governing body of the Township that single-family dwellings could be rented. On August 27, 2002, at a Planning Commission meeting, a Planning Commissioner asked whether the Planning Commission could put any restriction on the property owner "renting out the house." 8/27/2002 Minutes, **Exhibit 14**; Answer ¶ 50, Ex 5. "**Zoning Administrator Briggs then replied that 'there is no ordinance prohibiting or governing the renting of property.'**" *Id.*; see also 8/27/2002 Minutes at 8, Ex 14. Mr. Briggs offered his interpretation based on his "reading of the zoning ordinance as the zoning administrator." Briggs Dep 63:12-19, 64:10-14, Ex 10. The Township's current litigation counsel was present at that meeting, but did not refute Mr. Briggs' interpretation. *Id.* at 66:6-11.

With respect to whether a short-term rental constitutes a "motel," Mr. Briggs reviewed the definition of a "motel" and testified that only one motel existed in the entire Township. *Id.* at 44:14-46:3. He also agreed that a definition of a "commercial establishment"—which is necessary to be a motel—is the one set forth in 17 USC 119(d)(12), **Exhibit 15**, which requires the establishment to have a "common business area." Brigg Dep 47:16-48:1, Ex 10. A "commercial establishment" is something that is *always* commercial in nature, such as a "flower shop" or "ice cream store." *Id.* at 52:11-25.

Likewise, due to the fact that a "tourist home" is defined as lodging provided by a "resident family," a "tourist home" is one in which "literally a family is living there while they are hosting

other people staying there." *Id.* at 51:3-21. Plaintiff's members do not stay at their properties while they rent their single-family dwellings to others.

b. Ed de Vries

Zoning Administrator Ed de Vries served the Township from 2011 to 2018. de Vries Dep 7:8-11, Ex 11. He vacationed in the Township as a child and owned property in Park Township since the late 1970s, during which times he knew vacation rentals existed. *Id.* at 6:24-25, 9:15-22.

Zoning Administrator de Vries was unequivocal that the use of dwellings as short-term rentals constituted a "single-family dwelling" under a correct interpretation of the Zoning Ordinance:

Q: And, again, it was your understanding at this time that people were, in fact, allowed to use their homes as short-term rentals?

A: Yes.

Q: And that was because it was your position that the short-term rentals constituted a single-family dwelling?

A: Yes.

Id. at 56:4-10; see also *id.* at 45:4-7 (short-term rentals "constituted single-family dwellings" in residential districts).

Zoning Administrator de Vries formed his interpretation by reading the Zoning Ordinance and then discussing it with the Building Inspector, Manager, and Assessor, all who agreed short-term rentals were allowed. *Id.* at 16:16-17:9. Due to the fact that single-family dwellings could be used as short-term rentals, any change of the of the Zoning Ordinance would create a nonconforming use:

Q: ... [W]as your position that it was legal at the time to have a short-term rental in a residential district, but if that were to change the person would have a nonconforming use?

A: If it were a zoning change, yes.

Id. at 51:7-52:1. Zoning Administrator de Vries expressly told citizens that their property would be "grandfathered" if a zoning change were made, which de Vries said was the layman term for a "nonconforming use." 7/16/2018 E-mail, **Exhibit 16**; de Vries Dep 25:14-20, Ex 11.

Throughout his tenure, Zoning Administrator de Vries received a staggering number of inquiries about the legality of short-term rentals in the Township, and each time he informed the person that the Township permits it or does not prohibit short-term rentals. de Vries Dep 29:6-30:6, Ex 11 (explaining he got 2-3 calls per week and his response was "currently it's being permitted"); 7/30/2015 E-mail from de Vries, **Exhibit 17** ("There is not a prohibition on renting out rooms."); 4/6/2016 E-mail, **Exhibit 18** ("I do not see any violation of current ordinances as we do not address rental properties."); 7/23/2018 Letter, **Exhibit 19** ("Park Township does not currently regulate rental properties."); 7/21/2014 E-mail from de Vries, **Exhibit 20** ("We do not license, regulate, or inspect rental housing."); 6/3/2015 E-mail from de Vries, **Exhibit 21** ("There are not any specific regulations pertaining to rentals, either long term or nightly."); 3/27/2017 E-mail, **Exhibit 22** ("We do not have rental regulations or registration."); 8/18/2017 E-mail from de Vries, **Exhibit 23** ("Park Township does not regulate rental properties."). **To be clear, when de Vries told citizens that the Township "does not regulate" short-term rentals, he was inferring that the citizen "was allowed to do it" and was "lawfully allowed to do that."** de Vries Dep 41:5-21, Ex 11.

Likewise, just like Zoning Administrator Briggs, upon reviewing the definition of a *motel*, Administrator de Vries stated that only one motel existed in the Township, which was the "Lake Branch Motel." *Id.* at 33:21-34:12. Indeed, Zoning Administrator de Vries agreed that the definition of an "establishment" is "an institution or place of business with its fixtures and organized staff." *Id.* at 35:13-18, with Black's Law (6th ed) (*establishment*), **Exhibit 24**. de Vries

likewise agreed that the definition of a "commercial establishment" is an establishment "with a common business area." *Id.* at 36:12-37:1, with 17 USC 119(d)(12), Ex 15. And finally, Zoning Administrator de Vries also agreed that a tourist home means that "the family was living there while they were also renting out its rooms." de Vries Dep 38:1-14, Ex 11.

Not surprisingly, despite receiving complaints about short-term rentals over the years, Zoning Administrator de Vries never issued a single infraction solely because the person used a single-family dwelling as a short-term rental. *Id.* at 24:25-25:4. For example, in response to a lengthy complaint made by Foster Swift attorney Jack Siebers about nearby partygoers at a short-term rental, Zoning Administrator de Vries informed him that "[a]t this time the only Township Ordinance violation is the noise." 7/31/2018 E-mail, **Exhibit 25**

c. Professional Consultant Zoning Administrators

After Mr. de Vries' tenure ended in 2018, the Township hired a professional consulting firm, Fresh Coast Planning, to be the Zoning Administrator. For example, Emma Posillico, master's-level trained in urban and regional planning, was the Zoning Administrator from October 2018 through October 2020. Posillico Dep 8:14-16, 7:7-10, Ex 12. In a formal memorandum to the Zoning Board of Appeals, she clarified: "as you know, Park Township does not regulate vacation rentals." See 2/13/2020 ZBA Memo, **Exhibit 26**. Ms. Posillico also informed citizens of the same thing. See 7/23/2020 E-mail, **Exhibit 27** ("Park Township does not have short term rental regulations."); 6/2/2020 E-mail, **Exhibit 28** (same). Similarly, when a citizen asked whether a permit was needed for a short-term rental, Ms. Posillico said that she did not need a permit and could "use it as a short-term rental as long as there's not more than five unrelated individuals at a time in that unit." Posillico Dep 40:9-14, Ex 12. Ms. Posillico agreed that an "establishment" is an "institution or place of business with its fixtures and organized staff," which is a "good definition" for purposes of a "commercial establishment." *Id.* at 27:19-28:11. Ms. Posillico also

agreed that the definition of a "commercial establishment" is an establishment "with a common business area." *Id.* at 30:15-22.

Lindsay Mohr, also master's-level trained, was the Zoning Administrator in late 2020. Mohr Dep 8:20-22, 16:7-11, **Exhibit 29**. In her opinion, a single-family residence used for short-term rentals does not constitute a motel because the residence is not a "commercial establishment." *Id.* at 35:6-13. Not surprisingly, Ms. Mohr also informed residents that the Township does not regulate short-term rentals based on her reading and interpretation of the Zoning Ordinance. 10/8/2020 E-mail, **Exhibit 30** ("The Township does not regulate short-term rentals."); 10/19/2020 E-mail, **Exhibit 31** (same).

2. The Township's Zoning Board of Appeals (the "ZBA")

In 1987, a property owner appealed the denial of a building permit for a home in a residential zoning district. First Am Ver Compl ¶ 57, Ex 2; Answer ¶ 57 (admitted), Ex 5. During the hearing, a neighbor asked whether the property owner's home would be a rental, flagging to the ZBA that the owner's property was rented on a seasonal basis. 9/28/1987 Minutes at 2, **Exhibit 32**. Shortly thereafter, a ZBA member stated that the "Board didn't have any jurisdiction on whether or not this would be a residential home or a rental home." *Id.* The ZBA approved the owner's request. *Id.*

In 1999, a property owner sought a variance for a building permit to expand a home in a residential district. 3/22/99 Minutes, **Exhibit 33**. Neighbors complained the owner rented out the cottage all but one week out of the summer to groups of people, sometimes as many as twelve people. *Id.* at 2. Nonetheless, the ZBA approved the property owner's request. *Id.*

3. The Township's Planning Commission

The Township's Planning Commission "is responsible for making and adopting a plan for the Township's land use and development." First Am Ver Compl ¶ 41, Ex 2; Answer ¶ 41

(admitting), Ex 5. On July 18, 2000, the Planning Commission discussed a special use request to move a house onto an empty lot in a subdivision. 7/18/2000 Minutes, **Exhibit 34**. After the Planning Commission raised a concern that the house may be converted into a duplex, the Planning Commission acknowledged that "[y]ou can have a single rental in any district." *Id.* at 14. Another Planning Commission member followed up with: "It has to be a single-family residence. All township rules would apply here too. **They could rent them if they wanted to.**" *Id.* at 16 (emphasis added).

4. Township Manager Howard Fink

The Township Manager is Howard Fink. He has a master's degree in urban planning. Fink Dep 18:24-19:2, Ex 13. He has "much more training and lengthy experience to interpret a zoning ordinance than the average layperson off the street." *Id.* at 90:1-4.

Until the time that the Township Board decided to change its stance, Manager Fink knew that the Township did not regulate the use of single-family dwellings as a short-term rental and informed residents of that. See 8/4/2017 Manager's Report ("I have had detailed conversations with all the complainants explaining that we have no regulations on the books regarding this issue."), **Exhibit 35**. Indeed, despite the Township's enforcement being complaint driven and Manager Fink having received many complaints, no citations were ever issued. Fink Dep 40:5-6, Ex 13 (the Township is a "complaint-driven code enforcement system").

Manager Fink agreed with other Township officials that short-term rentals were legal. Although Manager Fink typically read the e-mails on which he was copied and would have corrected the Zoning Administrator's statements if they had been wrong, Manager Fink never disagreed with the Zoning Administrators' position that short-term rentals were legal. See 7/31/2018 E-mail, **Exhibit 36**, with Fink Dep 71:19-72:15, Ex 13; see also 7/23/2020 E-mail from

Posillico, Ex 27 ("Park Township does not have short term rental regulations."), with Fink Dep 88:20-24, Ex 13.

5. Code Enforcement Officer Paul Moerland

Code Enforcement Officer Paul Moerland served Park Township for approximately five years. Moerland Dep 6:9-12, **Exhibit 37**. Prior to that, he served as a police officer for the Holland Police Department for 29 years. *Id.* at 7:13-14. He knew that short-term rentals existed in residential areas during his entire tenure, but he never once issued a citation or even a warning for a Zoning Ordinance violation. *Id.* at 9:6-12, 16:4-13.

Until the time that the Township changed its position, Mr. Moerland informed numerous residents that short-term rentals were allowed. *Id.* at 30:6-9; see also 12/17/2020 E-mail, **Exhibit 38** ("Park Township does not have any regulations on rental units and short term rentals."); 7/17/2019 E-mail, **Exhibit 39** ("At this point the township does no inspections or regulations on rental property of any kind."); 12/21/2021 E-mail, **Exhibit 40** ("There is currently no ordinances on short term rentals"). Despite knowing short-term rentals existed, Mr. Moerland did not have the authority to overlook any violations, yet he never issued any citations. Moerland Dep 37:18-21. 41:9-17, 46:9-12, Ex 37.

6. Statements of Various Township Officials Made to Plaintiff's Members

In recent years, the Township has told many Plaintiff members that their single-family dwellings could be rented on a short-term basis:

- Sue Willoughby: Two Township representatives on two different occasions "assured it was permitted to rent the house to vacationing families" on a weekly basis.
- Stefan Walter: "I was unequivocally told that there were no such regulations or restrictions."
- Jason Reierson: "I called the Township in 2019 and was told there were no restrictions on short-term rentals or where they could be located."

- Jackie Beck: "I inquired if there were any restrictions or requirements on renting my home . . . and I was informed there was not."
- Lisa Ruggles: "I was told by Park Township that there were no restrictions or permit(s)/license(s) required for short-term rentals."
- Jeremy Allen: Despite telling Township employees a remodel was to accommodate his growing family and hosting vacation rental guests, "at no time did the permitting, licensing, or inspection representatives say short term rentals were illegal."
- Vic Van't Hof: "I was told there were no restrictions and no rental permit required."
- Robert Kust: "We were led to believe by the Township that the Township had no regulations governing short-term rentals."

See Affidavits, Ex 4.

C. PARK TOWNSHIP BANS SHORT-TERM RENTALS IN RESIDENTIAL AREAS

Due to the Township's consistent interpretation of its Zoning Ordinance, the Township had 248 single-family dwellings being rented on a short-term basis in October 2022. See Township Press Release, **Exhibit 41**. However, the Township Board recently decided that it did not want short-term rentals in the Township. Supervisor Gerard Dep 40:20-41:2, **Exhibit 42** ("The conclusion was not to have them.").

Consequently, "[t]he Township Board of Park Township voted 6-0 to ban short-term rentals in residential zoning districts at their regular meeting on Thursday, November 10, 2022." Township Press Release, Ex 41; Supervisor Gerard Dep 42:19-21, Ex 42 (this meeting is "where the board decided to not allow short-term rentals"); Manager Fink Dep 53:2-7, Ex 13 (same); Clerk/Board Member Keeter 26:18-24, **Exhibit 43** (the Board made the decision that "[short-term rentals] were not to be lawful in Park Township").

The Township has tried to justify its new stance by saying that short-term rentals were never allowed under the 1974 Zoning Ordinance, but that the Township simply never "enforced" its Zoning Ordinance. Discovery has shown that the Township's position is untrue. As Manager

Howard Fink explained, prior to a recent case in the last few years, the Township never made any formal decision to not enforce its Zoning Ordinance with respect to short-term rentals. Fink Dep 34:10-13, Ex 13.

D. PROCEDURAL HISTORY

As the Township's new ban went into effect, Plaintiff filed the instant lawsuit in October 2023. Count III of the Complaint seeks declaratory relief, namely a declaration that the use of a single-family dwelling as a short-term rental is lawful under the 1974 Zoning Ordinance.

Shortly thereafter, Plaintiff filed a motion for preliminary injunction. Plaintiff demonstrated that it was likely to prevail on Count I and Count III. With respect to Count III, Plaintiff demonstrated that the Zoning Ordinance permits the use of single-family dwellings as short-term rentals. See Pl's Br in Supp of Mot for Prelim Inj at 9-17.

After a hearing, this Court granted Plaintiff's motion. The Court found that Plaintiff is likely to prevail on the merits and enjoined the Township "from enforcing its ban on short-term rentals" and from "enforc[ing] . . . its Zoning Ordinance insofar as the Township claims it prohibits the use of short-term rentals in residential districts." Order Granting Pl's Mot for Prelim Inj at 2, Ex 1.

E. PARK TOWNSHIP AMENDS ITS ZONING ORDINANCE TO FINALLY PROHIBIT SHORT-TERM RENTALS IN RESIDENTIAL DISTRICTS.

After this Court granted the preliminary injunction, the Township finally recognized that its attempt to rewrite history would not stand. Thus, to fix the fact that the 1974 Zoning Ordinance allowed short-term rentals in residential districts, the Township enacted an amendment to the Zoning Ordinance in March 2024. See Ordinance 2024-1, **Exhibit 44**. According to the current Zoning Administrator, the new amendment "is intended to provide clarity," such as "by providing a definition of short-term rentals." Weiss 3/7/2024 Memo, **Exhibit 45**. The amendment also adds

"a section specifically describing what is lawful with regard to short-term rentals in Park Township." *Id.* As the Township's attorney explained "[t]he purpose of this ordinance is to cover some of the history, to provide a definition of short-term rental, and to essentially prohibit short-term rentals in the residential zoning districts." *See* Video of 3/14/2025 Board Meeting at approximately 28:58-29:14.³

Although the Township *says* that the new amendment merely "reaffirmed" its old ordinance (i.e., the Township did not want to completely capitulate in this litigation by acknowledging that the prior zoning ordinance permitted short-term rentals), Supervisor Gerard had never seen an ordinance passed solely to clarify and reaffirm an issue. Gerard Dep 53:3-6, Ex 42.

Discovery has confirmed that there is no genuine issue of material fact and Plaintiff is going to prevail on Count III of the First Amended Complaint.

III. LEGAL STANDARD

A motion for summary disposition under Michigan Court Rule 2.116(C)(10) "tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Such a motion allows the moving party to avoid a needless trial. *See Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000) (internal citations omitted). In evaluating a (C)(10) motion for summary disposition, a trial court "considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id.*;

³ Available at: <https://www.youtube.com/watch?v=9fF4SBP0rKA&list=PLAa-yh2xq57fnSZbc2XSbqi2hQQhiqYYA&index=2>.

Quinto v Cross & Peters Co, 451 Mich 358; 547 NW2d 314 (1996); *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); *Wheeler v Charter Twp of Shelby*, 265 Mich App 657, 663; 697 NW2d 180 (2005) (internal citations omitted).

IV. LAW AND ARGUMENT

Plaintiff is entitled to summary disposition on Count III because Park Township's 1974 Zoning Ordinance permitted the use of single-family dwellings as short-term rentals in residential-zoning districts. This Court should so declare.

A. THE TOWNSHIP HAS ADMITTED THAT PLAINTIFF'S MEMBERS' PROPERTIES EACH CONSTITUTE A "SINGLE-FAMILY DWELLING."

Since 1974, "[s]ingle-family dwellings" have been expressly permitted in all five residential districts. See ZO §§ 38-214(4), 38-244(1), 38-274(1), 38-304(1), & 38-334(1), Ex 7. The Township admitted that the properties owned by Plaintiff's members each constitute a "single-family dwelling." See Pl's 1st Am Compl ¶¶ 22–26, Ex 2 (alleging that each member "owns a single-family dwelling," which is rented on a short-term basis); Answer ¶¶ 22–26 ("**Defendant admits that [Plaintiff's member] owns a single-family dwelling . . .**"), Ex 5.

"It is a long-standing principle of law in Michigan that an admission is 'binding and may be acted upon when made in the pleadings.'" *Reif v Auto Club Ins Assoc*, 2022 WL 17870467, at *2 (Mich Ct App Dec 22, 2022) (quoting *Detroit Trust Co v Smith*, 256 Mich 376, 379; 204 NW 12 (1931))⁴; see also *Ambo v Holcomb*, 29 Mich App 258, 259; 185 NW2d 59 (1970) (explaining that an answer to a complaint admitting an allegation "constitute[s] a judicial admission") (alteration added).

⁴ Unpublished cases are attached at **Exhibit 50**.

Here, because the Township admits that the properties at issue constitute single-family dwellings, Plaintiff's members' properties have always been used lawfully in their respective districts. Thus, summary disposition on Count III should be entered in Plaintiff's favor. MCR 2.605(A).

B. THE PROPERTIES AT ISSUE ALSO FIT WITHIN THE DEFINITION OF A "SINGLE-FAMILY DWELLING."

This Court has the authority to interpret and declare the meaning of the Zoning Ordinance. See, e.g., *Macenas v Vill of Michiana*, 433 Mich 380, 395; 446 NW2d 102 (1989). Not surprisingly considering the Township's admission, Plaintiff's members' properties fall under the Zoning Ordinance's definition of a "single-family dwelling." When interpreting a zoning ordinance, "[t]erms ... must be given their plain and ordinary meanings, and it is appropriate to consult a dictionary for definitions." *Great Lakes Soc v Georgetown Charter Twp*, 281 Mich App 396, 408; 761 NW2d 371 (2008) (citing *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129, 132 (2004)). Further, "the judiciary cannot read restrictions or limitations into a statute that plainly contains none." *Rusnak v Walker*, 273 Mich App 299, 305; 729 NW2d 542 (2006) (citation omitted).

Park Township's definition of a single-family dwelling has two components: (1) the use must fall under the definition of a "dwelling" for a "single-family" and (2) the use cannot be a "motel" or "tourist room." See ZO § 38-6, *dwelling*, Ex 7.

1. Each building is a "single-family dwelling."

The Township's Zoning Administrator agreed that "short-term rentals constitute a single family dwelling." de Vries Dep 56:4-10, Ex 11. The Michigan Supreme Court agrees.

In *Reaume v Township of Spring Lake*, the Michigan Supreme Court analyzed a materially similar ordinance definition of "single-family dwelling" for a house turned into a short-term rental in the Township of Spring Lake. 505 Mich 1108; 943 NW2d 394 (2020); see also *Reaume v Twp*

of *Spring Lake*, 328 Mich App 321, 332; 937 NW2d 734 (2019) (setting forth the defendant-township's definition of "dwelling" and "dwelling, single-family"). The Court of Appeals held that the short-term rental did *not* constitute a "single-family dwelling," **but the Supreme Court vacated that holding.** *Id.* The Court observed that Spring Lake Township's ordinance defined "dwelling" to include a building occupied "permanently *or temporarily*," which the Court interpreted to mean the "transient occupancy of the property." *Reaume*, 505 Mich at 1108 (emphasis in original).

Spring Lake's definitions of both "dwelling" and "single-family" are materially the same as Park Township's. *Id.*⁵ Plaintiff's members' properties thus constitute a "single-family dwelling" under *Reaume*. The Township's Zoning Ordinance defines "dwelling" as a building that is occupied by a family "as a home or residence, either permanently *or temporarily*." ZO § 38-6 (emphasis added), Ex 7. Furthermore, although "single-family" is defined as "[a] building designed for use and occupancy by one family only" (just as Spring Lake's zoning ordinance did), the definition is subsumed within a "dwelling," which allows for "temporary" occupancy. Thus, under *Reaume*, the Township's Zoning Ordinance permits the "transient occupancy of the property." *Reaume*, 505 Mich at 1108.

Plaintiff's members' properties satisfy the definition of "dwelling" for another reason: The word "dwelling" is defined as a building "occupied" by one or more families. ZO § 38-6, Ex 7.

⁵ Compare Park Township's definition of single-family dwelling ("Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families (2) SINGLE-FAMILY A building designed for use and occupancy by one family only."), with Spring Lake Township's definition ("Any Building or portion thereof which is occupied in whole or in part as a home, residence, or sleeping place, either permanently or temporarily, by one (1) or more Families (1) Dwelling, Single-Family: A Building designed for use and occupancy by one (1) Family only."). *Reaume*, 328 Mich App at 332.

The word "occupied" "shall be construed to include the words 'intended, arranged or designed to be . . . occupied." ZO § 38-5(7), Ex 7. There can be no real dispute that Plaintiff's members' properties were "intended" or "designed" to be occupied as a home or residence; they have a common kitchen, living areas, bedrooms, bathrooms, yards, etc.

2. **The use of a single-family dwelling for a short-term rental is not a "motel."**

The definition of "single-family dwelling" excludes "motels." See ZO § 38-6 (*dwelling*), Ex 7. The Township's Zoning Ordinance defines "motel" as "[a] commercial establishment consisting of a building or group of buildings on the same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment. Access to the lodging facilities is generally from the outside." ZO § 38-6 (*motel*), Ex 7. Plaintiff's members' properties are not "motels."

a. **A Short-Term Rental Is Not A Commercial "Establishment"**

A motel is defined as a "*commercial establishment*," ZO § 38-6 (emphasis added), but a single-family dwelling used for a rental is not a "*commercial establishment*." The Zoning Ordinance does not define "establishment," so it is appropriate to consult the dictionary. *Great Lakes Soc*, 281 Mich App at 408. An "establishment" means "[a]n institution or place of business, **with its fixtures and organized staff.**" *Establishment*, BLACK'S LAW DICTIONARY (6th ed.), Ex 24; see also *Abnie v Ford Motor Co*, 195 NE2d 131, 135 (Ohio Com Pl 1961) (utilizing Webster's dictionary to define *establishment* as the above); 17 USC 119(d)(12) (defining a "commercial establishment" as "an establishment used for commercial purposes, such as a bar, restaurant, private office, fitness club, oil rig, retail store, bank or other financial institution, supermarket, automobile or boat dealership, or any other establishment **with a common business area**"). The word "establish" connotes permanency. See, e.g., *Establish*, BLACK'S LAW DICTIONARY (6th ed.)

("To settle, make or fix firmly; place on a permanent footing."), Ex 24; see also *Establish*, MERRIAM-WEBSTER DICTIONARY ("to institute . . . permanently by enactment or agreement" or "to make firm or stable"), **Exhibit 46**.

And even if the word "establishment" were ambiguous, the definitions above apply *when taking the facts in the light most favorable to the Township*. The Township's Zoning Administrators agreed that an "establishment" means "an institution or place of business, with its fixtures and organized staff." See de Vries Dep 35:13-18, Ex 11; Posillico Dep 27:19-28:11, Ex 12. Likewise, the Township Zoning Administrators agreed with the definition of "commercial establishment" used in 17 USC 119(d)(12), which requires a "common business area." See Briggs Dep 47:16-48:1, Ex 10; de Vries Dep 36:12-37:1, Ex 11; Posillico Dep 30:15-22, Ex 12.

Here, Plaintiff's members' single-family dwellings that are being used as rentals are not a commercial place of business with "fixtures and organized staff" or a "common business area." They are quite literally the opposite of an "established" commercial place of business. There are no lobbies for the public to enter or established hours. There is nothing fixed about it. A defining aspect of "short-term rentals" is that they are homes that could *stop* being rented altogether so that the property owner could use it for their own use. The single-family homes being used as short-term rentals are not *established* as a commercial operation in any sense of the word.

b. Since Long-Term Rentals Are Not A Commercial Establishment, Short-Term Rentals Cannot Be Either.

The Township does not consider a single-family dwelling rented for 28 days or more to be a motel, yet there is no distinction in the definition of a motel based on how long a transient guest stays at the unit. See ZO § 38-6, Ex 7. The definition of "motel" simply uses the word "transient." *Id.* The word "transient" means "temporary," "not lasting," or "not permanent." *Transient*, BLACK'S LAW DICTIONARY (6th ed.), **Exhibit 47**. Indeed, it was not until the Township's recent

amendments in March 2024 that the Township finally created a distinction between short-term and long-term rentals. See Ordinance 2024-1, Ex 44. Therefore, if a single-family dwelling rented for 28 days or more does not constitute a motel, then a single-family dwelling rented for less than 28 days cannot possibly constitute a motel either.

c. The Township Codified That Short-Term Rentals Are Not Motels.

Third, the Township has codified that single-family dwellings being rented for less than 28 days **do not** constitute a motel. See Ordinance 2023-2 ("the following shall not be considered short-term rentals: ... hotels, motels, resorts"), **Exhibit 48**. The Township must follow its own ordinances. *City of St Louis v Praprotnik*, 485 US 112, 123 (1988).

d. Reaume Does Not Apply Because Spring Lake's Definition Of "Motel" Was Materially Different.

The Township will attempt to rely upon the Michigan Supreme Court's decision involving Spring Lake Township. See *Reaume*, 505 Mich at 1108. However, even the Township admits that *Reaume* was decided under the specific facts of its case. See First Am Ver Compl at ¶ 67, Ex 2; Answer ¶ 67 (admitting that the Court made its decision "under the specific language of Spring Lake Township's Zoning Ordinance" (emphasis in original)), Ex 5. Our state's Supreme Court agrees: "we must follow the definition provided in the ordinance." *Reaume*, 505 Mich at 1108.

In *Spring Lake*, Spring Lake Township did not define a motel as a "commercial establishment" like here, but instead broadly defined it as "any building" that provided lodging for compensation on a transient basis:

A Building or group of Buildings on the same Lot, whether Detached or in connected rows, containing sleeping or Dwelling Units . . . designed for, or occupied by transient residents. The term shall include **any Building** ... intended to identify them **as providing lodging**, with or without meals, **for compensation on a transient basis**.

Reaume, 328 Mich App at 333 (emphasis added). Because Spring Lake Township broadly defined a "motel" to include "any building" that provided lodging on a "transient basis," rental homes fell within Spring Lake's definition of "motels." *Id.*

Here, unlike the broad definition in *Spring Lake*, the Township requires a motel to be a "commercial establishment." The single-family dwellings at issue in this case are in no sense a "commercial establishment," either by a strict definition of commercial establishment (as discussed above) or common sense. *Grand Rapids Emps Indep Union v City of Grand Rapids*, 235 Mich App 398, 406; 597 NW2d 284 (1999) (a court "may not abandon 'the canon of common sense' when construing the ordinance at issue"). On top of that, unlike here, there was no indication in *Reaume* that Spring Lake Township permitted rentals of 28 days or more or that Spring Lake codified the definition of "motel" to exclude short-term rentals. *Reaume* is materially distinguishable for all of those reasons and, therefore, this Court should reject the Township's attempt to rely on *Reaume*.

The importance of the phrase "commercial establishment"--and why that phrase makes this case distinguishable from *Reaume*--is shown by the Township's addition of that phrase to the Zoning Ordinance in 2003. Recall, in 2003, the Township amended the definition of a "motel" to include the phrase "commercial establishment," which was not included prior. See Original Definition, Ex 8, with ZO Amendment No ZA 51, Ex 9. **According to the then Zoning Administrator, by adding the phrase "commercial establishment," the Township excluded a short-term rental from the definition of a "motel."** Briggs Dep 57:5-16, Ex 10.

Considering the definition of "motel," the Township's longstanding Zoning Administrators said that there is only one motel in Park Township. Briggs Dep 44:14-46:3, Ex 10; de Vries Dep 33:21-34:12, Ex 11; see also 16-year Clerk/Board Member Keeter Dep 11:25-12:1, Ex 43 ("none").

Clearly, the hundreds of single-family dwellings used as short-term rentals do not each constitute a motel.⁶

3. **The use of single-family dwellings as a short-term rental does not constitute a "tourist home."**

The Township will also argue that the use of a single-family dwelling as a short-term rental also constitutes a "tourist home." As an initial matter, a "tourist home" is expressly defined as something "other than" a "motel." ZO § 38-6 (defining "tourist home" as "[a] building, **other than . . . a motel**") (emphasis added), Ex 7. Accordingly, the Township cannot argue that a single-family dwelling being used as a short-term rental is both a motel and a tourist home; by definition, it cannot be both.

Just as the Township cannot fit a square peg into a round hole with respect to the definition of a "motel," the Township also cannot fit a single-family dwelling being used as a short-term rental into the definition of a "tourist home." First, a "tourist home" must be both "provided by a **resident family**" and "in [the resident family's] home." *Id.* (emphasis added). A "family" is "[o]ne or more persons **occupying** a single dwelling unit and using common cooking facilities." *Id.* (*FAMILY*) (emphasis added). "Home" is not defined by the zoning ordinance, but it means "one's place of residence." See *Home*, MERRIAM-WEBSTER DICTIONARY, **Exhibit 49**. Thus, for something to be a tourist home, the lodging must be **provided by** residents who are "**occupying**" the dwelling unit in **their place of residence**.

⁶ According to the Township's Answer, the Township appears to argue that Plaintiff's members' buildings also constitute a "hotel." However, a "hotel" is a commercial establishment that has lodging "and additional services, such as restaurants, meeting rooms, entertainment, or recreational facilities." ZO § 38-6, *HOTEL*, Ex 7. Here, the buildings at issue are not a "hotel" because they are not a "commercial establishment" for the reasons set forth above, but also because none of the buildings offer "additional services, such as restaurants, meeting rooms, entertainment, or recreational facilities." See Allen Aff ¶ 9, Ex 4.

Taking the facts in the light most favorable to the Township, the Township's Zoning Administrators agreed that a "tourist home" requires the resident to be living at the dwelling while renting it out. Briggs Dep at 51:3-21, Ex 10 (a "tourist home" is one in which "literally a family is living there while they are hosting other people staying there"); de Vries Dep 38:1-14, Ex 11.

Here, *none* of Plaintiff's members (besides one) rent houses that they are "occupying" as their residence. Allen Aff ¶ 9, Ex 4. Just the opposite: Plaintiff's members (besides the one) only rent single-family dwellings that they are *not* occupying as their home. *See id.* Thus, single-family dwellings used as short-term rentals cannot possibly be "tourist homes."

And second, just like for a motel, the Township did not consider a rental of more than 28 days to be a tourist home. However, the definition of a "tourist home" does not contain a difference between dwellings being rented for more or less than 28 days. If a rental of more than 28 days does not constitute a tourist home, then a dwelling rented on a short-term basis also does not constitute a tourist home, either.

4. Even if the Zoning Ordinance Is Ambiguous, Plaintiff Is Entitled To Summary Disposition.

"[I]f reasonable minds could differ regarding the meaning of the ordinance, the courts may construe the ordinance." *Brandon Charter Twp*, 241 Mich App at 422 (citation omitted). Even if the Court were to find that the Zoning Ordinance is susceptible to more than one interpretation, the Court should interpret the Zoning Ordinance in Plaintiff's favor for at least three reasons.

First, "in cases of ambiguity in a municipal zoning ordinance, where a construction has been applied over an extended period by the officer or agency charged with its administration, that construction should be accorded great weight in determining the meaning of the ordinance." *Macenas v Vill. of Michiana*, 433 Mich 380, 398; 446 NW2d 102 (1989). Here, as set forth above, the Township's Zoning Administrators have consistently interpreted the Zoning Ordinance to

permit the use of single-family dwellings as short-term rentals. The Zoning Administrator is the officer expressly charged with administering and interpreting the Zoning Ordinance. Thus, the Zoning Administrators' interpretations should be given "great weight."

Second, when ordinances are ambiguous pertaining to property restrictions, the language must be interpreted in favor of the property owner. *Talcott v City of Midland*, 150 Mich App 143, 147; 387 NW2d 845 (1985) (holding that "the language must be interpreted, where doubt exists regarding legislative intent, in favor of the property owner"). Here, since the Township is attempting to impose restrictions on the use of Plaintiff's members' properties, the Zoning Ordinance must be construed in favor of Plaintiff.

Third, common sense tells us that short-term rentals are permitted. *Grand Rapids Emps*, 235 Mich App at 406 (a court "may not abandon 'the canon of common sense' when construing the ordinance at issue"). Single-family dwellings being rented are not "motels." Motels are different than AirBnBs. The Township Manager agrees that common-sense suggests that a short-term rental is *not* a "motel." Fink Dep 104:5-13, Ex 13. Common sense also tells us that something permitted in the Township for nearly 50 years was allowed under the Zoning Ordinance, especially when so many Township representatives and bodies repeatedly acknowledged their legality. Even if the Zoning Ordinance is ambiguous, the Court should construe it in Plaintiff's favor and grant its request for declaratory relief.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court enter a judgment awarding partial summary disposition pursuant to MCR 2.116(C)(10) in favor of Plaintiff on Count III. The Court should declare that the use of single-family dwellings as short-term rentals is a

lawful and permissible use under the Township's 1974 Zoning Ordinance, and therefore any such use prior to any Zoning Ordinance amendments constitutes a lawful nonconforming use.

Respectfully submitted,

VARNUM LLP

Dated: September 27, 2024

By: 

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
corporation,

Defendant.

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EXHIBITS 1 TO 10 FOR
PLAINTIFF PARK TOWNSHIP NEIGHBORS' BRIEF IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

Exhibit 1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474 - CZ

Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
corporation,

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ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

At a session of said Court, held in the City of
Grand Haven, County of Ottawa, State of Michigan,
on December 1, 2023.

PRESENT: Jon H. Hulsing
Circuit Court Judge

The Plaintiff having filed a Motion for Preliminary Injunction, and the Court being fully
advised in the premises,

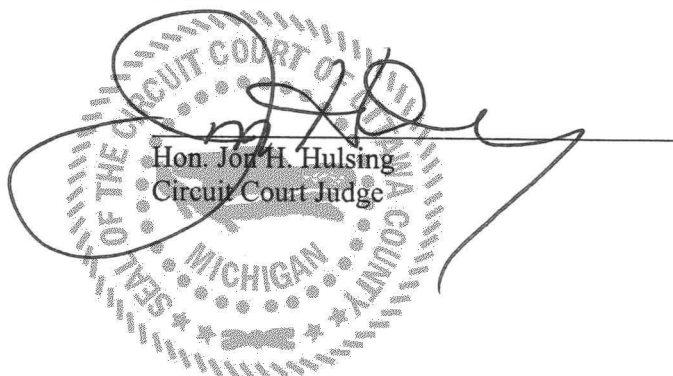


IT IS HEREBY ORDERED that Plaintiff's Motion for Preliminary Injunction is GRANTED.

IT IS FURTHER ORDERED that Park Township is enjoined from enforcing its ban on short-term rentals and enjoined from enforcement of its Zoning Ordinance insofar as the Township claims it prohibits the use of short-term rentals in residential districts.

IT IS SO ORDERED.

This is not a final Order and does not close this case.



Hon. Jon H. Hulsing
Circuit Court Judge

22012327.1

Exhibit 2

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
corporation,

Defendant.

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FIRST AMENDED COMPLAINT AND PETITION FOR WRIT OF MANDAMUS

*There is no other pending or resolved civil action arising out
of the transaction or occurrence as alleged in the Complaint.*

NOW COMES the Plaintiff, Park Township Neighbors, by and through its counsel,
Varnum LLP, and for its Verified First Amended Complaint states as follows:

INTRODUCTION

1. This lawsuit seeks to stop Park Township's illegal attempt to ban the rental of single-family homes on a short-term basis. *For nearly 50 years*, Park Township repeatedly and expressly permitted the use of single-family dwellings for short-term rentals.

2. On November 10, 2022, the Park Township's Board of Trustees—without amending its Zoning Ordinance—voted to "ban" the use of single-family dwellings as short-term rentals in residential zoning districts. The Township's Board also distinguished between "short term" and "long term" rentals (the dividing line is apparently 28 days), even though the text of the Zoning Ordinance contains no such distinction. The Township now seeks to enforce its purported ban on short-term rentals under the guise that it is merely "enforcing" its Zoning Ordinance that has existed since 1974.

3. Contradicting its false narrative, the Township's Board later voted, without holding a proper hearing or providing prior notice to the public, to adopt an amendment to the Zoning Ordinance defining, regulating, and prohibiting short-term rentals. This amendment, Zoning Ordinance No. 2022-02 ("Zoning Ordinance 2022-02"), was signed by the Supervisor of the Township Board and codified in the Zoning Ordinance.

4. In the summer of 2023, the Township realized it had a problem: if the Township amended its zoning ordinance, *all* of the existing short-term rentals would be grandfathered as nonconforming uses. This was unacceptable to the Township, so it took even more illegal actions to cover up the problem it created. In June of 2023, the Township's Board adopted another ordinance, Ordinance No. 2023-02 ("Regulatory Ordinance 2023-02")—again, without providing prior notice or a public hearing as required by Michigan law.

5. Regulatory Ordinance 2023-02 has essentially the same terms as Zoning Ordinance 2022-02, with one key difference—the ordinance purports to amend the general code of ordinances, not the Zoning Ordinance. Despite the Township's re-labeling, Regulatory Ordinance 2023-02 is a de facto zoning ordinance.

6. The Township tried to conceal this switch-up by erasing all record of Zoning Ordinance 2022-02, even though the Township never repealed or replaced it.

7. In short, the Township's actions have no support in the text of the Zoning Ordinance, as the Township for decades acknowledged that its Zoning Ordinance *permitted* the use of single-family dwellings as short-term rentals in residential districts. Yet, the Township now claims that it is going to issue civil infractions to property owners who attempt to use single-family dwellings as rentals for less than 28 days.

8. The Township must be halted from doing so because its attempt to suddenly prohibit short-term rentals is illegal for two primary reasons: (1) the Township was required to properly amend its Zoning Ordinance under the Michigan Zoning Enabling Act ("MZEA") to impose new use regulations on short-term rentals in residential areas, which the Township did not do, and (2) even if the Township does not amend its Zoning Ordinance, the use of single-family dwellings as short-term rentals is permitted under the Township's current Zoning Ordinance.

9. Plaintiff brings this action to advocate for the interests of its members, many who own single-family homes in Park Township that they rent on a short-term basis (collectively, the "Park Township Neighbors").

10. The Park Township Neighbors seek equitable and declaratory relief to prevent the Township from enforcing its new ban on short-term rentals in the residential zoning districts.

PARTIES, JURISDICTION, AND VENUE

11. Plaintiff Park Township Neighbors is a Michigan nonprofit corporation, with a registered address of 333 Bridge Street NW, Suite 1700, Grand Rapids, Michigan.

12. Plaintiff brings this action to advocate for the interests of its members, many who own real property in Park Township, Michigan that they use as a rental property.

13. Defendant, Park Township, is a Michigan municipal corporation located in Ottawa County, Michigan.

14. Jurisdiction of Plaintiff's claims for declaratory and injunctive relief is appropriate in this Court pursuant to Mich. Const. 1963, art. VI § 13; MCL 600.601, 600.605 600.6419(6), and MCR 2.605.

15. Venue is proper in this Court pursuant to MCL 600.1615.

FACTUAL BACKGROUND

A. THE PARK TOWNSHIP NEIGHBORS AND THEIR RESIDENTIAL PROPERTIES.

16. An independent firm recently conducted a professional poll to gather community members' input on the issue of short-term rentals in the Township.

17. This poll showed that nearly 60% of voters in the Township do not support the Township's new ban on short-term rentals and nearly a supermajority of voters favor a reasonable policy allowing a limited number of owners to rent their homes for short-term periods.

18. Plaintiff is a 501(c)(4) non-profit organization established by families, individuals, business owners, and community leaders working together to advocate for reasonable rules and regulations in Park Township that lawfully allow property owners to continue renting their single-family homes on a short-term basis.

19. Plaintiff consists of approximately 111 members, 107 of whom own property in Park Township.

20. Plaintiff's members use their properties for single-family dwellings that are rented on a short-term basis in each residential zoning district within the Township and will be prevented from continuing such use if the Township's ban is enforced.

21. The Township's residential zoning districts consist of the R-1 Rural Estate District ("R-1"), R-2 Lakeshore Residence District ("R-2"), R-3 Low Density Single-Family Residence District ("R-3"), R-4 Medium Density Single- and Two-Family Residence District ("R-4"), and R-5 Low Density Multifamily Residence District ("R-5").

22. For example, Richard Burkholder owns a single-family dwelling located at 3229 Elderwood Avenue in the R-1 zoning district, which is rented on a short-term basis.

23. Douglas Behrendt owns a single-family dwelling located at 2500 Lakefront Drive in the R-2 zoning district, which is rented on a short-term basis.

24. Sue Willoughby owns a single-family dwelling located at 1761 South Shore in the R-3 zoning district, which is rented on a short-term basis.

25. Robert Bouman owns a single-family dwelling located at 481 South 168th Avenue in the R-4 zoning district, which is rented on a short-term basis.

26. Claire Alsup owns a single-family dwelling located at 764 Jenison Avenue in the R-5 zoning district, which is rented on a short-term basis.

27. The use of these individuals' single-family dwellings as short-term rentals will be prevented if the Township's ban is enforced.

B. PARK TOWNSHIP'S ZONING ORDINANCE.

28. In 1972, two years before enacting its current Zoning Ordinance, the Township prepared a plan to examine current land use and future zoning goals of the Township.

29. The Township recognized its status as a popular vacation destination, with many residential properties being used on a temporary and seasonal basis.

30. The Township's plans recognized the existence of "rental cottages" and "seasonal homes" as "dwelling units" and recommended residential areas that had been developed with seasonal homes be maintained as such.

31. The Township adopted its Zoning Ordinance in 1974, consistent with such early plans.

32. The Zoning Ordinance establishes twelve (12) zoning districts within the Township, each with its own description, purpose, and use regulations.

33. There are five (5) primary residential zoning districts within the Township, which include R-1, R-2, R-3, R-4, and R-5.

34. Each of these residential zoning districts have distinguishing factors, but they all permit the use of "single-family dwellings."

35. The Zoning Ordinance defines a single-family dwelling as a "building designed for use and occupancy by one family" and explicitly permits the "temporary" occupancy of a building as a home or residence.

36. The Zoning Ordinance does not require that a single-family dwelling be owned by the family or individual occupying the structure to qualify as a single-family dwelling.

37. The Zoning Ordinance does not contain any language that would prohibit renting a single-family dwelling for 27 days or less.

38. Furthermore, the Zoning Ordinance does not distinguish between a single-family dwelling being used for more or less than 27 days by a family occupying it.

C. PARK TOWNSHIP'S HISTORICAL INTERPRETATION OF ITS ZONING ORDINANCE.

39. For nearly fifty years, the Township and its agents charged with interpreting its Zoning Ordinance have consistently maintained that the Zoning Ordinance permits the use of single-family dwellings for rentals on a short-term basis.

40. The Township's Planning Commission has repeatedly sanctioned the use of single-family dwellings for short-term rentals as lawful land use during public meetings.

41. The Planning Commission is responsible for making and adopting a plan for the Township's land use and development.

42. The Planning Commission further has the authority to review and deny or approve applications for special use permits, site plans, and other issues pertaining to land use.

43. At a public meeting in 2000, the Township's Planning Commission discussed a special use request to move a house onto an empty lot in a residential subdivision.

44. Some individuals raised concerns that the house would be used as a beach rental, however, the Planning Commission approved the request in a 9-0 vote and affirmed that, "**[y]ou can have a single rental in any district.**"

45. The Planning Commission's Chairman further explained that a single-family dwelling could be rented on a short-term basis, so long as it was limited to a single family at a time.

46. In the same meeting, the Chairman stated: "If a person from Chicago builds a \$300,000 house, we don't care whether they live in it 3 or 6 months or year around as long as it is properly maintained."

47. Another member of the Planning Commission followed up with: "It has to be a single-family residence. All township rules would apply here too. They could rent them if they wanted to."

48. The Township's Planning Commission affirmed the same position during a meeting in 2002. There, the Planning Commission considered another individual's special use request to move a house to an empty lot and use it "for a cottage or rental."

49. Six neighbors wrote letters in opposition, expressing concerns "about any renting of the house."

50. The Zoning Administrator, who is charged with administering and enforcing the Zoning Ordinance, advised that the Zoning Ordinance did not allow the Township to put any restriction on the individuals renting out the house. And again, the Planning Commission voted 8-0, approving the request.

51. In 2003, the Planning Commission held a hearing to discuss the approval of a site plan for a planned development unit ("PUD"). The proposed PUD was for a group of connected townhomes.

52. Several individuals expressed concerns about the townhomes being rented on a weekly basis and questioned whether the connected units would constitute a motel.

53. The Planning Commission, however, affirmed that any property owner in the Township could rent out a single-family home for any duration, even on a weekly basis.

54. Moreover, when approving PUD site plans, the Planning Commission has the authority to impose conditions and restrictions in addition to those in the Zoning Ordinance.

55. There, the Planning Commission asked the developer if he would be willing to agree to a 30-day minimum on rentals, but the developer declined. Nonetheless, the Planning

Commission ultimately approved the developer's site plan, even with the knowledge that units within the development would be rented out on a short-term basis.

56. The Township's Zoning Board of Appeals has also consistently affirmed the fact that the Zoning Ordinance does not prohibit the use of single-family dwellings for short-term rentals.

57. In 1987, a property owner appealed the denial of a building permit for a new home in a residential zoning district.

58. During the hearing, a neighbor asked whether the property owner's home would be a rental, flagging to the Zoning Board of Appeals that the owner's existing property was rented on a seasonal basis.

59. The Zoning Board of Appeals ultimately approved the property owner's request and, in doing so, explained that the "Board didn't have any jurisdiction on whether or not this would be a residential home or a rental home."

60. In other words, the Zoning Board of Appeals did not have jurisdiction to impose requirements on the rental of a single-family home in a residential area because the Zoning Ordinance does not provide for such restrictions.

61. The Zoning Board of Appeals affirmed the same position again in 1999. There, a property owner sought a variance for a building permit to expand a home in a residential district.

62. During the hearing, neighbors complained the property owner rented out the cottage all but one week out of the summer to various groups of people, sometimes to as many as twelve people at a time.

63. But again, even knowing that the property would be used as a short-term rental, the Zoning Board of Appeals approved the property owner's request.

64. The examples above reflect just some of the instances in which the Township and its Planning Commission, Board of Trustees, Zoning Administrator, and Zoning Board of Appeals, have expressly acknowledged that single-family homes and other types of residential properties may be lawfully rented on a short-term basis under the Zoning Ordinance.

65. In addition to the above, many members of Park Township Neighbors were explicitly told by Park Township employees and officials that their short-term rentals were allowed, including but not limited to the following:

- a. Jeremy and Rachael Allen – In 2017, before spending significant sums to finish the lower level of their home, they shared with the Township on a number of occasions that this home and remodel was to better accommodate their family and vacation rental guests, and at no time did the permitting, licensing, or inspection representatives say short term rentals were illegal. In fact, they purchased the home in 2015 from a local family who had been renting the home and, upon purchasing, the Allen family had to honor already existing short term rental reservations.
- b. Sue and Robert Kust – They purchased two properties, in 2013 and 2014. Before purchasing their first property in 2013, they were told that the Township had no regulations governing short-term rentals. In 2014, their contractor asked for a permit for remodeling for the purpose of renting and the permit was issued without question.
- c. Jackie Beck – In early 2022, she inquired if there were any restrictions or requirements on renting her home, and she was informed there was not.

- d. Daniel Lilley – He had multiple conversations with the Park Township Zoning Administrator, Ed DeVries, who confirmed that short-term rentals are not regulated.
- e. Brad and Lisa Ruggles – They did their due diligence and never would have invested without doing such due diligence, during which they were told by Park Township that there were no restrictions or permit(s)/license(s) required for short-term rentals.
- f. Jason Reiersen – He called the Township in 2019 and was told there were no restrictions, despite the person acknowledging that many short-term rentals existed.
- g. Mary TenBrink – She contacted the Township office asking if she needed a permit and asking if other regulations existed, but she was told there were no regulations on short-term rentals.
- h. Laurie and Vic Van't Hof – They bought a home in 2016. Mr. Van't Hof went to the Township office in person to ask if there were any restrictions or regulations required to rent short-term, and to inquire about a permit for renovations. He was told there were no restrictions and no rental permit required, and that there were many short-term rentals already in Park Township and it was fine.
- i. Crystal and Stefan Walter – Before they purchased property in the Township, Mr. Walker called and asked if there were any regulations or restrictions on short-term rentals. Mr. Walter was unequivocally told that there were no such regulations or restrictions.
- j. Sue Willoughby – Prior to making a very significant investment in a large waterfront home, she called the Township office two times and spoke to two

different people. She made it very clear that their plan was to rent the house weekly. Each time, she was assured it was permitted to rent the house to vacationing families.

66. Plaintiff's members relied on the Township's affirmative statements and actions warranting that the use of single-family dwellings for short-term rentals was lawful when they purchased and/or made significant investments to their properties for such purpose.

D. PARK TOWNSHIP'S NEW BAN ON SHORT-TERM RENTALS IN RESIDENTIAL AREAS.

67. On June 5, 2020, the Michigan Supreme Court held in *Reaume v Twp of Spring Lake* that Spring Lake Township's Zoning Ordinance did not permit short-term rentals under the specific language of Spring Lake Township's Zoning Ordinance. In Spring Lake Township, a short-term rental fell within Spring Lake's ordinance's definition of a motel.

68. Even though Park Township's Zoning Ordinance has materially different definitions than the Spring Lake Zoning Ordinance, just one month after *Reaume*, the Township's Planning Commission began evaluating its stance on short-term rentals at a public meeting held on July 8, 2020.

69. At this meeting, the Township's Attorney raised the Court's recent decision in *Reaume* and advised the Planning Commission that "because [the Township] never allowed motels in residential districts, there is no nonconforming status."

70. The Township's Attorney's proffered interpretation was directly contrary to Park Township's repeated interpretations over the prior decades.

71. In addition, the Township's Attorney's proffered interpretation was later contradicted by the Township's attempt to enact Zoning Ordinance 2022-2 and Regulatory

Ordinance 2023-02, which both concede that homes rented on a short-term basis are not considered motels.

72. During this time, the Township's Board and Manager were admonished by Township officials from ever again saying that short-term rentals are permitted in the Township. When the Township Manager was informed of the Township's new position, the Township Manager responded that he had told many residents that short-term rentals were permitted.

73. The Planning Commission decided that it would conduct an analysis of short-term rentals in the Township and set special meetings to discuss what the Township's stance on the matter would be.

74. Essentially, the Township saw *Reaume* as an opportunity to change its rules on short-term rentals while circumventing the legality of nonconforming uses by claiming short-term rentals fall within the Zoning Ordinance's definition of motels.

75. For the next two years, the Township continued to evaluate its position on short-term rentals.

76. On November 10, 2022, the Township's Board of Trustees voted at a regular meeting "to ban short-term rental use in residential zones."

77. The Board of Trustees also voted to enforce the ban on short-term rentals starting on October 1, 2023.

78. In adopting this ban, the Township did not amend the Zoning Ordinance. Instead, the Township argued that it was enforcing the existing Zoning Ordinance.

79. The Township intentionally crafted its "enforcement" narrative to thwart any claims of nonconforming uses.

80. A nonconforming use is the use of land in conflict with the zoning ordinance. When a zoning ordinance is adopted or amended, there might be existing, formerly lawful uses that conflict with the new zoning ordinance. These are nonconforming uses that give rise to a vested property right.

81. Accordingly, both the MZEA and the Zoning Ordinance require the Township to grandfather nonconforming uses that existed prior to a change in the zoning law. See ZO at § 38-631; MCL 125.3208.

82. The Township did not want to formally amend its Zoning Ordinance to ban short-term rentals because, if it did, it would be required to allow the approximately 240 existing homes that are rented on a short-term basis to continue as nonconforming uses.

83. So instead, the Township formulated a scheme to *reinterpret* the Zoning Ordinance rather than *amending* the Zoning Ordinance to prohibit a property use that was previously permitted.

84. The problem with the Township's scheme, however, is that the Township cannot impose new regulations on land use without amending the Zoning Ordinance.

85. At first, the Township tried to avoid amending the Zoning Ordinance by simply posting the new short-term rental regulations on its website.

86. On its website, the Township defined short-term rentals as "[a]nything under 28 days" and said that "[m]onthly leases and longer are permitted in all residential districts."

87. The Township further stated preexisting short-term rentals would not be recognized as nonconforming uses.

88. Yet, the Township claimed that it is lawful under the Zoning Ordinance to rent out single-family homes for 28 days or more, despite the fact that the rental of homes for 28 days or more is not listed under the residential zoning districts' use regulations.

89. None of the Township's new land use regulations relating to short-term rentals have any basis in the Zoning Ordinance.

90. In effect, the Township is imposing new zoning regulations on the use of single-family homes for temporary periods without taking the steps required to amend the Zoning Ordinance.

E. PARK TOWNSHIP'S ILLICIT ATTEMPTS TO AMEND THE ZONING ORDINANCE AFTER DECLARING THE BAN ON SHORT-TERM RENTALS.

91. A month after the Township adopted its ban on short-term rentals and posted the new rules on its website, the Township's Board voted to amend the Zoning Ordinance to incorporate some of the new self-declared rules on short-term rentals. But once the Township realized the consequences of its actions (i.e., amending the Zoning Ordinance would permit all short-term rentals that existed at that time to continue as nonconforming uses), the Township tried to cover up the evidence of its amendment.

92. On December 8, 2022, without proper notice or a public hearing as required by the MZEA, the Township's Board of Trustees adopted an amendment to the Zoning Ordinance, Zoning Ordinance No. 2022-02.

93. Zoning Ordinance 2022-02 defined short-term rentals as "[t]he rental of a dwelling unit for compensation for a term of 27 nights or fewer," excluding "hotels, motels, [and] resorts."

94. Zoning Ordinance 2022-02 also contained new rules requiring property owners to register their properties that are rented for 27 days or less with the Township and prohibited short-term rentals in all of the Township's zoning districts.

95. Afterward, the Township published notice of the Zoning Ordinance 2022-02 in the Holland Sentinel.

96. The Township proceeded to collect and track short-term rental registrations over the following months pursuant to Zoning Ordinance 2022-02.

97. In June of 2023, the Township apparently realized the consequence of amending the Zoning Ordinance i.e., that all existing short-term rentals would be nonconforming uses (and thus permitted).

98. The Township then tried to conceal its actions to revert back to its false narrative that short-term rentals were never allowed under the Zoning Ordinance.

99. On June 8, 2023, again without providing prior notice or a public hearing, the Township's Board of Trustees voted to adopt a regulatory ordinance on short-term rentals, Regulatory Ordinance 2023-02.

100. Regulatory Ordinance 2023-02 contains generally the same definition and prohibition of short-term rentals as Zoning Ordinance 2022-02. However, unlike Ordinance Zoning Ordinance 2022-02, which amended the Zoning Ordinance, Regulatory Ordinance 2023-02 amended the general code of ordinances.

101. At the same time, Zoning Ordinance No. 2022-02 was purportedly deleted from the Township's Zoning Ordinance.

102. The distinction between regulatory and zoning ordinances is important for the purposes of this dispute.

103. Regulatory ordinances are enacted by municipalities under their police power and are not zoning ordinances. Const 1963, art 8, §22, Charters, resolutions, ordinances; enumeration of powers.

104. By contrast, a zoning ordinance regulates the use of land and buildings.

105. Because local governments in Michigan have no inherent power to enact zoning regulations, they must enact them in accordance with the procedures and landowner protections (such as preserving nonconforming uses) of the MZEA. Zoning ordinances (including de facto zoning ordinances) which are not adopted in conformity with the MZEA's procedural safeguards are invalid.

106. By attempting to enact a regulatory ordinance instead of a zoning ordinance amendment to ban short-term rentals, the Township sought to avoid recognizing all of the existing short-term rentals as nonconforming uses and sidestep the MZEA's procedural safeguards.

107. However, despite the Township's re-labelling, the substance of Regulatory Ordinance 2023-02—which is essentially the same as Zoning Ordinance 2022-02—regulates the use of land and buildings and is therefore a zoning ordinance.

108. Ultimately, neither of the Township's attempted amendments are even enforceable due to glaring procedural deficiencies pursuant to the MZEA. But even if they were, they would only further support Plaintiff's position.

109. If Zoning Ordinance 2022-02 had been properly noticed and adopted, it would further solidify the fact that short-term rentals were lawful prior to the ban. The same goes for Regulatory Ordinance 2023-02, which despite the Township's artful framing, is nonetheless a de facto zoning ordinance.

110. Regardless of this convoluted scheme, the fact remains that the Township failed to properly amend the Zoning Ordinance to reflect its new zoning regulations on short-term rentals.

111. The Township is effectively imposing an amendment to its Zoning Ordinance through its ban on short-term rentals without taking the proper steps to formally amend the Zoning Ordinance.

112. The Township's underhanded tactics violate Michigan's laws designed to protect against precisely this type of municipal misconduct.

COUNT I
VIOLATION OF THE MICHIGAN ZONING ENABLING ACT

113. Plaintiff realleges and incorporates by reference the preceding allegations.

114. Land use regulations must be enacted through legislation pursuant to the procedures set forth under MZEA, MCL 125.3101 *et seq.*

115. A zoning ordinance is defined as an ordinance that regulates the use of land and buildings.

116. The MZEA states amendments or supplements to a zoning ordinance shall be adopted in the same manner as provided under the MZEA for the adoption of the original ordinance. MCL 125.3202(1).

117. Local governments may not avoid the substantive and procedural limitations of the MZEA by claiming a zoning ordinance is valid as an enactment pursuant to the general police power.

118. On November 10, 2022, the Township's Board voted to enforce a ban on short-term rentals in the residential zoning districts.

119. The Township's ban on short-term rentals regulates the use of land and buildings.

120. The Township's ban on short-term rentals prohibits the rental of single-family homes on a short-term basis.

121. The Township effectively amended its Zoning Ordinance by distinguishing between short-term and long-term rentals.

122. The Township ban on short-term rentals amended the Zoning Ordinance by prohibiting short-term rentals in its residential zoning districts.

123. However, the Township did not amend the Zoning Ordinance according to the requirements and procedures imposed by the MZEA when adopting its ban and self-declaring the definition of "short-term" rentals.

124. Accordingly, the ban on short-term rentals, including the Township's distinction between short-term and long-term rentals, violates the MZEA and should be declared void.

125. The Township also failed to adhere to the requirements and procedures set forth in the MZEA in its subsequent attempts to amend the Zoning Ordinance when adopting Zoning Ordinance 2022-02 and Regulatory Ordinance 2023-02.

126. Both Zoning Ordinance 2022-02 and Regulatory Ordinance 2023-02 seek to regulate the use of land and buildings.

127. Both Zoning Ordinance 2022-02 and Regulatory Ordinance 2023-02 sought to amend the Zoning Ordinance by distinguishing between short-term and long-term rentals and prohibiting short-term rentals in all of the Township's zoning districts.

128. The Township adopted these zoning regulations in violation of the MZEA, by, at a minimum, failing to provide prior notice or hold a public hearing.

129. In addition, the Township essentially tried to swap out Zoning Ordinance 2022-02 with an amendment to the general code of ordinances through Regulatory Ordinance 2023-02.

130. The MZEA does not allow municipalities to delete zoning ordinance amendments and unofficially substitute them with regulatory ordinances.

131. The Township's ban on short-term rentals, including its purported adoption of Zoning Ordinance 2022-02 and Regulatory Ordinance 2023-02, are unlawful and should be declared void.

132. The use of single-family homes, even when rented on a short-term basis, was, and still is, a lawful land use in all residential zoning districts under the Zoning Ordinance.

133. The Township, its Planning Commission, Board of Trustees, Zoning Administrator, and Zoning Board of Appeals have consistently affirmed the same in formal, public forums over the course of four decades and Plaintiff, and its members, have relied on such affirmations.

134. A lawful use of one's property is a vested property interest, and a subsequent amendment to a zoning ordinance cannot deprive the owner of that use.

135. Specifically, the MZEA allows conforming (i.e., lawful) land uses that exist at the time of the enactment or amendment of a zoning ordinance to be continued as nonconforming uses.

136. A court will not apply an amendment to a zoning ordinance where the amendment would eliminate a vested property interest acquired before its enactment.

137. The Park Township Neighbors have lawfully rented their properties to tenants to use and occupy as single-family homes on a short-term basis. The use of a single-family dwelling, including as rentals less than 28 days, is a lawful land use in all residential districts under the Zoning Ordinance.

138. The Park Township Neighbors have a vested property interest in the use of their properties as single-family homes, even if rented on a short-term basis.

139. The Township's ban on short-term rentals and refusal to recognize the Park Township Neighbors' short-term rental properties as nonconforming uses violates the MZEA and should be declared void.

COUNT II
VIOLATION OF THE DOCTRINE OF LEGISLATIVE EQUIVALENCY

140. Plaintiff realleges and incorporates by reference the preceding allegations.

141. Park Township is a general township.

142. While the Township has the authority to enact ordinances and resolutions related to municipal concerns, the Township cannot enact ordinances or resolutions that are inconsistent with the constitution and general laws of the State. Mich. Const. 1963, art. 7, § 22.

143. Under Michigan law, an ordinance may not be amended, repealed, or suspended by an act of less dignity than the ordinance itself. *McCarthy v Vill of Marcellus*, 32 Mich App 679, 688-89 (1971) ("An ordinance or resolution cannot be amended, repealed, or suspended by another act by a council of less dignity than the ordinance or resolution itself."); *City of Saginaw v Consumers' Power Co*, 213 Mich 460, 469 (1921) ("[A]n ordinance may not be repealed or amended without action of equal dignity to that required in its enactment."); *Lorencz v Broolifield Twp*, No 319235, 2015 WL 1931967, at *2 (Mich Ct App April 28, 2015) ("[A]n ordinance may only be repealed by an act of equal dignity, which requires the township to repeal by ordinance."); see also *Tuscola Wind IIL LLC v Ellington Twp*, No 17-CV-11025, 2018 WL 1291161, at *7 (ED Mich March 13, 2018).

144. This rule of law is referred to as the doctrine of legislative equivalency.

145. In declaring a ban on short-term rentals, the Township effectively amended its Zoning Ordinance by distinguishing between short-term and long-term rentals and by disallowing short-term rentals in residential districts.

146. However, the Township did not actually amend the Zoning Ordinance to incorporate the Township's new laws.

147. Accordingly, the ban on short-term rentals was not adopted by an act of equal dignity, as required by Michigan law.

148. The Township's ban on short-term rentals is unlawful and should be declared void.

COUNT III
DECLARATORY RELIEF

149. Plaintiff realleges and incorporates by reference the preceding allegations.

150. MCR 2.605(A)(1) provides that the Court may "declare the right and other legal relation of an interested party seeking a declaratory judgment" in cases of actual controversy.

151. There is an actual case or controversy between the parties regarding whether the Zoning Ordinance permits the use of single-family dwellings as a short-term rental in the R-1, R-2, R-3, R-4, and R-5 residential zoning districts.

152. The Township contends that short-term rentals are not, and have never been, a permitted land use under the Zoning Ordinance.

153. The Park Township Neighbors have lawfully used their single-family dwellings for short-term rentals.

154. The use of a single-family home, even on a temporary basis and as a short-term rental, is a lawful land use in all residential zoning districts under the Zoning Ordinance.

155. The Zoning Ordinance recognizes that single-family homes may be occupied on a temporary basis, regardless of duration.

156. For example, the Zoning Ordinance permits the temporary occupation of single-family homes with no distinction between a home rented under a one-year lease, month-to-month lease, six-month lease, or even two-week lease.

157. Park Township claims that it is going to enforce its "ban" on short-term rentals beginning on October 1, 2023.

158. Park Township has indicated that it is going to begin issuing enforcement notices and/or civil infractions after October 1, 2023, to all members of Park Township Neighbors who continue to advertise or use their single-family dwellings as short-term rentals.

159. It is appropriate that this Court issue a declaratory judgment affirming whether the use of single-family homes, even when rented on a short-term basis, is a lawful use of property in residential districts under the Zoning Ordinance because a binding declaration by this Court as to each party's rights and obligations would serve to guide the parties' future conduct and preserve the parties' legal rights.

160. The present adjudication of this controversy is necessary to guide the parties' future conduct and preserve the parties' legal rights.

161. The Court has the authority to interpret and declare the meaning of the Zoning Ordinance under MCR 2.605, MCL 125.3603(1) *et seq.*, and other applicable law.

COUNT IV
WRIT OF MANDAMUS

162. Plaintiff realleges and incorporates by reference the preceding allegations.

163. Land use regulations must be enacted through legislation pursuant to the procedures set forth under MZEA, MCL 125.3101 *et seq.*

164. A zoning ordinance is defined as an ordinance that regulates the use of land and buildings.

165. The MZEA requires that amendments or supplements to a zoning ordinance be adopted in the same manner as provided under the MZEA for the adoption of the original zoning ordinance.

166. The Township has adopted new land use regulations prohibiting short-term rentals in its residential zoning districts.

167. The Township is declaring and enforcing the new land use regulations against Plaintiff and the Park Township Neighbors, without adhering to the statutory requirements and procedures required to amend the Zoning Ordinance.

168. If the Township seeks to enforce new land use regulations, it has a clear legal duty to amend its Zoning Ordinance in compliance with the MZEA.

169. The Park Township Neighbors own property subject to the Zoning Ordinance's regulations.

170. The Park Township Neighbors have a clear legal right to have the Zoning Ordinance regulations enforced against their properties adopted and amended through lawful means in conformity with the MZEA.

171. Park Township Neighbors have no adequate legal or equitable remedy to require the Zoning Ordinance regulations enforced against their properties to be adopted through lawful means.

172. There is an actual case or controversy between the parties regarding the lawfulness of the Township's ban on short-term rentals without adherence to the requirements and procedures necessary to amend the Zoning Ordinance.

173. A present adjudication of this controversy is necessary to guide the parties' future conduct and preserve the parties' legal rights.

COUNT V
PREEMPTION

174. Under the Michigan Constitution, the Township's "power to adopt resolutions and ordinances relating to its municipal concerns" is "subject to the constitution and the law." Mich. Const. 1963, art. 7, § 22.

175. The Township is precluded from adopting regulations that are in conflict with a state statute.

176. For purposes of preemption, a conflict exists between a local regulation and a state statute when the regulation prohibits an act which the statute permits, or permits an act which the statute prohibits.

177. The Township's ban on short-term rentals, including the Township's subsequent attempts to enact Zoning Ordinance 2022-02 and Regulatory Ordinance 2023-02, was adopted to prevent the Park Township Neighbors from continuing to use their short-term rental properties as a nonconforming use (assuming those ordinances were properly adopted, which they were not).

178. The Township's ban on short-term rentals, specifically its failure to recognize the existing short-term rental properties in Park Township as nonconforming uses (assuming the ban was properly enacted, which it was not), prohibits an act that the MZEA permits.

179. Zoning Ordinance 2022-02 (assuming it was properly enacted, which it was not) prohibition of short-term rental, specifically its failure to recognize the existing short-term rental properties in Park Township as nonconforming uses, prohibits an act that the MZEA permits.

180. Regulatory Ordinance 2023-02 (assuming it was properly enacted, which it was not), specifically its failure to recognize the existing short-term rental properties in Park Township as nonconforming uses, prohibits an act that the MZEA permits.

181. The Township's ban (assuming it was properly enacted, which it was not) on short-term rentals is preempted by the MZEA, MCL 125.3208, which allows for the use of a dwelling, building, structure, or land that is lawful at the time of the enactment of a zoning ordinance or amendment to a zoning ordinance to be continued although the use does not conform to the zoning ordinance or amendment.

COUNT VI
VIOLATION OF DUE PROCESS UNDER THE MICHIGAN CONSTITUTION (IN THE ALTERNATIVE)

182. Plaintiff realleges and incorporates by reference the preceding allegations.

183. Plaintiff believes that the Zoning Ordinance is unambiguous that it has always permitted the use of single-family dwellings as short-term rentals. However, the City has argued that the Zoning Ordinance does not permit the use of single-family dwellings for short-term rentals.

184. Due to the City's position and/or argument, Plaintiff pleads this Count in the alternative that the Zoning Ordinance did not unambiguously permit the use of single-family dwellings as short-term rentals.

185. Under Michigan's constitution, an ordinance is unconstitutionally vague if it does not provide fair notice of the type of conduct prohibited.

186. An ordinance does not provide fair notice of proscribed conduct if it either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.

187. If the Zoning Ordinance does not unambiguously permit the use of single-family dwellings as short-term rentals (e.g., if the Zoning Ordinance forbids the use of single-family dwellings as short-term rentals), then the Zoning Ordinance does not provide fair notice of proscribed conduct.

188. The Zoning Ordinance is so vague that a person of common intelligence would have to guess that the Zoning Ordinance did not permit the use of single-family dwellings for short-term rentals, such that persons would have to guess at its meaning and different as to its application.

189. A person of common intelligence would not view the use of a single-family dwelling as a short-term rental to constitute a "commercial establishment," or at least the person would have to guess at its meaning and persons would differ as to its application.

190. Persons of common intelligence would not view the use of a single-family dwelling as a short-term rental to constitute a "motel," "hotel," or "tourist home" as those terms are defined in the Zoning Ordinance, such that persons must necessarily guess as to the Zoning Ordinance's meaning and differ as to its application.

191. The existence and threatened enforcement of disallowing the use of single-family dwellings as short-term rentals materially and adversely affects Plaintiff's members' ability to use their properties.

192. The Zoning Ordinance is unconstitutionally vague because it fails to provide fair notice of the prohibited conduct.

193. The application of the Zoning Ordinance is a violation of Plaintiff's due process rights under the Michigan constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Park Township Neighbors respectfully requests that the Court:

- A. Declare that the Township's ban on short-term rentals is unlawful and void because the ban violates the Michigan Zoning Enabling Act and permanently enjoin the Township's enforcement of it;
- B. Declare that Regulatory Ordinance 2023-02 is unlawful and void because the ordinance violates the Michigan Zoning Enabling Act and permanently enjoin the Township's enforcement of it;

- C. Declare that Zoning Ordinance 2022-02 is unlawful and void because the ordinance violates the Michigan Zoning Enabling Act and permanently enjoin the Township's enforcement of it;
- D. Declare that the Township's ban on short-term rentals is unlawful and void because the ban violates the doctrine of legislative equivalency and permanently enjoin the Township's enforcement of it;
- E. Declare that Regulatory Ordinance 2023-02 is unlawful and void because the ordinance violates the doctrine of legislative equivalency and permanently enjoin the Township's enforcement of it;
- F. Declare that the Township's ban on short-term rentals is preempted by State law and therefore void and unenforceable;
- G. Declare that Regulatory Ordinance 2023-02 is preempted by State law and therefore void and unenforceable;
- H. Declare that the use of single-family dwellings for short-term rentals is lawful in the Township's residential districts under the Zoning Ordinance;
- I. Declare that the members of Park Township Neighbors have a vested property interest in the use of their properties as short-term rentals;
- J. Issue a Writ of Mandamus compelling the Township to follow the requirements and procedures in the Michigan Zoning Enabling Act necessary to amend a zoning ordinance if the Township seeks to impose a ban and/or new land use regulations on short-term rentals in the residential zoning districts;

- K. In the alternative that the Zoning Ordinance does not permit the use of single-family dwellings as short-term rentals, declare that the Township's Zoning Ordinance is unconstitutionally vague, and therefore cannot be enforced insofar as it proscribes the use of single-family dwellings as short-term rentals; and
- L. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

VARNUM LLP

Dated: January 19, 2024

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Exhibit 3

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
corporation,

Defendant.

Kyle P. Konwinski (P76257)
Deion A. Kathawa (P84863)
VARNUM LLP
Attorneys for Plaintiff
P.O. Box 352
Grand Rapids, MI 49501
(616) 336-6000
kpkonwinski@varnumlaw.com
dakathawa@varnumlaw.com

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Kathryn R. Church (P80207)
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Attorneys for Defendant
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dmartin@thrunlaw.com
kchurch@thrunlaw.com

Michelle F. Kitch (P35498)
Clifford H. Bloom (P35610)
BLOOM SLUGGETT, PC
Co-Counsel for Defendant
161 Ottawa Ave. NW, Suite 400
Grand Rapids, MI 49503
(616) 965-9340
michelle@bloomsluggett.com
cliff@bloomsluggett.com

AFFIDAVIT OF JEREMY ALLEN

STATE OF MICHIGAN)
) ss.
COUNTY OF OTTAWA)

I, Jeremy Allen, being first duly sworn, do hereby state under penalty of perjury as follows:

1. My name is Jeremy Allen. I am an adult over the age of 18 years and I offer this affidavit concerning facts related to the above-referenced litigation.

2. I verify that the facts stated in this Affidavit are true and that, if sworn as a witness, I can testify with personal knowledge as to the facts set forth herein.

3. I am the President of Plaintiff.

4. As of the date of this affidavit, Plaintiff has approximately 135 members, 122 of whom own property in Park Township.

Further, Affiant sayeth not.

Dated: SEP 25 2024

Jeremy Allen
Jeremy Allen

Subscribed and sworn to before me, a Notary Public, this 25 day of September, 2024.

Casey Marietta
Name: Casey Marietta
Notary Public, County of Ottawa, MI
Acting in Ottawa County, Michigan
My Commission Expires: 12/15/2025

26276545.1

CASEY MARIETTA
Notary Public, State of Michigan
County of Ottawa
My Commission Expires Dec. 15, 2025
Acting in the County of Ottawa



Exhibit 4

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
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dmartin@thrunlaw.com
kathrynchurch@thrunlaw.com

AFFIDAVIT OF JEREMY ALLEN

STATE OF MICHIGAN)
) ss:
COUNTY OF OTTAWA)

I, Jeremy Allen, swear and affirm as follows:

1. I make the following statements based on personal knowledge and, if called as a witness in this matter, can testify competently to the same.
2. I am a member of Park Township Neighbors ("PTN").
3. I am the current president of PTN.

4. The current address of my rental property is 663 Bosma Ave., Holland MI 49424 in Zone R-4.

5. Currently, PTN has 126 members. Over 100 members and property in Park Township and rent their single-family dwelling to others.

6. Beth and Tom McGough, including their entity Haven Woods LLC, own several properties in Park Township and are members of PTN. They received several citations for allegedly operating short-term rentals purportedly in violation of the zoning ordinance.

7. In 2017, before spending significant sums to finish the lower level of my home, my spouse and I shared with the Township on a number of occasions that this home and remodel was to better accommodate our family and rental guests, and at no time did the permitting, licensing, or inspection representatives say short term rentals were illegal.

8. We purchased the home in 2015 from a local family who built the home in 2010 as a vacation home for themselves and as a short term rental. The family had been renting the home and, upon purchasing, we had to honor a number of already existing short term rentals.

9. Based on my reasonable investigation as the President of Park Township Neighbors, I am not aware of members, besides only one, who occupy their single-family dwelling *while* renting it out to others. PTN members rent their single-family dwellings when they are not being occupied by the PTN member. None of the PTN members have single-family dwellings being rented on a short term basis that offer additional services like restaurants, meeting rooms, entertainment, or recreational facilities.

10. The listing for our single-family dwelling that is rented on a short term basis is located here:

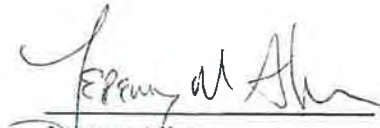
https://www.airbnb.com/rooms/8571145?source_impression_id=p3_1700492106_Xw91D%2Btl_tz9h5SH1

11. We have built ten years of ratings to reach "Superhost" status on AirBnB, with a nearly perfect 4.99 star rating. For every inquiry we have to turn away (which we have had to do because of the Township's ban), we are at the risk of losing invaluable goodwill we have built. One potential guest who inquired about availability and was told of the Township's ban, said it was "very disappointing" and that "we will plan to move our vacation plans elsewhere."

12. PTN member Daniel Lilley had multiple conversations with the Park Township Zoning Administrator, Ed DeVries, who each time confirmed that short-term rentals are not regulated in Park Township.

Further affiant sayeth not.

Dated: November 21, 2023


Jeremy Allen

Subscribed and sworn to before me, a Notary Public, this 21 day of Nov, 2023.

CASEY MARIETTA
Notary Public, State of Michigan
County of Ottawa
My Commission Expires Dec. 15, 2025
Acting in the County of Ottawa



Notary Public
County of Ottawa, State of Michigan

My Commission Expires: Dec. 15, 2025

21821664.1

Ottawa

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

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dmartin@thrunlaw.com
kathrynchurch@thrunlaw.com

AFFIDAVIT OF SUE WILLOUGHBY

STATE OF MICHIGAN)
) ss:
COUNTY OF OTTAWA)

I, Sue Willoughby, swear and affirm as follows:

1. I make the following statements based on personal knowledge and, if called as a witness in this matter, can testify competently to the same.
2. I am a member of Park Township Neighbors ("PTN").

3. The current address of my rental property is 1761 S Shore Dr., Holland, MI 49423 in Zone R-3.

4. Prior to making a very significant investment in a large waterfront home, I called the Township office two times and spoke to two different people.

5. I made it very clear to the Township representative that my plan was to rent the house weekly.

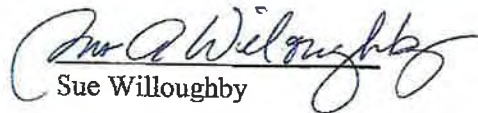
6. Each time, I was assured it was permitted to rent the house to vacationing families.

7. I cannot sustain my financial obligations with a month-to-month scenario. I never would have purchased the house if I knew there was a chance, I would not be able to offer it as a vacation rental.

8. I cannot possibly cover the costs of the house without weekly rental income.

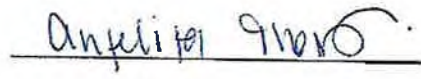
Further affiant sayeth not.

Dated: November 17, 2023


Sue Willoughby

Subscribed and sworn to before me, a Notary Public, this 17 day of November, 2023.

ANJELITA THOMAS
NOTARY PUBLIC - MICHIGAN
VAN BUREN COUNTY
MY COMMISSION EXPIRES 04/23/2029
ACTING IN VAN BUREN COUNTY


Notary Public
County of Van Buren, State of Michigan
My Commission Expires: 04/23/2029

21974192.1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
corporation,

Defendant.

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Chloe N. Cunningham (P83904)
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dmartin@thrunlaw.com
kathrynchurch@thrunlaw.com

AFFIDAVIT OF STEFAN WALTER

STATE OF MICHIGAN)
) ss:
COUNTY OF OTTAWA)

I, Stefan Walter, swear and affirm as follows:

1. I make the following statements based on personal knowledge and, if called as a witness in this matter, can testify competently to the same.
2. I am a member of Park Township Neighbors ("PTN").

3. The current address of my rental property is 92 S. Hampton St, Holland, MI 49424 in Zone R-3.

4. Before my spouse and I purchased property in the Township, I called and asked if there were any regulations or restrictions on short-term rentals.

5. I was unequivocally told that there were no such regulations or restrictions.

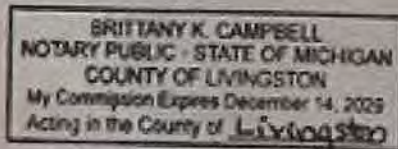
6. My spouse and I will be unable to pay the mortgage, property taxes, general upkeep and repairs, landscaping maintenance and improvements and hot tub maintenance without this short term rental.

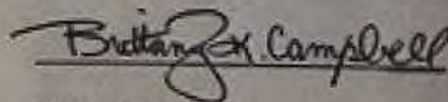
Further affiant sayeth not.

Dated: November 16, 2023


Stefan Walter

Subscribed and sworn to before me, a Notary Public, this 16 day of November, 2023.





Notary Public
County of Livingston, State of Michigan

My Commission Expires: 12/14/2025

21974175.1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
corporation,

Defendant.

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Chloe N. Cunningham (P83904)
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dmartin@thrunlaw.com
kathrynrchurch@thrunlaw.com

AFFIDAVIT OF JASON REIERSON

STATE OF MICHIGAN)
) ss:
COUNTY OF OTTAWA)

I, Jason Reiersen, swear and affirm as follows:

1. I make the following statements based on personal knowledge and, if called as a witness in this matter, can testify competently to the same.
2. I am a member of Park Township Neighbors ("PTN").

3. The current address of my rental property is 107 Algonquin Ave., Holland, MI 49424 in Zone R-3

4. I called the Township in 2019 and was told there were no restrictions on short-term rentals or where they could be located in the Township, despite the person acknowledging that many short-term rentals existed.

Further affiant sayeth not.

Dated: November 17, 2023


Jason Reiersen

Subscribed and sworn to before me, a Notary Public, this 17 day of November, 2023.





Notary Public
County of Williamson, State of Tennessee

My Commission Expires:

21974081.1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

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Defendant.

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kathrynchurch@thrunlaw.com

AFFIDAVIT OF JACKIE BECK

STATE OF MICHIGAN)
) ss:
COUNTY OF OTTAWA)

I, Jackie Beck, swear and affirm as follows:

1. I make the following statements based on personal knowledge and, if called as a witness in this matter, can testify competently to the same.
2. I am a member of Park Township Neighbors ("PTN").

3. The current address of my rental property is 176 Wood Ave, Holland, MI 49424 in Zone R-3.

4. In early 2022, I inquired if there were any restrictions or requirements on renting my home like the City of Holland has, and I was informed there was not.

5. If I am forced to cancel bookings: I will suffer the loss of Superhost status on Airbnb, loss of goodwill from customers, and likely negative reviews.

6. My listing would no longer be given preference in their algorithm, resulting in fewer potential guests seeing my home.

7. It is possible that if cancellations are required, Airbnb may not even let me create a new listing. When I had to cancel just ONE guest's stay this summer due to an air conditioner issue, I received a stern warning that my listing was at risk. What if I have to cancel ALL of the stays? Being unable to list on Airbnb of course would significantly harm my business, as to date I have gotten 96.55% of my guests from there.

8. If I am unable to continue to rely on my short term rental income, I would have to choose between letting my STR sit empty, while missing out on the majority of my income and greatly reducing my lifestyle in order to pay for the home's significant annual expenses, expenses which would no longer be reimbursed, or selling it and missing out on the enjoyment I gain from owning and personally using the home.

Further affiant sayeth not.

Dated: November 16th, 2023



Jackie Beck

Subscribed and sworn to before me, a Notary Public, this 16th day of November, 2023.

Karla Z Menger

Notary Public
County of Ottawa, State of Michigan

My Commission Expires: 5/17/2025

21973993.1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
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Defendant.

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dmartin@thrunlaw.com
kathrynchurch@thrunlaw.com

AFFIDAVIT OF LISA RUGGLES

STATE OF MICHIGAN)
) ss:
COUNTY OF OTTAWA)

I, Lisa Ruggles, swear and affirm as follows:

1. I make the following statements based on personal knowledge and, if called as a witness in this matter, can testify competently to the same.
2. I am a member of Park Township Neighbors ("PTN").

3. The current address of my rental property is 138 S. 160th Ave, Holland MI 49424 in Zone R-3.

4. My spouse and I did our due diligence and never would have invested without doing such due diligence, during which I was told by Park Township that there were no restrictions or permit(s)/license(s) required for short-term rentals.

Further affiant sayeth not.

Dated: November 20, 2023

Lisa Ruggles
Lisa Ruggles

Subscribed and sworn to before me, a Notary Public, this 20 day of November, 2023.

Mariah Rodriguez

Notary Public
County of Ottawa, State of Michigan

My Commission Expires: Feb, 27, 2029

21974050.1



STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
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Defendant.

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dmartin@thrunlaw.com
kathrynchurch@thrunlaw.com

AFFIDAVIT OF VIC VAN'T HOF

STATE OF MICHIGAN)
) ss:
COUNTY OF OTTAWA)

I, Vic Van't Hof, swear and affirm as follows:

1. I make the following statements based on personal knowledge and, if called as a witness in this matter, can testify competently to the same.
2. I am a member of Park Township Neighbors ("PTN").

3. The current addresses of my rental properties are 337 S. 168th Ave., Holland, MI 49424 in Zone R-4, and 438 Spruce St., Holland, MI 49424 in Zone R-3.

4. My spouse and I bought a home in 2016.

5. I went to the Township office in person to ask if there were any restrictions or regulations required to rent short-term, and to inquire about a permit for renovations.

6. I was told there were no restrictions and no rental permit required, and that there were many short-term rentals already in Park Township and it was fine.

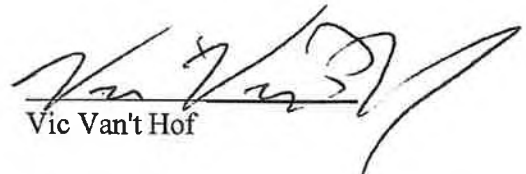
7. My spouse and I will not be able to pay the mortgage and property taxes if we cannot short term rent our house.

8. I rely on this income to provide for my household.

9. This is my income and if I cannot rent this house short term, I will lose the income and the ability to pay my bills.

Further affiant sayeth not.

Dated: November 20, 2023


Vic Van't Hof

Subscribed and sworn to before me, a Notary Public, this 20th day of November, 2023.



Notary Public
County of Ottawa, State of Michigan

My Commission Expires: 8/4/2029

21974150.1



ERICA HARADA
NOTARY PUBLIC - MICHIGAN
OTTAWA COUNTY
MY COMMISSION EXPIRES 08/04/2029

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

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dmartin@thrunlaw.com
kathrynrchurch@thrunlaw.com

AFFIDAVIT OF ROBERT KUST

STATE OF MICHIGAN)
) ss:
COUNTY OF OTTAWA)

I, Robert Kust, swear and affirm as follows:

1. I make the following statements based on personal knowledge and, if called as a witness in this matter, can testify competently to the same.
2. I am a member of Park Township Neighbors ("PTN").

3. The current addresses of my rental properties are 2219 Perry Street, Holland, MI 49424 in Zone R-3, and 2017 Lake Street., Holland, MI 49424 in Zone R-3.

4. My spouse and I purchased two properties, in 2013 and 2014.

5. Before purchasing our first property in 2013, we were told that the Township had no regulations governing short-term rentals.

6. In 2014, our contractor asked for a permit for remodeling for the purpose of renting and the permit was issued without question.

7. If my spouse and I knew we were unable to rent, we would have never made this investment in Park Township

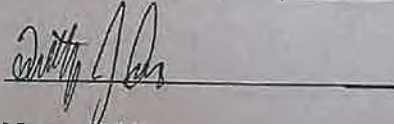
Further affiant sayeth not.

Dated: November 17, 2023



Robert Kust

Subscribed and sworn to before me, a Notary Public, this 17th day of ~~November~~, 2023.



Notary Public
County of Kent, State of Michigan

My Commission Expires:

JUNE 1, 2026

21973987.1



Exhibit 5

**STATE OF MICHIGAN
20TH CIRCUIT COURT FOR THE COUNTY OF OTTAWA**

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

v

PARK TOWNSHIP, a Michigan
municipal corporation

Defendant.

Honorable Jon H. Hulsing
Circuit Court Judge

Case No.: 2023-7474-CZ

Kyle P. Konwinski (P76257)
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Attorneys for Plaintiff
P.O. Box 352
Grand Rapids, MI 49501 (616) 336-6000
kpkonwinski@varnumlaw.com

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dmartin@thrunlaw.com



**DEFENDANT'S ANSWER TO THE *FIRST AMENDED* VERIFIED COMPLAINT
AND AFFIRMATIVE DEFENSES**

ANSWER

NOW COMES Defendant, Park Township, by its attorneys, THRUN LAW FIRM, P.C., and in response to Plaintiff's First Amended Verified Complaint and Petition for Writ of Mandamus states as follows:

INTRODUCTION

1. This lawsuit seeks to stop Park Township's illegal attempt to ban the rental of single-family homes on a short-term basis. For nearly 50 years, Park Township repeatedly and expressly permitted the use of single-family dwellings for short-term rentals.

ANSWER/RESPONSE: Defendant denies the factual allegations contained in paragraph 1, for the reason that they are not true, and for the reason that since at least February 7, 1974 (and likely before), the Township by zoning ordinance has prohibited the use of single-family dwellings in residential (hereinafter, both single-family and multi-family residential) and agricultural zoning districts to be used or operated for short term rentals (or similar uses). The statement contained in the first sentence of paragraph 1 also contains improper legal conclusions requiring no response.

2. On November 10, 2022, the Park Township's Board of Trustees-without amending its Zoning Ordinance-voted to "ban" the use of single-family dwellings as short-term rentals in residential zoning districts. The Township's Board also distinguished between "short term" and "long term" rentals (the dividing line is apparently 28 days), even though the text of the Zoning Ordinance contains no such distinction. The Township now seeks to enforce its purported ban on short-term rentals under the guise that it is merely "enforcing" its Zoning Ordinance that has existed since 1974.

ANSWER/RESPONSE: Defendant denies the factual allegations contained in paragraph 2 for the reason that they are not true, and for multiple other reasons, including in part that instead on November 10, 2022, the Township Board voted to lift, effective October 1, 2023, its temporary moratorium on the enforcement of its 1974 Zoning Ordinance prohibiting short-term rental of residential dwellings. Defendant further states that since February 7, 1974 (and likely before), the Township Zoning Ordinance has not permitted short-term rental of dwellings (or similar uses) in any residential or agricultural zoning district.

3. Contradicting its false narrative, the Township's Board later voted, without holding a proper hearing or providing prior notice to the public, to adopt an amendment to the Zoning Ordinance defining, regulating, and prohibiting short-term rentals. This amendment, Zoning Ordinance No. 2022-02 ("Zoning Ordinance 2022-02"), was signed by the Supervisor of the Township Board and codified in the Zoning Ordinance.

ANSWER/RESPONSE: Defendant denies the factual allegations contained paragraph 3 for the reason that they are not true, and for multiple reasons, including in part instead that the Township Board, at its regular meeting held on December 8, 2022, voted unanimously to approve the "Short-Term Rental Guidelines Ordinance" (Ordinance 2022-02) as a regulatory,

non-zoning or police power ordinance (not as a zoning ordinance or as an amendment to the Zoning Ordinance) to require those property owners lawfully operating or advertising a short-term rental of their property to register with the Township Community Development Director. Defendant further states that the Township Supervisor and Township Clerk were mistakenly presented with an incorrect, prior draft ordinance that was erroneously identified or formatted as a Zoning Ordinance amendment that had never been presented to or approved by the Township Board, yet the Township officials incorrectly and mistakenly signed the incorrect ordinance form when it was presented to them. That incorrect ordinance was subsequently mistakenly sent to the Holland Sentinel and the General Code for publication, but it had no legal effect as it has never been adopted by the Township Board. In fact, Ordinance 2022-02 (what Plaintiff euphemistically calls "Zoning Ordinance 2022-02"; Defendant hereby objects to calling or labeling Ordinance 2022-02 as "Zoning Ordinance 2022-02," and incorporates such objection in all of its corresponding answers herein) was mistakenly labeled as a zoning regulation after the proper licensing regulatory ordinance had been enacted/passed by the Township Board. As such, it was and remains invalid and null and void, with no need for the Township Board to enact an ordinance or ordinance amendment to rescind it. There was never an intent by the Township to enact Ordinance 2022-02 as an amendment to the Park Township Zoning Ordinance.

4. In the summer of 2023, the Township realized it had a problem: if the Township amended its zoning ordinance, all of the existing short-term rentals would be grandfathered as nonconforming uses. This was unacceptable to the Township, so it took even more illegal actions to cover up the problem it created. In June of 2023, the Township's Board adopted another ordinance, Ordinance No. 2023-02 ("Regulatory Ordinance 2023-02")-again, without providing prior notice or a public hearing as required by Michigan law.

ANSWER/RESPONSE: See generally the Answer/Response to paragraph 3, above. More specifically, Defendant denies the factual allegations in paragraph 4 as stated for the reason that they are not true, but Defendant does admit that Township officials realized in the early summer of 2023 that an incorrect version or format of an ordinance (that had not been reviewed or approved by the Township Board) had been incorrectly and mistakenly presented to the Township Supervisor and Township Clerk, erroneously signed by them, and subsequently published by the Holland Sentinel and General Code. Township officials further understood that state law requires a general police power or regulatory ordinance (i.e., a non-zoning ordinance, or sometimes referred to as a police power ordinance or regulatory ordinance) to be published within 30 days after the Township Board adopts the ordinance. When the Township realized that the wrong format or form had been utilized and signed for Zoning Ordinance 2022-02, the Township thereafter ensured that the ordinance language was placed in a proper non-zoning, police power or regulatory ordinance form and the Township

Board again adopted it as a regulatory ordinance, at its regular meeting held on June 8, 2023, and the Township timely published the readopted ordinance. The Township Board is not required to provide prior notice or a public hearing on such a general regulatory or police power ordinance. Since Ordinance 2022-02 was not effective (both due to the wrong format/form and that it was not published in the newspaper within 30 days of enactment), Ordinance 2022-02 is null, and void and it does not need a subsequent ordinance or ordinance amendment to be enacted to rescind or invalidate it. Ordinance 2022-02 was not a Zoning Ordinance amendment, but rather a non-zoning, police power or regulatory ordinance or ordinance amendment (and with a mistake in format) while Ordinance 2023-02 is clearly not a Zoning Ordinance amendment, but rather a non-zoning, regulatory or police power ordinance or ordinance amendment.

5. Regulatory Ordinance 2023-02 has essentially the same terms as Zoning Ordinance 2022-02, with one key difference-the ordinance purports to amend the general code of ordinances, not the Zoning Ordinance. Despite the Township's re-labeling, Regulatory Ordinance 2023-02 is a de facto zoning ordinance.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 5 as stated for the reason that they are not true. The Defendant denies that Ordinance 2022-02 adopted by the Township Board in December 2022 was a zoning ordinance amendment for the reason that it is not true, and further states that the Township Board actually reviewed and considered a regulatory or police power ordinance (i.e., non-zoning ordinance) at its December 2022 meeting. As noted above, a staff member mistakenly presented an incorrect prior non-enacted draft of an ordinance in zoning format, which was neither reviewed nor approved by the Township Board, to the Township Supervisor and Clerk, which was subsequently and mistakenly signed and published. The Township denies that either ordinance (Ordinance 2022-02 or Ordinance 2023-02) is a *de facto* zoning ordinance as neither ordinance is a zoning ordinance (or zoning ordinance amendment) or seeks to regulate the use of property, but merely requires property owners to register their status as a short-term rental with the Township.

6. The Township tried to conceal this switch-up by erasing all record of Zoning Ordinance 2022-02, even though the Township never repealed or replaced it.

ANSWER/RESPONSE: Defendant denies the allegations contained in paragraph 6 for the reason that they are untrue. The Township, acting through its officials and bodies, including the Township Board, did not seek to conceal anything but rather at an open public meeting held in June 2023 publicly acknowledged the above-described formatting error that occurred following the Township Board's adoption of Ordinance 2022-02 in December 2022. The Township Board did not repeal the prior non-zoning, regulatory or police power ordinance

that the Township Board adopted in December 2022 (Ordinance 2022-02) because that ordinance never took legal effect for the reasons described above. The Township Board once again adopted Ordinance 2023-02 as a non-zoning, regulatory or police power ordinance in June 2023, and properly and timely published the ordinance following its adoption.

7. In short, the Township's actions have no support in the text of the Zoning Ordinance, as the Township for decades acknowledged that its Zoning Ordinance *permitted* the use of single-family dwellings as short-term rentals in residential districts. Yet, the Township now claims that it is going to issue civil infractions to property owners who attempt to use single-family dwellings as rentals for less than 28 days.

ANSWER/RESPONSE: Defendant denies the allegations contained in the first sentence of paragraph 7 for the reason that they are not true for multiple reasons and including the reason, in part, that the 1974 Zoning Ordinance (or earlier ordinances) publicly and clearly prohibited short-term rentals in single-family dwellings. The Township admits that Township officials intend to issue municipal civil infractions citations to property owners who unlawfully use their single-family dwellings for short-term rentals in violation of the 1974 Zoning Ordinance.

8. The Township must be halted from doing so because its attempt to suddenly prohibit short-term rentals is illegal for two primary reasons: (1) the Township was required to properly amend its Zoning Ordinance under the Michigan Zoning Enabling Act ("MZEA") to impose new use regulations on short-term rentals in residential areas, which the Township did not do, and (2) even if the Township does not amend its Zoning Ordinance, the use of single-family dwellings as short-term rentals is permitted under the Township's current Zoning Ordinance.

ANSWER/RESPONSE: Defendant denies the allegations contained in paragraph 8 for the reason that they are not true, and for multiple other reasons including in part that the 1974 Zoning Ordinance (and earlier ordinances) prohibits single family dwellings from being used as short-term rentals in all residential and agricultural zoning districts and such zoning regulations have never been repealed.

9. Plaintiff brings this action to advocate for the interests of its members, many who own single-family homes in Park Township that they rent on a short-term basis (collectively, the "Park Township Neighbors").

ANSWER/RESPONSE: Defendant neither admits nor denies any of the factual allegations contained in paragraph 9, as Defendant has insufficient information as to form a belief as to their truth, and therefore leaves the Plaintiff to its proofs.

10. The Park Township Neighbors seek equitable and declaratory relief to prevent the Township from enforcing its new ban on short-term rentals in the residential zoning districts.

ANSWER/RESPONSE: Defendant admits that Plaintiffs seek equitable and declaratory relief but denies that the Plaintiff is entitled to any such relief and also denies the remaining allegations contained in paragraph 10 as the Township is not seeking to enforce a "new ban on short-term rentals," but rather is enforcing the long-standing use regulations in the residential and agricultural zoning districts (and other Zoning Ordinance provisions) banning short-term rentals.

PARTIES, JURISDICTION, AND VENUE

11. Plaintiff Park Township Neighbors is a Michigan nonprofit corporation, with a registered address of 333 Bridge Street NW, Suite 1700, Grand Rapids, Michigan.

ANSWER/RESPONSE: Defendant neither admits nor denies the factual allegations contained in paragraph 11 that the Plaintiff is a legally formed nonprofit corporation as Defendant has insufficient information as to form a belief as to their truth, and therefore leaves the Plaintiff to its proofs. Defendant further states that the Michigan Department of Licensing and Regulatory Affairs website lists Park Township Neighbors as a Michigan nonprofit corporation, with the registered agent being named as Kyle P. Konwinski and the registered address as being 333 North Bridge Street, Suite 1700, Grand Rapids, Michigan, yet the Articles of Incorporation filed with the Department of Licensing and Regulatory Affairs identify the registered agent as Adam Toosley with a registered address of 37085 Grand River Avenue, Suite 200, Farmington, Michigan. The Defendant further states that the Articles of Incorporation filed with the State identify Eric Doster of 2145 Commons Parkway, Okemos, Michigan as the sole incorporator. Denied that Plaintiff has standing in this case.

12. Plaintiff brings this action to advocate for the interests of its members, many who own real property in Park Township, Michigan that they use as a rental property.

ANSWER/RESPONSE: Defendant neither admits nor denies such factual allegations as Defendant has insufficient information as to form a belief as to their truth, and therefore leaves the Plaintiff to its proofs. Denied that Plaintiff has standing in this case.

13. Defendant, Park Township, is a Michigan municipal corporation located in Ottawa County, Michigan.

ANSWER/RESPONSE: Defendant admits that Park Township is a Michigan general law township and has municipal corporate existence.

14. Jurisdiction of Plaintiffs claims for declaratory and injunctive relief is appropriate in this Court pursuant to Mich. Const. 1963, art. VI§ 13; MCL 600.601, 600.605 600.6419(6), and MCR 2.605.

ANSWER/RESPONSE: Such laws speak for themselves. Defendant admits that this Court has general jurisdiction for claims regarding declaratory and injunctive relief. Denied that there is an actual case or controversy in this matter, and accordingly, this First Amended Complaint should be dismissed due to a lack of jurisdiction for this case specifically. Also denied that any of Plaintiff's claims for declaratory or injunctive relief or requests for mandamus have any merit or validity.

15. Venue is proper in this Court pursuant to MCL 600.1615.

ANSWER/RESPONSE: Defendant admits that venue is proper in this Court pursuant to MCL 600.1615 as Defendant is a governmental unit.

FACTUAL BACKGROUND

A. THE PARK TOWNSHIP NEIGHBORS AND THEIR RESIDENTIAL PROPERTIES.

16. An independent firm recently conducted a professional poll to gather community members' input on the issue of short-term rentals in the Township.

ANSWER/RESPONSE: Defendant neither admits nor denies any of the factual allegations contained in paragraph 16, as Defendant has insufficient information as to form a belief as to their truth, and therefore leaves the Plaintiff to its proofs. In addition, such assertions are totally irrelevant to the current lawsuit.

17. This poll showed that nearly 60% of voters in the Township do not support the Township's new ban on short-term rentals and nearly a supermajority of voters favor a reasonable policy allowing a limited number of owners to rent their homes for short-term periods.

ANSWER/RESPONSE: Defendant neither admits nor denies any of the factual allegations contained in paragraph 17, as Defendant has insufficient information to form a belief as to their truth, and therefore leaves the Plaintiff to its proofs. Defendant further denies that it has imposed a “new ban on short-term rentals” as alleged, for the reason that the “ban” has been in place since at least February 7, 1974 (or even earlier). In addition, the results of any such “poll” are totally irrelevant to any of the issues in the current lawsuit.

18. Plaintiff is a 501(c)(4) non-profit organization established by families, individuals, business owners, and community leaders working together to advocate for reasonable rules and regulations in Park Township that lawfully allow property owners to continue renting their single- family homes on a short-term basis.

ANSWER/RESPONSE: Defendant neither admits nor denies any of the factual allegations contained in paragraph 18, as Defendant has insufficient information to form a belief as to their truth and therefore leaves the Plaintiff to its proofs. Denied that Plaintiff has standing in this case. Defendant further states that the Articles of Incorporation for Park Township Neighbors state that the Corporation is organized exclusively for the purposes set forth in Section 501(c)(4) of the Internal Revenue Code of 1986. Furthermore, upon information and belief, it appears that the Plaintiff non-profit corporation was organized solely or primarily to facilitate the litigation in this matter for its members. Also denied that such short-term rentals are lawful as well as the implication that Park Township’s zoning regulations banning short-term rentals in residential and agricultural zoning districts are unreasonable.

19. Plaintiff consists of approximately 111 members, 107 of whom own property in Park Township.

ANSWER/RESPONSE: Defendant neither admits nor denies any of the factual allegations contained in paragraph 19, as Defendant has insufficient information to form a belief as to their truth and therefore leaves the Plaintiff to its proofs.

20. Plaintiff's members use their properties for single-family dwellings that are rented on a short-term basis in each residential zoning district within the Township and will be prevented from continuing such use if the Township's ban is enforced.

ANSWER/RESPONSE: Defendant neither admits nor denies any of the factual allegations contained in paragraph 20, as Defendant has insufficient information to form a belief as to their truth and therefore leaves the Plaintiff to its proofs. Denied that a short-term rental is a proper use or is a single-family dwelling. Defendant does admit that short-term rentals have been prohibited in the residential and agricultural zoning districts, because they do not meet the definition of a dwelling and otherwise, since at least February 7, 1974 (and likely earlier) under its Zoning Ordinance.

21. The Township's residential zoning districts consist of the R-1 Rural Estate District ("R-1"), R-2 Lakeshore Residence District ("R-2"), R-3 Low Density Single-Family Residence District ("R-3"), R-4 Medium Density Single- and Two-Family Residence District ("R-4"), and R-5 Low Density Multifamily Residence District ("R-5").

ANSWER/RESPONSE: The Park Township Zoning Ordinance and Zoning Map speak for themselves. Without waiving that objection, Defendant generally admits the factual allegations contained in paragraph 21. However, the AG-Agricultural and Permanent Open Space District also allows single-family residential dwellings (but not short-term rentals). Defendant further states that there are also multiple overlay zoning districts for certain historical neighborhoods within the Township.

22. For example, Richard Burkholder owns a single-family dwelling located at 3229 Elderwood Avenue in the R-1 zoning district, which is rented on a short-term basis.

ANSWER/RESPONSE: Defendant admits that Richard Burkholder (Richard and Marie Burkholder) owns a single-family dwelling located at 3229 Elderwood Avenue in the R-1 zoning district, but neither admits nor denies the remaining allegations as Defendant has insufficient information as to form a belief as to their truth, and therefore leaves the Plaintiff to its proofs.

23. Douglas Behrendt owns a single-family dwelling located at 2500 Lakefront Drive in the R-2 zoning district, which is rented on a short-term basis.

ANSWER/RESPONSE: Defendant admits that Douglas Behrendt (the Douglas Edward Behrendt Trust) owns a single-family dwelling located at 2500 Lakefront Drive in the R-2 zoning district, but neither admits nor denies the remaining allegations as Defendant has insufficient information as to form a belief as to their truth, and therefore leaves the Plaintiff to its proofs.

24. Sue Willoughby owns a single-family dwelling located at 1761 South Shore in the R-3 zoning district, which is rented on a short-term basis.

ANSWER/RESPONSE: Defendant admits that Susan Willoughby (Christopher and Susan Willoughby) owns a single-family dwelling located at 1761 South Shore Drive in the R-3 zoning district, but neither admits nor denies the remaining allegations as Defendant has insufficient information as to form a belief as to their truth, and therefore leaves the Plaintiff to its proofs.

25. Robert Bouman owns a single-family dwelling located at 481 South 168th Avenue in the R-4 zoning district, which is rented on a short-term basis.

ANSWER/RESPONSE: Defendant admits that Robert C. Bouman owns a single-family dwelling located at 481 South 168th Avenue in the R-4 zoning district, but neither admits nor denies the remaining allegations as Defendant has insufficient information as to form a belief as to their truth, and therefore leaves the Plaintiff to its proofs.

26. Claire Alsup owns a single-family dwelling located at 764 Jenison Avenue in the R-5 zoning district, which is rented on a short-term basis.

ANSWER/RESPONSE: Defendant admits that Claire Alsup (Clair Alsup and Luke Burgis) owns a single-family dwelling located at 764 Jenison Avenue in the R-5 zoning district, but neither admits nor denies the remaining allegations as Defendant has insufficient information as to form a belief as to their truth, and therefore leaves the Plaintiff to its proofs.

27. The use of these individuals' single-family dwellings as short-term rentals will be prevented if the Township's ban is enforced.

ANSWER/RESPONSE: Defendant neither admits nor denies any of the factual allegations contained in paragraph 27, as Defendant has insufficient information to form a belief as to their truth, and therefore leaves Plaintiff to its proofs. It is possible that one or more of these individuals may have a legitimate lawful non-conforming use status if their property has been consistently used for a short-term rental since before the Township Board's adoption of the Park Township Zoning Ordinance, which current ordinance became effective on February 7,

1974 as well as earlier applicable ordinances. However, the burden would be on each such individual to fully prove any lawful nonconforming status including proving that such lawful conforming use has not been abandoned, terminated, or waived.

B. PARK TOWNSHIP'S ZONING ORDINANCE.

28. In 1972, two years before enacting its current Zoning Ordinance, the Township prepared a plan to examine current land use and future zoning goals of the Township.

ANSWER/RESPONSE: Defendant admits the factual allegations contained in paragraph 28.

29. The Township recognized its status as a popular vacation destination, with many residential properties being used on a temporary and seasonal basis.

ANSWER/RESPONSE: Defendant objects as that plan speaks for itself. Without waiving that objection, Defendant generally admits the factual allegations contained in paragraph 29. Defendant further states that the residential properties referenced in the plan used on a temporary and seasonal basis were generally summer cottages, as distinguished from hotels, motels, and tourist homes.

30. The Township's plans recognized the existence of "rental cottages" and "seasonal homes" as "dwelling units" and recommended residential areas that had been developed with seasonal homes be maintained as such.

ANSWER/RESPONSE: Defendant objects, as the plan speaks for itself. Without waiving that objection, Defendant neither admits nor denies any of the factual allegations contained in paragraph 30, as Defendant has insufficient information to form a belief as to their truth and therefore leaves the Plaintiff to its proofs. Defendant further states that the Zoning Ordinance, while based on a plan, is the law of the land, not the plan.

31. The Township adopted its Zoning Ordinance in 1974, consistent with such early plans.

ANSWER/RESPONSE: Defendant admits that its current Zoning Ordinance was adopted in 1974 and was based in part upon a plan, and further states that it was effective February 7, 1974. The current Zoning Ordinance has been amended numerous times since 1974. There were also prior and predecessor zoning ordinances for Park Township that also effectively banned short-term rentals.

32. The Zoning Ordinance establishes twelve (12) zoning districts within the Township, each with its own description, purpose, and use regulations.

ANSWER/RESPONSE: Defendant admits the factual allegations contained in paragraph 32.

33. There are five (5) primary residential zoning districts within the Township, which include R-1, R-2, R-3, R-4, and R-5.

ANSWER/RESPONSE: Defendant admits the factual allegations contained in paragraph 33. Since the AG-Agricultural and Permanent Open Space zoning district allows single-family dwellings, that could also be considered a residential zoning district for some purposes. Defendant further states that there are multiple overlay zoning districts for certain historical residential neighborhoods within the Township.

34. Each of these residential zoning districts have distinguishing factors, but they all permit the use of "single-family dwellings."

ANSWER/RESPONSE: Defendant generally admits the factual allegations contained in paragraph 34.

35. The Zoning Ordinance defines a single-family dwelling as a "building designed for use and occupancy by one family" and explicitly permits the "temporary" occupancy of a building as a home or residence.

ANSWER/RESPONSE: Defendant objects as the Zoning Ordinance speaks for itself. Furthermore, the allegations constitute improper legal conclusions. Without waiving those objections, Defendant generally admits the factual allegations contained in paragraph 35, but objects to Plaintiff's selective quotes and further states that the complete definition of "dwelling" is as follows:

Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section 38-507, a mobile home shall be considered to be a dwelling.

(1) MULTIFAMILY: A building designed for use and occupancy by three or more families.

(2) SINGLE-FAMILY: A building designed for use and occupancy by one family only.

(3) TWO-FAMILY: A building designed for use and occupancy by two families only.

* * *

There are other definitions and portions of the current Zoning Ordinance that are also potentially relevant and applicable.

36. The Zoning Ordinance does not require that a single-family dwelling be owned by the family or individual occupying the structure to qualify as a single-family dwelling.

ANSWER/RESPONSE: Defendant objects as that is an improper legal assertion. Defendant admits the allegations in paragraph 36 as to “ownership.” Defendant further states that the Zoning Ordinance regulates land use, not ownership (although “use” and “ownership” may overlap); however, a family that is renting a building as the family’s home or residence on a non-transitory or longer basis may qualify the structure as a single-family dwelling and proper residential use under the Zoning Ordinance, whereas a family that is renting a structure on a short-term basis (and not as their home or residence) would not be considered a single-family dwelling or allowed use under the Zoning Ordinance at Section 38-6 and elsewhere in the Zoning Ordinance.

37. The Zoning Ordinance does not contain any language that would prohibit renting a single-family dwelling for 27 days or less.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 37 as untrue. For example, the Zoning Ordinance defines the term “dwelling” to be occupied “as a home or residence” and further explicitly excludes hotel, motels, resorts, tourist rooms, and cabins from the definition of a dwelling. In addition, there are other portions of the Zoning Ordinance the preclude short-term rentals.

38. Furthermore, the Zoning Ordinance does not distinguish between a single-family dwelling being used for more or less than 27 days by a family occupying it.

ANSWER/RESPONSE: Admitted that the Zoning Ordinance never uses the phrase “27 days.” However, various portions of the Zoning Ordinance do prohibit transitory, commercial, and other aspects of short-term rentals in various portions of the Zoning Ordinance. In general, Defendant denies the allegations in paragraph 37 for the reason that the Zoning Ordinance distinguishes a single-family dwelling based on its use as a home or residence from a commercial use as a hotel, motel, tourist room or tourist home.

C. PARK TOWNSHIP'S HISTORICAL INTERPRETATION OF ITS ZONING ORDINANCE.

39. For nearly fifty years, the Township and its agents charged with interpreting its Zoning Ordinance have consistently maintained that the Zoning Ordinance permits the use of single-family dwellings for rentals on a short-term basis.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 39 for the reason that they are not true. To the best of the knowledge, information and belief of Township officials, no Township Zoning Administrator has ever formally determined that short-term rentals are allowed within the residential or agricultural zoning districts. Nor can the Township find any evidence that any such interpretation/determination has been appealed by a property owner to the Park Township Zoning Board of Appeals or that the Zoning Board of Appeals, which has sole authority to interpret zoning ordinances on appeal, has ever ruled that the 1974 Zoning Ordinance (or earlier ordinances) permits short-term rentals in single-family dwellings.

40. The Township's Planning Commission has repeatedly sanctioned the use of single-family dwellings for short-term rentals as lawful land use during public meetings.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 40 for the reason that they are not true, and for the reason that the Planning Commission has no authority to repeal, amend, or officially interpret the 1974 Zoning Ordinance or earlier ordinances.

41. The Planning Commission is responsible for making and adopting a plan for the Township's land use and development.

ANSWER/RESPONSE: Defendant generally admits the allegations in paragraph 41.

42. The Planning Commission further has the authority to review and deny or approve applications for special use permits, site plans, and other issues pertaining to land use.

ANSWER/RESPONSE: Defendant objects as those are improper legal assertions. The Michigan Zoning Enabling Act, the Michigan Planning Act and the Zoning Ordinance all speak for themselves regarding such matters. Without waiving such objection, Defendant generally admits the allegations in paragraph 42.

43. At a public meeting in 2000, the Township's Planning Commission discussed a special use request to move a house onto an empty lot in a residential subdivision.

ANSWER/RESPONSE: Defendant generally admits the allegations in paragraph 43. Defendant further states that this occurred at the regular meeting of the Planning Commission held on July 18, 2000. The minutes of that meeting speak for themselves.

44. Some individuals raised concerns that the house would be used as a beach rental, however, the Planning Commission approved the request in a 9-0 vote and affirmed that, "[y]ou can have a single rental in any district."

ANSWER/RESPONSE: Defendant objects as the minutes from that Planning Commission meeting speak for themselves. Without waiving that objection, Defendant only admits that an individual (not a member of the Planning Commission) raised a concern during the public hearing that the house seeking special use approval to be moved might be used as "a beach rental." The Defendant further states that Planning Commission members raised concerns that the house may be converted into a duplex. Defendant further states that the Township Planning Commission noted that there were concerns about the potential rental of the house being moved when the Planning Commission voted to approve the special use request. The minutes of the July 18, 2000 meeting of the Planning Commission state in full context: "You can have a single rental in any district. If it looks like it is going to become a two-family home, the township wants to know about it. There are provisions in the ordinance to take care of that." Defendant further states that at no time did the Planning Commission authorize the home to be used for a short-term rental when it authorized the special use request. Furthermore, the issue of short-term rentals, beach rentals and similar matters were not formally in front of the Planning Commission at that time and the Planning Commission did not make a substantive decision regarding whether or not short-term rentals or beach rentals were allowed, and in fact, did not have the authority to do so in any event. Defendant denies any other allegations in paragraph 44 as being untrue.

45. The Planning Commission's Chairman further explained that a single-family dwelling could be rented on a short-term basis, so long as it was limited to a single family at a time.

ANSWER/RESPONSE: Please see the Answer/Response to paragraph 44, above. Defendant denies the allegations in paragraph 45 as being untrue and for the reasons stated in paragraph 44. In any event, the Chairperson of the Planning Commission does not have the legal authority to ultimately determine whether "a single-family dwelling could be rented on a short-term basis."

46. In the same meeting, the Chairman stated: "If a person from Chicago builds a \$300,000 house, we don't care whether they live in it 3 or 6 months or year around as long as it is properly maintained."

ANSWER/RESPONSE: Please see the Answer/Response to paragraphs 44 and 45, above. Without waiving those objections, Defendant admits the allegations in paragraph 46. Defendant further states that this quote was related to a separate special use request, for a private road. Defendant further states that the Planning Commission Chairperson made the quote regarding a person from Chicago having a second home that "they live in for 3 or 6 months or year-round" (not being a short-term rental) and that a second Planning Commission member (Southwell) stated that "It has to be a single family residence. All township rules would apply here too. They could rent them if they wanted to." Defendant further states that at no time did the Planning Commission authorize the homes to be constructed along this private road to be used for a short-term rental when it authorized the special use request.

47. Another member of the Planning Commission followed up with: "It has to be a single-family residence. All township rules would apply here too. They could rent them if they wanted to."

ANSWER/RESPONSE: Please see the Answer/Response to paragraphs 44 and 45, above. Defendant admits the allegations in paragraph 47. Defendant further states that at no time did this member say one could rent them on a short-term basis and at no time did the Planning Commission authorize the homes to be constructed along this private road to be used for a short-term rental when it authorized the special use request.

48. The Township's Planning Commission affirmed the same position during a meeting in 2002. There, the Planning Commission considered another individual's special use request to move a house to an empty lot and use it "for a cottage or rental."

ANSWER/RESPONSE: Please see the Answer/Response to paragraphs 44 and 45, above. Also, the record and minutes of that meeting speak for themselves. Defendant admits that the Planning Commission considered another property owner's special use request at a meeting in 2002 (August 20, 2002) and admits that the property owner stated that they "would like to move this house to a lot and use it for a cottage or a rental." Defendant denies that the Township Planning Commission took or affirmed any position that allowed a single-family dwelling in a single-family residential district to be used for a short-term rental consistent with the definition of either a hotel, motel, or tourist home. Defendant further states that the

Planning Commission tabled the matter from its August 20, 2002 meeting until its next meeting held on August 27, 2002.

49. Six neighbors wrote letters in opposition, expressing concerns "about any renting of the house."

ANSWER/RESPONSE: Defendant objects, as the record for that Planning Commission meeting speaks for itself, including what letters were accepted into the record. Defendant generally admits the allegations in paragraph 49 to the extent that the minutes of the August 27, 2002 meeting reflect that six letters of opposition were received at the Township office.

50. The Zoning Administrator, who is charged with administering and enforcing the Zoning Ordinance, advised that the Zoning Ordinance did not allow the Township to put any restriction on the individuals renting out the house. And again, the Planning Commission voted 8-0, approving the request.

ANSWER/RESPONSE: Defendant will reasonably assume that this paragraph 50 implicitly references the Planning Commission meeting of August 27, 2002, since it does not expressly so state. Based on that assumption, Defendant only admits that Planning Commissioner Kolean asked whether the Planning Commission could put any restriction on the property owner "renting out the house." Zoning Administrator Briggs then replied that "there is no ordinance prohibiting or governing the renting of property" without commenting on the validity of short-term rentals. Defendant also objects, as the record for that Planning Commission meeting speaks for itself. With regard to the balance of the assertions contained in paragraph 50, denied.

51. In 2003, the Planning Commission held a hearing to discuss the approval of a site plan for a planned development unit ("PUD"). The proposed PUD was for a group of connected townhomes.

ANSWER/RESPONSE: Defendant generally admits the allegations in paragraph 51. Defendant further states that the Michigan Zoning Enabling Act and the Township Zoning Ordinance allow the Township Board to waive the requirements of the Zoning Ordinance for a development approved as a planned unit development. Defendant further states that the original preliminary plan for the PUD in question was for the Macatawa Resort Hotel, which was before the Planning Commission at its meeting held on March 18, 2003. The development project was subsequently changed to the Lake Street Townhomes, considered

by the Planning Commission at its meetings held on October 28, 2003, and November 18, 2003. The records and minutes of those meetings speak for themselves.

52. Several individuals expressed concerns about the townhomes being rented on a weekly basis and questioned whether the connected units would constitute a motel.

ANSWER/RESPONSE: Defendant objects, as the minutes and the record of that Planning Commission meeting speak for themselves. Without waiving that objection, Defendant denies the allegations in paragraph 52 for the reason that it was Planning Commissioner Smeenge who questioned the weekly rental of the townhomes in the PUD project, and he wondered whether it changes the use into a motel.

53. The Planning Commission, however, affirmed that any property owner in the Township could rent out a single-family home for any duration, even on a weekly basis.

ANSWER/RESPONSE: Defendant objects, as both the record and the minutes of that Planning Commission meeting speak for themselves. Without waiving that objection, Defendant denies the allegations in paragraph 53 for the reason that it was the applicant, Randy Bowukamp, who stated that any homeowner in the Township could rent their home for a week at a time. Defendant denies that the Planning Commission, which acts through motions approved by a majority of its members and captured in the minutes of its minutes, ever affirmed this statement or concept.

54. Moreover, when approving PUD site plans, the Planning Commission has the authority to impose conditions and restrictions in addition to those in the Zoning Ordinance.

ANSWER/RESPONSE: Defendant objects as that is an improper legal assertion. Without waiving that objection, Defendant neither admits nor denies the allegations in paragraph 54 as they are a legal conclusion. Defendant further states that pursuant to the Michigan Zoning Enabling Act and the Township Zoning Ordinance, the Planning Commission has the authority to make recommendations to the Township Board, and the Township Board may waive or relax the general requirements of the Zoning Ordinance and impose reasonable conditions when the Township Board approves a planned unit development.

55. There, the Planning Commission asked the developer if he would be willing to agree to a 30-day minimum on rentals, but the developer declined. Nonetheless, the Planning Commission ultimately approved the developer's site plan, even with the knowledge that units within the development would be rented out on a short-term basis.

ANSWER/RESPONSE: Defendant objects, as the allegations are vague as it is not clear what “There” refers to. Defendant also objects as both the record and the minutes of that Planning Commission meeting speak for themselves. Without waiving that objection, Defendant denies the allegations in paragraph 55 for the reason that Planning Commissioner Smeenge (not the overall Planning Commission) asked the Developer, Randy Bouwkamp, if he would be “willing to go for 30-day minimum rentals” and Mr. Bouwkamp declined. The Defendant further states that the Planning Commission decided to recommend that the Township Board approve Mr. Bouwkamp’s PUD, with a condition that any rentals must be for a minimum of seven (7) days. The Defendant again further states that the Township may waive requirements of its zoning ordinance as part of, and may impose reasonable conditions upon, approval of a planned unit development.

56. The Township's Zoning Board of Appeals has also consistently affirmed the fact that the Zoning Ordinance does not prohibit the use of single-family dwellings for short-term rentals.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 56 as not being true, and for the reason that the Zoning Board of Appeals never issued any such decision.

57. In 1987, a property owner appealed the denial of a building permit for a new home in a residential zoning district.

ANSWER/RESPONSE: Defendant objects as the Plaintiff does not indicate which property owner or property was involved. Furthermore, that appeal did not involve a short-term rental or similar issue. Without waiving those objections, Defendant generally admits the allegations in paragraph 57. The Defendant further states that the Zoning Board of Appeals heard this appeal at its meeting held on September 28, 1987, and that this appeal was also for a variance.

58. During the hearing, a neighbor asked whether the property owner's home would be a rental, flagging to the Zoning Board of Appeals that the owner's existing property was rented on a seasonal basis.

ANSWER/RESPONSE: Defendant objects as the minutes and record of that Zoning Board of Appeals meeting speak for themselves. Defendant also objects to the vague term of “flagging.” Without waiving such objections, Defendant generally admits the allegations in paragraph 58 and that the property owner admitted that he rented his house out for the “winter,” thus for a full seasonal rental rather than a short-term rental basis.

59. The Zoning Board of Appeals ultimately approved the property owner's request and, in doing so, explained that the "Board didn't have any jurisdiction on whether or not this would be a residential home or a rental home."

ANSWER/RESPONSE: Defendant objects as the minutes and record of that ZBA meeting speak for themselves. Without waiving that objection, Defendant admits the allegations in paragraph 59 only to the extent that the Zoning Board of Appeals ultimately approved the property owner's request but denies that the Zoning Board of Appeals explained that it did not have jurisdiction over whether or not the property could be used as a residential home or a rental home. The Defendant further states that the quote contained in paragraph 59 attributed to the Zoning Board of Appeals (as if it were explained in a motion by the Zoning Board of Appeals as justification for its decision) was instead only made by Zoning Administrator Smit. The Defendant further states that the quote in context from the minutes is as follows: "Smit said the Board of Appeals had to determine the practical difficulties or unnecessary hardships in granting the variances. The Board didn't have any jurisdiction on whether or not this would be a residential home or a rental home." The Defendant further states that renting a single-family dwelling on a seasonal or longer-term basis (e.g., a summer home rented out in the off-season not as a short-term rental but for the entire winter) does not change its use in the same way that a short-term rental does. The Defendant further states that there is a significant distinction between regulating the use of the property as a hotel/motel/tourist home versus a single-family residence, which the Township does via its Zoning Ordinance, and the ownership/rental of a property that is actually used as a single-family residence. The issue of whether the proposal would be a residential home, or a rental use was not directly before the Zoning Board of Appeals in that case. The Defendant further denies that the Zoning Board of Appeals permitted the property to be rented out on a short-term basis as implied.

60. In other words, the Zoning Board of Appeals did not have jurisdiction to impose requirements on the rental of a single-family home in a residential area because the Zoning Ordinance does not provide for such restrictions.

ANSWER/RESPONSE: Defendant objects as that is an improper legal assertion. Without waiving that objection, Defendant denies the allegations in paragraph 60 for the reason that there is a significant distinction between regulating the use of the property as a hotel/motel/tourist home versus as a single-family residence, which the Township does via its Zoning Ordinance, and for the reason that the Zoning Ordinance adopted effective February 7, 1974 (and potentially earlier under prior ordinances) does not allow short-term rentals in residential or agricultural zoning districts, which the Zoning Board of Appeals has no authority to repeal or amend. With regard to whether or not the Zoning Board of Appeals has

jurisdiction to impose such a condition or conditions, and without waiving the above objections, neither admitted nor denied.

61. The Zoning Board of Appeals affirmed the same position again in 1999. There, a property owner sought a variance for a building permit to expand a home in a residential district.

ANSWER/RESPONSE: Defendant objects as the Plaintiff does not identify the exact date of the Zoning Board of Appeals meeting, the landowner involved or the property at issue. Furthermore, Defendant objects as the minutes and record of the applicable meeting speak for themselves. Without waiving those objections, Defendant admits the allegations in paragraph 61 only to the extent that the Zoning Board of Appeals considered a variance but denies that the Zoning Board of Appeals allowed short-term rentals as implied. The Defendant further states that the Zoning Board of Appeals considered the variance in question at its March 22, 1999 meeting.

62. During the hearing, neighbors complained the property owner rented out the cottage all but one week out of the summer to various groups of people, sometimes to as many as twelve people at a time.

ANSWER/RESPONSE: Defendant objects as the minutes and record for that Zoning Board of Appeals meeting speak for themselves. Without waiving that objection, Defendant only admits that following the public hearing being closed, a single neighbor raised the complaint in response to a question (“how much time the cottage is rented as opposed to being occupied by the owners”) that a member of the Zoning Board of Appeals asked the property owner’s representative, after the representative stated he did not know, and the neighbor raised the complaint contained in paragraph 62. Defendant denies any other allegations in paragraph 62 as being untrue.

63. But again, even knowing that the property would be used as a short-term rental, the Zoning Board of Appeals approved the property owner's request.

ANSWER/RESPONSE: Defendant objects as the minutes and record of that Zoning Board of Appeals meeting speak for themselves. Without waiving that objection, Defendant denies the allegations in paragraph 63 for the reason that the Zoning Board of Appeals did not know that the property in question would in-fact be used as a short-term rental in violation of the 1974 Zoning Ordinance (and possibly earlier ordinances); and that the Zoning Board of Appeals only heard that a neighbor alleged without any factual support or evidence that the property

had previously been rented for all but one week of the summer, sometimes with up to twelve people. The Zoning Board of Appeals, which acts through motions approved by a majority of its members and reflected in the minutes kept of its meetings, did not authorize its use as a short-term rental.

64. The examples above reflect just some of the instances in which the Township and its Planning Commission, Board of Trustees, Zoning Administrator, and Zoning Board of Appeals, have expressly acknowledged that single-family homes and other types of residential properties may be lawfully rented on a short-term basis under the Zoning Ordinance.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 64 as not being true, and for the reasons stated above.

65. In addition to the above, many members of Park Township Neighbors were explicitly told by Park Township employees and officials that their short-term rentals were allowed, including but not limited to the following:

- a. Jeremy and Rachael Allen - In 2017, before spending significant sums to finish the lower level of their home, they shared with the Township on a number of occasions that this home and remodel was to better accommodate their family and vacation rental guests, and at no time did the permitting, licensing, or inspection representatives say short term rentals were illegal. In fact, they purchased the home in 2015 from a local family who had been renting the home and, upon purchasing, the Allen family had to honor already existing short term rental reservations.
- b. Sue and Robert Kust - They purchased two properties, in 2013 and 2014. Before purchasing their first property in 2013, they were told that the Township had no regulations governing short-term rentals. In 2014, their

- contractor asked for a permit for remodeling for the purpose of renting and the permit was issued without question.
- c. Jackie Beck - In early 2022, she inquired if there were any restrictions or requirements on renting her home, and she was informed there was not.
 - d. Daniel Lilley - He had multiple conversations with the Park Township Zoning Administrator, Ed DeVries, who confirmed that short-term rentals are not regulated.
 - e. Brad and Lisa Ruggles - They did their due diligence and never would have invested without doing such due diligence, during which they were told by Park Township that there were no restrictions or permit(s)/license(s) required for short-term rentals.
 - f. Jason Reiersen - He called the Township in 2019 and was told there were no restrictions, despite the person acknowledging that many short-term rentals existed.
 - g. Mary TenBrink- She contacted the Township office asking if she needed a permit and asking if other regulations existed, but she was told there were no regulations on short-term rentals.
 - h. Laurie and Vic Van't Hof - They bought a home in 2016. Mr. Van't Hof went to the Township office in person to ask if there were any restrictions or regulations required to rent short-term, and to inquire about a permit for renovations. He was told there were no restrictions and no rental permit

required, and that there were many short-term rentals already in Park Township and it was fine.

- i. Crystal and Stefan Walter - Before they purchased property in the Township, Mr. Walker called and asked if there were any regulations or restrictions on short-term rentals. Mr. Walter was unequivocally told that there were no such regulations or restrictions.

- J. Sue Willoughby - Prior to making a very significant investment in a large waterfront home, she called the Township office two times and spoke to two different people. She made it very clear that their plan was to rent the house weekly. Each time, she was assured it was permitted to rent the house to vacationing families.

ANSWER/RESPONSE: Defendant neither admits nor denies any of the factual allegations contained in paragraph 65, as Defendant has insufficient information as to form a belief as to their truth, including subparts a-j, and Plaintiff is left to its proofs regarding such allegations.

66. Plaintiff's members relied on the Township's affirmative statements and actions warranting that the use of single-family dwellings for short-term rentals was lawful when they purchased and/or made significant investments to their properties for such purpose.

ANSWER/RESPONSE: Denied that the Township or its officials made any "affirmative statements and actions warranting that the use of single-family dwellings for short-term rentals was lawful." Also denied that any of the members of Plaintiff reasonably relied on any such statements or actions. Defendant neither admits nor denies any of the other factual allegations contained in paragraph 66, as Defendant has insufficient information as to form a belief as to their truth, and therefore leaves the Plaintiff to its proofs. Further, Defendant states that no individual Township employee or official can repeal or modify the Township's Zoning Ordinance or render a binding interpretation of the Township's Zoning Ordinance (except pursuant to a formal zoning application where a specific interpretation/determination is made by the Township Zoning Administrator with a possible appeal of that

specific decision to the Zoning Board of Appeals, which has apparently not happened regarding short-term rentals).

D. PARK TOWNSHIP'S NEW BAN ON SHORT-TERM RENTALS IN RESIDENTIAL AREAS

67. On June 5, 2020, the Michigan Supreme Court held in *Reaume v Twp of Spring Lake* that Spring Lake Township's Zoning Ordinance did not permit short-term rentals under the specific language of Spring Lake Township's Zoning Ordinance. In Spring Lake Township, a short-term rental fell within Spring Lake's ordinance's definition of a motel.

ANSWER/RESPONSE: Defendant objects as that is an improper legal assertion. Furthermore, *Reaume v Twp of Spring Lake* (both at the Court of Appeals and Michigan Supreme Court levels) speaks for itself. Although Defendant generally admits the factual allegations contained in paragraph 67, *Reaume v Twp of Spring Lake* had a much more extensive discussion of zoning regulations of short-term rentals, all of which support the Township's position in this lawsuit.

68. Even though Park Township's Zoning Ordinance has materially different definitions than the Spring Lake Zoning Ordinance, just one month after *Reaume*, the Township's Planning Commission began evaluating its stance on short-term rentals at a public meeting held on July 8, 2020.

ANSWER/RESPONSE: Defendant objects as part of paragraph 68 contains an improper legal assertion. Furthermore, the Township does not fully agree that its Zoning Ordinance “has materially different definitions than the Spring Lake Zoning Ordinance” in *Reaume v Twp of Spring Lake*. Without waiving those objections and clarifications, Defendant denies the factual allegations contained in paragraph 68 for the reason that the material provisions in the Spring Lake Zoning Ordinance were substantially the same as in the Park Township Zoning Ordinance, and for the further reason that the Planning Commission reviewed an amendment to a planned unit development at the Planning Commission's meeting held on July 8, 2020, during which Planning Commission members raised the issue of the units within the PUD were to be used for short-term rentals. Later during the meeting, following public comment and during Planning Commissioner comment, Planning Commission Chair Pfof asked whether a planning session should be considered with Township Staff to address short-term rental concerns raised by property owners in the Township. Defendant also objects as the record and minutes of that Planning Commission meeting speak for themselves.

69. At this meeting, the Township's Attorney raised the Court's recent decision in *Reaume* and advised the Planning Commission that "because [the Township] never allowed motels in residential districts, there is no nonconforming status."

ANSWER/RESPONSE: Defendant objects as the minutes and record of that Planning Commission meeting speak for themselves. Without waiving that objection, Defendant generally admits the factual allegations contained in paragraph 69.

70. The Township's Attorney's proffered interpretation was directly contrary to Park Township's repeated interpretations over the prior decades.

ANSWER/RESPONSE: Defendant objects as the minutes and record of that Planning Commission speak for themselves. Without waiving that objection, Defendant denies the factual allegations contained in paragraph 70 for the reason that they are not true, and for the reasons stated above.

71. In addition, the Township's Attorney's proffered interpretation was later contradicted by the Township's attempt to enact Zoning Ordinance 2022-2 and Regulatory Ordinance 2023-02, which both concede that homes rented on a short-term basis are not considered motels.

ANSWER/RESPONSE: Defendant continues to object to Plaintiff's characterization of Ordinance 2022-02 as being "Zoning Ordinance 2022-02," because it was never a zoning ordinance or an amendment to the Zoning Ordinance. Defendant denies the factual allegations contained in paragraph 71 for the reason that they are not true, and for the reasons stated above.

72. During this time, the Township's Board and Manager were admonished by Township officials from ever again saying that short-term rentals are permitted in the Township. When the Township Manager was informed of the Township's new position, the Township Manager responded that he had told many residents that short-term rentals were permitted.

ANSWER/RESPONSE: Defendant denies the factual allegations contained in paragraph 72 for the reason that they are not true, and for multiple specific reasons, including that there are no Township officials who are in a position to “admonish” the Township Board or to direct Township Board members from ever staying anything. Defendant further states that the Township has not taken a “new position” regarding short-term rentals, but rather began the process of exploring whether to begin to permit short-term rentals in residential areas under certain circumstances and if so, based on what kinds of regulations.

73. The Planning Commission decided that it would conduct an analysis of short-term rentals in the Township and set special meetings to discuss what the Township's stance on the matter would be.

ANSWER/RESPONSE: Defendant only admits that the Township began the process of considering whether to amend the Zoning Ordinance, which since 1974 (and even before then) has prohibited short-term rentals in residential and agricultural zoning districts, to permit short-term rentals in residential and agricultural zoning districts under certain circumstances and if so, based on what kinds of regulations. Defendant denies all other allegations in paragraph 73 as being untrue.

74. Essentially, the Township saw *Reaume* as an opportunity to change its rules on short-term rentals while circumventing the legality of nonconforming uses by claiming short-term rentals fall within the Zoning Ordinance's definition of motels.

ANSWER/RESPONSE: Defendant denies the factual allegations contained in paragraph 74 for the reason that they are untrue, and for multiple reasons including that short-term rentals have been prohibited in residential and agricultural zoning districts since the adoption of the Zoning Ordinance in 1974 (and even earlier) and would remain so unless the Township Board were to expressly amend or repeal the relevant ordinance provisions.

75. For the next two years, the Township continued to evaluate its position on short-term rentals.

ANSWER/RESPONSE: Defendant generally admits the factual allegations contained in paragraph 75. Defendant further states that the Township has not taken a “new position” regarding short-term rentals, but rather began the process of exploring whether to begin to permit short-term rentals in residential areas under certain circumstances and if so, based on what kinds of regulations.

76. On November 10, 2022, the Township's Board of Trustees voted at a regular meeting "to ban short-term rental use in residential zones."

ANSWER/RESPONSE: Defendant denies the factual allegations contained in paragraph 76 for the reason they are untrue. Instead, the Township Board voted at its regular meeting held on November 10, 2022, that it wanted to continue to enforce the current Zoning Ordinance, enacted in 1974, prohibiting short-term rentals in residential and agricultural zoning districts; this was not a new ban of short-term rentals. Also, the minutes and record of that meeting speak for themselves.

77. The Board of Trustees also voted to enforce the ban on short-term rentals starting on October 1, 2023.

ANSWER/RESPONSE: Defendant denies the factual allegations contained in paragraph 77 for the reason that they are untrue. Instead, the Township Board voted at its regular meeting held on November 10, 2022, that it wanted to continue to enforce the current Zoning Ordinance, enacted in 1974, which prohibits short-term rentals in residential and agricultural zoning districts (this was not a "new ban" of short term rentals), and further voted to lift the temporary moratorium on enforcement effective as of October 1, 2023, which temporary moratorium was previously put in place while the Planning Commission studied the short-term rental issue. Also, the minutes and record of that meeting speak for themselves.

78. In adopting this ban, the Township did not amend the Zoning Ordinance. Instead, the Township argued that it was enforcing the existing Zoning Ordinance.

ANSWER/RESPONSE: Defendant denies the factual allegations contained in paragraph 78 to the extent that they claim this was a new ban. Defendant admits that it did not amend the 1974 Zoning Ordinance at its meeting held on November 10, 2022. Defendant further states that the Township Board voted at its regular meeting held on November 10, 2022, that it would continue to enforce the current Zoning Ordinance, enacted in 1974, prohibiting short-term rentals in residential and agricultural zoning districts.

79. The Township intentionally crafted its "enforcement" narrative to thwart any claims of nonconforming uses.

ANSWER/RESPONSE: Defendant denies the factual allegations contained in paragraph 79 for the reason that they are not true. Furthermore, the Township has always indicated that it will accept any proven lawful nonconforming uses that existed since before February 6, 1974 (or potentially earlier under similar zoning provisions).

80. A nonconforming use is the use of land in conflict with the zoning ordinance.

When a zoning ordinance is adopted or amended, there might be existing, formerly lawful uses that conflict with the new zoning ordinance. These are nonconforming uses that give rise to a vested property right.

ANSWER/RESPONSE: Defendant neither admits nor denies the allegations in paragraph 80 for the reason that the statements contained in paragraph 80 contain improper legal conclusions requiring no response.

81. Accordingly, both the MZEA and the Zoning Ordinance require the Township to grandfather nonconforming uses that existed prior to a change in the zoning law. See ZO at§ 38- 631; MCL 125.3208.

ANSWER/RESPONSE: Defendant neither admits nor denies the allegations in paragraph 81 for the reason that the statements contained in paragraph 81 contain improper legal conclusions requiring no response. Also, the statutes and the Zoning Ordinance speak for themselves.

82. The Township did not want to formally amend its Zoning Ordinance to ban short- term rentals because, if it did, it would be required to allow the approximately 240 existing homes that are rented on a short-term basis to continue as nonconforming uses.

ANSWER/RESPONSE: Defendant neither admits nor denies the allegations in paragraph 82 for the reason that they are untrue, and for the reason that any new zoning ordinance or amendment to the current Zoning Ordinance prohibiting short-term rentals would not give rise to any lawful nonconforming uses as they would have also been prohibited by the 1974 Zoning Ordinance (and even earlier). Defendant further states that the statements in paragraph 82 contain improper legal conclusions requiring no response.

83. So instead, the Township formulated a scheme to *reinterpret* the Zoning Ordinance rather than *amending* the Zoning Ordinance to prohibit a property use that was previously permitted.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 83 for the reason that they are untrue and for multiple reasons including that the 1974 Zoning Ordinance (and

earlier ordinances) already prohibited the use of short-term rentals in residential and agricultural zoning districts. Also, Defendant strongly denies that it engages in “schemes.”

84. The problem with the Township's scheme, however, is that the Township cannot impose new regulations on land use without amending the Zoning Ordinance.

ANSWER/RESPONSE: Defendant neither admits nor denies the allegations in paragraph 84 for multiple reasons including that the statements in paragraph 84 contain improper legal conclusions requiring no response. Defendant further states that it did not have to impose any new regulations prohibiting short-term rentals in residential or agricultural zoning districts as such prohibition had already been in place since February 7, 1974, by the current Zoning Ordinance (or even earlier). Also, Defendant strongly denies that it engages in “schemes.”

85. At first, the Township tried to avoid amending the Zoning Ordinance by simply posting the new short-term rental regulations on its website.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 85 for the reason that they are untrue. The Township did not have to avoid amending its Zoning Ordinance as the 1974 Zoning Ordinance was still effective, having never been repealed. Also, the licensing ordinance was adopted for other reasons.

86. On its website, the Township defined short-term rentals as “[a]nything under 28 days” and said that “[m]onthly leases and longer are permitted in all residential districts.”

ANSWER/RESPONSE: The website speaks for itself. Without waiving that objection, Defendant admits the allegations in paragraph 86.

87. The Township further stated preexisting short-term rentals would not be recognized as nonconforming uses.

ANSWER/RESPONSE: Defendant neither admits nor denies any of the factual allegations contained in paragraph 87, as such assertions are vague, and Defendant has insufficient information as to form a belief as to their truth and it is also unclear whether this is referring to the Township website or a statement by any particular Township official. The Defendant further states that it is the Township’s position that an individual property owner may prove by a preponderance of evidence to the Township Zoning Administrator (or later, this Court or to the District Court) to establish lawful nonconforming status by establishing such use prior to February 7, 1974 (or potentially earlier).

88. Yet, the Township claimed that it is lawful under the Zoning Ordinance to rent out single-family homes for 28 days or more, despite the fact that the rental of homes for 28 days or more is not listed under the residential zoning districts' use regulations.

ANSWER/RESPONSE: Defendant neither admits nor denies any of the factual allegations contained in paragraph 88, as Defendant has insufficient information as to form a belief as to their truth. Also, such assertions are vague, and it is not clear whether this is referring to the Township website or any particular Township official's statement.

89. None of the Township's new land use regulations relating to short-term rentals have any basis in the Zoning Ordinance.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 89 in general and for the further reason that it has not imposed or enacted any new land use regulations related to short-term rentals.

90. In effect, the Township is imposing new zoning regulations on the use of single-family homes for temporary periods without taking the steps required to amend the Zoning Ordinance.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 90 for the reason that they are untrue. The Township has not imposed any new zoning regulations on the use of single-family dwellings. Defendant further states that the assertions contained in paragraph 90 may contain improper legal conclusions requiring no response.

E. PARK TOWNSHIP'S ILLICIT ATTEMPTS TO AMEND THE ZONING ORDINANCE AFTER DECLARING THE BAN ON SHORT-TERM RENTALS.

91. A month after the Township adopted its ban on short-term rentals and posted the new rules on its website, the Township's Board voted to amend the Zoning Ordinance to incorporate some of the new self-declared rules on short-term rentals. But once the Township realized the consequences of its actions (i.e., amending the Zoning Ordinance would permit all short-term rentals that existed at that time to continue as nonconforming uses), the Township tried to cover up the evidence of its amendment.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 91 for the reasons that they are untrue, and for the reasons stated above. The Defendant also strongly denies that it tried “to cover up” anything.

92. On December 8, 2022, without proper notice or a public hearing as required by the MZEA, the Township's Board of Trustees adopted an amendment to the Zoning Ordinance, Zoning Ordinance No. 2022-02.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 92 for the reason that they are untrue. Also, the Township Board never adopted what Plaintiff refers to as “Zoning Ordinance No. 2022-02.” Defendant also objects to Plaintiff’s characterization of “Zoning Ordinance No. 2022-02.”

93. Zoning Ordinance 2022-02 defined short-term rentals as “[t]he rental of a dwelling unit for compensation for a term of 27 nights or fewer,” excluding “hotels, motels, [and] resorts.”

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 93 for the reason that they are untrue. The Township Board never adopted what Plaintiff refers to as “Zoning Ordinance 2022-02.” Defendant also objects to Plaintiff’s characterization of “Zoning Ordinance 2022-02.”

94. Zoning Ordinance 2022-02 also contained new rules requiring property owners to register their properties that are rented for 27 days or less with the Township and prohibited short- term rentals in all of the Township's zoning districts.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 94 for the reason that they are untrue. The Township Board never adopted what Plaintiff refers to as “Zoning Ordinance 2022-02.” Defendant continues to object to Plaintiff’s phrase “Zoning Ordinance 2022-02.”

95. Afterward, the Township published notice of the Zoning Ordinance 2022-02 in the Holland Sentinel.

ANSWER/RESPONSE: Defendant denies that the Township Board ever adopted what Plaintiff refers to as “Zoning Ordinance 2022-02,” but admits that a Township official mistakenly

published a zoning ordinance amendment that was never considered or adopted by the Township Board. Defendant continues to object to Plaintiff's phrase "Zoning Ordinance 2022-02."

96. The Township proceeded to collect and track short-term rental registrations over the following months pursuant to Zoning Ordinance 2022-02.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 96 for the reason that the Township Board never adopted what Plaintiff refers to as "Zoning Ordinance 2022-02." Defendant continues to object to Plaintiff's phrase "Zoning Ordinance 2022-02." The Defendant admits that it did collect and track some short-term rental registrations.

97. In June of 2023, the Township apparently realized the consequence of amending the Zoning Ordinance i.e., that all existing short-term rentals would be nonconforming uses (and thus permitted).

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 97 for the reason that they are not true. The Township Board never adopted what Plaintiff refers to as "Zoning Ordinance 2022-02." Defendant continues to object to Plaintiff's phrase "Zoning Ordinance 2022-02." The Defendant further states that after Township officials discovered that the Township Supervisor and Township Clerk mistakenly signed a draft ordinance that had neither been reviewed or approved by the Township Board, and discovered that the incorrect draft ordinance was published, the Township realized it needed to correct the error.

98. The Township then tried to conceal its actions to revert back to its false narrative that short-term rentals were never allowed under the Zoning Ordinance.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 98 for the reason that they are not true. The Township did not attempt to conceal anything and explained the issue and error at an open public meeting. Defendant further states that after it publicly discovered the error (i.e. that the incorrect draft ordinance was published), the Township Board proceeded to take action to correct the error. Defendant did not create or engage in any "false narrative."

99. On June 8, 2023, again without providing prior notice or a public hearing, the Township's Board of Trustees voted to adopt a regulatory ordinance on short-term rentals, Regulatory Ordinance 2023-02.

ANSWER/RESPONSE: Defendant generally admits the allegations in paragraph 99. The Defendant further states that this Regulatory Ordinance 2023-02, which was nearly identical to the ordinance that the Township Board actually considered and approved earlier in December of 2022, with the exception of dates, was adopted at a meeting of the Township Board held in compliance with the Open Meetings Act, including public notice with the agenda and packet being made available on-line to the public. Defendant further states that a general regulatory ordinance does not require a formal public hearing and must be published within 30 days after the adoption in order to take effect.

100. Regulatory Ordinance 2023-02 contains generally the same definition and prohibition of short-term rentals as Zoning Ordinance 2022-02. However, unlike Ordinance Zoning Ordinance 2022-02, which amended the Zoning Ordinance, Regulatory Ordinance 2023- 02 amended the general code of ordinances.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 100. The Township Board never adopted what Plaintiff refers to as “Zoning Ordinance 2022-02.” Defendant admits that Ordinance 2023-02 is a regulatory ordinance and speaks for itself. Defendant continues to object to Plaintiff’s characterization of “Zoning Ordinance No. 2022-02.”

101. At the same time, Zoning Ordinance No. 2022-02 was purportedly deleted from the Township's Zoning Ordinance.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 101. The Township Board never considered or adopted what Plaintiff refers to as “Zoning Ordinance No. 2022-02,” and therefore there was nothing to delete. Defendant continues to object to Plaintiff’s characterization of “Zoning Ordinance No. 2022-02.”

102. The distinction between regulatory and zoning ordinances is important for the purposes of this dispute.

ANSWER/RESPONSE: No answer is called for as that assertion is unduly vague and is also an improper legal conclusion. Without waiving that objection, Defendant admits that such distinction may be important or relevant in this case.

103. Regulatory ordinances are enacted by municipalities under their police power and are not zoning ordinances. Const 1963, art 8, §22, Charters, resolutions, ordinances; enumeration of powers.

ANSWER/RESPONSE: Defendant generally admits the allegations in paragraph 103, even though the statements contained in paragraph 103 are improper legal conclusions requiring no response. Also, that constitutional provision speaks for itself.

104. By contrast, a zoning ordinance regulates the use of land and buildings.

ANSWER/RESPONSE: Defendant generally admits the allegations in paragraph 104, even though the statements contained in paragraph 105 are improper legal conclusions requiring no response.

105. Because local governments in Michigan have no inherent power to enact zoning regulations, they must enact them in accordance with the procedures and landowner protections (such as preserving nonconforming uses) of the MZEA. Zoning ordinances (including de facto zoning ordinances) which are not adopted in conformity with the MZEA's procedural safeguards are invalid.

ANSWER/RESPONSE: Defendant generally admits the allegations in paragraph 105, even though the statements contained in paragraph 105 are improper legal conclusions requiring no response. Also, the MZEA speaks for itself.

106. By attempting to enact a regulatory ordinance instead of a zoning ordinance amendment to ban short-term rentals, the Township sought to avoid recognizing all of the existing short-term rentals as nonconforming uses and sidestep the MZEA's procedural safeguards.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 106.

107. However, despite the Township's re-labelling, the substance of Regulatory Ordinance 2023-02-which is essentially the same as Zoning Ordinance 2022-02-regulates the use of land and buildings and is therefore a zoning ordinance.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 107. The requirement of registration or licensing does not regulate or involve the use of land or buildings. Defendant continues to object to Plaintiff's characterization of "Zoning Ordinance 2022-02."

108. Ultimately, neither of the Township's attempted amendments are even enforceable due to glaring procedural deficiencies pursuant to the MZEA. But even if they were, they would only further support Plaintiff's position.

ANSWER/RESPONSE: Defendant denies both the factual and legal allegations in paragraph 108, for the reason that they are not true or applicable.

109. If Zoning Ordinance 2022-02 had been properly noticed and adopted, it would further solidify the fact that short-term rentals were lawful prior to the ban. The same goes for Regulatory Ordinance 2023-02, which despite the Township's artful framing, is nonetheless a de facto zoning ordinance.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 109 for the reason that they are not true. The 1974 Zoning Ordinance (and earlier ordinances) lawfully prohibited short-term rentals in residential and agricultural zoning districts. Defendant continues to object to Plaintiff's characterization of "Zoning Ordinance 2022-02."

110. Regardless of this convoluted scheme, the fact remains that the Township failed to properly amend the Zoning Ordinance to reflect its new zoning regulations on short-term rentals.

ANSWER/RESPONSE: Defendant denies the sarcastic statement and other allegations in paragraph 110 of a convoluted scheme for the reason that they are not true. Also, specifically denied that the Township engaged in any "convoluted scheme." Defendant admits that it did not amend its Zoning Ordinance regarding short-term rentals.

111. The Township is effectively imposing an amendment to its Zoning Ordinance through its ban on short-term rentals without taking the proper steps to formally amend the Zoning Ordinance.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 111. The Defendant did not amend its zoning ordinance but instead lawfully adopted Regulatory Ordinance 2023-02 (a non-zoning, regulatory or police power ordinance), which does not affect or regulate the use of lands or buildings, but merely requires the registration of short-term rentals.

112. The Township's underhanded tactics violate Michigan's laws designed to protect against precisely this type of municipal misconduct.

ANSWER/RESPONSE: Defendant denies the sarcastic allegations in paragraph 112 of using any underhanded tactics, or of any municipal misconduct or violating laws, for the reason that they are not true. The Township does not engage in “underhanded tactics” or any type of “municipal misconduct.” Defendant fully complied with all Michigan laws.

COUNT I

ALLEGED VIOLATION OF THE MICHIGAN ZONING ENABLING ACT

113. Plaintiff realleges and incorporates by reference the preceding allegations.

ANSWER/RESPONSE: Defendant generally incorporates and restates its responses to paragraphs 1-112 of the Complaint as if repeated in this paragraph 113.

114. Land use regulations must be enacted through legislation pursuant to the procedures set forth under MZEA, MCL 125.3101 et seq.

ANSWER/RESPONSE: Defendant objects as such assertion is an improper legal claim or conclusion. Furthermore, the statute speaks for itself. Without waiving such objections, Defendant generally admits the allegations in paragraph 114.

115. A zoning ordinance is defined as an ordinance that regulates the use of land and buildings.

ANSWER/RESPONSE: Defendant objects as those statements are improper legal claims or conclusions, for which no response is required. Furthermore, the statute speaks for itself.

Without waiving those objections, Defendant neither admits nor denies the allegations in paragraph 115. Defendant further states that Section 102 of the Michigan Zoning Enabling Act, which contains the definitions of terms used in the MZEA, does not define the term “zoning ordinance.” MCL 125.3102.

116. The MZEA states amendments or supplements to a zoning ordinance shall be adopted in the same manner as provided under the MZEA for the adoption of the original ordinance. MCL 125.3202(1).

ANSWER/RESPONSE: Defendant objects as that is an improper legal claim or assertion. Without waiving that objection, Defendant generally admits the allegations in paragraph 116. Also, the MZEA speaks for itself.

117. Local governments may not avoid the substantive and procedural limitations of the MZEA by claiming a zoning ordinance is valid as an enactment pursuant to the general police power.

ANSWER/RESPONSE: Paragraph 117 states an improper legal conclusion for which no response is required. Also, such claims are vague. Without waiving such objections and to the extent that a response is required, the Defendant generally admits the allegations in paragraph 117. Also, the MZEA speaks for itself.

118. On November 10, 2022, the Township's Board voted to enforce a ban on short-term rentals in the residential zoning districts.

ANSWER/RESPONSE: Defendant objects as the record and minutes of that meeting speak for themselves. Without waiving that objection, Defendant denies the allegations in paragraph 118 for the reasons that they are not true and for the reasons stated above.

119. The Township's ban on short-term rentals regulates the use of land and buildings.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 119 to the extent it implies that the Township has recently banned short-term rentals. Defendant further states that the 1974 Zoning Ordinance (and earlier ordinances) does not permit the use of properties within residential or agricultural zoning districts for the short-term rentals of single-family dwellings for multiple reasons including, but not limited to, that any such short-term rental would result in the properties no longer being within the definition of a dwelling or a residence, but rather would fall within the definition of a hotel, motel, or tourist home,

which uses are permitted in other zoning districts. Such short-term rentals are also prohibited commercial uses.

120. The Township's ban on short-term rentals prohibits the rental of single-family homes on a short-term basis.

ANSWER/RESPONSE: Defendant admits only that the 1974 Zoning Ordinance (and earlier ordinances) prohibits the use of dwellings as short-term rentals in residential and agricultural zoning districts. Defendant denies all other allegations in paragraph 120 as untrue.

121. The Township effectively amended its Zoning Ordinance by distinguishing between short-term and long-term rentals.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 121 and for the additional reason that the Township did not amend its 1974 Zoning Ordinance.

122. The Township ban on short-term rentals amended the Zoning Ordinance by prohibiting short-term rentals in its residential zoning districts.

ANSWER/RESPONSE: Paragraph 122 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant generally denies the allegations in paragraph 122. Also, the Township did not amend its 1974 Zoning Ordinance.

123. However, the Township did not amend the Zoning Ordinance according to the requirements and procedures imposed by the MZEA when adopting its ban and self-declaring the definition of "short-term" rentals.

ANSWER/RESPONSE: Paragraph 123 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 123. Also, the Township did not amend its 1974 Zoning Ordinance.

124. Accordingly, the ban on short-term rentals, including the Township's distinction between short-term and long-term rentals, violates the MZEA and should be declared void.

ANSWER/RESPONSE: Paragraph 124 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 124 and including for the reasons

that the Township did not amend its 1974 Zoning Ordinance and the Township did not violate the MZEA.

125. The Township also failed to adhere to the requirements and procedures set forth in the MZEA in its subsequent attempts to amend the Zoning Ordinance when adopting Zoning Ordinance 2022-02 and Regulatory Ordinance 2023-02.

ANSWER/RESPONSE: Paragraph 125 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 125 and including for the reason that the Township did not amend its 1974 Zoning Ordinance and the Township did not violate the MZEA. Defendant continues to object to Plaintiff’s characterization of the term “Zoning Ordinance 2022-02.”

126. Both Zoning Ordinance 2022-02 and Regulatory Ordinance 2023-02 seek to regulate the use of land and buildings.

ANSWER/RESPONSE: Paragraph 126 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 126 and including for the reason that they are not true and for the additional reason that the Township did not attempt to amend its 1974 Zoning Ordinance, and did not need to do so for the purpose of simply requiring registration as that registration did not regulate the use of land or buildings. Defendant continues to object to Plaintiff’s use of the term “Zoning Ordinance 2022-02.”

127. Both Zoning Ordinance 2022-02 and Regulatory Ordinance 2023-02 sought to amend the Zoning Ordinance by distinguishing between short-term and long-term rentals and prohibiting short-term rentals in all of the Township's zoning districts.

ANSWER/RESPONSE: Paragraph 127 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 127 and including for the reason that the Township did not amend its 1974 Zoning Ordinance. Defendant also continues to object to Plaintiff’s phrase “Zoning Ordinance 2022-02.”

128. The Township adopted these zoning regulations in violation of the MZEA, by, at a minimum, failing to provide prior notice or hold a public hearing.

ANSWER/RESPONSE: Paragraph 128 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 128 and including for the reason that the Township did not amend its 1974 Zoning Ordinance.

129. In addition, the Township essentially tried to swap out Zoning Ordinance 2022-02 with an amendment to the general code of ordinances through Regulatory Ordinance 2023-02.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 129 and including for the reason that the Township Board never considered or adopted Ordinance 2022-02. Defendant continues to object to Plaintiff’s phrase “Zoning Ordinance 2022-02.”

130. The MZEA does not allow municipalities to delete zoning ordinance amendments and unofficially substitute them with regulatory ordinances.

ANSWER/RESPONSE: Paragraph 130 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant generally admits the allegations in paragraph 130. Also, the MZEA speaks for itself.

131. The Township's ban on short-term rentals, including its purported adoption of Zoning Ordinance 2022-02 and Regulatory Ordinance 2023-02, are unlawful and should be declared void.

ANSWER/RESPONSE: Paragraph 131 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies all of the allegations in paragraph 131 and including for the reason that they are untrue. Defendant also continues to object to Plaintiff’s use of the term “Zoning Ordinance 2022-02.”

132. The use of single-family homes, even when rented on a short-term basis, was, and still is, a lawful land use in all residential zoning districts under the Zoning Ordinance.

ANSWER/RESPONSE: Paragraph 132 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies all of the allegations in paragraph 132 and including for the reason that they are untrue, and for the reason that such uses remain prohibited under the 1974 Zoning Ordinance (and earlier ordinances) which has not been repealed or amended.

133. The Township, its Planning Commission, Board of Trustees, Zoning Administrator, and Zoning Board of Appeals have consistently affirmed the same in formal, public forums over the course of four decades and Plaintiff, and its members, have relied on such affirmations.

ANSWER/RESPONSE: Defendant denies each and every allegation in paragraph 133 for the reasons that they are not true, for the reasons stated above, and for the reason that the members of Plaintiff would have no right to rely on that type of statement even if such representations had been made.

134. A lawful use of one's property is a vested property interest, and a subsequent amendment to a zoning ordinance cannot deprive the owner of that use.

ANSWER/RESPONSE: Paragraph 134 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant admits the general legal proposition contained in the allegations in paragraph 134, although there may be circumstances and factors that change, modify or defeat such proposition in a specific case.

135. Specifically, the MZEA allows conforming (i.e., lawful) land uses that exist at the time of the enactment or amendment of a zoning ordinance to be continued as nonconforming uses.

ANSWER/RESPONSE: Paragraph 135 states a legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant generally admits the allegations in paragraph 135. However, there may be circumstances and factors that change such proposition or legal conclusion in a specific case. Finally, the MZEA speaks for itself.

136. A court will not apply an amendment to a zoning ordinance where the amendment would eliminate a vested property interest acquired before its enactment.

ANSWER/RESPONSE: Please see the response to paragraph 135, above. Paragraph 136 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant generally admits the allegations in paragraph 136.

137. The Park Township Neighbors have lawfully rented their properties to tenants to use and occupy as single-family homes on a short-term basis. The use of a single-family dwelling, including as rentals less than 28 days, is a lawful land use in all residential districts under the Zoning Ordinance.

ANSWER/RESPONSE: Paragraph 137 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 137 except to the extent that a member of Plaintiff can definitively establish a prior lawful nonconforming use by showing by a preponderance of evidence that the use lawfully existed before February 7, 1974 (or earlier) and that there has been no abandonment, termination, etc.

138. The Park Township Neighbors have a vested property interest in the use of their properties as single-family homes, even if rented on a short-term basis.

ANSWER/RESPONSE: Please see the response to paragraph 137, above. Paragraph 138 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 138 except to the extent a member of Plaintiff can definitively establish a prior lawful nonconforming use by showing by a preponderance of evidence that the use existed lawfully before February 7, 1974 (or earlier) and that there has been no abandonment, termination, etc.

139. The Township's ban on short-term rentals and refusal to recognize the Park Township Neighbors' short-term rental properties as nonconforming uses violates the MZEA and should be declared void.

ANSWER/RESPONSE: Please see the response to paragraphs 134 and 137, above. Paragraph 139 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 139 for the reason that they are not true, except to admit that the 1974 Zoning Ordinance does prohibit short-term rentals in residential and agricultural zoning districts and to admit that a member of Plaintiff can only establish a prior lawful nonconforming use by showing by a preponderance of evidence that the use lawfully existed before February 7, 1974 (or before) and that there has been no abandonment, termination, etc. Also, the MZEA speaks for itself.

COUNT II

ALLEGED VIOLATION OF THE DOCTRINE OF LEGISLATIVE EQUIVALENCY

140. Plaintiff realleges and incorporates by reference the preceding allegations.

ANSWER/RESPONSE: Defendant incorporates and restates its responses to paragraphs 1-139 of the Complaint as if repeated in this paragraph 140.

141. Park Township is a general township.

ANSWER/RESPONSE: Defendant admits that Park Township is a general law township.

142. While the Township has the authority to enact ordinances and resolutions related to municipal concerns, the Township cannot enact ordinances or resolutions that are inconsistent with the constitution and general laws of the State. Mich. Const. 1963, art. 7, § 22.

ANSWER/RESPONSE: Paragraph 142 states an improper legal conclusion for which no response is required. Also, such constitutional provision speaks for itself. Without waiving such objections and to the extent that a response is required, the Defendant admits the allegations in paragraph 142 to the extent that any such ordinance or resolutions were to violate said laws. Denied that any Township ordinance or resolution violates any such law.

143. Under Michigan law, an ordinance may not be amended, repealed, or suspended by an act of less dignity than the ordinance itself *McCarthy v Will of Marcellus*, 32 Mich App 679, 688-89 (1971) ("An ordinance or resolution cannot be amended, repealed, or suspended by another act by a council of less dignity than the ordinance or resolution itself"); *City of Saginaw v Consumers' Power Co*, 213 Mich 460, 469 (1921) ("[A]n ordinance may not be repealed or amended without action of equal dignity to that required in its enactment."); *Lorencz v Brookfield Twp*, No 319235, 2015 WL 1931967, at *2 (Mich Ct App April 28, 2015) ("[A]n ordinance may only be repealed by an act of equal dignity, which requires the township to repeal by ordinance."); see also *Tuscola Wind IIL LLC v Ellington Twp*, No 17-CV-11025, 2018 WL 1291161, at *7 (ED Mich March 13, 2018).

ANSWER/RESPONSE: Paragraph 143 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant generally admits the allegations in paragraph 143. Denied that the Township ordinances at issue violate the doctrine of legislative equivalency.

144. This rule of law is referred to as the doctrine of legislative equivalency.

ANSWER/RESPONSE: Paragraph 144 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant generally admits the allegations in paragraph 144. Denied that the Township ordinances at issue violate that doctrine.

145. In declaring a ban on short-term rentals, the Township effectively amended its Zoning Ordinance by distinguishing between short-term and long-term rentals and by disallowing short-term rentals in residential districts.

ANSWER/RESPONSE: Paragraph 145 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies each and every allegation in paragraph 145 for the reason that they are not true, and for the reason that the 1974 Zoning Ordinance prohibiting such use remains in effect having never been repealed.

146. However, the Township did not actually amend the Zoning Ordinance to incorporate the Township's new laws.

ANSWER/RESPONSE: Defendant objects to the very vague nature of those allegations, including the fact that the Plaintiff did not indicate the timelines involved or which “new laws” may have been involved. Without waiving that objection, the Defendant admits that the Township did not actually amend the Zoning Ordinance at the time at issue, and admits that the Township adopted a regulatory, police power or non-zoning ordinance to merely require short-term rental units to register with the Township.

147. Accordingly, the ban on short-term rentals was not adopted by an act of equal dignity, as required by Michigan law.

ANSWER/RESPONSE: Paragraph 147 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 147 and including for the reason that the Township prohibited short-term rentals in residential and agricultural zoning districts

when it originally adopted its Zoning Ordinance in 1974 (and potentially earlier). The adoption of the 1974 Zoning Ordinance was a legislative act.

148. The Township's ban on short-term rentals is unlawful and should be declared void.

ANSWER/RESPONSE: Paragraph 148 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 148 for the reason that they are untrue and also for the reasons stated above.

COUNT III

REQUEST FOR DELCARATORY RELIEF

149. Plaintiff realleges and incorporates by reference the preceding allegations.

ANSWER/RESPONSE: Defendant incorporates and restates its responses to paragraphs 1-148 of the Complaint as if repeated in this paragraph 149.

150. MCR 2.605(A)(I) provides that the Court may "declare the right and other legal relation of an interested party seeking a declaratory judgment" in cases of actual controversy.

ANSWER/RESPONSE: Paragraph 150 states an improper legal conclusion for which no response is required. That court rule also speaks for itself. Without waiving such objections and to the extent that a response is required, the Defendant admits the allegations in paragraph 150. Furthermore, the court rule speaks for itself. Defendant denies that there is an actual case and controversy supporting the Complaint.

151. There is an actual case or controversy between the parties regarding whether the Zoning Ordinance permits the use of single-family dwellings as a short-term rental in the R-1, R-2, R-3, R-4, and R-5 residential zoning districts.

ANSWER/RESPONSE: Paragraph 151 states an improper legal conclusion for which no response is required. In addition, the Defendant denies that there is an actual case or controversy (such that the Court does not have subject matter jurisdiction over this matter). Furthermore, the Defendant denies that Plaintiff has standing in this matter.

152. The Township contends that short-term rentals are not, and have never been, a permitted land use under the Zoning Ordinance.

ANSWER/RESPONSE: Defendant only admits that short-term rentals are not, and since at least February of 1974 have not been, a permitted or allowed land use in the residential or agricultural zoning districts under the relevant and respective sections of the Zoning Ordinance, except for any proven lawful legal nonconforming uses. All other allegations are denied.

153. The Park Township Neighbors have lawfully used their single-family dwellings for short-term rentals.

ANSWER/RESPONSE: Paragraph 153 states an improper legal conclusion for which no response is required. Without waiving that objection and to the extent that a response is required, the Defendant denies the allegations in paragraph 153 except for those members of Plaintiff who can establish a proven legal nonconforming use by showing by a preponderance of evidence that their property was lawfully used in such a manner prior to and continuously from February 7, 1974 (or potentially even earlier) and that the lawful nonconforming use was not abandoned, terminated, etc.

154. The use of a single-family home, even on a temporary basis and as a short-term rental, is a lawful land use in all residential zoning districts under the Zoning Ordinance.

ANSWER/RESPONSE: Paragraph 154 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant denies each and every allegation in paragraph 154 as such uses were and are prohibited under the 1974 Zoning Ordinance (and potentially earlier).

155. The Zoning Ordinance recognizes that single-family homes may be occupied on a temporary basis, regardless of duration.

ANSWER/RESPONSE: Paragraph 155 states an improper legal conclusion for which no response is required. Also, the Zoning Ordinance speaks for itself. To the extent that a response is required, the Defendant denies the allegations in paragraph 155 to the extent that the Zoning Ordinance defines a dwelling to specifically exclude hotels, motels, and tourist rooms and prohibits other commercial uses. Admitted that the Zoning Ordinance allows temporary occupancy for a residential (i.e. non-commercial use).

156. For example, the Zoning Ordinance permits the temporary occupation of single-family homes with no distinction between a home rented under a one-year lease, month-to-month lease, six-month lease, or even two-week lease.

ANSWER/RESPONSE: Paragraph 156 states an improper legal conclusion for which no response is required. Also, the Zoning Ordinance speaks for itself. To the extent that a response is required, the Defendant denies the allegations in paragraph 156 for the reason that the 1974 Zoning Ordinance (and earlier ordinances) prohibits the short-term rental of a dwelling within the definitions of dwelling, hotel, motel, or tourist home and due to its commercial nature.

157. Park Township claims that it is going to enforce its "ban" on short-term rentals beginning on October 1, 2023.

ANSWER/RESPONSE: Such allegations are unduly vague. Defendant denies the allegation contained in paragraph 157 to the extent that it implies that the Township has imposed a new ban on short-term rentals or that short-term rentals are not permitted in any zoning district, but Defendant admits that the Township Board adopted a motion at a public meeting held in November 2022 to end the temporary moratorium on the enforcement of the 1974 Zoning Ordinance prohibition of short-term rentals in residential and agricultural zoning districts as of October 1, 2023.

158. Park Township has indicated that it is going to begin issuing enforcement notices and/or civil infractions after October 1, 2023, to all members of Park Township Neighbors who continue to advertise or use their single-family dwellings as short-term rentals.

ANSWER/RESPONSE: Such allegations are unduly vague. Defendant denies the allegations contained in paragraph 158 to the extent that it indicates that a single-family dwelling may be used as a short-term rental and still meet the definition of a dwelling (or other applicable definitions), and to the extent that it is understood to apply to short-term rentals that are in zoning districts other than single-family residential, multi-family residential or agricultural zoning districts. Defendant is unaware of whether any of the members of the Park Township Neighbors may own property within the planned unit development that permitted the short-term rental (a minimum of seven days), in which case, those persons would be permitted to continue to operate the short-term rental as permitted by the planned unit development approval.

159. It is appropriate that this Court issue a declaratory judgment affirming whether the use of single-family homes, even when rented on a short-term basis, is a lawful use of property in residential districts under the Zoning Ordinance because a binding declaration by this Court as to each party's rights and obligations would serve to guide the parties' future conduct and preserve the parties' legal rights.

ANSWER/RESPONSE: Paragraph 159 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant neither admits nor denies the allegations in paragraph 159 for multiple reasons including a lack of sufficient knowledge or belief on whether the Plaintiff can meet its burden of proof that it has standing in this case.

160. The present adjudication of this controversy is necessary to guide the parties' future conduct and preserve the parties' legal rights.

ANSWER/RESPONSE: Defendant denies such assertion for the reason that the applicable provisions in the 1974 Zoning Ordinance have already been interpreted and effectively upheld by the Michigan Supreme Court in *Reaume v Township of Spring Lake*.

161. The Court has the authority to interpret and declare the meaning of the Zoning Ordinance under MCR 2.605, MCL 125.3603(1) *et seq.*, and other applicable law.

ANSWER/RESPONSE: Paragraph 161 states an improper legal conclusion for which no response is required. Also, such court rule and laws speak for themselves. To the extent that a response is required, the Defendant admits the allegations in paragraph 161 only if all parties have legal standing and "clean hands."

**COUNT IV
REQUEST FOR WRIT OF MANDAMUS**

162. Plaintiff realleges and incorporates by reference the preceding allegations.

ANSWER/RESPONSE: Defendant incorporates and restates its responses to paragraphs 1-161 of the Complaint as if repeated in this paragraph 162.

163. Land use regulations must be enacted through legislation pursuant to the procedures set forth under MZEA, MCL 125.3101 *et seq.*

ANSWER/RESPONSE: Paragraph 163 states an improper legal conclusion for which no response is required. Also, the MZEA speaks for itself. To the extent that a response is required, the Defendant generally admits the allegations in paragraph 163.

164. A zoning ordinance is defined as an ordinance that regulates the use of land and buildings.

ANSWER/RESPONSE: Defendant denies the allegations in paragraph 164 for the reason that Section 102 of the Michigan Zoning Enabling Act, which contains the definitions of terms used in the MZEA, does not define the term “zoning ordinance.” MCL 125.3102.

165. The MZEA requires that amendments or supplements to a zoning ordinance be adopted in the same manner as provided under the MZEA for the adoption of the original zoning ordinance.

ANSWER/RESPONSE: Paragraph 165 states an improper legal conclusion for which no response is required. Also, the MZEA speaks for itself. To the extent that a response is required, the Defendant generally admits the allegations in paragraph 165.

166. The Township has adopted new land use regulations prohibiting short-term rentals in its residential zoning districts.

ANSWER/RESPONSE: Defendant denies the allegations contained in paragraph 166 for the reason that short-term rentals in residential and agricultural zoning districts are prohibited under the 1974 Zoning Ordinance. The Township has not adopted new land use regulations regarding short-term rentals.

167. The Township is declaring and enforcing the new land use regulations against Plaintiff and the Park Township Neighbors, without adhering to the statutory requirements and procedures required to amend the Zoning Ordinance.

ANSWER/RESPONSE: Paragraph 167 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant denies the allegations in paragraph 167 for the reason that they are untrue. The 1974 Zoning Ordinance

was lawfully adopted in compliance with all legal requirements. In addition, the Township has not adopted new land use regulations regarding short-term rentals.

168. If the Township seeks to enforce new land use regulations, it has a clear legal duty to amend its Zoning Ordinance in compliance with the MZEA.

ANSWER/RESPONSE: Paragraph 168 states an improper legal conclusion to which no response is required. To the extent that a response is required, the Defendant generally admits the allegations as a general proposition contained in paragraph 168.

169. The Park Township Neighbors own property subject to the Zoning Ordinance's regulations.

ANSWER/RESPONSE: Defendant denies for the reason that the Plaintiff, a Michigan non-profit corporation, does not, to the Township's knowledge or belief, own any real estate within Park Township. Admitted that all properties in Park Township must comply with its Zoning Ordinance.

170. The Park Township Neighbors have a clear legal right to have the Zoning Ordinance regulations enforced against their properties adopted and amended through lawful means in conformity with the MZEA.

ANSWER/RESPONSE: Paragraph 170 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant generally admits the allegations in paragraph 170 in that the Township intends to enforce the 1974 Zoning Ordinance against properties that are owned by individuals who may be members of the Michigan non-profit organization. Denied that the Zoning Ordinance was recently amended regarding short-term rentals.

171. Park Township Neighbors have no adequate legal or equitable remedy to require the Zoning Ordinance regulations enforced against their properties to be adopted through lawful means.

ANSWER/RESPONSE: Paragraph 171 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant denies the allegations in paragraph 171, including for the reason that they already have this remedy as the Township intends to enforce the 1974 Zoning Ordinance against any properties that are not in compliance with the duly and lawfully adopted 1974 Zoning Ordinance; further,

depending on the circumstances, the individual property owners could seek an appeal to the Township's Zoning Board of Appeals for an official interpretation of the 1974 Zoning Ordinance once the Zoning Administrator has acted.

172. There is an actual case or controversy between the parties regarding the lawfulness of the Township's ban on short-term rentals without adherence to the requirements and procedures necessary to amend the Zoning Ordinance.

ANSWER/RESPONSE: Paragraph 172 states an improper legal conclusion for which no response is required. To the extent that a response is required, denied. Defendant believes there is no actual case or controversy in this matter and Plaintiff may also lack standing. Denied that the Township had not adhered to all legal requirements.

173. A present adjudication of this controversy is necessary to guide the parties' future conduct and preserve the parties' legal rights.

ANSWER/RESPONSE: Paragraph 173 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant denies the allegations in paragraph 173. Furthermore, the applicable provisions in the 1974 Zoning Ordinance have already been interpreted and effectively upheld by the Michigan Court of Appeals and also the Michigan Supreme Court in *Reaume v Township of Spring Lake*.

**COUNT V
PREEMPTION**

[Defendant reincorporates its responses from paragraphs 1 to 173 herein]

174. Under the Michigan Constitution, the Township's "power to adopt resolutions and ordinances relating to its municipal concerns" is "subject to the constitution and the law." Mich. Const. 1963, art. 7, § 22.

ANSWER/RESPONSE: Paragraph 174 states an improper legal conclusion for which no response is required. Also, the Michigan Constitution speaks for itself. To the extent that a response is required, the Defendant generally admits the allegations in paragraph 174.

175. The Township is precluded from adopting regulations that are in conflict with a state statute.

ANSWER/RESPONSE: Paragraph 175 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant admits the allegations in paragraph 175, but denies that the Township has adopted ordinances that conflict with state law.

176. For purposes of preemption, a conflict exists between a local regulation and a state statute when the regulation prohibits an act which the statute permits or permits an act which the statute prohibits.

ANSWER/RESPONSE: Paragraph 176 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant generally admits the allegations in paragraph 176, although the applicable appellate case law is more nuanced and detailed.

177. The Township's ban on short-term rentals, including the Township's subsequent attempts to enact Zoning Ordinance 2022-02 and Regulatory Ordinance 2023-02, was adopted to prevent the Park Township Neighbors from continuing to use their short-term rental properties as a nonconforming use (assuming those ordinances were properly adopted, which they were not).

ANSWER/RESPONSE: Paragraph 177 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant denies the allegations in paragraph 177. The 1974 Zoning Ordinance has effectively prohibited such short-term rentals in residential and agricultural zoning districts since February 7, 1974 (and likely earlier), and applies to all dwellings, not just those of the members of the Plaintiff non-profit corporation. Further, the 1974 Zoning Ordinance does not preclude any legal nonconforming uses for those property owners who can show by a preponderance of evidence that such use lawfully existed prior to and since February 7, 1974 (and likely before then). Defendant continues to object to Plaintiff's characterization of "Zoning Ordinance 2022-02."

178. The Township's ban on short-term rentals, specifically its failure to recognize the existing short-term rental properties in Park Township as nonconforming uses (assuming the ban was properly enacted, which it was not), prohibits an act that the MZEA permits.

ANSWER/RESPONSE: Paragraph 178 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant denies the allegations in paragraph 178.

179. Zoning Ordinance 2022-02 (assuming it was properly enacted, which it was not) prohibition of short-term rental, specifically its failure to recognize the existing short-term rental properties in Park Township as nonconforming uses, prohibits an act that the MZEA permits.

ANSWER/RESPONSE: Paragraph 179 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant denies the allegations in paragraph 179. Furthermore, the Township Board never adopted any “Zoning Ordinance 2022-02.” Finally, Defendant continues to object to Plaintiff’s mischaracterization of what Plaintiff improperly calls “Zoning Ordinance 2022-02.”

180. Regulatory Ordinance 2023-02 (assuming it was properly enacted, which it was not), specifically its failure to recognize the existing short-term rental properties in Park Township as nonconforming uses, prohibits an act that the MZEA permits.

ANSWER/RESPONSE: Paragraph 180 states an improper legal conclusion for which no response is required. To the extent that a response is required, the Defendant denies the allegations in paragraph 180. Regulatory Ordinance 2023-02 was lawfully adopted, does not regulate the use of any land or buildings, and is therefore not subject to the requirements of the Michigan Zoning Enabling Act. Also, the MZEA speaks for itself.

181. The Township's ban (assuming it was properly enacted, which it was not) on short- term rentals is preempted by the MZEA, MCL 125.3208, which allows for the use of a dwelling, building, structure, or land that is lawful at the time of the enactment of a zoning ordinance or amendment to a zoning ordinance to be continued although the use does not conform to the zoning ordinance or amendment.

ANSWER/RESPONSE: Paragraph 181 states an improper legal conclusion for which no response is required. Also, the MZEA speaks for itself. To the extent that a response is required, the Defendant denies the allegations in paragraph 181. The 1974 Zoning Ordinance was lawfully adopted in compliance with what was then known as the Township Zoning

Enabling Act, and without prohibiting any property owners from establishing a legal nonconforming use by showing by a preponderance of evidence that the property was lawfully used for a short-term rental prior to February 7, 1974 (and prior thereto) and ever since so long as no abandonment, termination, etc. occurred.

**COUNT VI
VIOLATION OF DUE PROCESS UNDER THE MICHIGAN CONSTITUTION
(IN THE ALTERNATIVE)**

182. Plaintiff realleges and incorporates by reference the preceding allegations.

ANSWER/RESPONSE: Defendant incorporates and restates its responses to paragraphs 1-182 of the Complaint as if repeated in this Paragraph 182.

183. Plaintiff believes that the Zoning Ordinance is unambiguous that it has always permitted the use of single-family dwellings as short-term rentals. However, the City has argued that the Zoning Ordinance does not permit the use of single-family dwellings for short-term rentals.

ANSWER/RESPONSE: What Plaintiff believes or does not believe is irrelevant to this lawsuit. Denied that the current Zoning Ordinance (or past ordinances) “has always permitted the use of single-family dwellings as short-term rentals.” In fact, short-term rentals in the residential and agricultural zoning districts have been unlawful under the current Zoning Ordinance since at least 1974 and likely prior thereto under prior Park Township zoning ordinances. Denied that Park Township is a “city” as alleged in the second sentence of paragraph 183. Generally admitted that the Township’s position is that the current Zoning Ordinance (and past ordinances) does not permit the use of single-family dwellings for short-term rentals in the residential or agricultural zoning districts, and that such ordinances have been unambiguous and clear regarding such prohibition.

184. Due to the City's position and/or argument, Plaintiff pleads this Count in the alternative that the Zoning Ordinance did not unambiguously permit the use of single-family dwellings as short-term rentals.

ANSWER/RESPONSE: Again, denied that Park Township is a “city.” Admitted that Plaintiff and Defendant disagree as to the legality of short-term rentals in the residential and agricultural zoning districts. Defendant also objects to Plaintiff’s confusing double or triple negative “did not unambiguously.” Denied that the current zoning ordinance and past zoning ordinances “did not unambiguously permit the use of single-family dwellings as short-term

rentals.” Contrary to Plaintiff’s apparent vague assertion, the current Zoning Ordinance (and past ordinances) have unambiguously and clearly prohibited the use of single-family dwellings as short-term rentals in the residential and agricultural zoning districts.

185. Under Michigan’s constitution, an ordinance is unconstitutionally vague if it does not provide fair notice of the type of conduct prohibited.

ANSWER/RESPONSE: Defendant objects to paragraph 185 as it is an improper legal assertion. Without waiving that objection, generally admitted as a legal proposition but with many legal qualifications and nuances. Denied that the Township Zoning Ordinance is vague.

186. An ordinance does not provide fair notice of proscribed conduct if it either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.

ANSWER/RESPONSE: Defendant objects to paragraph 186 as it is an improper legal assertion. Furthermore, the applicable appellate case law speaks for itself. Without waiving such objections, generally admitted as a broad legal proposition, but with many legal qualifications and nuances. Denied that the Park Township Zoning Ordinance is in any way vague or does not provide fair notice of prohibited short-term rental uses and conduct.

187. If the Zoning Ordinance does not unambiguously permit the use of single-family dwellings as short-term rentals (e.g., if the Zoning Ordinance forbids the use of single-family dwellings as short-term rentals), then the Zoning Ordinance does not provide fair notice of proscribed conduct.

ANSWER/RESPONSE: Defendant objects to paragraph 187 as it is an improper legal assertion. Also, such assertions are vague, confusing, and seemingly contradictory. Without waiving such objections, generally admitted as a broad legal proposition and hypothetical, but with many legal qualifications and nuances. Denied that the current Park Township Zoning Ordinance (and prior zoning ordinances) does not clearly prohibit the use of single-family dwellings or short-term rentals in the residential and agricultural zoning district. Also denied that the current Zoning Ordinance (and past zoning ordinances) does not provide fair notice of proscribed short-term rental conduct or uses.

188. The Zoning Ordinance is so vague that a person of common intelligence would have to guess that the Zoning Ordinance did not permit the use of single-family dwellings for

short-term rentals, such that persons would have to guess at its meaning and different as to its application.

ANSWER/RESPONSE: Denied.

189. A person of common intelligence would not view the use of a single-family dwelling as a short-term rental to constitute a "commercial establishment," or at least the person would have to guess at its meaning and persons would differ as to its application.

ANSWER/RESPONSE: Denied.

190. Persons of common intelligence would not view the use of a single-family dwelling as a short-term rental to constitute a "motel," "hotel," or "tourist home" as those terms are defined in the Zoning Ordinance, such that persons must necessarily guess as to the Zoning Ordinance's meaning and differ as to its application.

ANSWER/RESPONSE: Denied.

191. The existence and threatened enforcement of disallowing the use of single-family dwellings as short-term rentals materially and adversely affects Plaintiff's members' ability to use their properties.

ANSWER/RESPONSE: Denied.

192. The Zoning Ordinance is unconstitutionally vague because it fails to provide fair notice of the prohibited conduct.

ANSWER/RESPONSE: Defendant objects as that is an improper legal assertion. Without waiving that objection, denied.

193. The application of the Zoning Ordinance is a violation of Plaintiff's due process rights under the Michigan constitution.

ANSWER/RESPONSE: Defendant objects as that is an improper legal assertion. Without waiving that objection, denied.

RELIEF REQUESTED

WHEREFORE, Defendant Park Township respectfully requests that Plaintiff's Verified First Amended Complaint be dismissed with full prejudice, that the Court rule in favor of Defendant Park Township on all matters in this lawsuit, that Defendant Park Township be awarded its reasonable attorney fees and costs, and that the Court accord Park Township such other relief as the Court deems proper and appropriate.

Respectfully submitted,

THRUN LAW FIRM, P.C.

Date: February 29, 2024

By: *Daniel R. Martin*

Daniel R. Martin (P53532)

THRUN LAW FIRM, P.C.

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02022332



Exhibit 6



**park township
general land use
& circulation plan
1972**

DE ROO REALTY CO. - REALTORS
327 River Ave. - Call EX2-3191
Holland, Michigan

williams & works
engineers - surveyors - planners

Potential Land Use Conflicts

During the course of the land use survey, several problems, or potential problems, concerning land usage and the street system have come to light - the most critical of which are outlined below.

- Platting is taking place on unimproved roads. This will increase volumes on roads which are not designed to handle them, raise the potential for traffic accidents, and force premature financial burdens upon the Township.
- Although the Township has been very conservative about allowing additional commercial zones, there is evidence that these uses are spreading in strip form and creeping into residential areas.
- There are pockets of deteriorating dwelling units which lower the value of adjacent properties. Most of these units are either rental cottages along the lakes or seasonal homes with absentee owners.
- 144th Avenue dead ends north of James Street. This is an unnecessary inconvenience for school children who attend the local school and area residents who want to go north or south on this road.
- Several paved but minor roads abruptly become sand or gravel - among them: 152nd, 160th, and 168th Avenues; and Perry

Exhibit 7

Sec. 38-5. Rules applying to text. [Ord. No. Z, eff. 2-7-1974]

The following listed rules of construction apply to the text of this chapter:

- (1) The particular shall control the general.
- (2) With the exception of this section and Section 38-6, the headings which title a chapter, section or subsection are for convenience only and are not to be considered in any construction or interpretation of this chapter or as enlarging or restricting the terms and provisions of this chapter in any respect.
- (3) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
- (4) Unless the context clearly indicates to the contrary:
 - a. Words used in the present tense shall include the future tense;
 - b. Words used in the singular number shall include the plural number; and
 - c. Words used in the plural number shall include the singular number.
- (5) The term "building" or "structure" includes any part thereof.
- (6) The word "person" includes a firm, association, partnership, joint venture, corporation, trust, or equivalent entity or a combination of any of them as well as a natural person.
- (7) The words "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged, or designed to be used, or occupied."
- (8) Any word or term not defined herein shall be considered to be defined in accordance with its common or standard definition.

Sec. 38-6. Definitions. [Ord. No. Z, eff. 2-7-1974; amended by Ord. No. Z-3, eff. 2-3-1977; Ord. No. Z-12 eff. 12-4-1980; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-5, eff. 1-18-1983; Ord. No. Z-16, eff. 9-7-1983; Ord. No. Z-17, eff. 6-14-1985; Ord. No. Z-18, eff. 2-13-1986; Ord. No. Z-21, eff. 1-20-1989; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-26, eff. 10-5-1989; Ord. No. Z-51, eff. 9-5-2003; Ord. No. Z-52, eff. 9-5-2003; Ord. No. Z-55, eff. 3-31-2005; Ord. No. Z-56, eff. 8-22-2006; Ord. No. Z-58, eff. 12-13-2007; Ord. No. ZO16-1, eff. 6-16-2016; Ord. No. ZO17-1, eff. 5-15-2016; Ord. No. 2018-3, eff. 8-26-2018]

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ABUT — To physically touch or border upon, or to share a common property line. A property is considered to abut another property when the two properties share all or a portion of a common property line or the property lines touch, such as at a corner.

ACCESSORY USE OR STRUCTURE — A use, building or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use, building or structure. Without limitation of the foregoing definition of an accessory building, the following buildings are hereby determined to be accessory buildings: garages, storage buildings, guesthouses, bathhouses, greenhouses, playhouses, pool equipment and storage buildings, and pump houses.

Without limitation of the foregoing definition, docks are hereby determined to be accessory structures.

ADJACENT — To be near but not necessarily abut, adjoin, or be contiguous. A property is considered to be adjacent to another property when the two properties are nearby but do not share a common property line.

ADJOIN — To physically touch or border upon, or share all or part of a common property line with, another lot or parcel of land. A property is considered to adjoin another property when the two properties share all or part of a common property line.

ADULT FOSTER CARE FACILITY — A facility licensed under Public Act No. 218 of 1979 (MCL § 400.701 et seq.), as well as any other facility of substantially similar character and purpose.

AGRICULTURAL PRODUCTS — Those plants and animals useful to humans produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, deer, livestock (including breeding and grazing), horses, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms and other similar products. Marijuana is not considered an agricultural product. **[Added by Ord. No. 2023-01, eff. 4-15-2023]**

ALTERATIONS, STRUCTURAL — Any change in the supporting members of a building or structure, such as bearing walls, columns, beams or girders, any substantial change in the roof, or an addition to or diminution of a structure or building.

BASEMENT — A portion of a building, or a portion of a room, located wholly or partially below grade, but not including any part thereof not so located.

BED-AND-BREAKFAST OPERATION — An operation located in a single-family dwelling used to house a family unit as its principal place of residence, which offers overnight accommodations and a morning meal to transient guests in return for payment, including, but not limited to, any operation designed as an inn or tourist home.

BILLBOARDS and SIGNS —

- (1) **BILLBOARD** — Any structure, including the wall of any building, on which lettered, figured, or pictorial matter is displayed for advertising a business, service, or entertainment which is not conducted on the land upon which the structure is located or products not primarily sold, manufactured, processed or fabricated on such land.
- (2) **BUSINESS SIGN** — Any structure, including the wall of any building, on which lettered, figured, or pictorial matter is displayed for advertising a business, service, or entertainment conducted on the land where the structure is located or products primarily sold, manufactured, processed, or fabricated on such land.
- (3) **IDENTIFYING SIGN** — Any structure on the same premises it identifies which serves only:
 - a. To tell the name or use of any public or semipublic building or recreation space, club, lodge, church, or institution;

- b. To tell the name or address of an apartment house, hotel, or motel; or
 - c. To inform the public as to the use of a parking lot.
- (4) **NAMEPLATE** — A structure affixed flat against the wall of a building, which serves solely to designate the name or the name and profession or business occupation of a person or persons occupying the building.
- (5) **REAL ESTATE SIGN** — Any temporary structure used only to advertise with pertinent information the sale, rental, or leasing of the premises upon which it is located.

BLOCK — The property on either or both sides of the same street between the two nearest intersecting streets (crossing or terminating), railroad right-of-way, unsubdivided acreage, lake, rivers, or live streams, or between any of the foregoing and any other barrier to the continuity of development, or boundary line of the Township.

BUILDING — Anything which is constructed or erected, including a mobile home, having a roof supported by columns, walls, or other supports, which is used for the purpose of housing or storing of persons, animals, or personal property or carrying on business activities or other similar uses.

BUILDING HEIGHT — The vertical distance measured from the average existing grade, measured three linear feet out from the structure, to the highest point of the roof surface. The average existing grade shall be established using the Ottawa County Geospatial Insights and Solutions Department, or successor department, 2018 contours and shall be measured by utilizing no more than four points, each located at the center of the generally north-facing elevation, east-facing elevation, south-facing elevation, and west-facing elevation of the proposed structure. **[Amended by Ord. No. 2021-02, eff. 8-4-2021]**

BUILDING SETBACK — The distance between the adjacent lot line and the nearest wall projection or structural component of any building as measured along a straight line at a right angle to the lot line. Certain exceptions or additional restrictions to building setbacks can be found in Sections 38-494, 38-495, 38-496, 38-497, 38-483 and various other parts of this chapter regulating the location of buildings or structures. A deck or raised patio may be located within the building setback only if it is not more than 30 inches above the average surrounding grade. A deck over 30 inches above grade on a waterfront lot must comply with Section 38-495.

BUILDING, PRINCIPAL — A building or, where the context so indicates, a group of buildings which are permanently affixed to the land and which are built, used, designed, or intended for the shelter or enclosure of the principal use of the lot.

CARPORT — An open-sided vehicle shelter usually, but not always, formed by the extension of the roof from the side of a building. A carport shall be considered both an outdoor parking space and an accessory structure.

COMMON OPEN SPACE — Any area or space other than required yard areas which is unobstructed and unoccupied by buildings, structures, roads, or other man-made objects and is readily accessible to all those for whom it is required.

CONTIGUOUS — To abut or adjoin another property by sharing all or portion of a boundary line or property line. A property is considered to be contiguous to another property when the two properties share all or a portion of a common property line.

CORNER LOT — A lot located at the intersection of two or more public streets, private roads,

or combination of public streets and private roads, where the corner interior angle formed by the intersection of the streets and/or roads is 135° or less, or a lot abutting upon a curved street and/or road if tangents to the curve, at the two points where the lot lines meet the curve, form an interior angle of 135° or less.

DOCK — Any structure, whether permanent or removable, that extends from the shoreline into a lake, river or stream and to which one or more boats or other watercraft may be docked or moored.

DWELLING — Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section 38-507, a mobile home shall be considered to be a dwelling.

- (1) **MULTIFAMILY** — A building designed for use and occupancy by three or more families.
- (2) **SINGLE-FAMILY** — A building designed for use and occupancy by one family only.
- (3) **TWO-FAMILY** — A building designed for use and occupancy by two families only.

DWELLING UNIT — A building, or a portion of a building, with one or more rooms, including bathroom, kitchen, and sleeping facilities, connected together in a manner designed and maintained as a self-contained unit for residential occupancy by one or more people living as a single housekeeping unit.

FAMILY — One or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that, unless members are related by blood, marriage or adoption, no such family shall contain more than five persons.

FARM MARKET — A year-round or seasonal location where transactions and marketing activities between farm market operators and customers take place, which is located on property owned or controlled by the producer of the products offered for sale at the market, and subject to Generally Accepted Agricultural Management Practices as defined by the Michigan Department of Agriculture and Rural Development or its successor agency. **[Added by Ord. No. 2023-01, eff. 4-15-2023]**

FIRE GRATE — A metal cover that fits over the fire pit or recreational fire that helps control sparks from leaving the outdoor recreational fire, fireplace, fire pit, or container with openings not to exceed 12.5 millimeters/1.25 centimeters in dimension. **[Added by Ord. No. 2020-2, eff. 9-17-2020]**

FLOOR AREA — The gross floor area of all floors of a building or an addition to an existing building. For all office buildings and for any other building, except dwelling units, where the principal use thereof shall include the basement, the basement floor area shall be included except that part thereof which contains heating and cooling equipment and other basic utilities.

GREENBELT — An undeveloped or natural area, which may only be improved with landscaping and/or nature trails.

GROSS SITE ACREAGE — The total area in acres in any PUD that is determined according to the requirements of Section 38-367(2)a and that may include road right-of-way if the legal description for the land includes the road right-of-way.

GROSS USABLE ACRE — The total area per acre in any PUD District that is suitable for development, i.e., excluding areas of swamps, steep slopes, or other natural or man-made limitations, which preclude or limit development.

HOME OCCUPATION — An occupation that is conducted within a dwelling primarily by the residents of the dwelling, which use is incidental and secondary to the use of the dwelling as a home, and which does not alter the residential character of the property. **[Amended by Ord. No. 2021-08, eff. 11-2-2021]**

HOTEL — A commercial establishment that offers lodging accommodations and additional services, such as restaurants, meeting rooms, entertainment, or recreational facilities, to transient guests in return for payment. Access to the lodging facilities is generally from indoor corridors.

JUNKYARD — A place where junk, waste, or discarded or salvaged materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including wrecked vehicles, used building materials, structural steel materials and equipment and other manufactured goods that are worn, deteriorated or obsolete.

KENNEL — Any land, building or structure where five or more cats and/or dogs over four months of age are boarded, housed or bred.

LOT — A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory structures, or utilized for a principal use and accessory uses, together with such open spaces as are required by this chapter.

LOT AREA — The total horizontal area within the lot lines of a lot. In the case of a waterfront lot, the lot area shall be measured to the 100-year floodplain elevation as depicted in the December 2011 Flood Insurance Rate Map (FIRM), as amended, issued by the United States Federal Emergency Management Agency. In determining lot area, land located within a public street right-of-way and/or a private road easement shall not be considered.

LOT LINE, FRONT — In the case of a lot not located on a corner, the line separating said lot from the street right-of-way. In the case of a corner lot, the front lot line shall be that line that separates said lot from the street which is designated as the front street on the site plan or which is designated as the front street on the site plan review application or request for a building permit.

LOT LINE, REAR — Ordinarily, that lot line which is opposite and most distant from the front lot line. In the case of irregular, triangular, or wedge-shaped lots or lots that are pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than 10 feet in length, lying farthest from the front lot line and wholly within the lot.

LOT LINE, SIDE — Any lot line other than the front or rear lot lines. A side lot line separating a lot from a street is a side street lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

LOT WIDTH — The horizontal distance between the side lot lines of a lot parallel to the front lot line. Lot width shall be measured at the front lot line and shall not be less than the minimum width required within the zoning district in which it is located continuously to the minimum depth necessary to meet the minimum lot area of the zoning district in which it is located.

LOT, IMPROVED — A property developed with a principal building, accessory structure, or combination thereof.

LOT, UNIMPROVED — A property left undisturbed in a natural state without a principal building, accessory structure, or combination thereof, or any other man-made feature.

MAJOR AUTOMOBILE REPAIR — General repair, rebuilding, or reconditioning of engines or vehicles, collision service, including body repair and frame straightening, painting or upholstering; or vehicle steam cleaning and undercoating.

MARINA — A place where any one or more of the following conditions exist:

- (1) A commercial enterprise is operated for the sale, service or storage of boats or other watercraft; or
- (2) A dock and/or mooring is extended into or over an inland lake or stream for use by the public and/or land, condominium or dock owners and more than four boats will be moored to any one dock and/or more than four moorings will be located.

MINOR AUTOMOBILE REPAIR — Minor repairs, incidental replacement of parts, or motor service to passenger automobiles and trucks not exceeding two tons' capacity; provided, however, there is excluded any repair or work included in the definition of the term "major automotive repair" in this section.

MOBILE HOME — A structure, transportable in one or more sections, which is built on a chassis and designed to be used as a dwelling, with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained in the structure; excluding, however, a vehicle designed and used as temporary living quarters for recreational, camping or travel purposes, including a vehicle having its own motor power or a vehicle moved on or drawn by another vehicle.

- (1) **DOUBLE-WIDE** — A combination of two mobile homes designed and constructed to be connected along the longitudinal axis, thus providing double the living space of a conventional single-wide unit without duplicating any of the service facilities such as kitchen equipment or furnace.
- (2) **SINGLE-WIDE** — A mobile home with a longitudinal width of no greater than 14 feet for its full length.

MOBILE HOME COMMISSION ACT — Michigan Public Act No. 96 of 1987 (MCL § 125.2301 et seq.), or other similar successor statute having similar licensing jurisdiction.

MOBILE HOME LOT — A measured parcel of land within a mobile home park which is delineated by lot lines on a final development plan and which is intended for the placement of a mobile home and the exclusive use of the occupants of such mobile home.

MOBILE HOME PAD — That portion of a mobile home lot reserved for the placement of a mobile home, appurtenant structures, or additions.

MOBILE HOME PARK — A parcel of land under single ownership which has been planned and improved for the placement of mobile homes on a rental basis for nontransient use.

MOBILE HOME SUBDIVISION — A mobile home park, except that the mobile home lots are subdivided, surveyed, recorded, and sold in accordance with Public Act No. 288 of 1967 (MCL § 560.101 et seq.).

MOTEL — A commercial establishment consisting of a building or group of buildings on the

same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment. Access to the lodging facilities is generally from the outside.

MOTOR VEHICLE — Every vehicle that is self-propelled.

NET BUILDABLE ACREAGE — The area in acres in any PUD that is determined according to the requirements of Section 38-367(2).

NONCOMMERCIAL ORGANIZATION — An organization which does not produce an income for any person; a nonprofit organization which raises funds for itself and which has 15 or more stockholders or members shall be considered a noncommercial organization.

NURSING HOME — A facility licensed under Public Act No. 368 of 1978 (MCL § 333.1101 et seq.).

OUTDOOR POND — Any outdoor body of standing water accumulated in a natural or artificially constructed basin or depression in the earth, either above or below or partly above or partly below grade, capable of holding water to a depth of greater than two feet when filled to capacity.

OWNERSHIP INTEREST — A proprietary interest in land which confers certain rights and responsibilities, held by any individual, firm, association, syndicate, partnership, or corporation.

PARKING AREA, SPACE OR LOT — An off-street open area, the principal use of which is for the parking of automobiles, whether for compensation or not, or as an accommodation to clients, customers, visitors or employees. The term "parking area" includes access drives within the actual parking area. For purposes of this definition, and as used throughout this chapter, the term "off-street," when related to off-street parking requirements, includes both public streets and private roads, thereby requiring the parking area to be located off both public streets and private roads.

PARKING BAY — A hard surface area adjacent and connected to, but distinct from, a street or private road, intended for parking motor vehicles.

PIER — Concrete posts embedded in the ground to a depth below the frost line at regular intervals along the longitudinal distance of a mobile home and intended to serve as a base for supporting the frame of the mobile home.

PRINCIPAL OR MAIN USE — The primary or predominant use of a lot.

PRODUCE — Fresh fruits, vegetables, grain, oats, and other similar products raised or cultivated from the earth. **[Added by Ord. No. 2023-01, eff. 4-15-2023]**

RECREATIONAL FIRE — An outdoor fire burning material other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, barbecue grill or barbecue pit and has a total fuel area of three feet (914 mm) or less in diameter and two feet (610 mm) or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purpose. **[Added by Ord. No. 2020-2, eff. 9-17-2020]**

RESORT — A commercial establishment, generally used as a vacation facility by the general public, which offers lodging accommodations, restaurants or meals, recreation and entertainment to transient guests in return for payment, and which provides on-site activities such as golfing, horseback riding, skiing, swimming, snowmobiling, hiking, biking, tennis, other court sports or other similar activities.

ROADSIDE MARKET STAND — A temporary building or structure designed or used for the display and/or sale of agricultural products produced on the premises upon which the stand is located.

SATELLITE DISH ANTENNA — A parabolic or spherical reflective type of antenna used for communications with a satellite-based system located in planetary orbit.

STREET — A publicly or privately owned and maintained right-of-way which affords traffic circulation and principal means of access to abutting property, including any avenue, place, way, drive, lane, boulevard, highway, road or other thoroughfare, except an alley. The street right-of-way shall include all land deeded or dedicated for street purposes, or, in the absence of a deed or dedication for street purposes, the street right-of-way shall be considered to be 66 feet in width.

STRUCTURE — Anything except a building, constructed or erected, the use of which requires permanent location on the ground or lake, river or stream bottom or attachment to something having a permanent location on the ground or lake, river or stream bottom.

SWIMMING POOL — A structure either above or below or partly above and partly below grade, located either in part or wholly outside of a permanently enclosed and roofed building, designed to hold water to a depth of greater than two feet when filled, and intended to be used for swimming purposes.

TEMPORARY LOCAL PRODUCE MARKET — A seasonal location operating 90 or fewer days per calendar year and consisting of over 200 square feet in total size including market tables or structures, where transactions and marketing activities between produce market vendors and customers take place on a neutral property not owned or controlled by the producer of the products offered for sale at the market. **[Added by Ord. No. 2023-01, eff. 4-15-2023]**

TOURIST HOME — A building, other than a hotel, boardinghouse, lodging house, or motel, where lodging is provided by a resident family in its home for compensation, mainly for transients.

TRAVEL TRAILER — A transportable unit intended for occasional or short-term occupancy as a dwelling unit during travel, recreational, or vacation use.

UNDIVIDED PERMANENT OPEN SPACE — Property that is contiguous (i.e., undivided by any road, street, etc.) and in common ownership that will perpetually remain as undeveloped open space via a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land.

USABLE FLOOR AREA — The floor area of a dwelling exclusive of garages, porches, basement or utility area.

VALUE-ADDED AGRICULTURAL PRODUCTS — Raw agricultural products that have been modified or enhanced to have a higher market value and/or a longer shelf life, such as pies, salsas, jams, soaps, etc. **[Added by Ord. No. 2023-01, eff. 4-15-2023]**

VEHICLE — Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices propelled by human power or used exclusively upon stationary rails or tracks.

WATERFRONT LOT — A lot abutting or having frontage on either Lake Michigan or Lake Macatawa.

YARD — An open space, other than a court, unoccupied and unobstructed by any building or structure; provided, however, that fences, walls, poles, posts and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility. "Yards" or "minimum yards" as required in other provisions of this chapter shall be considered as "required yards," and allowable building projections shall be the same as defined in this section for building setbacks.

YARD, FRONT — A yard extending across the full width of the lot, the depth of which is the distance between the street right-of-way (or private road easement) line and the main wall of the building or structure. In the case of waterfront lots, the yard fronting on the street (or private road) shall be considered the front yard.

YARD, REAR — A yard, unoccupied except for accessory buildings, extending across the full width of the lot, the depth of which is the distance between the rear lot line and the rear wall of the main building.

YARD, SIDE — A yard between a main building and the side lot line, extending from the front yard to the rear yard, or any yard that is not considered a front or rear yard.

ZONING ACT — The Michigan Zoning Enabling Act, Public Act No. 110 of 2006 (MCL § 125.3101 et seq.).

Sec. 38-7. Violation. [Ord. No. Z, eff. 2-7-1974]

Any building or structure which is erected, moved, placed, reconstructed, razed, extended, enlarged, altered, maintained or used, or any use of a lot or land which is begun, maintained or changed in violation of any term or provision of this chapter, is hereby declared to be a nuisance per se. Any person who shall violate a provision of this chapter or shall fail to comply with any of the requirements thereof, shall be responsible for a municipal civil infraction, subject to enforcement procedures as set forth in the municipal civil infraction ordinance adopted by the Township, and subject to a fine of \$50, plus costs and other sanctions, for each infraction. Each day during which any violation continues after due notice has been served shall be deemed a separate and distinct offense. Increased civil fines may be imposed for repeat violations; a repeat violation means a second or subsequent municipal civil infraction violation committed by a person within any twelve-month period and for which a person admits responsibility or is determined to be responsible. An increased civil fine for repeat violation shall be as follows:

- (1) The fine for any offense which is a first repeat offense shall be \$250, plus costs and other sanctions;
- (2) The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be \$500, plus costs and other sanctions.

The Township Zoning Administrator is hereby designated as authorized Township official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the Township municipal chapter violations bureau) as provided by this chapter.

Sec. 38-31. Zoning administration. [Ord. No. Z, eff. 2-7-1974]

The provisions of this chapter shall be administered and enforced by the Zoning Administrator.

Sec. 38-214. Use regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-6, eff. 9-7-1978; Ord. No. Z-12, eff. 12-4-1980; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-56, eff. 8-22-2006; Ord. No. Z-61, eff. 7-9-2009]

Land, buildings or structures in the R-1 Rural Estate District may be used for the following purposes only:

- (1) Farms for both general and specialized farming, except livestock, feed lots and poultry farms, together with farm dwellings and buildings and other installations necessary to such farms. Temporary housing for migratory workers is prohibited.
- (2) Greenhouses, nurseries, orchards, vineyards, or blueberry farms.
- (3) Riding stables, where horses are boarded and/or rented, if there is a minimum lot area of 20 acres and a site plan that is in accordance with the requirements of Article II, Division 3, of this chapter is approved by the Planning Commission.
- (4) **Single-family dwellings.**
- (5) Home occupations when authorized in accordance with Section 38-506.
- (6) Removal and processing of topsoil, sand, gravel, or other such minerals when authorized by the Planning Commission in accordance with Section 38-505. **[Amended by Ord. No. 2020-001, eff. 1-27-2020]**
- (7) Roadside stands when authorized as a special use. The same standards as are provided in Section 38-184(10) shall be considered. **[Amended by Ord. No. 2018-1, eff. 3-23-2018]**
- (8) Publicly owned athletic grounds and parks.
- (9) Business signs.
- (10) Private and public schools, libraries, museums, art galleries, and similar uses, when owned and operated by a governmental agency or nonprofit organization and when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
 - a. The size, nature and character of the proposed use;
 - b. The proximity of the proposed use to adjoining properties;
 - c. The parking facilities provided for the proposed use;
 - d. Any traffic congestion or hazards that will be occasioned by the proposed use;
 - e. How well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and
 - f. The effect of the proposed use on adjoining properties and the surrounding neighborhood.
- (11) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:

- a. The size, character and nature of the church building;
 - b. The proximity of the church to adjoining properties;
 - c. The off-street parking that is to be provided for the church;
 - d. The potential traffic congestion and hazards that will be caused by the church use;
 - e. The degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and
 - f. The effect of the church on adjoining properties and the surrounding neighborhood.
- (12) Recreational or church camps with no travel trailers, when owned and operated by a governmental agency or by a nonprofit organization which has been determined by the United States Internal Revenue Service to an organization tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or similar successor statute. A site plan for the recreational or church camp or any expansion or extension thereof, which is in accordance with the requirements of Article II, Division 3, of this chapter, shall be approved by the Planning Commission before a building permit is issued.
- (13) Adult foster care facilities that are subject to Township zoning jurisdiction and nursing homes are permitted if authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
- a. The number of residents who are to occupy the proposed facility;
 - b. The effect of the proposed facility on the immediate surrounding neighborhood;
 - c. Potential traffic that will be generated by the proposed facility;
 - d. Available parking for employees, visitors and others;
 - e. The adequacy of the recreational areas and the open space areas provided for the proposed facility; and
 - f. The proximity of the proposed facility to any other adult foster care facility or nursing home.
- (14) Foster family homes, foster family group homes, family child care homes, and adult foster care family homes are permitted uses as required by the Zoning Act. Group child care homes are special uses to the extent required by the Zoning Act.
- (15) Bed-and-breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
- a. The number of bed-and-breakfast sleeping rooms;
 - b. The effect of the proposed operation on the adjoining properties and the surrounding neighborhood;

- c. Potential traffic that will be generated by the proposed bed-and-breakfast operation;
- d. Available parking; and
- e. The ability of the proposed bed-and-breakfast operation to comply with all requirements of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

(16) A building which has existed for at least five years may be used to store boats, trailers and other recreational vehicles during off season as an accessory use to an on-going farming operation. No outdoor storage of such articles shall be permitted. Stored articles may not be used for living or recreational purposes while on the property. No sales of the stored articles shall be permitted while on the property. Except for watercraft stored on the property, no repairs, maintenance or other work shall be permitted on the stored articles while on the property. Repairs to, maintenance of, or any other work on watercraft stored on the property may only be conducted within the building. No signage advertising the storage activities shall be permitted on the property. The storage of such articles shall not adversely affect surrounding neighborhoods or adjoining properties, nor shall it adversely affect the environment. Buildings that are located closer than 200 feet from a residential structure on neighboring property, or which are on a lot less than five acres in size, must first obtain a special use permit from the Planning Commission before being used to store such items. In considering such authorization the Planning Commission shall consider the following standards:

- a. The nature and character of the surrounding neighborhoods and adjoining properties, including the proximity of residential structures to the building to be used for such storage;
- b. The effect of such use on surrounding neighborhoods and adjoining properties, such as but not limited to noise, screening, lights and fumes;
- c. The ingress and egress to the property and the building to be used for such storage, including driveways and turnarounds;
- d. The effect of increased traffic on the surrounding neighborhoods, including connections to major streets;
- e. The nature and character of the building to be used for such storage, including but not limited to its architectural features, previous and/or current use;
- f. The effect of current and/or increased outdoor storage of items and materials on the property, including parking of vehicles; and
- g. The environmental effects of the requested use.

All bed-and-breakfast operations shall comply at all times with all requirements and other provisions of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

Sec. 38-244. Use regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-6, eff. 9-7-1978; Ord.

No. Z-12, eff. 12-4-1980; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-56, eff. 8-22-2006]

Land, buildings or structures in the R-2 Lakeshore Residence District may be used for the following purposes only:

- (1) **Single-family dwellings.**
- (2) Parks, playgrounds, community centers, governmental, administration, or service buildings which are owned and operated by a governmental agency or a noncommercial organization when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:
 - a. The necessity for such use for the surrounding neighborhood;
 - b. The proximity of the intended use to adjoining properties specifically including proximity to occupied dwellings;
 - c. The size, nature and character of the proposed use;
 - d. Potential traffic congestion that might be occasioned by the intended use,
 - e. Parking facilities to be provided for the proposed use; and
 - f. The effect of the proposed use on adjoining properties and the surrounding neighborhood.
- (3) Private and public schools, libraries, museums, art galleries and similar uses, when owned and operated by a governmental agency or nonprofit organization and when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
 - a. The size, nature and character of the proposed use;
 - b. The proximity of the proposed use to adjoining properties;
 - c. The parking facilities provided for the proposed use;
 - d. Any traffic congestion or hazards that will be occasioned by the proposed use;
 - e. How well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and
 - f. The effect of the proposed use on adjoining properties and the surrounding neighborhood.
- (4) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
 - a. The size, character and nature of the church building;
 - b. The proximity of the church to adjoining properties;

- c. The off-street parking that is to be provided for the church;
 - d. The potential traffic congestion and hazards that will be caused by the church use;
 - e. The degree with which the church harmonizes, blends with and enhances the adjoining properties and the surrounding neighborhood; and
 - f. The effect of the church on adjoining properties and the surrounding neighborhood.
- (5) Recreational or church camps with no travel trailers, when owned and operated by a governmental agency or by a nonprofit organization which has been determined by the United States Internal Revenue Service to be an organization tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or similar successor statute. A site plan for the recreational or church camp or any expansion or extension thereof, which is in accordance with the requirements of Article II, Division 3, of this chapter, shall be approved by the Planning Commission before a building permit is issued.
- (6) Adult foster care facilities that are subject to Township zoning jurisdiction and nursing homes are permitted if authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
- a. The number of residents who are to occupy the proposed facility;
 - b. The effect of the proposed facility on the immediate surrounding neighborhood;
 - c. Potential traffic that will be generated by the proposed facility;
 - d. Available parking for employees, visitors and others;
 - e. The adequacy of the recreational areas and the open space areas provided for the proposed facility; and
 - f. The proximity of the proposed facility to any other adult foster care facility or nursing home.
- (7) Foster family homes, foster family group homes, family child care homes, and adult foster care family homes are permitted uses as required by the Zoning Act. Group child care homes are special uses to the extent required by the Zoning Act.
- (8) Bed-and-breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
- a. The number of bed-and-breakfast sleeping rooms;
 - b. The effect of the proposed operation on the adjoining properties and the surrounding neighborhood;
 - c. Potential traffic that will be generated by the proposed bed-and-breakfast operations;
 - d. Available parking; and

- e. The ability of the proposed bed-and-breakfast operation to comply with all requirements of Chapter 8, pertaining to bed-and-breakfast establishments, as amended. All bed-and-breakfast operations shall comply at all times with all requirements and other provisions of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

(9) Home occupations when authorized in accordance with Section 38-506.

Sec. 38-274. Use regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-56, eff. 8-22-2006]

Land, buildings or structures in the R-3 Low Density Single-Family Residence District may be used for the following purposes only:

- (1) Single-family dwellings.
- (2) Private and public schools, libraries, museums, art galleries and similar uses, when owned and operated by a governmental agency or nonprofit organization and when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
 - a. The size, nature and character of the proposed use;
 - b. The proximity of the proposed use to adjoining properties;
 - c. The parking facilities provided for the proposed use;
 - d. Any traffic congestion or hazards that will be occasioned by the proposed use;
 - e. How well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and
 - f. The effect of the proposed use on adjoining properties and the surrounding neighborhood.
- (3) Parks, playgrounds, community centers, governmental, administration, or service buildings which are owned and operated by a governmental agency or a noncommercial organization when authorized as a special use by the Planning Commission utilizing the same standards as are provided in Section 38-244(2).
- (4) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
 - a. The size, character and nature of the church building;
 - b. The proximity of the church to adjoining properties;
 - c. The off-street parking that is to be provided for the church;
 - d. The potential traffic congestion and hazards that will be caused by the church use;
 - e. The degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood; and

- f. The effect of the church on adjoining properties and the surrounding neighborhood.
- (5) Adult foster care facilities that are subject to Township zoning jurisdiction and nursing homes are permitted if authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
- a. The number of residents who are to occupy the proposed facility;
 - b. The effect of the proposed facility on the immediate surrounding neighborhood;
 - c. Potential traffic that will be generated by the proposed facility;
 - d. Available parking for employees, visitors and others;
 - e. The adequacy of the recreational areas and the open space areas provided for the proposed facility; and
 - f. The proximity of the proposed facility to any other adult foster care facility or nursing home.
- (6) Foster family homes, foster family group homes, family child care homes, and adult foster care family homes are permitted uses as required by the Zoning Act. Group child care homes are special uses to the extent required by the Zoning Act.
- (7) Bed-and-breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
- a. The number of bed-and-breakfast sleeping rooms;
 - b. The effect of the proposed operation on the adjoining proper ties and the surrounding neighborhood;
 - c. Potential traffic that will be generated by the proposed bed-and-breakfast operation;
 - d. Available parking; and
 - e. The ability of the proposed bed-and-breakfast operation to comply with all requirements of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.
- (8) All bed-and-breakfast operations shall comply at all times with all requirements and other provisions of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.
- (9) Home occupations when authorized in accordance with Section 38-506.

Sec. 38-304. Use regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-56, eff. 8-22-2006]

Land, buildings or structures in the R-4 Medium Density Single- and Two-Family Residence District may be used for the following purposes only:

- (1) Any use permitted in the R-3 Low Density Single-Family District, subject, except as

specifically provided otherwise in this division, to the same conditions, restrictions and requirements as are provided in said R-3 Zoning District.

- (2) Two-family dwelling.
- (3) Home occupations when authorized in accordance with Section 38-506.
- (4) Bed-and-breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
 - a. The number of bed-and-breakfast sleeping rooms;
 - b. The effect of the proposed operation on the adjoining properties and the surrounding neighborhood;
 - c. Potential traffic that will be generated by the proposed bed-and-breakfast operation;
 - d. Available parking; and
 - e. The ability of the proposed bed-and-breakfast operation to comply with all requirements of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

All bed-and-breakfast operations shall comply at all times with all requirements and other provisions of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

Sec. 38-334. Use regulations. [Ord. No. Z, eff. 2-7-1974; Ord. No. Z-14, eff. 4-19-1982; Ord. No. Z-23, eff. 7-17-1989; Ord. No. Z-56, eff. 8-22-2006]

Land, buildings or structures in the R-5 Low Density Multifamily Residence District may be used for the following purposes only:

- (1) Any use permitted in the R-4 Medium Density Single- and Two-Family Residence District, subject, except as specifically provided otherwise in this division, to the same conditions, restrictions and requirements as are provided in the said R-4 Zoning District.
- (2) Multifamily dwellings provided they are served by public water.
- (3) Home occupations when authorized in accordance with Section 38-506.
- (4) Bed-and-breakfast operations when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
 - a. The number of bed-and-breakfast sleeping rooms;
 - b. The effect of the proposed operation on the adjoining properties and the surrounding neighborhood;
 - c. Potential traffic that will be generated by the proposed bed-and-breakfast operation;

- d. Available parking; and
- e. The ability of the proposed bed-and-breakfast operation to comply with all requirements of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

All bed-and-breakfast operations shall comply at all times with all requirements and other provisions of Chapter 8, pertaining to bed-and-breakfast establishments, as amended.

Exhibit 8

PARK TOWNSHIP ZONING ORDINANCE

EFFECTIVE FEBRUARY 7, 1974
AMENDED NOVEMBER 22, 1974
AMENDED FEBRUARY 3, 1977
AMENDED MAY 5, 1977
AMENDED MARCH 2, 1978
AMENDED SEPTEMBER 7, 1978
AMENDED JULY 5, 1979

An ordinance to establish zoning regulations for the Township of Park, Ottawa County, Michigan including regulations governing non-conforming uses, structures and buildings, to provide for the administration, enforcement and amendment of such regulations, to prescribe penalties for the violation of such regulations, and to provide for conflicts with other ordinances or regulations, all in accordance with the provisions of Michigan Act 184 of 1943, as amended.

THE TOWNSHIP OF PARK, OTTAWA COUNTY, MICHIGAN, ORDAINS:


- (a) Single Wide--a mobile home with a longitudinal width of no greater than fourteen (14) feet for its full length.
- (b) Double Wide--a combination of two (2) mobile homes designed and constructed to be connected along the longitudinal axis, thus providing double the living space of a conventional single wide unit without duplicating any of the service facilities such as kitchen equipment or furnace.

SECTION 3.23 MOBILE HOME LOT. A measured parcel of land within a mobile home park which is delineated by lot lines on a final development plan and which is intended for the placement of a mobile home and the exclusive use of the occupants of such mobile home.

SECTION 3.24 MOBILE HOME PAD. That portion of a mobile home lot reserved for the placement of a mobile home, appurtenant structures or additions.

SECTION 3.25 MOBILE HOME PARK. A parcel of land under single ownership which has been planned and improved for the placement of mobile homes on a rental basis for non-transient use.

SECTION 3.26 MOBILE HOME SUBDIVISION. A mobile home park except that the mobile home lots are subdivided, surveyed, recorded, and sold in accordance with Michigan Act 288 of 1967, as amended.



SECTION 3.27 MOTEL. A building or group of buildings on the same lot, whether detached or in connected rows, containing sleeping or dwelling units which may or may not be independently accessible from the outside with garage or parking space located on the lot and designed for, or occupied by automobile travelers. The term shall include any building or building groups designated as motor lodges, transient cabins, or by any other title intended to identify them as providing lodging, with or without meals, for compensation on a transient basis.

SECTION 3.28 MOTOR VEHICLE. Every vehicle which is self-propelled.

SECTION 3.29 NON-COMMERCIAL ORGANIZATION. An organization which does not produce an income for any person; a non profit organization which raises funds for itself and which has fifteen (15) or more stockholders or members shall be considered a non-commercial organization.

SECTION 3.30 OUTDOOR POND. Any outdoor body of standing water accumulated in a natural or artificially constructed basin or depression in the earth, either above or below or partly above or partly below grade, capable of holding water to a depth of greater than two (2) feet when filled to capacity.

Exhibit 9

ORDINANCE NO. ZA 51**ZONING ORDINANCE AMENDMENT**

AN ORDINANCE to amend the Park Township Zoning Ordinance to amend and restate Section 3.06A (pertaining to the definition of "Bed And Breakfast Operation"); to add a new Section 3.10A (to provide a definition of "Carport"); to amend and restate Section 3.13 (pertaining to the definition of "Dwelling"); to delete Section 3.14 (pertaining to the definition of "Dwelling Unit"); to add a new Section 3.18A (to provide a definition of "Hotel"); to amend and restate Section 3.27 (pertaining to the definition of "Motel"); to add a new Section 3.35A (to provide a definition of "Resort"); to amend and restate Section 4.14 (pertaining to Front and Rear Yard Averaging); to amend and restate Chapter XIV (Sections 14.01-14.05 of the Zoning Ordinance pertaining to the C-1 Neighborhood Business District); to amend and restate Chapter XVI (Sections 16.01-16.06 of the Zoning Ordinance pertaining to the C-2 Resort Service District); to amend and restate Chapter XVII (Sections 17.01-17.06 of the Zoning Ordinance pertaining to Parking and Loading Spaces); to amend and restate Section 20A.1 (pertaining to Site Plan Review); and to provide for the effective date of this ordinance.

THE TOWNSHIP OF PARK, COUNTY OF OTTAWA, AND STATE OF MICHIGAN, ORDAINS:

Section 1. Amendment to and Restatement of Section 3.06A. Section 3.06A of the Park Township Zoning Ordinance, Bed And Breakfast Operation, shall be amended and restated in its entirety as follows:

SECTION 3.06A BED AND BREAKFAST OPERATION.

An operation located in a single-family dwelling used to house a family unit as its principal place of residence, which offers overnight accommodations and a morning meal to transient guests in return for payment, including but not limited to any operation designed as an inn or tourist home.

Section 2. Addition of Section 3.10A. Section 3.10A, Carport, shall be added to the Park Township Zoning Ordinance, to be located after Section 3.10, and shall state in its entirety as follows:

SECTION 3.10A CARPORT.

An open-sided vehicle shelter usually (but not always) formed by the extension of the roof from the side of a building. A carport shall be considered both an outdoor parking space and an accessory structure.

Section 3. Amendment to and Restatement of Section 3.13. Section 3.13 of the Park Township Zoning Ordinance, Dwelling, shall be amended and restated in its entirety as follows:

SECTION 3.13 DWELLING.

Any building or portion of a building that is occupied in whole or in part as a home or residence, either permanently or temporarily, by one or more families, but not including motels, hotels, resorts, tourist rooms or cabins. Subject to compliance with the requirements of Section 4.29, a mobile home shall be considered to be a dwelling.

- (a) Dwelling, Single-Family - A building designed for use and occupancy by one (1) family only.
- (b) Dwelling, Two-Family - A building designed for use and occupancy by two (2) families only.
- (c) Dwelling, Multi-Family - A building designed for use and occupancy by three (3) or more families.

Section 4. Deletion of Section 3.14. Section 3.14 of the Park Township Zoning Ordinance, Dwelling Unit, shall be deleted and Section 3.14 shall be reserved for future use.

Section 5. Addition of Section 3.18A. Section 3.18A, Hotel, shall be added to the Park Township Zoning Ordinance, to be located after Section 3.18, and shall state in its entirety as follows:

SECTION 3.18A HOTEL.

A commercial establishment that offers lodging accommodations and additional services, such as restaurants, meeting rooms, entertainment, or recreational facilities, to transient guests in return for payment. Access to the lodging facilities is generally from indoor corridors.

Section 6. Amendment to and Restatement of Section 3.27. Section 3.27 of the Park Township Zoning Ordinance, Motel, shall be amended and restated in its entirety as follows:

SECTION 3.27 MOTEL.

A commercial establishment consisting of a building or group of buildings on the same lot, whether detached or in connected rows, which offers lodging accommodations and sleeping rooms to transient guests in return for payment. Access to the lodging facilities is generally from the outside.

Section 7. Addition of Section 3.35A. Section 3.35A, Resort, shall be added to the Park Township Zoning Ordinance, to be located after Section 3.35, and shall state in its entirety as follows:

SECTION 3.35A RESORT.

A commercial establishment, generally used as a vacation facility by the general public, which offers lodging accommodations, restaurants or meals, recreation and entertainment to transient guests in return for payment, and which provides on-site activities such as golfing, horseback riding, skiing, swimming, snowmobiling, hiking, biking, tennis, other court sports or other similar activities.

Section 8. Amendment to and Restatement of Section 4.14. Section 4.14 of the Park Township Zoning Ordinance shall be amended and restated in its entirety as follows:

SECTION 4.14 FRONT YARD & REAR YARD AVERAGING.

- (a) Residential Front Yard Averaging. In any Residence Zoning District where the average depth of at least two (2) front yards of existing adjacent buildings within one hundred (100) feet of the lot in question and within the same block on the same side of the street is less than the minimum front yard depth prescribed for the Residence Zoning District in which the lot is located, then the required front yard shall be modified to be no less than the average depth of the existing adjacent buildings, as established by a licensed surveyor; provided, however, that the depth of the front yard shall not be less than ten (10) feet in any event.
- (b) Residential Rear Yard Averaging. In any Residence Zoning District where the average depth of at least two (2) rear yards of existing adjacent buildings within one hundred (100) feet of the lot in question and within the same block on the same side of the street is less than the minimum rear yard depth prescribed for the Residence Zoning District in which the lot is located, then the required rear yard shall be modified to be no less than the average depth of the existing adjacent buildings, as established by a licensed surveyor; provided, however, that the depth of the rear yard shall not be less than ten (10) feet in any event.
- (c) Commercial Front Yard Averaging. In any Commercial Zoning District (the C-1 Neighborhood Business District and the C-2 Resort Service District) where the average depth of at least two (2) front yards of existing commercial buildings within one hundred (100) feet of the lot in question and within the same block on the same side of the street is less than the minimum front yard depth prescribed for the Commercial Zoning District in which the lot is located, then the required front yard shall be modified to be no less than the average depth of the existing commercial buildings as established by a licensed surveyor; provided, however, that the depth of the front yard shall not be less than fifty (50) feet in any event. For purposes of this section, if an existing commercial building has a varying front yard setback, then the average of the closest point front setback and the farthest point front setback shall be used as the front yard setback for that building when calculating the average front yard setbacks to determine the minimum front yard for the new building.

Section 9. Amendment to and Restatement of Chapter 14. Chapter XIV of the Park Township Zoning Ordinance, C-1 Neighborhood Business District, being Sections 14.01 through 14.05, shall be amended and restated in its entirety as follows:

CHAPTER XIV

C-1 NEIGHBORHOOD BUSINESS DISTRICT

SECTION 14.01 DESCRIPTION AND PURPOSE.

This Zoning District is for neighborhood convenience shopping including retail businesses or service establishments which supply commodities or perform services which meet the daily needs of the neighborhood.

SECTION 14.02 USE REGULATIONS.

Land, buildings or structures in this Zoning District may be used for the following purposes only:

- (a) Those non-residential uses which are permitted in the Residential Zoning Districts, subject, except as specifically provided otherwise in this Chapter, to the same conditions, restrictions and requirements as are provided in the Residential Zoning Districts.
- (b) Bakery goods store
- (c) Banks, loan and/or finance offices
- (d) Barber or beauty shop
- (e) Book, stationery or gift store
- (f) Candy, store, soda foundation and/or ice cream store
- (g) Clothes cleaning and/or laundry pick-up station
- (h) Clothing and dry goods store
- (i) Delicatessen store
- (j) Dress shop
- (k) Drug store
- (l) Florist and gift shop without nursery
- (m) Funeral home
- (n) Grocery store and meat market
- (o) Hardware store

- (p) Household appliance store
- (q) Jewelry store
- (r) Nursery school and day nurseries
- (s) Paint and wall paper store
- (t) Parking lots
- (u) Photographer
- (v) Radio and television store
- (w) Restaurants and/or cafes without dancing, floor shows or drive-in service
- (x) Laundromats
- (y) Service stations, including minor auto repairs, if all repair work is conducted wholly within a completely enclosed building, when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
 - (1) the size, nature and character of the gas station,
 - (2) the proposed location of the gas station,
 - (3) the location of entrance drives and access to the gas station with respect to potential traffic congestion or hazards,
 - (4) how well the gas station harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood,
 - (5) the need and necessity for the products and services of the gas station at the proposed location, and
 - (6) the effect of the gas station on adjoining properties and the surrounding neighborhood.
- (z) Shoe repair shop
- (aa) Tailor and/or dress maker
- (bb) Variety store including notions and "five and ten" stores
- (cc) Other similar retail business or service establishments which supply convenience commodities or perform services primarily for residents of the surrounding neighborhood when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
 - (1) the size, nature and character of the proposed use,
 - (2) the proximity of the proposed use to adjoining properties,

- (3) the parking facilities provided for the proposed use,
 - (4) how well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood,
 - (5) the need or necessity for the proposed use to service the needs of the surrounding neighborhood, and
 - (6) the effect of the proposed use on adjoining properties and the surrounding neighborhood.
- (dd) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
- (1) the size, character and nature of the church building,
 - (2) the proximity of the church to adjoining properties.
 - (3) the off-street parking which is to be provided for the church,
 - (4) the potential traffic congestion and hazards which will be caused by the church use,
 - (5) the degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood, and
 - (6) the effect of the church on adjoining properties and the surrounding neighborhood.
- (ee) Offices which are consistent with a neighborhood business district when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
- (1) the size, nature and character of the proposed use,
 - (2) the proximity of the proposed use to adjoining properties,
 - (3) the parking facilities provided for the proposed use,
 - (4) how well the proposed use harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood,
 - (5) the effect of the proposed use on adjoining properties and the surrounding neighborhood

SECTION 14.03 REQUIRED CONDITIONS.

- (a) With the exception of automobile parking and off-street parking, all business, service or processing shall be conducted wholly within a completely enclosed building.
- (b) All uses permitted in this zoning district shall be serviced with public water.
- (c) The Planning Commission shall approve a site plan for any permitted use in this Zoning District, which is in accordance with the requirements of Chapter XX-A of this Ordinance, before a building permit is issued.
- (d) Lighting facilities shall be equipped with shielding so as to reflect the light downward and away from adjoining properties.

SECTION 14.04 HEIGHT REGULATION.

No building or structure shall exceed thirty-five (35) feet in height.

SECTION 14.05 AREA REGULATIONS.

No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements.

- (a) Front Yard – Except as otherwise provided in Section 4.14, there shall be a front yard of not less than seventy-five (75) feet.
- (b) Side Yard -
 - (1) Where the side of a lot in a C-1 Zoning District abuts upon the side of a lot in any R or AG Zoning District, each side yard shall be not less than twenty five (25) feet.
 - (2) There shall be a side yard of not less than fifty (50) feet on the street side of a corner lot.
 - (3) No side yard shall be required when directly abutting other commercial uses or land included in a C Zoning District.
- (c) Rear Yard -
 - (1) Where the rear of a lot in a C-1 Zoning District abuts any R Zoning District or AG Zoning District, there shall be a rear yard of not less than twenty-five (25) feet; provided, however, that where a public alley separates the rear of a C-1 Zoning District lot from the side yard of a lot in any R Zoning District or AG Zoning District, the full width of the alley

shall be considered as part of the rear yard in determining its depth. This shall apply to all structures and accessory buildings.

(2) In all other cases, there shall be a rear yard of not less than ten (10) feet.

(d) Screening & Buffering - Side yards and rear yards adjoining any lot in an R or AG Zoning District shall be screened by a solid-wall or tight-board fence six (6) feet in height or equivalent screening with vegetative plantings. A green space of not less than fifteen (15) feet deep shall be maintained along each public street to act as a buffer.

(e) Lot Area - The minimum lot area shall be one-half (1/2) acre; provided, however, that all private sewage disposal systems not connected to a public sewer must be approved by the Ottawa County Health Department. The minimum lot width shall be one hundred twenty-five (125) feet.

Section 10. Amendment to and Restatement of Chapter 16. Chapter XVI of the Park Township Zoning Ordinance, C-2 Resort Service District, being Sections 16.01 through 16.06, shall be amended and restated in its entirety as follows:

CHAPTER XVI

C-2 RESORT SERVICE DISTRICT

SECTION 16.01 DESCRIPTION AND PURPOSE.

This Zoning District is for commercial uses that primarily serve tourists and seasonal residents.

SECTION 16.02 USE REGULATIONS.

Land, buildings, or structures in this Zoning District may be used for the following purposes only:

- (a) Amusement enterprises
- (b) Bakery goods store
- (c) Barber or beauty shop
- (d) Book, stationery or gift store
- (e) Campgrounds when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:
 - (1) the proposed location for the campground,
 - (2) the size, nature and character of the campground and any buildings or structures to be utilized with the campground,

- (3) the proximity of the campground to adjoining properties,
 - (4) the parking facilities provided for the campground,
 - (5) the location of entrances and access to the campground in terms of any traffic congestion or hazards which will be occasioned by the campground, and
 - (6) the effect of the campground on adjoining properties and the surrounding neighborhood.
- (f) Candy store, soda fountain, ice cream store
- (g) Delicatessen store
- (h) Drive-in car eating places when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:
- (1) the proposed location for the drive-in,
 - (2) the size, nature and character of the buildings and structures to be utilized for the drive-in,
 - (3) the proximity of the drive-in to adjoining properties,
 - (4) the parking facilities provided for the drive-in,
 - (5) the location of entrances and drives in terms of any traffic congestion or hazards which will be occasioned by the drive-in,
 - (6) how well the drive-in harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood,
 - (7) the hours of drive-in operation and any potential disturbance or nuisance of the drive-in operation for adjoining properties and the surrounding neighborhood, and
 - (8) the effect of the drive-in on adjoining properties and the surrounding neighborhood.
- (i) Drug store
- (j) Florist, gift and antique shop, but not including nursery
- (k) Grocery store and meat market
- (l) Hotels and motels
- (m) Laundromats
- (n) Liquor store including beer and wine sales
- (o) Lodge hall, private clubs

- (p) Multi-family dwellings. If the development is five (5) acres or less. Multi-family dwellings must comply with Chapter XI of the ordinance.
- (q) Parking lots
- (r) Photographer
- (s) Resorts. If the development is four (4) acres minimum.
- (t) Restaurants, cafes, cocktail lounges
- (u) Service stations when authorized as a special use by the Planning Commission including minor auto repairs provided all repair work is conducted wholly within a completely enclosed building. In considering such authorization, the Planning Commission shall consider the same standards as are provided in Section 14.02(y).
- (v) Theater, except drive-in theater
- (w) Marinas when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the following standards:
 - (1) the size, nature and character of the marina,
 - (2) the proposed location of the marina,
 - (3) the location of entrances and drives leading to the marina with respect to potential traffic congestion or hazards,
 - (4) the parking facilities to be provided for the marina,
 - (5) the location and character of the storage areas and facilities to be provided by the marina for boats, cradles, and other boat accessories,
 - (6) the facilities to be provided by the marina for the display of new and used boats for sale,
 - (7) how well the marina harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood,
 - (8) any potential disturbance or nuisance from the marina operation for adjoining properties and the surrounding neighborhood, and
 - (9) the effect of the marina on adjoining properties and the surrounding neighborhood.
- (x) Other similar retail business or service establishments which supply convenience commodities or perform service primarily for tourists and for seasonal residents when authorized as a special use by the Planning Commission. In considering such authorization, the Planning Commission shall consider the same standards as are provided in Section 14.02(cc).

- (y) Churches when authorized by the Planning Commission as a special use. In considering such authorization, the Planning Commission shall consider the following standards:
- (1) the size, character and nature of the church building,
 - (2) the proximity of the church to adjoining properties.
 - (3) the off-street parking which is to be provided for the church,
 - (4) the potential traffic congestion and hazards which will be caused by the church use,
 - (5) the degree with which the church harmonizes, blends with and enhances adjoining properties and the surrounding neighborhood, and
 - (6) the effect of the church on adjoining properties and the surrounding neighborhood.

SECTION 16.03 REQUIRED CONDITIONS.

- (a) A site plan for any permitted use in this Zoning District, which is in accordance with the requirements of Chapter XX-A of this Ordinance, shall be approved by the Planning Commission before a building permit is issued.
- (b) Lighting facilities shall be equipped with shielding so as to reflect the light downward and away from adjoining properties.
- (c) All uses permitted in this zoning district shall be serviced with public water.

SECTION 16.04 HEIGHT REGULATION.

No building or structure shall exceed thirty-five (35) feet in height.

SECTION 16.05 AREA REGULATIONS.

No building or structure nor any enlargement thereof shall be hereafter erected except in conformance with the following yard, lot area and building coverage requirements.

- (a) Front Yard – Except as otherwise provided in Section 4.14, there shall be a front yard of not less than seventy-five (75) feet.
- (b) Side Yard -
 - (1) Where the side of a lot in a C-2 Zoning District abuts upon the side of a lot in any R or AG Zoning District, each side yard shall be not less than twenty-five (25) feet.

- (2) There shall be a side yard of not less than fifty (50) feet on the street side of a corner lot.
- (3) No side yard shall be required when directly abutting other commercial uses or land included in a C Zoning District.

(c) Rear Yard -

(1) Where the rear of a lot in a C-2 Zoning District abuts any R Zoning District or AG Zoning District, there shall be a rear yard of not less than twenty-five (25) feet; provided, however, that where a public alley separates the rear of a C-2 Zoning District lot from the side yard of a lot in any R Zoning District or AG Zoning District, the full width of the alley shall be considered as part of the rear yard in determining its depth. This shall apply to all structures and accessory buildings.

(2) In all other cases, there shall be a rear yard of not less than ten (10) feet.

(d) Screening & Buffering - Side yards and rear yards adjoining any lot in an R or AG Zoning District shall be screened by a solid-wall or tight-board fence six (6) feet in height or equivalent screening with vegetative plantings. A green space of not less than fifteen (15) feet deep shall be maintained along each public street to act as a buffer.

(e) Lot Area - The minimum lot area shall be one-half (1/2) acre; provided, however, that all private sewage disposal systems not connected to a public sewer must be approved by the Ottawa County Health Department. The minimum lot width shall be one hundred twenty-five (125) feet.

SECTION 16.06 HOTEL/MOTEL/RESORT REGULATIONS.

(a) **Minimum Unit Size.**

No hotel, motel, or resort unit may be less than 250 square feet.

(b) **Density Requirements.**

(1) A hotel, motel, or resort that is served by both public water and sewer shall comply with the following density requirements by meeting the minimum lot area established in the following table.

Density for Facilities Served by Public Water and Sewer

| Unit Size – Interior Dimensions | Minimum Lot Area |
|---|---------------------------------|
| 250 ft ² – ≤ 400 ft ² | 2,500 ft ² per unit. |
| > 400 ft ² – ≤ 650 ft ² | 3,500 ft ² per unit. |
| > 650 ft ² | 4,500 ft ² per unit. |

- (2) A hotel, motel, or resort that is not served by both public water and sewer shall comply with the following density requirements by meeting the minimum lot area established in the following table.

Density for Facilities Not Served by Public Water and Sewer

| Unit Size – Interior Dimensions | Minimum Lot Area |
|---|---------------------------------|
| 250 ft ² – ≤ 400 ft ² | 5,000 ft ² per unit. |
| > 400 ft ² – ≤ 650 ft ² | 7,000 ft ² per unit. |
| > 650 ft ² | 9,000 ft ² per unit |

(c) **Kitchen Regulations.**

- (1) Any hotel, motel or resort unit that is between two hundred fifty (250) square feet and five hundred (500) square feet in size may have a kitchenette (limited to only a microwave and refrigerator) installed within the unit. Any hotel, motel or resort unit that is between two hundred fifty (250) square feet and five hundred (500) square feet in size shall not be plumbed for a kitchen, and shall not have a kitchen sink, a stove, oven or any other type of cook-top.
- (2) Any hotel, motel or resort unit that is more than five hundred (500) square feet in size may have a kitchenette (as provided in subsection 16.06(c)(1) above) or a full kitchen. If a full kitchen is installed in any hotel, motel or resort unit, there must be a designated eating area, a stove, a kitchen sink, and a refrigerator.

(d) **General Requirements.**

- (1) All hotels, motels, and resorts shall have an on-site manager, as determined by the Planning Commission in the special use approval process.
- (2) All hotels, motels, and resorts shall provide housekeeping services.
- (3) Each hotel unit, motel unit, and resort unit shall have bathroom facilities.

Section 11. Amendment to and Restatement of Chapter 17. Chapter XVII of the Park Township Zoning Ordinance, Parking and Loading Spaces, being Sections 17.01 through 17.06, shall be amended and restated in its entirety as follows:

CHAPTER XVII

PARKING AND LOADING SPACES

SECTION 17.01 GENERAL.

In all zoning districts, there shall be provided, before any building or structure is occupied, or is enlarged or increased in capacity, off-street, outdoor parking spaces for motor vehicles as provided in the following table. All parking shall be designed and constructed to be in compliance with relevant provisions of all state and federal laws and regulations, including but not limited to the Michigan Persons with Disabilities Civil Rights Act and the federal American Disabilities Act. This shall include, but not be limited to, the requisite number of handicapped parking spaces to be made available.

| Use | Minimum Parking Spaces Required |
|--|---|
| Dwellings | Two (2) for each dwelling unit |
| Assembly uses such as theaters, clubs, community halls, arenas, museums, pools, studios, mortuary, or other similar uses. This specifically excludes restaurants and bars. | One (1) for each twenty-five (25) square feet of assembly area and one (1) for each employee. |
| Hospitals, institutions | Two (2) for each patient bed |
| Sanitariums, convalescent, or nursing homes | One (1) for each patient bed |
| Homes for senior citizens | Two (2) for each dwelling unit |
| Hotels, motels, resorts | One space per each unit between 250 ft ² – ≤ 400 ft ² . Two spaces per each unit between > 400 ft ² – ≤ 650 ft ² . Three spaces per each unit > 650 ft ² . In addition, there shall be one (1) space for each employee on duty. In addition, there shall be designated loading zones. |
| Bowling alleys | Eight (8) for each alley |
| Private, elementary and junior high schools | One (1) for each employee normally engaged in or about the buildings and grounds plus one (1) for each four (4) seats used in a public assembly area |
| Senior high schools and institutions of higher learning | One (1) for each employee normally engaged in or about the buildings and grounds, and one (1) for each three (3) students enrolled in the institution |
| Churches | One (1) for each three (3) seats in the main worship unit |
| Professional offices and buildings | One (1) for each two hundred (200) square feet of floor area and one (1) for each employee |
| Restaurants not serving alcohol, and ice cream parlors | One (1) for each two (2) seats |

| | |
|---|---|
| Medical doctors office, dental clinic, or veterinarian office | Eight (8) for each doctor plus one for each employee |
| Banks, business offices, and public buildings not specifically mentioned elsewhere | One (1) for each one hundred fifty (150) square feet of floor area |
| Taverns, bars and restaurants serving alcohol | Two (2) for each three (3) seats but not less than forty (40) spaces in any event |
| Marinas | One (1) for each slip or mooring |
| "Drive-In Establishments" | One (1) for each employee plus four (4) additional spaces |
| Outdoor Cafes and ice cream shops without indoor seating | One (1) for each employee plus one (1) for each two (2) outdoor seats but not less than a minimum of four (4) additional spaces |
| Retail stores, supermarkets, department stores, billiard/pool rooms, personal service shops | One (1) for each employee and one for each one hundred fifty (150) square feet of retail sales area |
| Other uses not specifically mentioned | In the case of buildings which are used for uses not specifically mentioned, those provisions for off-street parking facilities for a use which is so mentioned and to which said use is similar in terms of parking demand shall apply |
| Mixed used in same building | In the case of mixed used in the same building, the amount of parking space for each use specified shall be provided and the space for one (1) use shall be not considered as providing required spaces for any other use except as to churches and auditoriums incidental to public and parochial schools permitted herein |

SECTION 17.02 JOINT USE OF FACILITIES.

Provision of common parking facilities for several uses in the same vicinity is encouraged. Where multiple principal uses utilizing common parking facilities exist on the same property in the same vicinity, the total space requirement is the sum of the minimum individual requirements for each use.

Where a principal use and an accessory use exist on the same property, the total space requirement is the sum of the minimum individual requirements for the principal and accessory uses unless the Planning Commission authorizes as a special use a smaller number of parking spaces. In granting such authorization, the Planning Commission shall consider the following standards:

- (1) Whether the proposed number of parking spaces is sufficient to meet the need for parking facilities of both the principal and accessory uses. The

number of parking spaces authorized by the Planning Commission shall not be less than the minimum number required for the principal use.

- (2) The reason for the request that a smaller number of parking spaces than that required be authorized.
- (3) The effect on adjoining property and the surrounding neighborhood.

The Planning Commission shall hold a public hearing with notice thereon in accordance with the requirements of the Act with respect to special use authorization.

The Planning Commission shall hold a public hearing and shall meet all the requirements of Michigan Act 184 of 1943, as amended, with respect to special use authorization, including requirements concerning notification of the public hearing.

SECTION 17.03 LOCATION OF FACILITIES.

Off-street parking facilities shall be located as hereafter specified; when a distance is specified, it shall be the walking distance measured from the nearest point of the parking facility to nearest normal entrance to the building or use that such facility is required to serve.

- (a) For all residential buildings and for all non-residential buildings and uses in residential zoning districts, required parking shall be provided on the lot with the building or use it is required to serve.
- (b) For commercial and all non-residential buildings and uses in commercial zoning districts, required parking shall be provided within three hundred (300) feet.

SECTION 17.04 SIZE OF PARKING SPACE.

Each off-street parking space shall have an area of not less than two hundred (200) square feet (exclusive of access drives or aisles) and shall be a minimum of ten (10) feet in width, and shall be appropriately marked.

SECTION 17.05 REQUIREMENTS FOR PARKING AREAS.

Every parcel of land hereafter established as an off-street public or private parking area for ten (10) or more vehicles, including a municipal parking lot, commercial parking lot, automotive sales and/or service lot, and accessory parking areas for multiple dwellings, businesses, public assembly, and institutions, shall be developed and maintained in accordance with the following requirements.

- (a) The parking lot and its driveways shall be effectively screened on each side which adjoins premises situated in any R or AG Zoning District by a fence of acceptable design, wall, or compact evergreen hedge. There shall also be

provided on each side and rear which adjoins any R or AG Zoning District, a greenbelt ten (10) feet in width landscaped with lawn *or* low shrubbery clumps or trees.

- (b) The parking lot and its driveway shall be designed to provide adequate drainage. Environmentally friendly drainage systems are encouraged including, but not limited to, on-site water retention, permeable paving surfaces, rain gardens, etc.
- (c) The parking lot and its driveway shall be (1) surfaced with concrete, asphalt pavement or a type of environmentally friendly porous paving, and (2) maintained in good condition, free of dust, trash, and debris.
- (d) The parking lot and its driveways shall not be used for repair, dismantling, or servicing of any vehicles.
- (e) The parking lot shall be provided with entrances and exits so located as to minimize traffic congestion.
- (f) The parking lot shall be provided with wheel or bumper guards so located that no part of a parked vehicle will extend beyond the parking area.
- (g) Lighting facilities shall be equipped with shielding so as to reflect the light downward and away from adjoining properties.
- (h) No part of any public or private parking area regardless of number of spaces provided shall be closer than ten (10) feet to the street right-of-way line.

SECTION 17.06 OFF-STREET LOADING AND UNLOADING SPACES.

For every building or addition to an existing building hereafter erected to be occupied by storage, retail store or block of stores, hotel, motel, resort, hospital, mortuary, laundry, restaurant or other similar uses, requiring the receipt or distribution of materials or merchandise, there shall be provided and maintained on the same lot with such building or addition (1) an area or means adequate for maneuvering and ingress and egress for delivery vehicles and (2) off-street loading and unloading spaces in relation to floor areas as follows.

- (a) Up to ten thousand (10,000) square feet - one (1) space at least fourteen (14) feet in width, thirty-five (35) feet in length and fourteen (14) feet in height;
- (b) Ten thousand (10,000) square feet or more – at least two (2) spaces at least fourteen (14) feet in width, fifty-five (55) feet in length and fourteen (14) feet in height;

No such space shall be located closer than fifty (50) feet to any lot in any R Zoning District. All loading spaces shall be appropriately marked.

Section 12. Amendment to and Restatement of Section 20A.1. Section 20A.1 of the Park Township Zoning Ordinance, Site Plan Review, shall be amended and restated in its entirety as follows:

SECTION 20A.1 SITE PLAN REVIEW.

Notwithstanding the failure of this Ordinance to specifically provide elsewhere for site plan approval of a particular use, site plan review and approval is required in each of the following instances:

- (1) A site plan shall be submitted to the Planning Commission for approval of any use or change of use permitted in the C-1 or C-2 Zoning District.
- (2) A site plan shall be submitted to the Planning Commission for approval of any multi-family dwelling in an R-5 Zoning District.
- (3) A site plan shall be submitted to the Zoning Inspector for approval of any two-family dwelling in an R-4 or R-5 Zoning District. The Zoning Inspector may, in his discretion, refer any such site plan to the Planning Commission for its review and approval.
- (4) A site plan shall be submitted to the Planning Commission for approval of any church, public school or private or parochial school, or any public or private recreational facility to be constructed in the R-1, R-2, R-3, R-4, or R-5 Zoning Districts.
- (5) For any special use and also for any planned unit development, provided that if the requirements for a site plan as provided in this Chapter are met by plans and other documentation required in Chapter XIII, then a separate site plan shall not be required pursuant to this Chapter.
- (6) When any other section of this Ordinance requires site plan approval.

Section 13. Amendment to and Restatement of Section 20A.2. Section 20A.2 of the Park Township Zoning Ordinance, Site Plan Content, shall be amended and restated in its entirety as follows:

SECTION 20A.2 SITE PLAN CONTENT.

A site plan shall include all of the following information unless the same is not reasonably necessary, as determined by the Planning Commission:

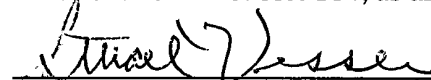
- (1) A plot plan based on an accurate certified land survey showing:
 - a. Location, size and type of present buildings or structures to be retained or removed.
 - b. Location of all proposed buildings, structures or other improvements.
 - c. Location of existing and proposed streets, drives and parking lots.

- d. Location of water and sewer lines.
 - e. Storm drainage.
 - f. Refuse and service areas.
 - g. Utilities with reference to location, availability and compatibility.
 - h. Screening and buffering with reference to type, dimensions and character.
 - i. Topographical features including contour intervals no greater than five (5) feet.
 - j. Ditches and water courses.
 - k. Ground cover and other pertinent physical features of the site such as trees.
 - l. Proposed landscaping.
 - m. Location of existing improvements.
 - n. Location of lot lines.
 - o. Loading and unloading of facilities.
 - p. Exterior lighting and signs.
 - q. Location of existing structures on land immediately adjacent to the site within one hundred (100) feet of the site's parcel lines.
 - r. The date, north arrow, and scale. The scale shall not be less than 1" = 50' if the subject property is less than three (3) acres and 1" = 100' if the subject property is three (3) acres or more.
 - s. The name and address of the professional individual, if any, responsible for the preparation of the site plan.
- (2) Preliminary architectural sketches and/or a general statement as to the type of construction and materials to be used in the proposed buildings or structures. Height and area of buildings and structures shall be provided. The height of buildings and structures shall be detailed from the existing grade (and proposed grade if there is to be any change in the grade), as well as from the crown of the street(s) adjoining the property upon which the building or structure will be erected.
- (3) The period of time within which the project will be completed.
- (4) Proposed staging of the project, if any.
- (5) Gross areas of buildings and parking.
- (6) Delineation of the one hundred (100) year floodplain and any proposed uses therein.
- (7) A description of all aspects of such plan which might have an adverse effect on public health, safety and welfare.
- (8) Current proof of ownership of the land to be utilized or evidence of a contractual ability to acquire such land such as an option or purchase contract.

- (9) Method of financing and commitments, or other proof of ability to obtain financing.
- (10) Additional information which the body or official reviewing and approving the site plan may request which is reasonably necessary to evaluate the site plan.

The body or official review the site plan shall have the discretion to waive the inclusion in the site plan of any of the above referenced information.

Section 14. Effective Date. That the foregoing amendment to the Park Township Zoning Ordinance was approved and adopted by the Township Board of Park Township, Ottawa County, Michigan, on August 14, 2003, after a public hearing as required pursuant to Michigan Act 184 of 1943, as amended. This Ordinance is ordered to take effect on September 5, 2003, which date is more than 7 days after publication of the ordinance as is required by Section 11a of Act 184, as amended, provided that this effective date shall be extended as necessary to comply with the requirements of Section 12 of Act 184, as amended.



Township Supervisor

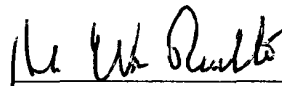


Township Clerk

H:\Park Township\Motel Hotel Issue\Zoning Ordinance Amendment - REV per PC 7-15 recommendation.doc

CERTIFICATE

I, Howard C. VanRaalte, the Clerk for the Township of Park, Ottawa County, Michigan, do hereby certify that the foregoing Park Township Zoning Ordinance Amendment Ordinance was adopted at a regular meeting of the Park Township Board held on August 14, 2003. The following members of the Township Board were present at that meeting: Visser, Van Raalte, Steggerda, Van Dyke, Marsilje, Koopman, Price. The following members of the Township Board were absent: None. The Zoning Ordinance Amendment was adopted by the Township Board with members of the Board Visser, Van Raalte, Steggerda, Marsilje, Price, Koopman, Van Dyke voting in favor and members of the Board None voting in opposition. Notice of Adoption of the Amendment to the Park Township Zoning Ordinance was published in The Holland Sentinel on August 28, 2003.



Howard C. VanRaalte
Park Township Clerk

NOTICE OF ADOPTION OF AMENDMENT
TO PARK TOWNSHIP ZONING ORDINANCE

PLEASE TAKE NOTICE that an Amendment to the Park Township Zoning Ordinance was adopted at the Park Township Board meeting held on August 14, 2003. A copy of that Amendment Ordinance is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that the Zoning Ordinance Amendment was given effect as of September 5, 2003.

PLEASE TAKE FURTHER NOTICE that a copy of the Zoning Ordinance Amendment may be purchased or inspected by any person at the Park Township office at 52- 152nd Avenue, Holland, Michigan (Telephone: 616-399-4520), on any day of the week, except Saturdays, Sundays and legal holidays, between the hours of 8:00 a.m. and 12:00 noon, and 1:00 p.m. and 5:00 p.m.

Dated: August 20, 2003.

Howard C. VanRaalte
Park Township Clerk

H:\Wp8.0\DOC\DRM\parktwp.notice of adoption.Motel Hotel Zoning Ord. Amend

Exhibit 10

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation, Case No. 2023-7474-CZ
Plaintiff, Hon. Jon H. Hulsing

v
PARK TOWNSHIP, a Michigan
municipal corporation,
Defendant.

DEPOSITION OF: KIRK BRIGGS

DATE: May 2, 2024
TIME: 9:03 a.m.
LOCATION: Thrun Law Firm, P.C.
3260 Eagle Park Drive NE, Suite 121
Grand Rapids, Michigan
REPORTER: Lori J. Cope, RPR, CSR-4113

Fortz Legal Support
www.FortzLegal.com
844.730.4066

FORTZ
Legal

Document received by the MI Ottawa 20th Circuit Court.

FORTZ
Legal

1 Q. And how did you make that transition? You kind of mentioned
2 this, but it sounds like maybe people at the township knew of
3 you from being a fireman?

4 A. Yeah, Bob Smit was going to retire, who was the building
5 inspector that I knew, that I had worked with there, and for
6 some reason I was just thumbing through the paper, because I
7 got it for free, and I turned the page and there was an ad for
8 a building inspector, so I wrote the township a letter. And a
9 few days later the township supervisor called me, left a
10 voicemail on my machine, because that's what we had back then,
11 and I thought I wonder why he's calling me, why would he be
12 calling, it must be something about the fire department. So I
13 kind of hesitated calling him back and finally -- I think he
14 called again and I called him back. He says, oh, we want to
15 interview you for this building inspector job. Oh, that's
16 right, I guess I did apply for that. I did two interviews and
17 they offered me the job, so --

18 Q. Okay. Great.

19 So in '92 you started as the building inspector?

20 A. Yeah.

21 Q. How long were you the building inspector?

22 A. 16 years.

23 Q. Okay. At some point my understanding is you were also the
24 zoning administrator.

25 A. Zoning -- zoning, yeah.

1 Q. So is that different than the building inspector?

2 A. Right, I did multiple jobs there.

3 Q. Okay. All right. So you were the building inspector for 16
4 years?

5 A. Uh-huh.

6 THE REPORTER: Was that a yes?

7 BY MR. KONWINSKI:

8 Q. Yes?

9 A. Yes.

10 Q. Sorry. I know I asked that already too.

11 But then you -- at some point you added the role of
12 zoning administrator?

13 A. It was -- it was all in one.

14 Q. So you --

15 A. I got hired --

16 THE REPORTER: One at a time.

17 A. I got hired as a building inspector/zoning
18 administrator/planning coordinator.

19 BY MR. KONWINSKI:

20 Q. Got it.

21 So for all 16 years you were the building inspector,
22 zoning administrator, and planning coordinator?

23 A. Yes.

24 Q. I'm trying to just flesh this out in my own mind here. Are
25 those kind of three different roles in the township that

1 Q. Okay. In your role -- I don't know if you would consider this
2 as a zoning administrator function or perhaps just kind of
3 your world generally since you did all three, but were you the
4 person at the township, it was your job to interpret the
5 ordinance?

6 A. Pretty much, yeah.

7 Q. And I guess when I say like interpret the ordinance, if, for
8 example, the planning commissioners had a question about what
9 the zoning ordinance meant, they would turn to you to say,
10 hey, what does this mean?

11 A. Yeah, yeah, yeah.

12 Q. And, likewise, the township board, if they had a question,
13 they would naturally look to you for an interpretation of the
14 ordinance?

15 A. Well, I wasn't necessarily at the board meetings.

16 Q. Okay.

17 A. They had a township attorney there for that, but sometimes.
18 They would come to my office and want to talk about a
19 zoning issue sometimes.

20 Q. So the board meetings you wouldn't always go to. Would you
21 always go to the planning commission meetings?

22 A. Yes.

23 Q. So you might not be at the board meeting, but perhaps if a
24 board member had a question about the zoning ordinance, they
25 might come and ask you about it?

1 A. Yeah, it was a pretty open office. The planning -- back then
2 the trustees came in quite often for coffee or, you know, to
3 visit different parts of the departments in the township, so
4 it was --

5 Q. Uh-huh.

6 A. -- pretty open. A lot different than I think it is today. I
7 think -- you know how everything changed in the world,
8 everything is locked up now, so --

9 Q. I know exactly what you mean.

10 I was assuming this, and I probably should just ask
11 you, your position with the township, that's a full-time
12 position?

13 A. Yes.

14 Q. Did you have like an actual office at the township?

15 A. Yes.

16 Q. And when you started in '92, what was your starting salary?

17 A. Oh, man, I don't know. I have no idea.

18 Q. Could you estimate it, or no?

19 A. No.

20 Q. How about when you left, do you --

21 A. I have no idea. That was 18 years ago.

22 Q. Yeah. Okay.

23 All right. Likewise, I was asking you about, you
24 know, your role as interpreting the zoning ordinance.

25 Similarly, if citizens had questions, would you be the one

1 that they would come to?

2 A. Yes.

3 Q. So if a citizen had a question about whether something was or
4 wasn't allowed under the zoning ordinance, you would be the
5 person to answer that question?

6 A. Yes.

7 Q. And I didn't know this until I was reviewing documents getting
8 ready for this, while you were in this role Mr. Martin was the
9 counsel for the township at that time?

10 A. Part of it.

11 Q. At least part of it.

12 A. Yeah.

13 Q. Okay. Do you remember about when Mr. Martin started?

14 A. No.

15 Q. Do you remember who it was before him?

16 A. Yeah.

17 Q. Who was it?

18 A. Tom Reinsma.

19 Q. Do you know how to spell that for her -- for both of us? I
20 guess Dan would know.

21 MR. MARTIN: Yes, it's R-e-i-n-s-m-a.

22 BY MR. KONWINSKI:

23 Q. Okay. And did he work for the same law firm?

24 A. Yes.

25 Q. What I was going to ask about -- strike that.

1 The entire time you were in this role as building
2 inspector, planning coordinator, and zoning administrator, if
3 you had any questions about the interpretation of the ordinance
4 that you didn't even feel comfortable answering, did you have
5 your counsel there to be able to ask them that type of
6 question?

7 A. Yeah.

8 Q. This is kind of a -- again, not understanding how the township
9 works, did you have -- some people, for example, might not --
10 they might work for the township, but they might not be --
11 they might be told hey, don't ask our attorneys until you go
12 through the proper channels. I guess my question is: Did you
13 have the -- I'm going to call it -- the authority to like go
14 directly pick up the phone and call Dan, hey, Dan, I got a
15 question that I don't know the answer to?

16 A. Yeah. So the townships need to watch their money, and every
17 time you call the attorney the clock starts running.

18 Q. Exactly.

19 A. So they wanted to still watch -- you know, watch, you know,
20 not call for every little thing. But, you know, if I had to
21 know, I could call Tom, so --

22 Q. So if you wanted to, you did have the ability to. Without
23 consulting with someone else first, you could pick up the
24 phone and/or stop by Dan's or the prior counsel's office and
25 ask them a question?

1 smaller. And then planning/zoning stuff I learned from the
2 other zoning commissioners and from the township attorney and
3 from reading the ordinance.

4 Q. And do you think you -- do you ever recall, when you first
5 became the zoning administrator, did you sit down and actually
6 read the ordinance front to back or --

7 A. No. No, but I did study it from time to time, so --

8 Q. And when you studied it from time to time, you would be
9 studying the provisions that pertained to whatever issue was
10 arising?

11 A. Yeah. If something was coming up in our forward section, I
12 would read that chapter, yeah.

13 Q. You know, throughout your entire time as a zoning
14 administrator at some point in time, do you think you read
15 every portion of the zoning ordinance?

16 A. Oh, yeah.

17 Q. How would you describe how familiar you became with the zoning
18 ordinance? I mean, would you say you were very knowledgeable?
19 You knew it pretty well? How would you describe it?

20 A. I was pretty knowledgeable, yeah.

21 Q. Okay. How about the city or the -- does the township have
22 like a charter, a township charter?

23 A. No.

24 Q. No.

25 Okay. What about the Michigan Zoning Enabling Act,

1 at the township that actually issued a civil infraction or a
2 violation notice?

3 A. No.

4 Q. I suspect from time to time as the zoning administrator you
5 did, in fact, issue civil infraction citations or notices.

6 A. Yes.

7 Q. I'm going to use a little bit more of a laymen's term, but
8 when we say municipal civil infractions, is that the same
9 thing as a violation of a zoning ordinance?

10 A. Yes.

11 Q. So if someone was violating the zoning ordinance, it was your
12 job at the township to issue an infraction or a violation
13 notice?

14 A. Yeah.

15 Q. To your recollection, while you were the zoning administrator,
16 did you ever issue a citation or a violation notice for
17 someone who was using their house as a short-term rental
18 solely because it was being used as a short-term rental?

19 A. No.

20 Q. And while you were the zoning administrator -- well, let me
21 ask you this: Let's see, if I have my timing right, when you
22 were the zoning administrator, you moved during that time
23 period, right, because you have lived at your current house
24 for --

25 A. Yeah. Yeah.

1 I am sitting here today talking about your job from '92 to
2 2008ish. When you were the zoning administrator, do you
3 remember knowing that there were houses that people used to
4 rent out to people?

5 MR. MARTIN: And, for clarity, are you saying rent
6 out to people generally, or as STRs?

7 BY MR. KONWINSKI:

8 Q. Yeah, just renting out.

9 A. Not STRs?

10 Q. Well, just renting out.

11 A. I was aware of rental houses, yeah.

12 Q. And so let's clarify that. What is the difference in your
13 mind, because you clarified STRs, what is the difference
14 between a rental house and a STR?

15 A. Short term versus long term.

16 Q. The dividing line being in your mind what?

17 A. Was 29 days or less --

18 Q. Okay. So --

19 A. -- would be short-term rental.

20 Q. All right. All right. So let me try to then clarify it. So
21 a short-term rental, which I'm going to say was less than 28
22 days, I know that's slightly different than what you said, but
23 for my purpose of this question less than 28 days, were you
24 aware, when you were zoning administrator, of whether people
25 used their houses for a short-term rental?

1 A. I was not aware.

2 Q. Okay.

3 A. There might have been some, but I just wasn't aware of them.

4 Q. All right. But you were aware that some people rented their
5 house for, I'm going to call it, a long-term rental, which
6 would be 28 days or more?

7 A. Yes.

8 Q. That would just be even like if someone leases their house for
9 a year?

10 A. Yes.

11 Q. Okay.

12 A. And I was aware of people that go away for the winter and rent
13 their house for three/four months through the winter.

14 Q. Understood.

15 Now, Park Township is -- would you describe it as a
16 resort community?

17 A. I would describe it as a residential community.

18 Q. Residential.

19 Even when you were zoning administrator did people
20 from Chicago come and visit Park Township in the summer?

21 A. Well, some people stayed at the beach, which is the most
22 popular beach in Michigan, right, and the people down on my
23 side of the lake -- park Township is divided on two sides with
24 the a lake -- there is people that were summer people that
25 lived in their summer cottages all summer from Chicago and

1 Township?

2 A. I don't think there is any that I can think of. There
3 might --

4 Q. Okay.

5 A. I just thought of another one out by the general store that
6 was there too. I don't remember the name of that one either.
7 In fact, it has got a pool. It might still be there.

8 Q. Okay.

9 A. Yeah, that might still be there.

10 Q. Which one might still be there?

11 A. The one out by Ottawa Beach right by the general store --

12 Q. Okay.

13 A. -- if that gives you a reference.

14 Q. Okay. All right. Now, flip two pages. We are going to page
15 6 now. There is a definition of a motel.

16 Do you see that?

17 A. Yes.

18 Q. Take a second to read the definition of motel.

19 A. Okay.

20 Q. Now, how many motels when you were the zoning administrator to
21 your recollection existed in Park Township?

22 A. I might have got those definitions mixed up because this one
23 says outside. Let me read this other one a minute.

24 Q. Sure. Sure. Take your time.

25 A. Often indoor corridors. Okay. So I got hotel and motel mixed

1 up in my head. So there were -- those hotels that I talked
2 about were motels.

3 Q. Okay.

4 A. And the hotel was Point West, which had both outside and
5 indoor corridors.

6 Q. Got it.

7 So let me try and get this here. So as far as the
8 motels, it was the one at the 160th and Shore -- South Shore
9 Drive --

10 A. Yeah.

11 Q. -- and then the two story somewhere near the corner of 152nd
12 by the general store?

13 A. Yeah.

14 Q. Those were the two motels. And then the hotel was Point
15 West?

16 A. Point West was a hotel/motel. It had both.

17 Q. Got it.

18 All right. And would -- and, again, I also asked,
19 well, to your knowledge, now how many motels are there. Is
20 your answer still the same with that, or do we need to clarify
21 that?

22 A. The one I'm thinking of -- I never been on site. I have just
23 been by it. It's -- I believe that's a motel, the one out by
24 general store.

25 Q. Okay. So currently to your recollection, to your knowledge,

1 the only motel in Park Township is the one out by the general
2 store?

3 A. Yeah.

4 Q. All right. You can keep that definition of motel slightly
5 handy. I'm going have a few questions about it. I am going
6 to give you a really long document. And the vast majority of
7 this is not going to matter, but there is a specific part, and
8 I will point you towards it.

9 (Exhibit 4 marked.)

10 BY MR. KONWINSKI:

11 Q. I am handing you, Mr. Briggs, Exhibit 4. This is actually a
12 part of the U.S. Code, which is federal law, and I even have
13 to find the right place myself here. All right. Now, if you
14 go to page -- well, let me show you something else in the
15 prior exhibit. If you go to the definition of motel, so go to
16 page 6 there, I just want to show you what I am going to be
17 talking about. All right. This calls a motel a commercial
18 establishment.

19 Do you see that?

20 A. Yes.

21 Q. All right. And I will tell you there is no separate
22 definition in the zoning ordinance of what a commercial
23 establishment is. Okay?

24 A. Okay.

25 Q. All right. Now if you look at the document I gave you on page

1 11, Exhibit 4 --

2 MR. MARTIN: Can you identify what this document is
3 again?

4 MR. KONWINSKI: Yes.

5 MR. MARTIN: You said U.S. Code, but what does it
6 pertain to?

7 MR. KONWINSKI: Exhibit 4 is 17 U.S.C. Section 119,
8 which pertains to title 17, copyrights.

9 BY MR. KONWINSKI:

10 Q. All right. Now, if you flip to page 11, there is a definition
11 on here, at the top you will see number 12, commercial
12 establishment.

13 A. Yep.

14 Q. Do you see that?

15 A. Yes.

16 Q. Now, this says a commercial establishment means an
17 establishment used for commercial purposes, such as a bar,
18 restaurant, private office, fitness club, oil rig, retail
19 store, bank or other financial institution, supermarket,
20 automobile or boat dealership, or any other establishment with
21 a common business area.

22 Do you see that?

23 A. Yes.

24 Q. I'm curious, is that what you would also consider a commercial
25 establishment to be?

1 A. Yes. I would say yeah.

2 Q. All right. And if you go -- that's all for that document. If
3 you look at -- going back to the definition of hotel, so if
4 you go back to -- excuse me, motel. Stay on motel.

5 A. Yeah.

6 Q. Do you see that?

7 A. Yes.

8 Q. A couple other things here. This definition also talks about
9 lodging accommodations. Again, there is no definition of
10 lodging accommodations in the zoning ordinance.

11 What is lodging accommodations to you?

12 A. Where are you picking up lodging accommodations at again?

13 Q. Sorry. So if you look at the definition of motel in
14 Exhibit --

15 MR. MARTIN: I apologize, Kirk. He is in Exhibit 3,
16 the township zoning ordinance.

17 BY MR. KONWINSKI:

18 Q. Sorry, I am flipping around here.

19 A. Yeah.

20 Q. Exhibit 3, township zoning ordinance, definition of motel.
21 You will see the definition there says it offers lodging
22 accommodations.

23 Do you see that?

24 A. Okay. Yep.

25 Q. I'm just curious, again, there is no definition in the zoning

1 aside this one. We are done with that one.

2 A. Okay.

3 Q. If you are on Exhibit 3, page 8, there is a definition of a
4 tourist home.

5 Do you see that?

6 A. Yes.

7 Q. All right. Take a second to give that a read, and just let me
8 know after you read it.

9 A. Okay.

10 Q. All right. This is defined as -- you will see it says this is
11 where lodging is provided by a resident family in its home for
12 compensation.

13 Do you see that?

14 A. Yes.

15 Q. Now, I understand that to mean a resident family, meaning they
16 are a resident, meaning they live there. Is that correct?

17 A. Yes.

18 Q. And so resident family means this is -- this tourist home is
19 literally a family is living there while they are hosting
20 other people staying there?

21 A. Yes.

22 Q. All right. Going back, I had meant to ask -- that is all I
23 had on tourist home. If you go back to motel, page 6, I
24 forgot to ask one other thing about that. Okay. So I want to
25 again look at motel and I want to focus on the part that says

1 commercial establishment. Okay.

2 Do you see that, Mr. Briggs?

3 A. Yeah, right here.

4 Q. Commercial establishment. Right?

5 A. Yep.

6 Q. Now, the township apparently didn't call it a commercial
7 building or -- they could have used any other words. They
8 used commercial establishment. And I am curious to you -- the
9 word established to me means something that is fixed, it is
10 permanent, it is always there, so it is something that is
11 always commercial. To you what does the word establishment
12 mean in relation to being a commercial establishment?

13 A. A commercial establishment is something that's at least used
14 part time for commercial.

15 Q. And why the word established? What does established mean?

16 A. It means that it's -- it's -- commonly happens, so it could be
17 full-time commercial, such as a store or a gas station or
18 full-time hotel, or it could be a hotel that is closed in the
19 winter because there is no tourists in town, so they are not
20 full-time open. It could be a flower shop that's only open in
21 the summertime because of tourists or an ice cream store that
22 is only open in the summertime, but it is still established.

23 Q. So it is like these motels that you described, it's always a
24 motel, it's just sometimes it's not open?

25 A. Right.

1 it's an if, I don't know if it's true or not, we are going to
2 find out, if we accept that this was the definition of a
3 motel. Okay. Do you see that part of Mr. Bouwkamp --

4 A. Yeah.

5 Q. Okay. If a motel is defined as any building to provide
6 lodging for compensation on a transient basis, if that's the
7 definition of motel, you would agree with me that a person
8 using a house for a short-term rental, it would fall under a
9 motel?

10 A. It might, yeah.

11 Q. Okay. But then if we add the word commercial establishment as
12 we have talked about, a commercial establishment is something
13 that's established as a commercial nature --

14 A. Yeah.

15 Q. -- that would not include a short-term rental.

16 A. Right.

17 Q. Okay. When you were the zoning administrator, were you aware
18 of whether people were advertising their house ever for
19 rent?

20 A. No, I wasn't aware of it.

21 Q. Okay.

22 A. For rent, are you talking long term or short term?

23 Q. Either one.

24 A. Because there was long-term rental.

25 Q. Okay. Yep. Either one.

1 exactly what's going on here, but if you flip to page 8, the
2 next page, you will see Kolean asked.

3 Do you see that kind of towards the middle of the
4 page?

5 A. Right.

6 Q. By the way, he was the planning commissioner?

7 A. I think so.

8 Q. He says Kolean asked if they could put any restriction on the
9 DeYoungs renting out the house.

10 Do you see that?

11 A. Right.

12 Q. And then Briggs stated that there is no ordinance prohibiting
13 or governing the renting of property.

14 Do you see that?

15 A. Right.

16 Q. That is consistent with what we were just talking about, you
17 did not believe this was any prohibition governing the renting
18 of property?

19 A. Right.

20 Q. And that, again, applies to whether it was short term or long
21 term. Correct?

22 A. Well, I don't think short term was on the radar then, so I
23 don't think it is -- I think they meant -- in the discussion
24 of this back then it was that it was going to be a seasonal
25 rental, but -- so short term wasn't on the radar back in those

1 days.

2 Q. Yeah.

3 A. Yeah.

4 Q. Fair enough. All right. So when you were saying there was no
5 ordinance prohibiting or governing the renting of property,
6 did you believe -- you know, when you said that, did that
7 apply to both long-term and short-term rentals even though it
8 wasn't on the radar?

9 A. It could be, yeah. Yeah, right.

10 Q. Okay. And I know this is kind of implied in this, but when
11 you say there is no ordinance prohibiting or governing the
12 renting of property, that was based on your reading of the
13 zoning ordinance as the zoning administrator?

14 A. Right.

15 Q. I have as part of the case some old zoning ordinances. The
16 one prior to 1974 was produced to me. I'm curious if you ever
17 had to look at those old zoning ordinances for any part of
18 your job. No?

19 A. Not that I can remember, no.

20 MR. KONWINSKI: All right. Let's go off the record.

21 (Off the record 10:28 to 10:36 a.m.)

22 BY MR. KONWINSKI:

23 Q. Back on the record.

24 Today when people rent their house out we always
25 call them short-term rentals. Some folks have told me, I

1 talked about a rental it was always talking about a long-term
2 rental.

3 Q. Understood.

4 But with respect to the statement you made, and I
5 know it doesn't say one way or the other, but if you had said
6 on the record no -- there is no ordinance prohibiting or
7 governing the renting of property, if Mr. Martin disagreed
8 with that, you would have expected him to say well, hold on a
9 second, there is, you would have expected him to correct
10 you?

11 A. Yes.

12 (Exhibit 8 marked.)

13 BY MR. KONWINSKI:

14 Q. Let me hand you here, sir, what I have marked as Exhibit 8.

15 MR. MARTIN: Thank you.

16 MR. KONWINSKI: Yes.

17 BY MR. KONWINSKI:

18 Q. And this here, sir, is the agenda and minutes from the July
19 18th, 2000 planning commission meeting.

20 Do you see that?

21 A. Yes.

22 Q. And if we look at the second page of the document where it has
23 the minutes, present, it indicates you were at this meeting.

24 Correct?

25 A. Yes.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
corporation,

Defendant.

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EXHIBITS 11 TO 20 FOR
PLAINTIFF PARK TOWNSHIP NEIGHBORS' BRIEF IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

Exhibit 11

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation, Case No. 2023-7474-CZ
Plaintiff, Hon. Jon H. Hulsing

v
PARK TOWNSHIP, a Michigan
municipal corporation,
Defendant.

DEPOSITION OF: EDWIN J. DEVRIES

DATE: July 18, 2024
TIME: 9:02 a.m.
LOCATION: Thrun Law Firm, P.C.
3260 Eagle Park Drive NE, Suite 121
Grand Rapids, Michigan
REPORTER: Lori J. Cope, RPR, CSR-4113

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1 Q. And when I say short-term rental, I am meaning a rental of
2 less than 28 days. Okay?

3 A. Okay.

4 Q. If I ever use that word, long-term rental or short-term
5 rental, which I probably will, and you need me to clarify
6 that, just let me know.

7 A. Okay.

8 Q. All right. I have deposed a few other people in this case.
9 Understanding you might not know everyone I deposed, have you
10 talked to anyone about their deposition?

11 A. No.

12 Q. Did you do anything to prepare for today's deposition?

13 A. No.

14 Q. All right. I'm just going to get some background information
15 first. Where do you currently live, Mr. Devries? Just the
16 city. I don't need an address.

17 A. Zeeland, Michigan.

18 Q. Zeeland.

19 How long have you lived there?

20 A. Oh, boy, 12 years.

21 Q. How about prior to Zeeland?

22 A. Then I was living -- it was a Holland, Michigan address. I
23 was living in Park Township.

24 Q. And how long did you live in Park Township?

25 A. I think since about 1978 or '79.

1 Q. All right. And so you lived there until about 2012ish?

2 A. Yes.

3 Q. All right. And what's your highest level of formal
4 education?

5 A. Formal education was high school.

6 Q. Where did you graduate from high school?

7 A. Holland Christian.

8 Q. Now, if I had it right here in the case, you served as the
9 zoning administrator from approximately 2011 to 2018. Does
10 that sound right?

11 A. That's -- yes.

12 Q. All right. After 2018 -- did you retire at that point?

13 A. I did.

14 Q. Have you had any full-time employment since then?

15 A. No full time, no.

16 Q. All right. Have you worked for Park Township at all since you
17 retired as the zoning administrator?

18 A. No.

19 Q. Let's go back a little bit prior to the zoning administrator.
20 You mentioned you worked for Ottawa County Sheriff's
21 Department for 33 years. That was immediately prior to being
22 the zoning administrator?

23 A. It was immediately prior to working at Park Township. I was
24 initially hired to do code compliance.

25 Q. When did you -- do you remember the year you first got hired

1 Q. Could you just generally describe what that role was?

2 A. I supervised deputies that were contracted to Holland and Park
3 Township, and then also helped supervise deputies -- other
4 road patrol deputies that might be assigned to working the
5 Holland area.

6 Q. Do you recall if at any time while you worked for the Ottawa
7 County Sheriff Department, did you ever have to respond to
8 complaints in Park Township about short-term rentals?

9 A. Not that I recall.

10 Q. When you lived in Park Township, did you live in one house
11 that whole time, multiple houses, homes or condos, whatever?

12 A. I had two homes. Two homes. One on Ottawa Beach Road and
13 then in about '85 or '86 moved into a subdivision home.

14 Q. And let's talk about -- well, let's talk about the first
15 place. The Ottawa Beach Road, do you recall then were there
16 any short-term or vacation rentals in Park Township at that
17 time that you were aware of I should say?

18 A. Not -- not that I was aware of. I was aware of -- because
19 going back a number of years when I was a child my family
20 would rent a cottage on Lake Michigan on Lakeshore Drive, so I
21 knew that they were occurring on Lakeshore Drive, but other
22 than that I can't say I was aware of any.

23 Q. And the one that your family would rent when you were a child,
24 was that in Park Township?

25 A. There was a time or two they rented one in Park Township, and

1 allowed. There was -- as the years went on there was more and
2 more discussion about whether it should be allowed.

3 Q. These questions that you got in the first few years, do you
4 remember, are these people looking to buy homes and asking if
5 they could do it, is it neighbors calling and saying hey,
6 there is too many people there, or maybe was it just a mix of
7 both?

8 A. It was a mix, yes.

9 Q. Do you remember would you get these types of inquiries while
10 you were in code enforcement, or do you recall if this is by
11 the time you were zoning administrator?

12 A. It probably started -- the questions were probably directed to
13 me anyway when I became the zoning administrator.

14 Q. And do you know why were they directed to you once you became
15 the zoning administrator?

16 A. Probably because the ladies that answered the phone would say
17 well, he's the zoning administrator, we will give the call to
18 him, so --

19 Q. And so maybe a more formal way to say that is it was -- at
20 least they felt it was your job to answer those types of
21 questions?

22 A. Correct.

23 Q. And when you became the zoning administrator, did you
24 realize -- you also believed it was your job to answer those
25 types of questions?

1 definition of how long a rental, you know, the ordinance
2 didn't address it or anything like that. So we more or less
3 took it as long as it was a residential use in a residential
4 area, be it for a short term or a longer term, it was going to
5 be permitted, especially looking in light of the fact that we
6 knew it had gone on for a number of years along Lake Michigan
7 and I guess a few places along Lake Macatawa.

8 Q. And coming to this position you just described, would you have
9 at some point, you know, went and looked at the zoning
10 ordinance and figured out whether you thought they were
11 permitted or not under the zoning ordinance?

12 A. You know, we looked at it. And, like I say, there was nothing
13 that -- nothing in the ordinance that differentiated rental
14 versus owner, and so obviously short-term rentals were not
15 addressed at all.

16 Q. And all I am -- let me try to clarify my question. So you
17 said we looked at it and came to this conclusion. I guess
18 what I am asking is when this issue first arose, did you go
19 and ask someone whether, hey, I got this inquiry, what is our
20 position, or as opposed to did you, you know, take a look at
21 the zoning ordinance, and when you say we looked at it, do you
22 mean you looked at the zoning ordinance, or perhaps it was a
23 combination?

24 A. I looked at the zoning ordinance. I couldn't find anything
25 addressing it. I asked a couple of people in the office

1 wondering if they were aware of what's -- you know, I asked
2 the manager, asked the building inspector, and asked -- I
3 think I even talked to the assessor, you know, and it was
4 basically like yeah, they knew it was going on in the township
5 and there had not been any issues that they were aware of.

6 Q. If I'm hearing you right, the building inspector, the manager
7 and the assessor, they all believed as well that people could
8 have short-term rentals in the township?

9 A. I believe so.

10 MR. MARTIN: Objection. That is not what he said.
11 He said that they were aware of it, that there were no issues
12 that he was aware of. Not that they could be permitted, but
13 go ahead and answer.

14 A. Okay. I will say that none of them said you can't allow it,
15 and the manager -- and I don't know if he did it specifically
16 with this case, but a number of times he would look at me and
17 go you are the zoning administrator, you decide, so --

18 BY MR. KONWINSKI:

19 Q. Okay. Oh, you did mention -- you said at some point you --
20 you said zoning training. Did you receive any kind of formal
21 zoning training?

22 A. I did. There were some short classes, and then for a week I
23 attended a zoning administrator training that was put on. We
24 were up north. I believe it was put on by Michigan State.

25 Q. Any recollection of who put on the short classes? Is that

1 MR. MARTIN: Correct. Then they did an RFP and then
2 hired Thrun.

3 BY MR. KONWINSKI:

4 Q. Okay. Let me try this a better way. During the entire time
5 that you were in code enforcement and the zoning
6 administrator, the township had counsel that they had hired?

7 A. Yes.

8 Q. Let's start at code enforcement. When you were solely in code
9 enforcement, not the zoning administrator, were you able to
10 reach out to the township's counsel if you ever had questions
11 that you deemed appropriate for legal?

12 A. If I had to, it would have been probably through the
13 manager --

14 Q. Okay.

15 A. -- if there was something I had a question on as far as
16 enforcement, but the ordinances were pretty much
17 straightforward, so I'm not sure if that ever occurred or
18 not.

19 Q. All right. And how about when you were zoning administrator,
20 same answer?

21 A. Then it got a little more complex.

22 Q. All right. So as zoning administrator if you ever had
23 questions you thought were appropriate for legal counsel, were
24 you able to reach out directly to your counsel?

25 A. Knowing that it incurred cost, I would usually clear it first

1 with the manager saying, hey, I got a question on this, can
2 we -- I think towards the end I was told, yeah, if you got a
3 question. You know, I could shoot counsel an email with a
4 question, yeah.

5 Q. And do you recall if there was ever a time when you reached
6 out to the manager for that type of question, did he ever say
7 not to reach out to your counsel?

8 A. I don't recall that that ever happened.

9 Q. All right. And were there occasions when you were the zoning
10 administrator where you did, in fact, either going through
11 this process of manager first or directly, were there times
12 when you did have to reach out to counsel for questions?

13 A. Yeah.

14 Q. All right. And, again, don't tell me the content of any of
15 these, but if you reached out to questions [sic] did you
16 always get an answer back from counsel?

17 A. Yes.

18 Q. All right. I will show you a couple of documents here,
19 Mr. Devries.

20 MR. MARTIN: Thank you.

21 MR. KONWINSKI: Yes.

22 BY MR. KONWINSKI:

23 Q. This is a document that was previously marked as Exhibit 1,
24 Mr. Devries, and this is from the Park Township zoning
25 ordinance.

1 Q. All right. And anyone else to your recollection?

2 A. That is all I can remember.

3 Q. All right. So then, if I have it right, during the time
4 period you were both zoning administrator and in code
5 enforcement the only other person issuing civil infractions
6 was the part-time parking person?

7 A. Yes.

8 Q. And then it goes on, in the same sentence later you are also
9 designated as the authorized township official to issue
10 municipal civil infraction violation notices.

11 Do you see that?

12 A. Yes.

13 Q. You understood you were the authorized township official to
14 issue municipal civil infraction violation notices?

15 A. Correct.

16 Q. And, again, could anyone else issue the municipal civil
17 infraction violation notices, or is that the same answer as
18 what we already talked about?

19 A. I'm trying to think of the difference between the two, but I
20 believe they were. If I recall correctly, the municipal civil
21 infraction violation notices, they could take care of it at
22 the township office, and that's primarily where the parking
23 tickets went. And then if they didn't take care of it, it was
24 given to me and then I could write one up for the court.

25 Q. All right. And, sitting here today, do you recall, did you

1 ever have to issue either a municipal civil infraction
2 citation or a violation notice solely because someone used a
3 single-family dwelling as a short-term rental?

4 A. No.

5 Q. All right. As the zoning administrator do you recall did you
6 ever get training as to what a nonconforming use was?

7 A. Yes.

8 Q. And do you recall what it was?

9 A. A nonconforming use was a use that existed prior to a given
10 section of the township ordinance, a zoning ordinance, but
11 then would be allowed to continue. There were terms like
12 legally nonconforming or something like that that were thrown
13 around, but that they were allowed to continue that use.

14 Q. And to be a nonconforming use did the use have to be lawful
15 prior to the change in the ordinance which made it unlawful?

16 A. That's the way I took it, yes.

17 Q. And I have also heard the phrase used a lot grandfathering.
18 Is this another term people -- or do you use the word
19 grandfathering ever with a nonconforming use?

20 A. That same term, yes.

21 Q. Okay. And this concept of a nonconforming use, did you
22 understand what a nonconforming use was the entire time that
23 you were the zoning administrator?

24 A. It probably came more to light in the training I received.

25 Q. All right.

1 normal, you know, with an ordinance violation you have X
2 number of days to take care of it or else the township will
3 take care of it and bill you, and the owner took care of it
4 almost immediately.

5 Q. And then so it sounds like people would come and ask you about
6 complaints and what complaints you are getting. One of the
7 things you said is that people would approach you and ask you
8 whether the short-term rentals should be or are permitted or
9 not. Do you recall what you told them in response to those
10 inquiries?

11 A. I believe generally my response was we have nothing that
12 specifically prohibits it. And as time went on if the call
13 was from a prospective owner, somebody looking to buy
14 property, they would ask if they could do it. I said
15 currently it's being permitted, however, there is more and
16 more -- I always warned them there was more and more
17 discussion about talk of restricting it or prohibiting it
18 altogether.

19 Q. In a bit here today I am going to show you some of the email
20 inquiries that you got with this communication. Sitting here,
21 could you estimate the number of times -- not emails, but like
22 how many times do you think someone called you and said
23 something to the effect of are short-term rentals permitted or
24 not?

25 A. I think towards the end maybe a couple of times a month. I

1 mean, it wasn't a frequent call every day or even every

2 week.

3 Q. And for how long -- when you say towards the end, you know, a

4 couple times a month, would you peg that as the last year, the

5 last few months, the last two or three years?

6 A. I think the last two/three years.

7 Q. Okay.

8 A. And then as -- we got the occasional call, and then as time

9 went on the calls would increase a bit, yeah.

10 Q. Was there any point in time when you were the zoning

11 administrator that you changed your position as to whether

12 short-term rentals were allowed or not?

13 A. No.

14 Q. We talked about city council a bit. How about the planning

15 commission, did you ever have to attend planning commission

16 meetings?

17 A. Yes.

18 Q. And could you describe how often would you have to describe --

19 would you have to attend planning commission meetings? Like

20 was that, again, as needed? Did you end up going all of the

21 time?

22 A. It started out as needed, but towards I would say the last

23 three years/four years I was probably at about every one.

24 Q. And, again, is that because just more and more questions were

25 arising directed towards you?

1 Q. And you understood that if a use was not listed, it was not
2 allowed. Correct?

3 A. Correct.

4 Q. Now, in the R-2 district, for example, you will see there
5 under (1) single-family dwellings are allowed. Correct?

6 A. Correct.

7 Q. And you knew that single-family dwellings, that that is
8 actually defined in the definition section of the zoning
9 ordinance?

10 A. Yes.

11 Q. I'm going to hand you here, Mr. Devries -- you can set this
12 one aside -- I'm going hand you here, Mr. Devries, the
13 definition section of the zoning ordinance. I suspect that
14 this section of the zoning ordinance you had to refer to from
15 time to time.

16 A. Yes.

17 Q. I'm going ask you a few questions on page 6 of this, which I
18 am going to ask you some questions about the definition of a
19 motel.

20 A. Okay.

21 Q. Now, do you think during your time as zoning administrator you
22 would have had to at least, you know, look at this definition
23 of a motel, you know, at least one time?

24 A. Probably, yes.

25 Q. All right. And feel free to read that definition, but the

1 first question for you is: I'm curious, did Park Township
2 have any motels in Park Township when you were the zoning
3 administrator?

4 A. They had one business that went by the name of -- it used to
5 go by the name anyway of Lake Branch Motel, but, yet, I
6 believe the individual rooms were sold as like condominium
7 units, but then people could rent. Either through the main
8 office or from the owner of that particular unit they could
9 rent a room.

10 Q. And besides the Lake Branch Motel, any other motels in Park
11 Township that you were aware of?

12 A. No.

13 Q. Here under this definition of motel it indicates a motel is a
14 commercial establishment.

15 Do you see that?

16 A. Yes.

17 Q. What is in your opinion a commercial establishment?

18 A. My opinion would be it would be a structure and/or business
19 for the purpose of running a business out of the building.

20 Q. All right. I'm going to hand you -- kind of keep that one
21 handy right there. That commercial establishment, I am going
22 to ask you a few more questions about it. I am going to mark
23 here as Exhibit 66 --

24 MR. KONWINSKI: I apologize, Dan, but we previously
25 marked this as an exhibit, I just had a nonmarked copy, but

1 just for ease of reference I will mark it again.

2 MR. MARTIN: Oh, sure. Thanks.

3 (Exhibit 66 marked.)

4 BY MR. KONWINSKI:

5 Q. Now, Mr. Devries, again, this motel, it defines a commercial
6 establishment. And what I have handed you here as Exhibit 66
7 I will confess is out of what is -- it's a dictionary
8 attorneys frequently use called Black's Law Dictionary. Take
9 that for what it's worth. It is not too big of a deal, but I
10 highlighted at the bottom right where it says establishment.

11 Do you see that?

12 A. Yes.

13 Q. And this defines establishment as an institution or place of
14 business, with its fixtures and organized staff.

15 Do you see that?

16 A. Yes.

17 Q. Do you agree with that definition of establishment?

18 A. Yes.

19 Q. Okay. All right. You can set that aside.

20 I'm going to hand you now -- this one is a little
21 fumbly to get through. Let me hand you what was previously
22 marked as Exhibit 4. And, again, I am still working on this
23 commercial establishment phrase. What I have handed you as
24 Exhibit 4, just so you know, this is out of federal copyright
25 law. So really that aspect of it, it is kind of strange, I

1 know, but I tried to find some definition of commercial
2 establishment. I want to ask you about it in here. If you
3 flip to -- well, it's the 1, 2, 3, 4, 5 -- the 6th to last
4 page. Yep. Okay.

5 A. Okay.

6 MR. MARTIN: Is that page 13 on the bottom right
7 corner?

8 MR. KONWINSKI: Where do you see that at?

9 MR. MARTIN: It's very faint.

10 MR. KONWINSKI: I think you are right, Dan.

11 BY MR. KONWINSKI:

12 Q. If you see here, Mr. Devries, there is a definition here of
13 commercial establishment.

14 Do you see that?

15 A. Yes.

16 Q. Under (A) this defines commercial establishment as it means an
17 establishment used for commercial purposes, such as a bar,
18 restaurant, private office, fitness club, oil rig, retail
19 store, bank or other financial institution, supermarket,
20 automobile or boat dealership, or any other establishment with
21 a common business area.

22 Do you see that?

23 A. Yes.

24 Q. Do you agree with that definition of commercial
25 establishment?

1 A. I believe so, yes.

2 Q. All right. Go back to Exhibit 3. You can set that one aside
3 now, Exhibit 4. Just going back to the definition section,
4 you can -- yep. Let's look at -- if you actually flip to
5 page -- what is it -- I'm going to go back to page 4, page 4.

6 A. Okay.

7 Q. All right. And under the very bottom there is hotel.

8 Do you see that?

9 A. Yes.

10 Q. Do you think during the time that you were zoning
11 administrator you ever had to look at this definition of
12 hotel?

13 A. I don't believe I had to look at it, no.

14 Q. All right. If you just peruse, if you look at that definition
15 of hotel, again, my question is: How many hotels existed in
16 Park Township to your knowledge when you were the zoning
17 administrator?

18 A. I'm not aware of any.

19 Q. All right. Let's flip forward to one more here, page 8, and
20 I'll ask you a couple of questions about tourist home. Do you
21 see that definition of tourist home?

22 A. Yes.

23 Q. Do you think while you were the zoning administrator you ever
24 had to look at this definition of tourist home?

25 A. Yes.

1 Q. All right. And if we look at tourist home, this indicates
2 that it's a building, other than a hotel, boardinghouse,
3 lodging house, or motel, where lodging is provided by a
4 resident family in its home for compensation, mainly for
5 transients.

6 Do you see that?

7 A. Yes.

8 Q. And where this talks about where lodging is provided by a
9 resident family, do you see that part?

10 A. Yes.

11 Q. Does that mean -- when it says resident family, does that mean
12 that the family was living there while they were also renting
13 out its rooms?

14 A. Yes.

15 MR. KONWINSKI: All right. Why don't we go off the
16 record and take a five-minute comfort break if you guys are
17 okay with that.

18 MR. MARTIN: Sure.

19 (Off the record 10:03 to 10:05 a.m.)

20 BY MR. KONWINSKI:

21 Q. Back on the record here.

22 Mr. Devries, when you were the zoning administrator
23 of Park Township do you have any idea on the number of
24 short-term rentals that existed?

25 A. Not exactly for sure. The only ones we would become aware of

1 that time the only municipality I was aware of was Holland
2 city where they did have to license a house that was for rent,
3 they would have to be inspected and licensed as such. We
4 didn't get involved in that at that point.

5 Q. Okay. And by telling Jacob that we do not license, regulate,
6 or inspect rental housing, were you telling him he was allowed
7 to do it?

8 A. I guess one could infer that, yes.

9 Q. I mean, is that what -- I guess, is that what you were
10 conveying to him?

11 A. Well, basically I was just answering his question. He was
12 planning to rent it out, he was wondering if there were any
13 requirements, and I said no.

14 Q. All right. So maybe a better -- let me ask you this way: You
15 were telling him it was legal to be able to rent it out?

16 A. That would probably be the way it would be taken by most
17 people, yes.

18 Q. And, again, I know that might be how it was taken by this
19 Mr. Schwarz. Is that what you were conveying to him, he was
20 lawfully allowed to do that?

21 A. Yes, we didn't prohibit rental housing in Park, so yes.

22 (Exhibit 68 marked.)

23 BY MR. KONWINSKI:

24 Q. I'm going to hand you, Mr. Devries, Exhibit 68. And,
25 Mr. Devries, Exhibit 68, this is an email exchange between

1 rental properties.

2 Do you see that?

3 A. Yes.

4 Q. Am I correct then you -- it was your position that short-term
5 rentals, they fell -- they constituted single-family dwellings
6 in residential districts?

7 A. Yes.

8 Q. And then I think what you are saying here, and I have seen
9 this in other of your correspondence, if there were other
10 ordinances violated, such as noise or littering, those issues
11 could be addressed by those ordinances?

12 A. Correct.

13 (Exhibit 71 marked.)

14 BY MR. KONWINSKI:

15 Q. All right. Exhibit 71 here, Mr. Devries.

16 MR. MARTIN: Thanks.

17 MR. KONWINSKI: Yes.

18 BY MR. KONWINSKI:

19 Q. Mr. Devries, again, this is an email again from a Matt
20 Kammeraad, who sent it to Julie Northrup, who forwards it to
21 you. Correct?

22 A. Yes.

23 Q. And Mr. Kammeraad asked what are the requirements to legally
24 operate a rental property in Holland Park Township. And you
25 respond Park Township does not regulate rental property. If

1 an email, and the second paragraph of her email says she is
2 looking to buy a home that is zoned R-3, and I want to be sure
3 I won't be in any violation if I rent this out via Airbnb on a
4 short-term basis.

5 Do you see that?

6 A. I do.

7 Q. And then you tell her we do not currently regulate rentals,
8 either long-term or short-term. And then she responds and
9 asked if something changes in the future, would I be
10 grandfathered.

11 Do you see that?

12 A. Yes.

13 Q. And then you respond and you said if it were a zoning
14 ordinance change, it would be grandfathered.

15 Do you see that?

16 A. Yes.

17 Q. And when you are using the term grandfathered there, we are
18 talking about this same concept of a nonconforming --

19 A. Nonconforming.

20 Q. -- nonconforming use?

21 A. Yeah.

22 Q. So your position was since it -- your position -- was your
23 position that it was legal at the time to have a short-term
24 rental in a residential district, but if that were to change
25 the person would have a nonconforming use?

1 A. If it were a zoning change, yes.

2 Q. Okay. Later in your email you say so far there has not been a
3 desire to regulate rentals, realizing we have a lot of them on
4 Lake Michigan.

5 At this time any -- when you say a lot, do you have
6 any estimation of how many there were at this time?

7 A. I don't, no.

8 Q. Let's look at what was previously marked as Exhibit 31. First
9 question, Mr. Devries, was this an email from a Meghann
10 Reynolds to yourself?

11 A. Yes.

12 Q. And do you remember who Ms. Reynolds is?

13 A. She took over the zoning duties immediately after I left or
14 she was in the process of taking it over, I can't remember
15 which, but yeah.

16 Q. I was going to say was there -- do you recall was there any
17 period of overlap between you two?

18 A. Yes, we worked together for a couple weeks to a month, I
19 believe.

20 Q. And how about after you stopped working for Park Township,
21 would she still contact you to get your take on things?

22 A. She actually left there before I did.

23 Q. Okay. Do you remember who took over for her?

24 A. I believe the township contracted with Fresh Coast to do
25 zoning as well as they were currently doing the planning for

1 warning letter, but that the only township ordinance violation
2 is noise. Correct?

3 A. Yes.

4 Q. And, again, it was your understanding at this time that people
5 were, in fact, allowed to use their homes as short-term
6 rentals?

7 A. Yes.

8 Q. And that was because it was your position the short-term
9 rentals constituted a single-family dwelling?

10 A. Yes.

11 Q. I'm going to hand you Exhibit 77, which I believe is the
12 letter that you write in response.

13 (Exhibit 77 marked.)

14 BY MR. KONWINSKI:

15 Q. I'm going to ask you that. Now, is this the letter,
16 Mr. Devries, where you told Mr. Siebers a warning letter was
17 being mailed about 2005 Driftwood, and this letter I handed
18 you as Exhibit 77, this is the letter about 2005 Driftwood?

19 A. Yes.

20 Q. And consistent with your email to Mr. Siebers in the second
21 sentence or paragraph there you said please keep in mind this
22 is a single-family residence district. Currently Park
23 Township does not regulate home vacation rentals.

24 Do you see that?

25 A. Yes.

Exhibit 12

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

v

File No: 2023-7474-CZ
Hon. Jon J. Hulsing

PARK TOWNSHIP, a Michigan municipal
Corporation,

Defendant.

VIDEOCONFERENCE DEPOSITION OF EMMA POSILLICO
taken before Shawn M. Breimayer, Certified Shorthand Reporter,
via ZOOM, appearing remotely from Birmingham, England, Monday,
July 1, 2024, commencing at 8:59 a.m., pursuant to notice.

APPEARANCES:

FOR THE PLAINTIFF: Kyle P. Konwinski (P76257)
VARNUM LLP
333 Bridge Street NW, Ste 1700
Grand Rapids, MI 49504
(616) 336-6000

FOR THE DEFENDANT: Daniel R. Martin (P53532)
THRUN LAW FIRM, P.C.
3260 Eagle Park Drive NE, Suite 121
Grand Rapids, MI 49525
(616) 588-7702

Reported by: Shawn M. Breimayer, CSR-6888

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Document received by the MI Ottawa 20th Circuit Court.

1 A. No.

2 Q. And when you were doing the Google search, did you see
3 anything that brought -- that refreshed your memory as
4 to anything in particular that occurred while you were
5 in Park Township?

6 A. No.

7 Q. Just a little bit of background from you now. What is
8 your highest level of education?

9 A. I have a master's degree in urban and regional
10 planning.

11 Q. From where?

12 A. University of Albany. It's in Albany, New York.

13 Q. And what year did you get the master's?

14 A. 2013.

15 Q. Okay. And undergrad?

16 A. It's a bachelor of science in construction management
17 from Roger Williams University, which is in Rhode
18 Island, and that was 2009.

19 Q. And after you got your master's, what was your first
20 full-time employment?

21 A. I was employed as a regional planner with the Stark
22 County Regional Planning Commission. That is outside
23 of Akron, Ohio.

24 Q. And could you just describe generally what type of work
25 you did in that position?

1 A. It's the combination of comprehensive planning and
2 subdivision review applications for the unincorporated
3 areas of Stark County.

4 Q. And what -- could you give us the approximate dates
5 that you worked in that position?

6 A. It would have been May 2014 through August 2018.

7 Q. And then, did you move to Grand Rapids because of work
8 or?

9 A. Because of my husband's employment.

10 Q. So you guys moved to Grand Rapids in August of 2018,
11 and at some point thereafter you get hired by Fresh
12 Coast Planning?

13 A. In October of 2018, yes.

14 Q. Got it, okay, yeah, couple months later. And for how
15 long did you work at Fresh Coast Planning?

16 A. From October 2018 through October 2020.

17 Q. And what took you guys to England?

18 A. My husband's employment.

19 Q. And I don't know if you saw any names of folks when you
20 Googled as to who the people are in Park Township
21 Neighbors, but do you have any idea if you know anyone
22 who is even part of Park Township Neighbors?

23 A. I did not see any names.

24 Q. I assume when you worked for Fresh Coast Planning you
25 knew what Airbnb's were?

1 update on any outstanding zoning issues. So from a
2 purely zoning perspective, that would have been my
3 involvement. If I was there to represent Fresh Coast
4 Planning in a planning perspective, then I would have
5 been more involved with making summaries of any
6 planning applications that were made or any other --
7 any other recommendations for changes in terms of the
8 resolution or the commission itself.

9 Q. And as the zoning administrator, was one of your jobs
10 to interpret the zoning ordinance for the Township?

11 A. Yes.

12 Q. And sitting here today, do you recall if any planning
13 commission meeting you attended ever involved
14 short-term rentals?

15 A. I know that it was a topic of discussion at various
16 points. Was there any physical proposed text amendment
17 to the zoning resolution during my time there, no.

18 Q. And do you remember when it was discussed what was
19 being discussed?

20 A. It was primarily the number of complaints that would be
21 brought to the Township.

22 Q. And what would -- do you remember what was the result
23 of those conversations? Was it just they discussed the
24 complaints and moved on or was there ever, you know?

25 A. It was truly we understand that this is an outstanding

1 it also includes this thing about additional services
2 such as restaurants, meeting rooms, entertainment, and
3 recreation. Do you see that definition, too?

4 A. Yes.

5 Q. Do you recall how many motels or hotels existed in Park
6 Township when you were the zoning administrator?

7 A. I can't recall.

8 Q. Can you estimate?

9 MR. MARTIN: And again, there is a difference
10 between estimating and speculating, so don't speculate.
11 But if you could estimate, feel free. If you can't,
12 don't speculate.

13 THE WITNESS: I really can't.

14 BY MR. KONWINSKI:

15 Q. Okay. I mean, could you say, and again, we don't want
16 you to guess, could you say more than 10 or less than
17 10?

18 A. Yes.

19 Q. Now, this definition of motel it says it's a commercial
20 establishment. What is a commercial establishment to
21 you?

22 A. I would say something that is an established business
23 with some sort of, license is not the correct word, but
24 some sort of recording of their business status.

25 Q. I'm going to -- this -- we're going to -- this is a

1 record thing, Ms. Posillico. I'm going to mark this
2 for the record as Exhibit 52. This is from a
3 dictionary I got, Ms. Posillico, and it defines
4 establishment as an institution or place of business
5 with its fixtures and organized staff. Do you see
6 that?

7 A. Yes.

8 Q. Do you -- would you agree that that's the same -- would
9 you say that's a good definition of establishment when
10 we're talking about a commercial establishment?

11 A. Sure, yes.

12 Q. And this talks about the motel, and I'm back, sorry,
13 just for the record, I flipped back to deposition
14 Exhibit 3 now and we're still looking at motel. And
15 this, again, the definition of a motel talks about a
16 commercial establishment, which offers lodging
17 accommodations and sleeping rooms to transient guests
18 in return for payment. Do you see that?

19 A. Yes.

20 Q. I'm going to ask you about both of these lodging
21 accommodations and sleeping rooms. So, to you, what
22 are lodging accommodations?

23 A. I think it's somewhat stated within the definition. It
24 provides respite for transient guests.

25 Q. When you say respite, do mean it's a place to stay?

1 going to ask about when I find this here, Ms.
2 Posillico, is when we're looking at the definition of
3 motel it defines it as a commercial establishment, and
4 I'll represent to you that nothing in the Park Township
5 zoning ordinance specifically defines commercial
6 establishment. And this was -- what I'm about to show
7 you -- oh, did I miss it. What I'm about to show you,
8 basically the only definition of commercial
9 establishment that I could find in essentially any law,
10 and I'm just curious, okay, here it is. So we're still
11 on Exhibit 4. Took me awhile to locate it. It talks
12 about commercial establishment. Do you see that here
13 where it say commercial establishment?

14 A. Yes.

15 Q. All right. And it says, it means an establishment used
16 for commercial purposes such as a bar, restaurant,
17 private offices, it names others, and any other
18 establishment with a common business area. I'm
19 curious, did you agree with that definition of a
20 commercial establishment or if you think it's something
21 different?

22 A. I think I would agree with that.

23 Q. Do you recall if -- we're going to not talk about these
24 for a little bit here. Do you ever recall, did you
25 ever receive complaints from any citizens about

1 A. A single short-term rental, so a single unit, yes. But
2 if we are talking about two short-term rentals adjacent
3 to each other, so for instance, in a duplex, then that
4 would be not considered a single family dwelling.

5 Q. Understood. So like a typical home that's one total
6 unit, that would be a single family dwelling under the
7 zoning ordinance?

8 A. If it were not divided up into separate units, yes.

9 Q. So here what you're -- if I gather, this kind of in
10 summary to Ms. Reiersen, you're telling her you don't
11 need a permit and you can use it as a short-term rental
12 as long as there's not more than five unrelated
13 individuals at a time in that unit, correct?

14 A. Yes.

15 Q. We're going to move on to a different exhibit. This is
16 a -- an agenda and its packet from a zoning board of
17 appeals meeting, Ms. Posillico. I'm not going to ask
18 you about all of it. I am going to ask you some
19 questions about a memo you wrote, and it does relate to
20 this agenda item.

21 A. Mm-hm.

22 Q. This is an item, it says a request by Randy, Randall,
23 excuse me, Schipper on behalf of Oakwood Interests to
24 construct an accessory building. We're going to talk
25 about this a little bit. And if I heard you right from

Exhibit 13

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,
Plaintiff,

Case No.: 2023-7474-CZ

v.

Hon. Jon H. Hulsing

PARK TOWNSHIP, a
Michigan municipal corporation,
Defendant.

DEPOSITION OF: HOWARD FINK

DATE: July 2, 2024

TIME: 12:59 p.m.

LOCATION: Thrun Law, PC

3260 Eagle Park Drive NE, Suite 121

Grand Rapids, Michigan

REPORTER: Kelly M. Kane, CSR-1470

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1 still answer the question that I ask.

2 The only reason I say that is, as Dan knows,
3 relevance isn't even an objection for a deposition. Now, he
4 can object; even if he did, you'd still have to answer. And
5 I appreciate it, I know you don't think it's relevant, but
6 that's my job and Dan's job to fight that out in court. I
7 would beg to differ, I think whether something constitutes a
8 commercial use or not is actually a relevant aspect to this
9 case. So I appreciate what you're doing, but the way this
10 operates today, I know, is a little abnormal from a normal
11 conversation.

12 A. But the problem is I don't remember the answer. I do know
13 that there's a legal definition of that and I -- I want to
14 say it's like within the two-week time frame.

15 Q. Okay. And again, all my question is is, if I had to go ask
16 someone what constitutes a commercial use versus a
17 non-commercial use as to how many days a person rents it,
18 who would you best direct me to at the Township besides --
19 understanding your first answer was Dan, who else at the
20 Township, if anyone?

21 A. The zoning administrator.

22 Q. All right. And why the zoning administrator?

23 A. Because it's a definition.

24 Q. And the zoning administrator is the person whose job it is
25 to interpret the zoning ordinance?

1 A. Correct.

2 Q. All right. Just going back, I know we kind of went down a
3 rabbit hole there, but we were talking about, again, your
4 personal belief. We started with your personal belief as to
5 whether short-term rentals should be allowed in the Township
6 or not. And the one thing you said is it's a commercial use
7 in a residential district. Are there any other reasons you
8 don't think short-term rentals should be allowed in the
9 Township?

10 A. No, not necessarily.

11 Q. All right. And do you have any short-term rentals in close
12 proximity, I'm going to say, to your residence?

13 A. What do you define as close proximity?

14 Q. I think, you know, your immediate neighbors, your block.

15 Let's back up. Do you live on a residential
16 street?

17 A. Yep.

18 Q. Are there any short-term rentals on your street?

19 A. Nope.

20 Q. Do you have other nearby streets by your house, or no?

21 A. Uh-huh.

22 Q. Okay.

23 A. Yes.

24 Q. Any short-term rentals you're aware of in your neighborhood,
25 I'll call it?

1 building and planning and zoning department, didn't do the
2 actual zoning but did all the economic development work,
3 planning work and things of that nature.

4 Q. And were you the community development director first and
5 then the administrator?

6 A. Correct.

7 Q. How long were you the community development director?

8 A. About four years, if I recall.

9 Q. And --

10 A. Maybe three years, and then the other half was as
11 administrator.

12 Q. And how about prior to that what did you do?

13 A. Prior to that I was in graduate school. Well, prior to that
14 I owned my own consulting firm coming out of graduate school
15 for a few years. We did municipal economic development
16 consulting and planning, consulting for communities mostly
17 in Northwest Indiana.

18 Q. How long did you have the consulting firm for?

19 A. About two, two and a half years.

20 Q. And you --

21 A. I'd have to refer to my résumé at this point.

22 Q. Okay. And you started that after grad school?

23 A. Actually technically while I was in grad school.

24 Q. Where did you go to grad school?

25 A. University of Illinois at Chicago.

1 Q. And what was your degree in?

2 A. Master's of urban planning.

3 Q. How long is that grad program?

4 A. It's a two-year program; I did it in three. I changed my
5 specialization after the first year and took a few extra
6 courses.

7 Q. Okay. And undergrad?

8 A. DePaul.

9 Q. With an L, not a W?

10 A. Yeah.

11 Q. DePaul in Chicago there?

12 A. Yep.

13 Q. And what year did you graduate from DePaul?

14 A. 2001, I think. Yeah.

15 Q. Is that like a Bachelor of Arts or Bachelor of Science or --

16 A. I think it was a Bachelor of Arts because it was a
17 communications major, marketing minor.

18 Q. Do you remember the year you graduated from grad school?

19 A. I want to say 2004, maybe 2003. I'd have to go back and
20 check the transcripts.

21 Q. And have you ever used short-term rentals, Airbnbs, VRBOs?

22 A. Yes.

23 Q. About how many times?

24 A. Twice that I -- maybe three times.

25 Q. And when do you think the last time was?

1 then asked the question, are you saying you've not seen the
2 Spring Lake case or you've not seen anything in writing
3 about enforcing the ordinance or not?

4 BY MR. KONWINSKI:

5 Q. I've never seen anything in writing that was like a formal
6 decision from the Township saying we're not going to enforce
7 our zoning ordinance with respect to short-term rentals.
8 Again, I've never seen it but I want to ask you. So let me
9 try to ask that again.

10 Prior to the Spring Lake case are you aware of any
11 formal decision by the Township to not enforce its zoning
12 ordinance with respect to short-term rentals?

13 A. No.

14 Q. One thing you indicated was that the Township -- or, excuse
15 me, the Spring Lake case gave the Township a clear
16 understanding of how the Michigan Supreme Court was going to
17 treat short-term rentals. Do you think, prior to the
18 Spring Lake case, it was not clear how the Park Township
19 zoning ordinance treated short-term rentals?

20 A. No.

21 Q. You think it was clear?

22 A. Yes.

23 Q. And how did the -- I guess it's changed now. How did the
24 Park Township zoning ordinance treat short-term rentals?

25 A. They were not lawful.

1 became a planning commission and a board decision almost
2 instantly. But before that there was no issue and there was
3 no -- there wasn't any -- there wasn't any, if you will,
4 eyes on it.

5 We are -- we are a community that operates in a
6 complaint-driven code enforcement system. We don't go out
7 looking for complaints. So this is an issue that was --
8 that came to us. We didn't go out searching for the issue.
9 And so prior to the Spring Lake case, and I can't precisely
10 get exact time frames because now we're talking in more
11 generalities, but prior to the Spring Lake case and prior to
12 COVID this wasn't a thing. It wasn't -- I mean, there
13 were -- here and there there were some people talking about
14 it, but it didn't become a thing. And then all of a sudden
15 it was a thing.

16 And then that's when -- that's when we all sort of
17 understood where the law was around it and what we needed to
18 do in order to finalize a decision whether the board was
19 going to allow it, whether they're not going to allow it,
20 how the planning commission was going to study it, on and
21 on, so on and so forth, and then that's when this whole
22 process started for the last two, three years.

23 Prior to that, I mean, you could go -- and, you
24 know, there's thousands and thousands of Michigan
25 municipalities, and I can guarantee you a lot of them will

1 A. Yeah.

2 Q. This is where the board makes its policy decision as to
3 whether short-term rentals should be allowed or not?

4 A. Correct.

5 Q. And the board decides that short-term rentals should not be
6 allowed?

7 A. In residential zones.

8 Q. In residential zones.

9 Do you recall -- I'm sure it's somewhere, I didn't
10 find it -- when was the moratorium in place? How long
11 before this, do you know?

12 A. I think maybe a year.

13 Q. Okay. Prior to this meeting do you recall, did you make a
14 formal recommendation to the board as to whether short-term
15 rentals should be allowed or not?

16 A. No.

17 Q. All right. Mr. Fink, I'm going to hand you here Exhibit 15.
18 This was a previous deposition exhibit.

19 Mr. Fink, Exhibit 15, previously marked, is this a
20 press release from Park Township?

21 A. Yes.

22 Q. Did you draft this?

23 A. Yes. Let me --

24 Q. And did anyone -- go ahead.

25 A. Let me rephrase. I believe so.

1 BY MR. KONWINSKI:

2 Q. We're moving on to Exhibit 59, Mr. Fink. What I've handed
3 you as Exhibit 59 is an email exchange between Ed deVries
4 and a Jack Siebers, and you're copied on it. Do you see
5 that?

6 A. Uh-huh.

7 Q. Yes?

8 A. Uh-huh, yes.

9 Q. And do you recall this by chance?

10 A. Now that I'm reading it, yes, but if you'd asked me five
11 minutes ago, anything about it, I don't know that I'd be
12 able to recall it off of memory.

13 Q. Do you know who Mr. Siebers is just as a resident of
14 Park Township?

15 A. Yes, I believe I recall Mr. Siebers.

16 Q. Do you recall, did you ever respond to this email that
17 Ed deVries sent, to your recollection?

18 A. I don't recall.

19 Q. When you're copied on emails do you typically read them or
20 sometimes not?

21 A. No, I typically read them.

22 Q. Okay. Now, if you had seen anything inaccurate in
23 Mr. deVries's email would it have been your standard
24 practice to say, well, he's not right? Correct it, I should
25 say?

1 A. (Witness nods head up and down.)

2 Q. Yes?

3 A. Yes.

4 Q. Okay. Now, here there's a lengthy complaint about

5 short-term rentals, and you'll see Mr. deVries, in his email

6 in his second sentence, says, at this time the only Township

7 ordinance violation is the noise. Do you see that?

8 A. Give me the paragraph.

9 Q. First paragraph, second sentence.

10 A. Thank you.

11 Okay. Yeah, I see it.

12 Q. So if I'm hearing you right, you did not respond to this

13 email and clarify that actually Mr. deVries was wrong,

14 right?

15 A. Correct.

16 Q. Okay. Why not?

17 A. The same answer I gave you before, is I don't recall at what

18 point my own knowledge of the issue shifted. And while I am

19 the manager, we all have department heads and we allow our

20 department heads to do their job, and unless I'm sure of

21 something I'm not going to correct. I probably wasn't sure

22 of it at the time.

23 Q. Okay. And this postdates the previous exhibit we looked at.

24 So is it fair to say, in your manager's report of Exhibit 57

25 you weren't sure yet whether or not simply using a house as

1 administrator. She had a very similar background as I did.

2 Q. And did you view her as having -- what would you say her
3 positives and weaknesses are too?

4 A. I think she was very well trained, I think she was very
5 adept in her role, I think she was very efficient.
6 Weaknesses was we couldn't keep her that long.

7 Q. Okay. What I handed you as Exhibit 62, you'll see here this
8 again is an email exchange, and it looks like it starts out
9 from a Mr. Greg Niewiadomski -- I should be able to get
10 those Polish names -- but Mr. Niewiadomski says in his
11 original email, could you point me to the rules and
12 regulations that apply to short-term rentals in the
13 Township. And then Mr. Hunsburger responds but then
14 Ms. Posillico responds. Do you see that?

15 A. Yes.

16 Q. And you're copied on this, correct?

17 A. Yes.

18 Q. Do you recall, did you respond to this in any way?

19 A. No, not that I recall.

20 Q. Now, if you had seen anything inaccurate in Ms. Posillico's
21 email would you have responded and alerted the recipients to
22 the correction?

23 A. If I was aware that there was an inaccuracy, yes, I would
24 have said something.

25 Q. Now, here on July 23rd of 2020 Ms. Posillico says, good

1 Q. And you as well, you have much more training and lengthy
2 experience to interpret a zoning ordinance than the average
3 layperson off the street?

4 A. I would agree with that, but I am not an expert. There are
5 many things I do and -- that I don't know.

6 Q. I mean --

7 A. You're an attorney and a real estate attorney; I'm sure
8 there are elements of zoning law that come up that you're
9 not aware of.

10 Q. Fair. But as far as -- you know, I'm not talking about
11 attorneys who -- you know, we do legal stuff. As far as
12 non-attorneys go, I mean, you are very experienced in
13 interpreting zoning ordinances?

14 A. I am experienced at it, but I just want to clarify something
15 that you just said. You said not including legal. The
16 zoning ordinance is an entire legal document. That's
17 nothing else but a legal document.

18 Interpreting a zoning ordinance is -- is half
19 knowledge and education of the zoning ordinance and why
20 things happened and how things happened over time, and it's
21 half understanding the principles of zoning law, which
22 change from state to state and area to area. I would -- I
23 would say to you that -- go poll the 6,000, 10,000
24 communities in the state of Michigan, see if you can come up
25 with -- see what percentage you can come up with that could

1 permitted and if it's not listed it's not permitted?

2 A. Is what the same or different?

3 Q. Yes, let me ask it this way: Her memo says it's intended to
4 provide clarity by providing a definition of a short-term

5 rental. Let me ask you this way: Do you think the zoning
6 ordinance was clear before this as to what constituted a
7 short-term rental?

8 A. Man, from 1974, I don't know. I'm not sure. I'm not
9 sure -- I'm not sure if I think that the previous ordinance
10 was clear on what a short-term rental was.

11 Q. There was no, like, specific definition of a short-term
12 rental?

13 A. That is correct. I believe that is accurate, yes.

14 Q. And I think then -- this question, this is more intuitive,
15 but intuitively people do not think that motels are
16 short-term rentals, right?

17 I'm not talking about the zoning ordinance
18 definition, I'm just talking in common parlance, I should
19 say.

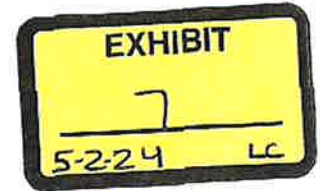
20 MR. MARTIN: And my objection is again
21 speculation, as it's asking him to speculate what other
22 people think. He can testify as to himself, but again --
23 you can answer the question; preferably don't speculate.

24 BY MR. KONWINSKI:

25 Q. Let me ask you this way: In your many years of experience

Exhibit 14

A G E N D A
PARK TOWNSHIP PLANNING COMMISSION
Regular Meeting
August 27, 2002
6:00 pm



CALL MEETING TO ORDER

APPROVAL OF AGENDA

Item #1 - Subdivision Ordinance Variance
Wildflower
160th & James St.
Bosgraaf Builders
Ted Bosgraaf
Public Hearing

Item #2 - Final PUD - Wildflower
160th & James
Bosgraaf Builders
Ted Bosgraaf

Tabled from July 16, 2002

Item #3 - Site Plan Change - Harderwyk Church
1627 W. Lakewood Blvd.
Doug DeKock
Public Hearing

Item #4 - Special Use - Private Road
Timber Ridge Lane
2931 N. 152nd Ave.
Nederveld Associates
Greg Raad
Public Hearing

Item #5 - Subdivision Preliminary - Faber Plat
Woodwind Dr.
Nederveld Associates
Greg Raad

Item #6 - Special Use - Move House
0 N. Lakeshore Dr.
Scott DeYoung

Tabled from August 20, 2002

ANNOUNCEMENTS

ADJOURNMENT

PARK TOWNSHIP
PLANNING COMMISSION
SPECIAL MEETING
AUGUST 27, 2002

DRAFT COPY

The special meeting of the Park Township Planning Commission was called to order at 6:00 p.m. by Chairman John VanIwaarden.

Present: Harold Burrell, David Smcngce, Carol Bowerman, Amanda Price, Phil Hill, Frank Beltman, Renee Kolean, John VanIwaarden, Dan Martin, attorney, and Kirk Briggs, Zoning Administrator

Absent: Bob Mihos

MOTION

A motion was made by Beltman and supported by Price to approve the agenda with the addition of item #6.

VOTE

Motion carried: 8-0

Item #1 - Subdivision Ordinance Variance - Wildflower - Bosgraaf

Burrell stated that he was stepping down, on advice from council, as he has business dealings with Bosgraaf Development.

Bowerman stepped down as she lives in the notice area.

Todd Stuve, Exxel Engineering, summarized the proposed PUD. He stated that the request is to waive the requirement to connect, via road, to the Silver Ridge Subdivision to the east.

Martin read a letter from Warner, Norcross and Judd, attorneys for Bosgraaf, stating the variance request.

Price went over the standards to consider for a variance found on page 41, section 6.1, of the Park Township Subdivision Ordinance.

Price asked what the special circumstances were that warranted a variance.

John Cameron, attorney, stated that the road connection does not benefit the plat or the residents in Wildflower. They felt that it would have an adverse effect on the residents of Silver Ridge because it would create a traffic shortcut and would potentially cause people to use both subdivisions to travel from Lakewood Blvd. to James St.

Price asked why this was materially detrimental.

Cameron repeated his prior argument. He stated that they could not find one reason that connecting the subdivisions would be beneficial.

Beltman asked if they had any other reasons for not connecting the subdivisions.

Cameron stated that the school district was not enthused about the two areas being connected.

Bosgraaf stated that the OCRC recommended that the two areas not be connected. He stated that the pond needs to be as far away from the school as possible.

VanIwaarden asked about the pond size.

Stuive stated that the pond needs to be 4.4 acre-feet for proper detention. This pond will be 4.8 acre-feet.

Beltman stated that they could build the pond and still connect the subdivisions.

There was a discussion on the size of pond needed and how that related to having a school to the north of this site.

Price stated that there was no assurance that a school would ever be built on this location.

Stuive stated that the pond should still be designed for the entire forty acres in a developed state. The size would only diminish by an insignificant amount if no school were to be built there.

The public hearing was opened at 6:37 p.m.

Debra Swanson, 295 Sandy Ct., asked why the Planning Commission wants the subdivisions to be connected with a road.

VanIwaarden stated that it is required by the subdivision ordinance.

Paul Van Allsburg, 322 Silveridge Dr., stated that his biggest concern is the safety of the children if there is increased traffic.

Mike Long, 251 Silveridge Dr., stated that this connection would increase the number of strangers in his neighborhood.

Tom Bader, 375 Silveridge Dr., stated that he would like his subdivision to remain as it is with only one way of ingress and egress.

Kreig Kuiper, 351 Sandcastle Dr., stated that he moved to Silver Ridge from Windstream because Silver Ridge was not a cut-through subdivision like Windstream is.

Ed Walsh, 358 Sandcastle Dr., stated that he agreed with Kuiper.

Robert Fein, 350 Sandcastle Dr., stated that he feels this will create more traffic in his subdivision.

Ellen Smith, 274 Silveridge Dr., stated that this would allow strangers in her neighborhood.

Jerry Glover, 370 Silveridge Dr., stated that he feels connecting these two subdivisions would create a traffic safety issue.

Tom Werkman, 321 Silveridge Dr., stated that there is already a speeding problem in Silver Ridge. He stated that his lawn has been damaged from vehicles and he is already trying to work with the sheriff's department to try to curtail that. He stated that he felt that connecting to Wildflower would only add to the problem.

Fred Melms, 270 Silveridge Dr., stated that since there are no sidewalks in Silver Ridge there is nowhere for the people of the neighborhood to walk. More traffic would make it more dangerous. He stated that he has also has his lawn torn up by vehicles.

Kim Pustover, 242 Sandcastle Dr., stated that she agreed.

Mary Spaulding, 290 Silveridge Dr., stated that she had spoken with Ottawa County sheriff's deputy Brian Buter and he had stated that she is lucky to live in a subdivision that did not interconnect with another because it is safer that way.

Paul Amos, 355 Sandcastle Dr., stated that he does not want the road there.

Tom Brown, 253 Silveridge Dr., asked why Silver Ridge south and north were not required to be connected if the subdivision ordinance requires it.

Sarah Brown, 253 Silveridge Dr., stated that she had talked with a safety officer and he had told her that there was no way that an emergency vehicle would cut through a subdivision to get to another subdivision, they would always take arterial roads. She stated that since there are no sidewalks in her area, people walk in the streets. She stated that you couldn't compare subdivisions today to those of thirty years ago, those had straight streets and sidewalks.

Mark Laman, 364 Silveridge Dr., stated that there are no sidewalks and there are people on the road.

Steven Pinkham, 1412 Sandy Run, stated that he feels that house values go down when traffic increases.

Harold Burrell, 1424 Post Ave., stated that the walkway would provide access between the subdivisions. He stated that he felt that if a road were placed there, people would use it. He stated that he felt that speed bumps, stop signs, etc., don't work.

Phil Munoa, 362 Sandcastle Dr., stated that he has lived in both types of subdivisions, connected and not connected, and it is nicer to live in one that is not connected.

Dan Oegema, 1437 Sandy Run, stated that Wildflower already has two access points.

The public hearing was closed at 7:07 p.m.

Briggs stated that the speeding vehicles must be current Silver Ridge residents. He stated that this makes a good argument for requiring sidewalks in subdivisions if everyone walks and bicycles in the streets. He stated that the fire department likes two or more ways into a subdivision.

Kolean stated that she understood the comments. She stated that she needed to consider whether or not the variance is worthwhile in consideration of the creativity of the PUD presented.

Hill stated that he does not see anything that unique in this PUD. He stated that he does not like to see subdivisions with one entrance and exit.

Price stated that she did see some creative aspects of this PUD. She pointed out the narrower roads, the sidewalks, narrower lot widths, etc. She stated that she felt the sidewalks would address some of the issues that were brought up in the public hearing. She stated that she was concerned with finding answers to the third and fourth standards they were to consider.

Martin stated regarding standard number three, that granting a variance would not violate the Subdivision Control Act.

Briggs stated regarding standard number four, that there is a section in the comprehensive plan that requires subdivisions to be interconnected.

Price stated regarding standard number one., that she did not see any special circumstances, no land contour or feature, no water, etc.

Smeenge wondered why there was no stub street created on Silver Ridge north. He stated that it seemed the ordinance was violated at that time. He stated that he has seen a nice mix of subdivisions both connected and not connected. He stated that he does not want to see this connected. He discussed some of the traffic issues. He stated that his subdivision has no sidewalks and there have been two children hit by vehicles.

MOTION

A motion was made by Smeenge to recommend approval of the variance to the Park Township Board.

There was no support for this motion.

MOTION

A motion was made by Hill and supported by Beltman to recommend to the Park Township Board to not approve the variance.

VOTE – ROLL CALL

Motion carried: 4-2

Kolean – Yes

Beltman – Yes

Hill – Yes

Vanlwaarden – Yes

Price – No

Smeenge – No

Item #2 - Final PUD – Wildflower - Bosgraaf

MOTION

A motion was made by Kolean and supported by Hill to remove the item from the table.

VOTE

Motion carried: 5-1 (Smeenge)

Smeenge stated that he voted no because he would like to wait for the outcome of the vote on the variance at the Park Township Board.

MOTION

A motion was made by Smeenge and supported by Price to table this item until the Park Township Board has taken a vote on the variance issue.

VOTE

Motion carried: 6-0

Rowerman and Burrell returned.

Item #3 – Site Plan Change – Harderwyk Christian Reformed Church

Doug DeKock explained the site plan change. They would like to relocate a portable building to the rear of the property.

Hill asked when the relocation would occur.

DeKock stated that it would be by April, 2003. They would like to be able to have the portable building remain on the property for five years.

Smeenge asked if there were any building code issues.

Briggs stated that there are not. It will be inspected.

Smeenge asked for an updated site plan showing the gravel parking lot and the ten acres that the church has purchased to the north.

DeKock stated that he would supply that.

The public hearing was opened at 7:50 p.m.

The public hearing was closed at 7:50 p.m.

MOTION

A motion was made by Hill and supported by Bowerman to approve the site plan as presented with the following condition:

1. Building to be moved within one year and may remain for five years.

VOTE

Motion carried: 8-0

Item #4 – Special Use – Private Road – Timber Ridge Lane

Greg Raad, Nederveld Associates, stated that they wanted to build a road that would be 850 feet long. It would go down the existing driveway. They will retain as many trees as possible. There is a proposed boulevard. The developer is only allowed four divisions by the state. Six are shown on the plat as a master plan. They are under the understanding that the state will allow them two more splits ten years from now. They will do four divisions at this time.

VanIwaarden asked which four divisions they were doing.

There was a discussion on the divisions that they were proposing.

Raad clarified that they are just asking for permission for the road, not the splits. They are just trying to show the future use of the land.

Smeenge asked about a copy of the road agreement.

Raad stated that he had submitted one copy inside the township packet and did not understand that he needed more copies.

There was a discussion on how to proceed.

Briggs wanted to clarify that the division into six lots requires a platted subdivision. The ordinance does not allow six lots along a private road. It must be on a public road. The area a private road is located on is part of the individual lots, whereas on a public road the lot sizes do not include the road area. If a public road were put in, as required by a subdivision, as required by six lots, these lots would not be of sufficient size to meet the zoning requirement.

Martin clarified that perhaps they are trying to avoid the issue of having to plat this as a subdivision by only doing four lots now. There is not enough acreage for six lots with a public road.

VanIwaarden asked for clarification on the 10-year option.

Briggs stated that that was available under the old law but not under the current law.

Raad stated that he did not agree with that statement.

Smeenge asked about the accessory building that is currently on the property. The size of the building is too large for a two-acre lot.

Raad stated that that issue would be addressed before the lots are split.

MOTION

A motion was made by Smeenge and supported by Hill to table this item with the following conditions:

1. Public hearing to be held when this item returns.
2. A modified plan showing four lots must be supplied.
3. A complete package addressing the other issue raised in this meeting.

VOTE

Motion carried: 8-0

Item #5 – Subdivision Preliminary – Faber Plat

Greg Raad, Nederveld Associates, stated that they want to split one lot into two and that must be done with the platting process since they have already done all the splits that they are allowed on this piece of property. The lots will meet R-3 requirements. They have OCRC and OCDC approval.

VanIwaarden asked if it would be possible to build on lot #2 due to the terrain.

Raad stated that they are aware of the problems and will be able to find a building envelope.

MOTION

A motion was made by Beltman and supported by Burrell to recommend approval of the subdivision preliminary to the Park Township Board.

VOTE

Motion carried: 8-0

Item #6 – Special Use - Move House - Scott DeYoung

VanIwaarden summarized the items that were received since the last meeting. He asked Briggs if the report from Holland Engineering was sufficient.

Briggs stated that the report was fine but the DeYoungs will need to repair or change the rafter span to meet the current building code. They need to inform Briggs how they intend to achieve that.

There was a discussion on the variance that was granted for a building envelope, how the house will fit within that envelope, the site plan, etc.

Scott DeYoung, 4590 36th St., Drenthe, spoke for the item. He stated that the house will match the other houses on the street and will line up on the block with them.

Six letters of opposition were received at the township office.

The public hearing was held and closed on August 20, 2002.

VanIwaarden asked if the three standards had been met.

Kolcan asked if they could put any restriction on the DeYoungs renting out the house.

Briggs stated that there is no ordinance prohibiting or governing the renting of property.

Martin clarified that the three standards of section 4.22 of the ordinance needed to be considered.

VanIwaarden read the three standards. The Planning Commission stated that the three standards were met.

The house needs to be moved by October 9, 2002, per the current owner.

VanIwaarden wanted to make sure the DeYoungs understood that the neighbors were concerned about any renting of the house. He also wanted them to take responsibility for making the actual move go as smoothly as possible with neighbor notification, school bus route notification, minimal tree removal, etc.

MOTION

A motion was made by Smeenge and supported by Burrell to approve the special use to move a house to 0 S. Lakeshore Dr. with the following conditions:

1. The garage siding must match the siding of the house.
2. The driveway must be paved.
3. The landscaping must be similar to other houses in the neighborhood within one year of the move date.
4. The elevation of the first floor must be no higher than the house to the east (as close as the code allows).
5. The rafters must be modified as required by the engineering report.

VOTE

Motion carried: 8-0

ANNOUNCEMENTS

1. Smeenge stated that the Zoning Board of Appeals granted a rear yard setback of 13.3 feet for 55 feet of width for the lot on Big Bay Dr. that the Planning Commission had seen at their meeting on August 20, 2002. He stated that the developer had decided to build one house rather than two.

MOTION

A motion was made by Smeenge and supported by Hill to adjourn at 9:05 p.m.

VOTE

Motion carried: 8-0

Meeting adjourned.

Sandy Brodie
Recording Secretary

Exhibit 15

United States Code Annotated
Title 17. Copyrights (Refs & Annos)
Chapter 1. Subject Matter and Scope of Copyright (Refs & Annos)

17 U.S.C.A. § 119

§ 119. Limitations on exclusive rights: Secondary transmissions of distant television programming by satellite

Effective: December 20, 2019

Currentness

(a) Secondary transmissions by satellite carriers.--

(1) Non-network stations.--Subject to the provisions of paragraphs (3), (4), and (6) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a non-network station shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing or for viewing in a commercial establishment, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for each retransmission service to each subscriber receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing or for viewing in a commercial establishment.

(2) Network stations.--

(A) In general.--Subject to the provisions of subparagraph (B) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a network station shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission, and the carrier provides local-into-local service to all DMAs. Failure to reach an agreement with a network station to retransmit the signals of the station shall not be construed to affect compliance with providing local-into-local service to all DMAs if the satellite carrier has the capability to retransmit such signals when an agreement is reached.

(B) Secondary transmissions to unserved households.--

(i) In general.--The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions of the signals of no more than two network stations in a single day for each television network to persons who reside in unserved households.



(ii) Short markets.--In the case of secondary transmissions to households located in short markets, subject to clause (i), the statutory license shall be further limited to secondary transmissions of only those primary transmissions of network stations that embody the programming of networks not offered on the primary stream or the multicast stream transmitted by any network station in that market.

[(iii) Repealed. Pub.L. 116-94, Div. P, Title XI, § 1102(a)(1)(A)(ii)(I), Dec. 20, 2019, 133 Stat. 3202]

(C) Submission of subscriber lists to networks.--

(i) Initial lists.--A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, not later than 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households.

(ii) Monthly lists.--After the submission of the initial lists under clause (i), the satellite carrier shall, not later than the 15th of each month, submit to the network a list, aggregated by designated market area, identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) any persons who have been added or dropped as subscribers under clause (i) since the last submission under this subparagraph.

(iii) Use of subscriber information.--Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of monitoring compliance by the satellite carrier with this subsection.

(iv) Applicability.--The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to which the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(3) Noncompliance with reporting and payment requirements.--Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a non-network station or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

(4) Willful alterations.--Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a non-network station or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

(5) Violation of territorial restrictions on statutory license for network stations.--

(A) Individual violations.--The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506, except that--

(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

(ii) any statutory damages shall not exceed \$250 for such subscriber for each month during which the violation occurred.

(B) Pattern of violations.--If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who are not eligible to receive the transmission under this section, then in addition to the remedies set forth in subparagraph (A)--

(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$2,500,000 for each 3-month period during which the pattern or practice was carried out; and

(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$2,500,000 for each 6-month period during which the pattern or practice was carried out.

(C) Previous subscribers excluded.--Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before November 16, 1988.

(D) Burden of proof.--In any action brought under this paragraph, the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is to a subscriber who is eligible to receive the secondary transmission under this section.

The court shall direct one half of any statutory damages ordered under clause (i)¹ to be deposited with the Register of Copyrights for distribution to copyright owners pursuant to subsection (b). The Copyright Royalty Judges shall issue regulations establishing procedures for distributing such funds, on a proportional basis, to copyright owners whose works were included in the secondary transmissions that were the subject of the statutory damages.

(6) Discrimination by a satellite carrier.--Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made

by a non-network station or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the satellite carrier unlawfully discriminates against a distributor.

(7) Geographic limitation on secondary transmissions.--The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.

(8) Service to recreational vehicles and commercial trucks.--

(A) Exemption.--

(i) In general.--For purposes of this subsection, and subject to clauses (ii) and (iii), the term "unserved household" shall include--

(I) recreational vehicles as defined in regulations of the Secretary of Housing and Urban Development under section 3282.8 of title 24, Code of Federal Regulations; and

(II) commercial trucks that qualify as commercial motor vehicles under regulations of the Secretary of Transportation under section 383.5 of title 49, Code of Federal Regulations.

(ii) Limitation.--Clause (i) shall apply only to a recreational vehicle or commercial truck if any satellite carrier that proposes to make a secondary transmission of a network station to the operator of such a recreational vehicle or commercial truck complies with the documentation requirements under subparagraphs (B) and (C).

(iii) Exclusion.--For purposes of this subparagraph, the terms "recreational vehicle" and "commercial truck" shall not include any fixed dwelling, whether a mobile home or otherwise.

(B) Documentation requirements.--A recreational vehicle or commercial truck shall be deemed to be an unserved household beginning 10 days after the relevant satellite carrier provides to the network that owns or is affiliated with the network station that will be secondarily transmitted to the recreational vehicle or commercial truck the following documents:

(i) Declaration.--A signed declaration by the operator of the recreational vehicle or commercial truck that the satellite dish is permanently attached to the recreational vehicle or commercial truck, and will not be used to receive satellite programming at any fixed dwelling.

(ii) Registration.--In the case of a recreational vehicle, a copy of the current State vehicle registration for the recreational vehicle.

(iii) Registration and license.--In the case of a commercial truck, a copy of--

(I) the current State vehicle registration for the truck; and

(II) a copy of a valid, current commercial driver's license, as defined in regulations of the Secretary of Transportation under section 383 of title 49, Code of Federal Regulations, issued to the operator.

(C) Updated documentation requirements.--If a satellite carrier wishes to continue to make secondary transmissions to a recreational vehicle or commercial truck for more than a 2-year period, that carrier shall provide each network, upon request, with updated documentation in the form described under subparagraph (B) during the 90 days before expiration of that 2-year period.

(9) Statutory license contingent on compliance with FCC rules and remedial steps.--Notwithstanding any other provision of this section, the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission embodying a performance or display of a work made by a broadcast station licensed by the Federal Communications Commission is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if, at the time of such transmission, the satellite carrier is not in compliance with the rules, regulations, and authorizations of the Federal Communications Commission concerning the carriage of television broadcast station signals.

(10) Restricted transmission of out-of-state distant network signals into certain markets.--

(A) Out-of-state network affiliates.--Notwithstanding any other provision of this title, the statutory license in this subsection and subsection (b) shall not apply to any secondary transmission of the primary transmission of a network station located outside of the State of Alaska to any subscriber in that State to whom the secondary transmission of the primary transmission of a television station located in that State is made available by the satellite carrier pursuant to section 122.

(B) Exception.--The limitation in subparagraph (A) shall not apply to the secondary transmission of the primary transmission of a digital signal of a network station located outside of the State of Alaska if at the time that the secondary transmission is made, no television station licensed to a community in the State and affiliated with the same network makes primary transmissions of a digital signal.

[(11) Redesignated (8)]

[(12) Redesignated (9)]

[(13) Repealed. Pub.L. 116-94, Div. P, Title XI, § 1102(a)(1)(B), Dec. 20, 2019, 133 Stat. 3202]

[(14) Redesignated (10)]

(b) Deposit of statements and fees; verification procedures.--

(1) Deposits with the Register of Copyrights.--A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation--

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all non-network stations and network stations whose signals were retransmitted, at any time during that period, to subscribers as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such retransmissions, and such other data as the Register of Copyrights may from time to time prescribe by regulation;

(B) a royalty fee payable to copyright owners pursuant to paragraph (4) for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of a primary stream or multicast stream of each non-network station or network station during each calendar year month by the appropriate rate in effect under this subsection; and

(C) a filing fee, as determined by the Register of Copyrights pursuant to section 708(a).

(2) Verification of accounts and fee payments.--The Register of Copyrights shall issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under this subsection.

(3) Investment of fees.--The Register of Copyrights shall receive all fees (including the filing fee specified in paragraph (1) (C)) deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (5)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Librarian of Congress as provided by this title.

(4) Persons to whom fees are distributed.--The royalty fees deposited under paragraph (3) shall, in accordance with the procedures provided by paragraph (5), be distributed to those copyright owners whose works were included in a secondary transmission made by a satellite carrier during the applicable 6 month accounting period and who file a claim with the Copyright Royalty Judges under paragraph (5).

(5) Procedures for distribution.--The royalty fees deposited under paragraph (3) shall be distributed in accordance with the following procedures:

(A) Filing of claims for fees.--During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions shall file a claim with the Copyright Royalty Judges, in accordance with requirements that the Copyright Royalty Judges shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) Determination of controversy; distributions.--After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Copyright Royalty Judges shall authorize the Librarian of

Congress to proceed to distribute such fees to the copyright owners entitled to receive them, or to their designated agents, subject to the deduction of reasonable administrative costs under this section. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(C) Withholding of fees during controversy.--During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall have the discretion to authorize the Librarian of Congress to proceed to distribute any amounts that are not in controversy.

(c) Adjustment of royalty fees.--

(1) Applicability and determination of royalty fees for signals.--

(A) Initial fee.--The appropriate fee for purposes of determining the royalty fee under subsection (b)(1)(B) for the secondary transmission of the primary transmissions of network stations and non-network stations shall be the appropriate fee set forth in part 258 of title 37, Code of Federal Regulations, as in effect on July 1, 2009, as modified under this paragraph.

(B) Fee set by voluntary negotiation.--On or before June 1, 2010, the Copyright Royalty Judges shall cause to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers for the secondary transmission of the primary transmissions of network stations and non-network stations under subsection (b)(1)(B).

(C) Negotiations.--Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or agreements for the payment of royalty fees. Any such satellite carriers, distributors and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Copyright Royalty Judges shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the cost thereof.

(D) Agreements binding on parties; filing of agreements; public notice.--

(i) Voluntary agreements; filing.--Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

(ii) Procedure for adoption of fees.--

(I) Publication of notice.--Within 10 days after publication in the Federal Register of a notice of the initiation of voluntary negotiation proceedings, parties who have reached a voluntary agreement may request that the royalty fees

in that agreement be applied to all satellite carriers, distributors, and copyright owners without convening a proceeding under subparagraph (F).

(II) Public notice of fees.--Upon receiving a request under subclause (I), the Copyright Royalty Judges shall immediately provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.

(III) Adoption of fees.--The Copyright Royalty Judges shall adopt the royalty fees from the voluntary agreement for all satellite carriers, distributors, and copyright owners without convening the proceeding under subparagraph (F) unless a party with an intent to participate in that proceeding and a significant interest in the outcome of that proceeding objects under subclause (II).

(E) Period agreement is in effect.--The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Royalty Judges in accordance with this paragraph shall become effective on the date specified in the agreement and shall remain in effect in accordance with the terms of the agreement until the subscriber for which the royalty is payable is no longer eligible to receive a secondary transmission pursuant to the license under this section.

(F) Fee set by Copyright Royalty Judges proceeding.--

(i) Notice of initiation of the proceeding.--On or before September 1, 2010, the Copyright Royalty Judges shall cause notice to be published in the Federal Register of the initiation of a proceeding for the purpose of determining the royalty fees to be paid for the secondary transmission of the primary transmissions of network stations and non-network stations under subsection (b)(1)(B) by satellite carriers and distributors--

(I) in the absence of a voluntary agreement filed in accordance with subparagraph (D) that establishes royalty fees to be paid by all satellite carriers and distributors; or

(II) if an objection to the fees from a voluntary agreement submitted for adoption by the Copyright Royalty Judges to apply to all satellite carriers, distributors, and copyright owners is received under subparagraph (D) from a party with an intent to participate in the proceeding and a significant interest in the outcome of that proceeding.

Such proceeding shall be conducted under chapter 8.

(ii) Establishment of royalty fees.--In determining royalty fees under this subparagraph, the Copyright Royalty Judges shall establish fees for the secondary transmissions of the primary transmissions of network stations and non-network stations that most clearly represent the fair market value of secondary transmissions, except that the Copyright Royalty Judges shall adjust royalty fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Royalty Judges in accordance with subparagraph (D). In determining the fair market value, the Judges shall base their decision on economic, competitive, and programming information presented by the parties, including--

(I) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

(II) the economic impact of such fees on copyright owners and satellite carriers; and

(III) the impact on the continued availability of secondary transmissions to the public.

(iii) Effective date for decision of Copyright Royalty Judges.--The obligation to pay the royalty fees established under a determination that is made by the Copyright Royalty Judges in a proceeding under this paragraph shall be effective as of January 1, 2010.

(iv) Persons subject to royalty fees.--The royalty fees referred to in clause (iii) shall be binding on all satellite carriers, distributors and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under subparagraph (D).

(2) Annual royalty fee adjustment.--Effective January 1 of each year, the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary transmissions of network stations and non-network stations shall be adjusted by the Copyright Royalty Judges to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) published by the Secretary of Labor before December 1 of the preceding year. Notification of the adjusted fees shall be published in the Federal Register at least 25 days before January 1.

(d) Definitions. As used in this section--

(1) Distributor.--The term "distributor" means an entity that contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities in accordance with the provisions of this section.

(2) Network station.--The term "network station" means--

(A) a television station licensed by the Federal Communications Commission, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States that offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934);

except that the term does not include the signal of the Alaska Rural Communications Service, or any successor entity to that service.

§ 119. Limitations on exclusive rights: Secondary transmissions of..., 17 USCA § 119

(3) **Primary network station.**--The term "primary network station" means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

(4) **Primary transmission.**--The term "primary transmission" has the meaning given that term in section 111(f) of this title.

(5) **Private home viewing.**--The term "private home viewing" means the viewing, for private use in a household by means of satellite reception equipment that is operated by an individual in that household and that serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

(6) **Satellite carrier.**--The term "satellite carrier" means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47, Code of Federal Regulations, or the Direct Broadcast Satellite Service under part 100 of title 47, Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing pursuant to this section.

(7) **Secondary transmission.**--The term "secondary transmission" has the meaning given that term in section 111(f) of this title.

(8) **Subscriber; subscribe.**--

(A) **Subscriber.**--The term "subscriber" means a person or entity that receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(B) **Subscribe.**--The term "subscribe" means to elect to become a subscriber.

(9) **Non-network station.**--The term "non-network station" means a television station, other than a network station, licensed by the Federal Communications Commission, that is secondarily transmitted by a satellite carrier.

(10) **Unserved household.**--The term "unserved household", with respect to a particular television network, means a household that--

(A) is a subscriber to whom subsection (a)(8) applies; or

(B) is a subscriber located in a short market.

[(C) Repealed. Pub.L. 116-94, Div. P, Title XI, § 1102(a)(3)(A)(ii), Dec. 20, 2019, 133 Stat. 3202]

[(D) Redesignated (A)]

[(E) Repealed. Pub.L. 116-94, Div. P, Title XI, § 1102(a)(3)(A)(ii), Dec. 20, 2019, 133 Stat. 3202]

(11) **Local market.**--The term "local market" has the meaning given such term under section 122(j).

(12) **Commercial establishment.**--The term "commercial establishment"--

(A) means an establishment used for commercial purposes, such as a bar, restaurant, private office, fitness club, oil rig, retail store, bank or other financial institution, supermarket, automobile or boat dealership, or any other establishment with a common business area; and

(B) does not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as a hotel, dormitory, hospital, apartment, condominium, or prison.

(13) **Multicast stream.**--The term "multicast stream" means a digital stream containing programming and program-related material affiliated with a television network, other than the primary stream.

(14) **Primary stream.**--The term "primary stream" means--

(A) the single digital stream of programming as to which a television broadcast station has the right to mandatory carriage with a satellite carrier under the rules of the Federal Communications Commission in effect on July 1, 2009; or

(B) if there is no stream described in subparagraph (A), then either --

(i) the single digital stream of programming associated with the network last transmitted by the station as an analog signal; or

(ii) if there is no stream described in clause (i), then the single digital stream of programming affiliated with the network that, as of July 1, 2009, had been offered by the television broadcast station for the longest period of time.

(15) **Local-into-local service to all DMAs.**--The term "local-into-local service to all DMAs" has the meaning given such term in subsection (f)(7).

(16) **Short market.**--The term "short market" means a local market in which programming of one or more of the four most widely viewed television networks nationwide is not offered on either the primary stream or multicast stream transmitted by any network station in that market or is temporarily or permanently unavailable as a result of an act of god² or other force majeure event beyond the control of the carrier.

(e) Expedited consideration by Justice Department of voluntary agreements to provide satellite secondary transmissions to local markets.--

(1) In general.--In a case in which no satellite carrier makes available, to subscribers located in a local market, as defined in section 122(j)(2), the secondary transmission into that market of a primary transmission of one or more television broadcast stations licensed by the Federal Communications Commission, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission into such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

(2) Definition.--For purposes of this subsection, the term "antitrust laws"--

(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in paragraph (1).

(f) Certain waivers granted to providers of local-into-local service to all DMAs.--

(1) Injunction waiver.--A court that issued an injunction pursuant to subsection (a)(5)(B) before the date of the enactment of this subsection shall waive such injunction if the court recognizes the entity against which the injunction was issued as a qualified carrier.

(2) Limited temporary waiver.--

(A) In general.--Upon a request made by a satellite carrier, a court that issued an injunction against such carrier under subsection (a)(5)(B) before the date of the enactment of this subsection shall waive such injunction with respect to the statutory license provided under subsection (a)(2) to the extent necessary to allow such carrier to make secondary transmissions of primary transmissions made by a network station to unserved households located in short markets in which such carrier was not providing local service pursuant to the license under section 122 as of December 31, 2009.

(B) Expiration of temporary waiver.--A temporary waiver of an injunction under subparagraph (A) shall expire after the end of the 120-day period beginning on the date such temporary waiver is issued unless extended for good cause by the court making the temporary waiver.

(C) Failure to provide local-into-local service to all DMAs.--

(i) Failure to act reasonably and in good faith.--If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to act reasonably or has failed to make a good faith effort to provide local-into-local service to all DMAs, such failure--

(I) is actionable as an act of infringement under section 501 and the court may in its discretion impose the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

(II) shall result in the termination of the waiver issued under subparagraph (A).

(ii) Failure to provide local-into-local service.--If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to provide local-into-local service to all DMAs, but determines that the carrier acted reasonably and in good faith, the court may in its discretion impose financial penalties that reflect--

(I) the degree of control the carrier had over the circumstances that resulted in the failure;

(II) the quality of the carrier's efforts to remedy the failure; and

(III) the severity and duration of any service interruption.

(D) Single temporary waiver available.--An entity may only receive one temporary waiver under this paragraph.

(E) Short market defined.--For purposes of this paragraph, the term "short market" means a local market in which programming of one or more of the four most widely viewed television networks nationwide as measured on the date of the enactment of this subsection is not offered on the primary stream transmitted by any local television broadcast station.

(3) Establishment of qualified carrier recognition.--

(A) Statement of eligibility.--An entity seeking to be recognized as a qualified carrier under this subsection shall file a statement of eligibility with the court that imposed the injunction. A statement of eligibility must include--

(i) an affidavit that the entity is providing local-into-local service to all DMAs;

(ii) a motion for a waiver of the injunction;

(iii) a motion that the court appoint a special master under Rule 53 of the Federal Rules of Civil Procedure;

(iv) an agreement by the carrier to pay all expenses incurred by the special master under paragraph (4)(B)(ii); and

(v) a certification issued pursuant to section 342(a) of Communications Act of 1934.

(B) Grant of recognition as a qualified carrier.--Upon receipt of a statement of eligibility, the court shall recognize the entity as a qualified carrier and issue the waiver under paragraph (1). Upon motion pursuant to subparagraph (A)(iii), the court shall appoint a special master to conduct the examination and provide a report to the court as provided in paragraph (4)(B).

(C) Voluntary termination.--At any time, an entity recognized as a qualified carrier may file a statement of voluntary termination with the court certifying that it no longer wishes to be recognized as a qualified carrier. Upon receipt of such statement, the court shall reinstate the injunction waived under paragraph (1).

(D) Loss of recognition prevents future recognition.--No entity may be recognized as a qualified carrier if such entity had previously been recognized as a qualified carrier and subsequently lost such recognition or voluntarily terminated such recognition under subparagraph (C).

(4) Qualified carrier obligations and compliance.--

(A) Continuing obligations.--

(i) In general.--An entity recognized as a qualified carrier shall continue to provide local-into-local service to all DMAs.

(ii) Cooperation with compliance examination.--An entity recognized as a qualified carrier shall fully cooperate with the special master appointed by the court under paragraph (3)(B) in an examination set forth in subparagraph (B).

(B) Qualified carrier compliance examination.--

(i) Examination and report.--A special master appointed by the court under paragraph (3)(B) shall conduct an examination of, and file a report on, the qualified carrier's compliance with the royalty payment and household eligibility requirements of the license under this section. The report shall address the qualified carrier's conduct during the period beginning on the date on which the qualified carrier is recognized as such under paragraph (3)(B) and ending on April 30, 2012.

(ii) Records of qualified carrier.--Beginning on the date that is one year after the date on which the qualified carrier is recognized as such under paragraph (3)(B), but not later than December 1, 2011, the qualified carrier shall provide the special master with all records that the special master considers to be directly pertinent to the following requirements under this section:

(I) Proper calculation and payment of royalties under the statutory license under this section.

(II) Provision of service under this license to eligible subscribers only.

(iii) **Submission of report.**--The special master shall file the report required by clause (i) not later than July 24, 2012, with the court referred to in paragraph (1) that issued the injunction, and the court shall transmit a copy of the report to the Register of Copyrights, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives, and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate.

(iv) **Evidence of infringement.**--The special master shall include in the report a statement of whether the examination by the special master indicated that there is substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement.

(v) **Subsequent examination.**--If the special master's report includes a statement that its examination indicated the existence of substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement, the special master shall, not later than 6 months after the report under clause (i) is filed, initiate another examination of the qualified carrier's compliance with the royalty payment and household eligibility requirements of the license under this section since the last report was filed under clause (iii). The special master shall file a report on the results of the examination conducted under this clause with the court referred to in paragraph (1) that issued the injunction, and the court shall transmit a copy to the Register of Copyrights, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives, and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate. The report shall include a statement described in clause (iv).

(vi) **Compliance.**--Upon motion filed by an aggrieved copyright owner, the court recognizing an entity as a qualified carrier shall terminate such designation upon finding that the entity has failed to cooperate with an examination required by this subparagraph.

(vii) **Oversight.**--During the period of time that the special master is conducting an examination under this subparagraph, the Comptroller General shall monitor the degree to which the entity seeking to be recognized or recognized as a qualified carrier under paragraph (3) is complying with the special master's examination. The qualified carrier shall make available to the Comptroller General all records and individuals that the Comptroller General considers necessary to meet the Comptroller General's obligations under this clause. The Comptroller General shall report the results of the monitoring required by this clause to the Committees on the Judiciary and on Energy and Commerce of the House of Representatives and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate at intervals of not less than six months during such period.

(C) **Affirmation.**--A qualified carrier shall file an affidavit with the district court and the Register of Copyrights 30 months after such status was granted stating that, to the best of the affiant's knowledge, it is in compliance with the requirements for a qualified carrier. The qualified carrier shall attach to its affidavit copies of all reports or orders issued by the court, the special master, and the Comptroller General.

(D) **Compliance determination.**-- Upon the motion of an aggrieved television broadcast station, the court recognizing an entity as a qualified carrier may make a determination of whether the entity is providing local-into-local service to all DMAs.

(E) Pleading requirement.--In any motion brought under subparagraph (D), the party making such motion shall specify one or more designated market areas (as such term is defined in section 122(j)(2)(C)) for which the failure to provide service is being alleged, and, for each such designated market area, shall plead with particularity the circumstances of the alleged failure.

(F) Burden of proof.--In any proceeding to make a determination under subparagraph (D), and with respect to a designated market area for which failure to provide service is alleged, the entity recognized as a qualified carrier shall have the burden of proving that the entity provided local-into-local service with a good quality satellite signal to at least 90 percent of the households in such designated market area (based on the most recent census data released by the United States Census Bureau) at the time and place alleged.

(5) Failure to provide service.--

(A) Penalties.--If the court recognizing an entity as a qualified carrier finds that such entity has willfully failed to provide local-into-local service to all DMAs, such finding shall result in the loss of recognition of the entity as a qualified carrier and the termination of the waiver provided under paragraph (1), and the court may, in its discretion--

(i) treat such failure as an act of infringement under section 501, and subject such infringement to the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

(ii) impose a fine of not less than \$250,000 and not more than \$5,000,000.

(B) Exception for nonwillful violation.--If the court determines that the failure to provide local-into-local service to all DMAs is nonwillful, the court may in its discretion impose financial penalties for noncompliance that reflect--

(i) the degree of control the entity had over the circumstances that resulted in the failure;

(ii) the quality of the entity's efforts to remedy the failure and restore service; and

(iii) the severity and duration of any service interruption.

(6) Penalties for violations of license.--A court that finds, under subsection (a)(6)(A), that an entity recognized as a qualified carrier has willfully made a secondary transmission of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section shall reinstate the injunction waived under paragraph (1), and the court may order statutory damages of not more than \$2,500,000.

(7) Local-into-local service to all DMAs defined.--For purposes of this subsection:

(A) In general.--An entity provides "local-into-local service to all DMAs" if the entity provides local service in all designated market areas (as such term is defined in section 122(j)(2)(C)) pursuant to the license under section 122, except

for designated market areas where the entity is temporarily or permanently unable to provide local service as a result of an act of god or other force majeure event beyond the control of the entity.

(B) Household coverage.--For purposes of subparagraph (A), an entity that makes available local-into-local service with a good quality satellite signal to at least 90 percent of the households in a designated market area based on the most recent census data released by the United States Census Bureau shall be considered to be providing local service to such designated market area.

(C) Good quality satellite signal defined.--The term "good quality satellite signal" has the meaning given such term under section 342(e)(2) of Communications³ Act of 1934.

[(g) Redesignated (f)]

[(h) Repealed. Pub.L. 116-94, Div. P, Title XI, § 1102(a)(4), Dec. 20, 2019, 133 Stat. 3203]

CREDIT(S)

(Added Pub.L. 100-667, Title II, § 202(2), Nov. 16, 1988, 102 Stat. 3949; amended Pub.L. 103-198, § 5, Dec. 17, 1993, 107 Stat. 2310; Pub.L. 103-369, § 2, Oct. 18, 1994, 108 Stat. 3477; Pub.L. 104-39, § 5(c), Nov. 1, 1995, 109 Stat. 348; Pub.L. 105-80, §§ 1, 12(a)(8), Nov. 13, 1997, 111 Stat. 1529, 1535; Pub.L. 106-44, § 1(g)(4), Aug. 5, 1999, 113 Stat. 222; Pub.L. 106-113, Div. B, § 1000(a)(9) [Title I, §§ 1004 to 1007, 1008(b), 1011(h)(2), (c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-527 to 1501A-531, 1501A-537, 1501A-543, 1501A-544; Pub.L. 107-273, Div. C, Title III, §§ 13209, 13210(1), (8), Nov. 2, 2002, 116 Stat. 1908, 1909; Pub.L. 108-419, § 5(g), (h), Nov. 30, 2004, 118 Stat. 2367; Pub.L. 108-447, Div. J, Title IX [Title I, §§ 101(b) to 105, 107(a), 108, 111(a)], Dec. 8, 2004, 118 Stat. 3394 to 3408; Pub.L. 109-303, § 4(e), (g), Oct. 6, 2006, 120 Stat. 1482, 1483; Pub.L. 110-403, Title II, § 209(a)(4), Oct. 13, 2008, 122 Stat. 4264; Pub.L. 111-118, Div. B, § 1003(a)(1), Dec. 19, 2009, 123 Stat. 3469; Pub.L. 111-144, § 10(a)(1), Mar. 2, 2010, 124 Stat. 47; Pub.L. 111-151, § 2(a)(1), Mar. 26, 2010, 124 Stat. 1027; Pub.L. 111-157, § 9(a)(1), Apr. 15, 2010, 124 Stat. 1119; Pub.L. 111-175, Title I, §§ 102(a)(1), (b) to (k), 105, May 27, 2010, 124 Stat. 1219 to 1226, 1239; Pub.L. 111-295, § 6(c), Dec. 9, 2010, 124 Stat. 3181; Pub.L. 113-200, Title II, §§ 201(2), 202(a), Dec. 4, 2014, 128 Stat. 2066; Pub.L. 116-94, Div. P, Title XI, § 1102(a), (c)(1), Dec. 20, 2019, 133 Stat. 3201, 3203.)

Notes of Decisions (18)

Footnotes

- 1 So in original. Probably means subpar. (B)(i).
- 2 So in original.
- 3 So in original. Probably should be preceded by "the".

17 U.S.C.A. § 119, 17 USCA § 119

Current through P.L. 118-41. Some statute sections may be more current, see credits for details.

End of Document

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Exhibit 16

From: Ed deVries[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C0D7DE4E957B477E93098569E8483709-EDEVRIES]
Sent: Mon 7/16/2018 4:57:33 PM (UTC)
To: Brianna Blauwkamp[Brianna.Blauwkamp@huntington.com]
Subject: RE: Short Term Rentals

If it were a zoning ordinance change, it would be grandfathered. If other than zoning, such as our B&B, it would then take effect regardless. So far there has not been a desire to regulate rentals, realizing we have a lot of them on Lake Michigan, but with more and more publicity I can't say that won't change.



Ed de Vries
Community Development Director
Phone: 616.738.4238
Email: edevries@parktownship.org

From: Brianna Blauwkamp [mailto:Brianna.Blauwkamp@huntington.com]
Sent: Monday, July 16, 2018 12:52 PM
To: Ed deVries <edevries@parktownship.org>
Subject: RE: Short Term Rentals

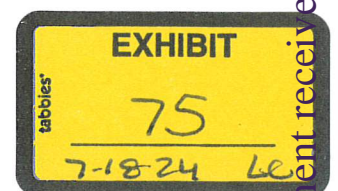
Thank you Ed. Should something change in the future, would I be grandfathered in? For instance if I bought a home purely for investment and rented it out on AirBNB and next year the law in Park Township changed, I wouldn't want to be without that income.

From: Ed deVries [mailto:edevries@parktownship.org]
Sent: Monday, July 16, 2018 12:50 PM
To: Brianna Blauwkamp
Subject: RE: Short Term Rentals

Huntington Security Checkpoint: External email. Please make sure you trust this source before clicking links or opening attachments.

Brianna,

We do not currently regulate rentals, either long term or short term.



Document received by the MI Ottawa 20th Circuit Court.



Ed de Vries
Community Development Director
Phone: 616.738.4238
Email: edevries@parktownship.org

From: Brianna Blauwkamp [<mailto:Brianna.Blauwkamp@huntington.com>]
Sent: Friday, July 13, 2018 10:53 AM
To: Ed deVries <edevries@parktownship.org>
Subject: Short Term Rentals

Hi Ed,

I pulled up the zoning map for Park Township, what zones allow for short term rentals such as Vacation Homes/rentals on a weekly basis? I don't see anything specifically stating short term rentals are not allowed.

I'm looking at buying a home that is zoned R-3, and want to be sure I won't be in any violation if I rent this out via AirBNB on a short term basis.

Thank you,

Brianna Blauwkamp

Branch Manager, AVP
NMLS ID: 850679
Phone: 616-748-6334

The Huntington National Bank
101 E Main Street
MI101
Zeeland, MI 49464
huntington.com



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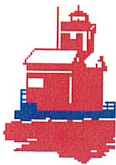
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Exhibit 17

From: Ed deVries[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C0D7DE4E957B477E93098569E8483709-EDEVRIES]
Sent: Thur 7/30/2015 4:39:57 PM (UTC)
To: Steffany Dunker[steffanydunker@gmail.com]
Subject: RE: High-End Homes: Ultra-modern house on Lake Michigan focuses on the view | MLive.com

Steffany,

Yes we have been made aware of it. If we can't show they are serving food, but merely renting out rooms, there is not a violation. **There is not a prohibition on renting out rooms**, and this does occur elsewhere as well.



Ed de Vries
Zoning Administrator &
Code Compliance Officer
Phone: 616-738-4238
Email: edevries@parktownship.org

From: Steffany Dunker [mailto:steffanydunker@gmail.com]
Sent: Thursday, July 30, 2015 11:37 AM
To: Ed deVries <edevries@parktownship.org>
Subject: Fwd: High-End Homes: Ultra-modern house on Lake Michigan focuses on the view | MLive.com

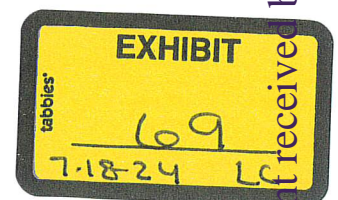
Mr. deVries,

I am sure that you have already seen the article linked below. The article mentions that the Mannes' are "renting guest suites" (operating a bed and breakfast or hotel) despite being denied the right to do so by the Township. The Mannes' seem to have deliberately disregarded the Planning Commission's multiple denials for a bed and breakfast license and are operating a commercial establishment in an R-2 District.

http://www.mlive.com/business/west-michigan/index.ssf/2015/07/high-end_homes_ultra-modern_ho.html

I trust that the Township is taking the appropriate action to ensure this activity ceases. If you have any questions, please feel free to contact me.

Sincerely,
Steffany Dunker



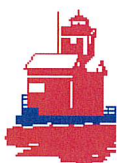
Document received by the MI Ottawa 20th Circuit Court.

Exhibit 18

From: Ed deVries [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C0D7DE4E957B477E93098569E8483709-EDEVRIES]
Sent: Wed 4/6/2016 8:53:09 PM (UTC)
To: Jim Kiewel [jim@fairlypainless.com]
Subject: FW: Follow Up

Jim,

I do not see any violation of current ordinances as we do not address rental properties. There are ordinances and laws pertaining to noise and littering which are best addressed by contacting law enforcement when they occur.



Ed de Vries
Zoning Administrator &
Code Compliance Officer
Phone: 616-738-4238
Email: edevries@parktownship.org

From: Jerry Hunsburger
Sent: Tuesday, April 05, 2016 7:44 PM
To: Jim Kiewel <jim@fairlypainless.com>
Cc: Ed deVries <edevries@parktownship.org>; Jerry Felix <jfelix@parktownship.org>
Subject: Re: Follow Up

Jim,

Thanks for the update on what happened.

To be clear, when I talked to you I mentioned that we put a moratorium on our Planned Unit Development (PUD) ordinance. That would have no impact on the concern you detail in your email.

I will pass on your message to our code enforcement staff. Ed deVries from our staff can call to confirm if this situation is in violation of any current local ordinance. I suspect it is not.

I will have Ed deVries contact you at the number I have for you which is (616) 516-0389.

Best,

Jerry Hunsburger, Supervisor
Park Township

Jerry Hunsburger, Supervisor
Park Township

On Apr 5, 2016, at 4:13 PM, Jim Kiewel <jim@fairlypainless.com> wrote:

Dear Jerry,



This is to follow up on our conversation regarding the U.S. Marshall-led raid on the rental property at 2008 Scotch Drive. Though I have neither seen nor heard any mention of it in the media, the neighborhood scuttlebutt identifies a person of interest and attributes a substantial rap sheet to him, including felony arrests and/or convictions on drug and prostitution charges.

It is my present understanding the raid was conducted upon probable cause and that the warrant that enabled the owners to reenter the house followed by several days following the event. Thereafter it did take three days for them to load three vehicles and a trailer with bags of contents presumably associated with the alleged miscreant's activities while in residence.

During the period in question (February and March) I do not recall seeing the occupant at all, let alone visitors. However, some of my neighbors say they felt something was going on there — lights on and cars stopping buy at late hours of the night etc..

The property in question appears to have been purchased for rental purposes and advertised on Air B&B to that end. It was regularly occupied on a short-term basis throughout the past year. However, it is said that the rental in question in question was booked, not through Air B&B, but a "local" agent.

When we talked, you made the very important point that people by the lakeshore have long rented out their houses and or spare rooms when on vacation, largely without incident. But, as we have discussed, occasional nuisances such as noise and littering common with ill-mannered renters pale beside the potential downside of harboring a quiet felon.

You also mentioned that the Township Board has initiated a moratorium on zoning issues while it reviews the present outdated, convoluted and sometimes self-contradictory code. I hope this exercise will include consideration of future problems such as that above arising from the proliferation of non-professional rentals brought about by Air B&B and others.

Specifically, I would suggest adoption of some mandatory rental agreement applying to all occupants other than immediate family members that, in addition to holding the renter responsible to the owner, holds the owner and his/her agents responsible to the community for problems arising from lack of due diligence in screening applicants.

I would very much like to hear your thoughts on the issue. In the meantime, continued thanks for the approachability, diligence and common sense you bring to your office.

-- JK

Exhibit 19



Park Township

52 S. 152nd Avenue, Holland, Michigan 49424-6201
Phone (616) 399-4520 • Fax: (616) 399-8540
Website: www.parktownship.org • E-mail: Info@parktownship.org

07/23/2018

Reuter Rentals LLC
1371 Edgewood Dr
Holland MI 49424

Re: 336 Marquette Ave. Parcel # 70-15-26-455-031

Incident # E18-0118

Dear Reuter Rentals LLC,

We have received calls regarding the short term rental situation at the property at 336 Marquette. One of the complaints was that there seemed to be a large number of persons staying there. This is zoned as a single family district, so the house should be rented to, and the renters advised that one family may occupy the house. Park Township defines family as "One or more persons occupying a single dwelling unit and using common cooking facilities; provided, however, that unless members are related by blood, marriage or adoption, no such family shall contain more than five persons."

Park Township does not currently regulate rental properties, but the question comes up regularly, especially when complaints are received. In addition there has been one Court ruling (not in Ottawa County) that stated short term rentals are a business use of property in a residential area.

I am asking that you be mindful of this and take whatever steps you can to minimize problems so that this does not become an issue.

Thank you for your cooperation in this matter.

Sincerely,

Ed de Vries
Community Development Director
Phone: (616) 738-4238
Email: edevries@parktownship.org

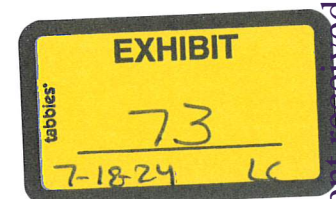


Exhibit 20

From: Ed deVries [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C0D7DE4E957B477E93098569E8483709-EDEVRIES]
Sent: Mon 7/21/2014 7:56:56 PM (UTC)
To: schwarz.jacob@gene.com [schwarz.jacob@gene.com]
Subject: FW: Rental query

Jacob,

We do not license, regulate, or inspect rental housing. Thanks for checking.

Ed deVries

-----Original Message-----

From: Julie Northrup
Sent: Monday, July 21, 2014 8:53 AM
To: Ed deVries
Subject: FW: Rental query

-----Original Message-----

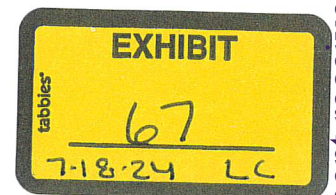
From: Jacob Schwarz [mailto:schwarz.jacob@gene.com]
Sent: Sunday, July 20, 2014 4:53 PM
To: Julie Northrup
Subject: Rental query

Hi Folks,

We recently purchased a single family home in Park Township and are planning to rent it out. Are there any requirements by the Township to document this arrangement?

Many thanks for your time and very best wishes.

Jacob Schwarz
San Ramon, CA
650-291-4737



STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
corporation,

Defendant.

Kyle P. Konwinski (P76257)
Deion A. Kathawa (P84863)
VARNUM LLP
Attorneys for Plaintiff
P.O. Box 352
Grand Rapids, MI 49501
(616) 336-6000
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Michelle F. Kitch (P35498)
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BLOOM SLUGGETT, PC
Co-Counsel for Defendant
161 Ottawa Ave. NW, Suite 400
Grand Rapids, MI 49503
(616) 965-9340
michelle@bloomsluggett.com
cliff@bloomsluggett.com

EXHIBITS 21 TO 30 FOR
PLAINTIFF PARK TOWNSHIP NEIGHBORS' BRIEF IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

Exhibit 21

From: Ed deVries[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C0D7DE4E957B477E93098569E8483709-EDEVRIES]
Sent: Wed 6/3/2015 1:05:22 PM (UTC)
To: Paul Lane[lanepa@gvsu.edu]
Subject: RE: E15-0071

Paul,

Thanks for the update.

There are not any specific regulations pertaining to rentals, either long term or nightly.



Ed de Vries
Zoning Administrator &
Code Compliance Officer
Phone: 616-738-4238
Email: edevries@parktownship.org

From: Paul Lane [mailto:lanepa@gvsu.edu]
Sent: Tuesday, June 02, 2015 2:26 PM
To: Ed deVries
Subject: FW: E15-0071

Ed,

As I was washing the Jeep last night, I double checked its registration and it is fully registered until August when I will renew it. So I agree it became inoperable while I was sick which is why the caregiver tried to prop the hood open and charge it as there was a buyer for it. My health just returned and now that I am full swing my plan when I return is to either have someone come and start it, put in the garage to work on it, or to have it hauled to a place where they can work on it.

So it is fully registered and now cleaned up (I agree it was dirty and the caregiver had left a piece of ugly foam in the hood to keep it open) Now I will work on the operation part when I get back after the 15th.

Hope that helps.

By the way could you send me any Park Township regulations on nightly rentals?

Thanks for all you do.

Dr. L
401 Crest Drive
Holland, Michigan

Paul M Lane
Professor of Marketing
Seidman College of Business
Grand Valley State University
Professor Emeritus
UNAN Managua



Document received by the MI Ottawa 20th Circuit Court.

Director of Applied Global Innovation Initiative
Suite 124
@ GVSU Holland Meijer Campus
616-399-9593

Exhibit 22

From: Ed deVries[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C0D7DE4E957B477E93098569E8483709-EDEVRIES]
Sent: Mon 3/27/2017 12:20:54 PM (UTC)
To: Jerry Hunsburger[jhunsburger@parktownship.org]; Howard Fink[hfink@parktownship.org]
Subject: RE: Short-term rentals

Jerry,

We do not have rental regulations or registration. Holland City and Holland Township do, but you may want to consider the time and expense needed to begin that type of program. Usually people are concerned that renters are loud or leave trash around. We have ordinances to cover those type of violations. In truth most of the real concern is "outsiders" living near us.



Ed de Vries
Community Development Director
Phone: 616.738.4238
Email: edevries@parktownship.org

From: Jerry Hunsburger
Sent: Sunday, March 26, 2017 5:53 AM
To: Howard Fink <hfink@parktownship.org>; Ed deVries <edevries@parktownship.org>
Subject: Short-term rentals

Howard and Ed,

This article will likely bring some of our residents out regarding this issue. I have heard from maybe 4 or 5 people on this but in some cases they were very concerned.

Do we have any wording regulating short-term rentals now in our Ordinances?

Jerry

Follow the link below to view the article.
hollandsentinel.mi.newsmemory.com/publink.php?shareid=1d714c4f4

Gerald (Jerry)Hunsburger, Supervisor
Park Township
Office phone (616) 738-4232



Document received by the MI Ottawa 20th Circuit Court.

Exhibit 23

From: Ed deVries[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C0D7DE4E957B477E93098569E8483709-EDEVRIES]
Sent: Wed 8/23/2017 3:46:13 PM (UTC)
To: Rachel Nykamp[raleigh84@hotmail.com]
Subject: RE: Rentals in single family residences

Rachel,

No apologies necessary. The next Board meeting is September 14 at 6:30 p.m. The Board meets on the 2nd Thursday of the month.



Ed de Vries
Community Development Director
Phone: 616.738.4238
Email: edevries@parktownship.org

From: Rachel Nykamp [mailto:raleigh84@hotmail.com]
Sent: Saturday, August 19, 2017 6:06 PM
To: Ed deVries <edevries@parktownship.org>
Subject: Re: Rentals in single family residences

Thank you for the response Ed. I apologize for the frustration in my earlier email, I was extremely tired and heading to work. I'm at my wits end with these rentals. We endure long cold winter months with the reward of these precious summer days. These homes with the constant traffic and parties are pushing over the limit of my kindness. The address of this particular one is 98 Algonquin, which I see is owned by an LLC out of Florida. And this is why we have the situation we do now. We want families as neighbors- not motels. When is the next board meeting? Some neighbors and I would like to speak on this issue and the misuse of properties zoned single family residential. I've been a life long Park Township resident. My husband and I are considering selling over this. I don't want to.

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From: Ed deVries <edevries@parktownship.org>
Sent: Friday, August 18, 2017 5:30:15 PM
To: Rachel Nykamp
Subject: RE: Rentals in single family residences

Rachel,

Park Township does not regulate rental properties as you are aware. There are other ordinances in place to regulate behavior that is disorderly. After speaking to them once and getting the reply you did, it would have been appropriate to contact law enforcement. I should also point out that Park

Township does not get increased taxes on rental property, all the non-homestead tax goes to the State for education.

If you can give the address of the offending property I can send a letter to the owner advising them of the issues.



Ed de Vries
Community Development Director
Phone: 616.738.4238
Email: edevries@parktownship.org

From: Rachel Nykamp [<mailto:raleigh84@hotmail.com>]

Sent: Friday, August 18, 2017 6:44 AM

To: Ed deVries <edevries@parktownship.org>

Subject: Rentals in single family residences

Good Morning Ed,

I was given your name as a person to contact some time ago about the issue of the ever increasing weekly (or less) rentals. I live on Cheyenne Ave. and have for several years now. I chose this neighborhood to raise my children because of its safety and abundance of children and families. When we first moved here there was one rental on the street, even the one has been an added safety risk and disturbed our streets peace. This "residence" often has upward of 7 cars in the driveway, rotating weekly. One week this past year there were 15 extra cars. Do you realize what an increase in traffic flow that causes a single block street? It is unacceptable. Now there are 3 rentals on our block alone. 2 are owned by the same people and have very little upkeep and no one to be sure renters are being respectful of the neighborhood, as the owners live hours away. The last straw for me was last night though. We have a new rental adjacent to our back yard. The BVM rental site says this house is for 7 people, however last night, multiple families were there having a loud party with a fire and music at 2:00am. I am a teacher at a charter school, we are in session, I work today. I walked to the corner of my yard 2 times to ask them to be respectful of neighbors or I'd call in a noise complaint. They yelled at me and threatened to call the police on me for trespassing- I was in my own yard. This is just too much. You need to be protecting the peace of the residences here. I know you get more tax money from nonresidential properties, but you are allowing the nature of Park Township to be destroyed. The larger homeowner associations have been able to prevent this in their areas, lucky them. Those of us not in an association need the township to step it up and protect our neighborhoods. We need to act now, before the state passes legislation taking local rights to prevent this away. It is not just me, I know for a fact my neighbors the Butts and Geerlings are very upset as well. We have discussed seeking legal help, but would like the township to step in and do right by its citizens. Now, I need to get my sleep deprived self off to work. Please address this. I'm respectfully hoping you take this seriously.

Thank you,
Rachel Nykamp-Warren

(616)994-5699

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Exhibit 24

BLACK'S LAW DICTIONARY®

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

SIXTH EDITION

BY

THE PUBLISHER'S EDITORIAL STAFF

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Law School, Boston, MA

MARTINA N. ALIBRANDI

Certified Public Accountant, Bolton, MA

ST. PAUL, MINN.
WEST PUBLISHING CO.
1990

Emma Posillico 7/1/2024

Exhibit

52

ESPIONAGE ACT

Espionage Act. Federal law which punishes espionage, spying, and related crimes. 18 U.S.C.A. § 793 *et seq.*

Esplees /əsplyz/. An old term for the products which the ground or land yields; as the hay of the meadows, the herbage of the pasture, corn of arable fields, rent and services, etc. The word has been anciently applied to the land itself.

Espousals /əspəwzəlz/. A mutual promise between a man and a woman to marry each other at some other time. It differs from a marriage, because then the contract is completed.

Espurio /əspuriyow/. In Spanish law, a spurious child; one begotten on a woman who has promiscuous intercourse with many men.

Esq. Abbreviation for Esquire.

Esquire /eskway(ə)r/askway(ə)r/. In English law, a title of dignity next above gentleman, and below knight. Also a title of office given to sheriffs, serjeants, and barristers at law, justices of the peace, and others.

In United States, title commonly appended after name of attorney; e.g. John J. Jones, Esquire.

Essence. That which is indispensable. The gist or substance of any act; the vital constituent of a thing; that without which a thing cannot be itself. *Norman v. Department of Labor and Industries*, 10 Wash.2d 180, 116 P.2d 360, 362.

Essence of the contract. Any condition or stipulation in a contract which is mutually understood and agreed by the parties to be of such vital importance that a sufficient performance of the contract cannot be had without exact compliance with it is said to be "of the essence of the contract." See also *Basis of bargain*.

Essence test. Under this test arbitrator's interpretation of collective bargaining agreement must be upheld if it can in any rational way be derived from the agreement, viewed in light of its language, its context, and any other indicia of the parties' intention. *Carmichaels Area School Dist. v. Carmichaels Area Ed. Ass'n*, 37 Pa.Cmwith. 141, 389 A.2d 1203, 1205.

Essendi quietum de tolonio /əsénday kwiyiytam diy talówniyow/. A writ to be quit of toll; it lies for citizens and burgesses of any city or town who, by charter or prescription, ought to be exempted from toll, where the same is exacted of them.

Essential. Indispensably necessary; important in the highest degree; requisite. That which is required for the continued existence of a thing.

Essential governmental duties. Those duties which framers of Constitution intended each member of union would assume in functioning under form of government guaranteed by Constitution. *Commissioner of Internal Revenue v. Stilwell*, C.C.A.7, 101 F.2d 588, 591.

Essoin, v. /əsóyn/. In old English practice, to present or offer an excuse for not appearing in court on an appointed day in obedience to a summons; to cast an essoin.

This was anciently done by a person whom the party sent for that purpose, called an "essoiner."

Essoin, n. /əsóyn/. In old English law, an excuse for not appearing in court at the return of the process. Presentation of such excuse. Essoin was not now allowed at all in personal actions. 3 Bl.Comm. 278, note.

Essoin day /əsóyn dèy/. In England, formerly the first general return-day of the term, on which the courts sat to receive essoins, i.e., excuses for parties who did not appear in court, according to the summons of writs. 3 Bl.Comm. 278. By St. 11 Geo. IV, and 1 Wm. IV, c. 70, § 6, these days were done away with, as a part of the term.

Essoin de malo villa /əsóyn diy məlow vilij/. When the defendant is in court the first day; but gone without pleading, and being afterwards surprised by sickness, etc., cannot attend, but sends two essoiners, who openly protest in court that he is detained by sickness in such a village, that he cannot come *pro lucrari* and *pro perdere*; and this will be admitted, for it falls on the plaintiff to prove whether the essoin is true or not.

Essoiniator /əsóyniyètər/. A person who made an essoin.

Essoin roll /əsóyn rōwl/. In England, a roll upon which essoins were formerly entered, together with the day to which they were adjourned.

Establish. This word occurs frequently in the Constitution of the United States, and it is there used in different meanings: (1) To settle firmly, to fix unalterably; as to establish justice, which is the avowed object of the Constitution. (2) To make or form; as to establish uniform laws governing naturalization or bankruptcy. (3) To found, to create, to regulate; as: "Congress shall have power to establish post-offices." (4) To found, recognize, confirm, or admit; as: "Congress shall make no law respecting an establishment of religion." See *Establishment clause*. (5) To create, to ratify, or confirm, as: "We, the people . . . do ordain and establish this Constitution." *Ware v. U. S.*, 71 U.S. (4 Wall.) 617, 18 L.Ed. 389. See also *Establishment clause*.

To settle, make or fix firmly; place on a permanent footing; found; create; put beyond doubt or dispute; prove; convince. *Wells Lamont Corp. v. Bowles*, Em. App., 149 F.2d 364, 366. To enact permanently. To bring about or into existence.

Establishment. An institution or place of business, with its fixtures and organized staff. *Abnie v. Ford Motor Co.*, Ohio Com.Pl., 195 N.E.2d 131, 135. State of being established.

Establishment clause. That provision of the First Amendment to U.S. Constitution which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .". Such language prohibits a state or the federal government from setting up a church, or passing laws which aid one, or all, religions, or giving preference to one religion, or forcing belief or disbelief in any religion. *Everson v. Board of Education*, 330 U.S. 1, 67 S.Ct. 504,

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Exhibit 25

From: Ed deVries[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C0D7DE4E957B477E93098569E8483709-EDEVRIES]
Sent: Tue 7/31/2018 4:41:53 PM (UTC)
To: Siebers, Jack[JSiebers@fosterswift.com]
Cc: Jerry Hunsburger[jhunsburger@parktownship.org]; Howard Fink[hfink@parktownship.org]
Subject: RE: 2005 Driftwood - Formal Complaint - Air BandB

Jack,

I have entered a noise complaint violation in our records, and a warning letter is being mailed to the owners. **At this time the only Township Ordinance violation is the noise.** We can't substantiate if a violation of the single family zoning occurred as we do not know the relationship status of those occupying the home at that time. As to the parking, the photo shows a violation of Michigan Vehicle Code, but that is not enforceable by the Township. I did add in the letter that the home can only be rented to a family.

I did some checking on the AirBnB site, and found that the owners began renting their home this year. They advertise it as being in a residential area, with a maximum of six cars allowed, four bedrooms with eight beds, and two baths. They have a prohibition on loud parties, specifically "bachelor and bachelorette parties." It seems they have the intent on preventing or discouraging this type of behavior. They also advertise it as family friendly. This appears to be the first problem that has been reported to us since the rentals began.

I have a couple of observations concerning your comment on regulating rentals, and who should call the police. First, regulating rentals does not address noise, trash, or parking violations as those are already covered under ordinances or statutes. Most of the problems people cite with rental properties are already covered by existing rules.

Secondly, regardless of ownership or occupancy, violations of the noise ordinance should be reported by those persons affected by the noise. If your neighbor who owns his home has a loud party, who would then report it? Reporting violations is not the same as "regulating" the issue. I will say that in my 33 years of Law Enforcement, I responded to at least as many noise complaints in owner occupied homes as in rentals, if not more so.

Ed de Vries
Park Township Community Development Director
Phone: 616-738-4238
Email: edevries@parktownship.org

From: Siebers, Jack [mailto:JSiebers@fosterswift.com]
Sent: Monday, July 30, 2018 4:24 PM
To: Ed deVries <edevries@parktownship.org>



Cc: Jerry Hunsburger <jhunsburger@parktownship.org>

Subject: 2005 Driftwood - Formal Complaint - Air BandB

Hi Ed,

Please treat this email as a formal complaint against the homeowner at 2005 Driftwood. My wife, Mary, and I live at 1991 Woodlark, one street over from Driftwood. My complaint consists of noise, public disturbance, violation of low density single family housing zoning, and violation of parking requirements. I also have concerns for the safety of pedestrians, especially children, in the area. Mary and I have resided in Park Township for nearly 30 years, and we have never encountered such an abusive situation as this.

The homeowner is renting her home out on a short term rental basis. Last week she rented it to a raucous group from Thursday through Sunday. Attached is a photo of the cars of the people who stayed in the home those days and nights. It was taken early Saturday (the garage lights are still on). Yes, there were 9 cars of people staying in the house! There were three aisles of cars in the drive. Can you imagine that many people sleeping in a small, ranch home, which likely only has one bathroom!

On Thursday night, they had a drunken pool party that lasted well into the early morning on Friday. Mary found herself reading in a chair at 1:15 a.m. because of the yelling and screaming going on in their pool one block over from our home (I wear hearing aids and was able to take them off). And that was on a week night. Fortunately, it was too cold for them to have another pool party on Friday night, and they had a wedding somewhere Saturday.

On Friday, Mary spoke with you on the phone about the situation. Your advice was for us to call the police the next time it occurs. But Ed, that isn't fair to the neighbors because you are charging the neighbors with the responsibility of regulating what transpires at that home. If the homeowner wants to engage in a commercial enterprise in a low density single family residential district, it should be incumbent on the homeowner to regulate what takes place on her property, not us.

Obviously, the homeowner has no regard whatsoever for the neighbors or she wouldn't rent her home to a crowd like this and allow a drunken pool party that lasted into the early hours. Nor would she overburden the neighborhood with 9 cars at one small home. She was informed of the problem on Friday, but she still let the whole gang of people with 9 cars stay until Sunday so she could collect her rent.

If she had any concern for the neighbors, it would be very easy for the homeowner to control this. She could limit the no. of people in the home, limit the hours for the pool, and install ring type surveillance cameras over her driveway and pool. She could monitor it from her cell phone. Then she could call the police, instead of asking the neighbors to do it. Better still she could return to the house and kick them out.

In addition to the violations I mentioned, I am very concerned about pedestrians with that much traffic going in and out of the drive of that house. There are no sidewalks. I regularly see children on bikes, mothers pushing strollers, and people walking their dogs. Last evening, Mary and I came home about 10 p.m. in the dark. We encountered three young children riding their bikes in the street in the dark. Anyone who would rent a house and fill it to overflowing with people from 9 cars would have

no appreciation for the situation. They just want a cheap place to party.

Ed, I have offered some proactive steps the homeowner can easily take to avoid these problems. Obviously, she isn't about to take them without some urging by the township because it will encroach on her own time, wherever she may be at the time, and will require her to spend a little of her rental income on the cameras, and she has no regard for the neighbors or she wouldn't be doing this. Otherwise, she would have kicked them out of the house when she learned of the problem on Friday.

Therefore, I am personally filing this complaint with the hopes that the Township will do the right thing and put a stop to such an extreme, abusive overburdening of the property by the homeowner.

Park Township is a great township, and the officials and employees work consciously to make it so. Mary and I greatly appreciate that. When we sold our home of 25 years on Lake Michigan, we bought another nearby in Windstream because Park Township is a great place to live.

Thank you so much, Ed, for your hard work.

Jack A. Siebers

Attorney

Foster Swift Collins & Smith PC

151 Central Avenue, Suite 260

Holland, MI 49423-2831

Phone: 616.796.2501

Fax: 616.796.2520

jsiebers@fosterswift.com

www.fosterswift.com



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Exhibit 26

STAFF MEMO

To: Park Township Zoning Board of Appeals
Subject: Variance Request for the meeting of February 24, 2020
Date: 2/13/2020
From: Emma Posillico, Zoning Administrator

One (1) application has been received for the February 24, 2020 Zoning Board of Appeals meeting.

Item #1. A request by Randall Schipper, on behalf of Oakwood Interests, LLC, and BPS Builders, to construct an accessory building that includes an Accessory Dwelling Unit, which is prohibited per Section 38-491(b)1c of the Park Township Zoning Ordinance. Said land and premises are located at 3065 N. Lakeshore Drive, Holland, MI 49424 (Parcel 70-15-16-150-015, Zoned R-2 Lakeshore Residence District).

Applicable Ordinance Sections:

Sec. 38-491(b.)1c, Detached accessory buildings – General requirements

c. No accessory building or structure shall include residential or living quarters for human beings.

Background:

The owners of 3065 North Lakeshore Drive would like to demolish the residence that is currently on the property, to build a new residence. The property is described as Lot 14 of H.L. Williams Estates, and is approximately 2.2 acres or approximately 95,832 square feet. As noted, there is an existing residence on the property, approximately 2,000 square feet in size (excluding the attached garage). There is also an existing 1,000 square foot accessory building to the east of the residence. Aerial photographs are below, including an enlarged image of the existing accessory building, relative to the house.





According to the applicant’s letter, the owners would like to live on the property during the construction of the new residence, by constructing a new accessory building that houses an accessory dwelling unit (ADU) and garage. The property owner anticipates that construction of the residence would take two (2) years; at which time the ADU would continue to serve guests, with a full kitchen and bathroom facilities.

It should be noted that in 2017, Park Township Staff discovered that the existing accessory building on the property was being renovated without permits, for what appeared to be living quarters (a photograph is below). A letter was issued in 2017 to the current property owner stating that permits must be applied for, but it appears they never were obtained. The Township did receive a call from the current builder of the project in 2017 stating that only cosmetic upgrades were made at that time to the “studio apartment.” Staff notes from 2017 indicate that the existing accessory structure shall not be used as living quarters.

The applicant has stated that the property owner intends to demolish the existing accessory structure on the property, but has not provided a timeline for doing so. (Staff did inquire, but did not receive a response.)



Zoning Board of Appeals Considerations:

As aforementioned, per Section 38-491(b.)1c of the Zoning Ordinance, “No accessory building or structure shall include residential or living quarters for human beings.” As such, the applicant is seeking a variance to construct an accessory building that includes an Accessory Dwelling Unit, which is prohibited in the Zoning Ordinance.

Non-Use Variance Standards Review:

Pursuant to Sec. 38-70, an affirmative finding as to each standard listed below must be made in order to authorize a non-use variance.

- a. *That strict compliance with the zoning ordinance regulating the minimum area, yard setbacks, frontage, height, bulk, or density, or other regulation would render conformity with those restrictions of the zoning ordinance unnecessarily burdensome.*

The applicant states that the property owners will construct the ADU to serve as their residence during the demolition of the existing residence and construction of a new residence, so the ADU will need a kitchen and bathroom. The applicant continues that strict compliance with the Zoning Ordinance would require that the kitchen or bathroom facilities be removed from the ADU, to remove the living quarters from the accessory building once the property owner has moved into the new residence. The applicant further states that the property owner would prefer to keep those facilities intact so the ADU can serve as a guesthouse for their family and guests. The property owner is willing to accept a condition on the variance that the ADU would not be used as an “independent dwelling by outsiders.”

Staff Comments: The current property owner is listed as Oakwood Interests, LLC with an address in Scottsdale, Arizona. Oakwood Interests, LLC owns multiple properties in Park Township, so Staff would not advise using residency during construction as reasoning for granting a variance. Further, Staff does not believe that a condition requiring that the ADU be used only by family and guests is enforceable. A “guest” of Oakwood Interests, LLC could be any individual(s) that the LLC defines as their “guest.” **As you know, Park Township does not regulate vacation rentals.** However, restricting dwelling units from accessory buildings is one method of requiring that vacation rentals be within or attached to a primary dwelling (depending upon the number of dwelling units permitted by zoning district).

Given the number of new residences built in Park Township, Staff does not receive frequent inquiries into someone residing on the property during construction. As such, it does not seem unnecessarily burdensome to prohibit accessory buildings from being used for living quarters. If the ZBA agrees, this standard has not been met.

- b. *That granting the requested variance would do substantial justice to the applicant as well as to other property owners in the zoning district. If a lesser relaxation than that applied for would give substantial relief to the property owner and be more consistent with justice to other property owners in the district, the Board of Appeals may grant a lesser variance provided the other standards are met.*

The applicant provides a lengthy response to this item, stating that the R-2 zoning district is intended for low-density single-family uses and other seasonal residential uses along the shoreline. The applicant further states that guesthouses are listed in the definition of an accessory building, and while guesthouse is not defined in the Zoning Ordinance, a dictionary definition is provided. The applicant then outlines other guesthouses in proximity to the subject property, and makes the argument that such arrangements are fairly common in the R-2 district, as there are numerous properties used as family estates.

Staff Comments:

Staff does agree that the definition of “Accessory Use or Structure” lists a guesthouse as an accessory building. However, it was identified to the applicant that it is believed to be provided in the definition as a reference to the existing guesthouses located throughout Park Township that pre-date the Zoning Ordinance. As the intention of a zoning ordinance is to reduce nonconformities in an area, Staff disagrees that the applicant should be permitted an ADU as there may be others in the generalized area. As noted in item (a.), it is plausible that the property owner may utilize the ADU for a vacation rental in the future. Given that, and the intention of the Zoning Ordinance regarding existing guesthouses, it does not seem that permitting another ADU would do substantial justice to the applicant or other property owners in the area. If the ZBA agrees, this standard has not been met.

- c. *That the plight of the property owner/applicant is due to the unique circumstances of the property (e.g., an odd shape or a natural feature like a stream or a wetland) and not due to general conditions of the zoning district.*

The applicant states that his clients need to construct kitchen and bathroom facilities in this building because it will serve as their dwelling during the demolition of the existing residence and construction of the new one. The property owners live out-of-state so they do not have a “house in town” they can stay in during the construction project. The applicant also states that the parcel is over two (2) acres, but it is not wide enough to be able to split off a parcel for a separate dwelling, nor do the applicants wish to do so.

Staff Comments: As aforementioned, the property is owned by Oakwood Interests, LLC, which owns other properties in Park Township, one (1) of which has a single-family residence built upon it (229 Norwood Avenue). Unless the applicant provides information as to how the ownership between these properties differs, it is unclear how there is not another location they can stay at during the construction project (not to mention rental properties or hotels if the owner is visiting in small intervals).

Staff does not see how the property owner wishing to stay on the property during construction is a “plight,” particularly as Staff identified options for the owner to stay on the property during construction. In an email dated December 12, 2019, Staff identified to the applicant that it may be possible for an ADU to be built during construction, as long as a letter of credit was issued to the Township that the principal residence would be built, and kitchen/bathroom facilities would be removed from the accessory building upon completion of the principal residence (thus reverting back to an accessory building without living quarters). If the ZBA agrees, this standard has not been met.

d. That the practical difficulties alleged are not self-created.

The applicant states that the practical difficulty is not self-created, in the sense used in the law. They state that the “self-creation” test arose out of a case in which a property owner divided up a large parcel, leaving a portion of a property a few feet narrower than permitted in the zoning district, when the land could have been divided up in a manner that did not create the problem. According to the applicant, the court ruled that the property owner had needlessly created the problem so he could not insist that the township provide him relief. The applicant states that constructing an ADU with a full kitchen and bathroom facilities is not a needless creation of a nonconformity, that it is a necessity so there is a place to live while in Michigan to oversee the construction project.

Staff Comments: The applicant has introduced the purported origin of the “self-creation” test; if the ZBA is concerned that this standard has been mis-applied in previous considerations by the Board, Staff would encourage you to confer with the Township Attorney. However, it has been practice for many years to consider the phrase “self-created” in a generalized manner, rather than a strict interpretation of case law as the applicant is suggesting. If the ZBA continues to interpret a “self-created” hardship as it has been, the applicant’s argument of needing to live on the property during construction is entirely self-created. As Staff has mentioned, the LLC that owns the subject property also owns another property in Park Township, and there are rental properties and short-term living arrangements throughout the Holland area that would provide a residence during construction. The applicant has also stated that the property owner would only stay in the ADU “while in Michigan,” rather than as their primary residence during construction. If the ZBA agrees, this standard has not been met.

Recommendation:

It is Staff's interpretation that allowing an Accessory Dwelling Unit on the subject property does not meet the four (4) standards for granting a non-use variance. Staff will note that the Township does receive somewhat frequent inquiries into building Accessory Dwelling Units. If this is a consideration that the Township would like to pursue, Staff would encourage the ZBA to approach the Planning Commission about writing a text amendment to modify the Zoning Ordinance.

Should the ZBA agree to grant the variance request, Staff would encourage you to require the property owner to demolish the existing accessory building on the property prior to commencing construction on the proposed.

CUNNINGHAM
DALMAN PC
ATTORNEYS AT LAW

Andrew J. Mulder
Joel G. Bouwens
Jeffrey K. Helder
Ronald J. Vander Veen
David M. Zessin
Randall S. Schipper
Susan E. Vroegop
Gregory J. McCoy
P. Haans Mulder
Vincent L. Duckworth
Kenneth M. Horjus

Nicholas R. Dekker
Jessica Arends
Lindsey Schoettle Gorsline
Derek W. Dalman

Of Counsel:
Ronald L. Dalman
James A. Bidol
Kenneth B. Breese

January 13, 2020

Mr. Doug Dreyer, Chair
Zoning Board of Appeals
Park Township
52 – 152nd Avenue
Holland, MI 49424

Hand Delivered

RE: Non-Use Variance Request;
3065 N. Lakeshore Drive, Holland, MI 49424

Dear Doug:

I am representing Oakwood Interests, LLC, the owner of the real property located at 3065 N. Lakeshore Drive and BPS Builders, its contractor, in their request for a non-use variance. The owners of the property want to raze the house currently on the property and build a new, more modern one. To be able to enjoy their property during that project and oversee the work, they want to first build an accessory building with an accessory dwelling unit (“ADU”) and garage. They expect the demolition, site work and construction of their new residence will take up to two years. After construction of the new house is complete, the garage will serve the new residence and the ADU would lodge family and guests visiting them. The ADU would have the full kitchen and bathroom facilities from its initial use as my clients’ principal dwelling on the site.

Therefore, they would need a variance from Zoning Ordinance §38-491(b)(1)c. to have an ADU in an accessory building. This is a non-use variance, subject to the standards of ZO §38-70(1).¹

a. Strict compliance with the regulation barring living quarters in an accessory building would be unnecessarily burdensome. My clients will construct the ADU in the accessory building to serve as their residence during the demolition of the existing residence on their property and construction of a new residence so it will, of course, need a kitchen and bathroom.

¹ A question was raised of whether this might be a use variance, apparently on the premise that the use would be multifamily. Multifamily, though, is for two dwellings within the same building, such as a duplex, not for two dwellings on a parcel in separate buildings. To be a use variance, it would have to be a recognized “use”, meaning the township would have to allow it in some zoning district in the township. However, the Zoning Ordinance bars two dwellings in separate buildings within a parcel in every zoning district. Here what the applicants desire is a subordinate dwelling unit in an accessory building for their family and guests, not a second independent dwelling.

Strict compliance with §38-491(b)(1)c would require that they remove the kitchen or bathroom facilities from the ADU, even though those facilities would be just a couple years old. My clients would prefer to keep those facilities intact so the ADU can serve as a guesthouse, an *accessory* dwelling unit. It would be only for the use of their family and guests, and not for use as an independent dwelling by outsiders. They would accept such a condition on the variance.

b. Granting the requested variance would do substantial justice to the applicant as well as to other property owners in the zoning district. The R-2 zoning district is intended for low-density single-family uses and *other seasonal residential uses* along the shoreline. ZO §38-243. A single-family residence is obviously a permitted use. So are accessory buildings. ZO §38-491. The Zoning Ordinance includes guesthouses in the definition of accessory building. ZO §38-6. While the ordinance does not define “guesthouse”, a common meaning found in dictionaries is “a *separate* living facility for the use of guests on an estate”. Ms. Postillo has indicated that the township interprets this as a recognition that there are many pre-existing accessory buildings in the township, especially lakeshore area, used as guesthouses. There are several in close proximity to my clients’ property. One is on the immediately adjacent property to the south. Another is on the next adjacent property to the north. There appear to be several more between this property and James Street on the west side of Lakeshore Drive and others to the north. Reviewing the Ottawa County GIS map of the R-2 zoning district shows that such buildings are fairly common in this district, which differs from other residential zoning districts in that it is has numerous properties used as family estates that are designed to accommodate extended families on occasional visits and vacant much of the rest of the year. We do not expect allowing an ADU on this parcel will have a negative impact on neighbors.

c. The plight of the property owner/applicant is due to the unique circumstances of the property. My clients need to construct kitchen and bathroom facilities in this building because it will serve as their dwelling during the demolition of the existing residence and construction of the new one. They live out-of-state so do not have a “house in town” they can stay in during the construction project. When they are here, this would be the place they need to stay. While their parcel is over two (2) acres, it is not wide enough to be able to split off a parcel for a separate dwelling, and they would not want to do that anyway. They want to keep the property intact as their summer home.

d. The practical difficulty they face is not self-created, in the sense used in the law. The “self-creation” test arose out of a case in which a property owner divided up his large parcel piecemeal, leaving him a portion that was a few feet narrower than permitted in the zoning district. He easily could have divided up his land in a way that did not create that problem. The court ruled that he had needlessly created the problem so could not insist that the township provide him relief. Here, while my client will construct the ADU with full kitchen and bathroom facilities, that is not needless creation of a nonconformity. It is necessary so that they have a

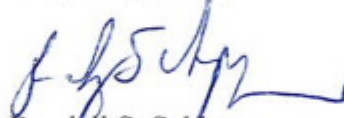
Mr. Doug Dreyer, Chair
Zoning Board of Appeals
Park Township
January 13, 2020
Page 3

Hand Delivered

place to live while in Michigan to oversee the construction project and enjoy their beautiful property in the meantime.

We think the Township Zoning Board of Appeals can grant the applicant a non-use variance for an ADU in an accessory building in this situation and respectfully request that you do so. Thank you.

Very truly yours,



Randall S. Schipper
schipper@cunninghamdalman.com

RSS/lc

From: [Zoning](#)
To: [Randy Schipper](#)
Cc: [Brian P. Skaggs](#)
Subject: RE: 3065 N. Lakeshore Drive/Accessory Dwelling Unit
Date: Tuesday, February 04, 2020 7:56:00 AM

Randy,

Good morning, and thank you for the reply. I will proceed with the application as submitted, but we need any supplemental documents by Friday, February 7th at 5:00 PM. The public hearing notice will be printed on Sunday, February 9th, so the complete application needs to be ready for citizen inspection on Monday morning.

One remaining question – when is the applicant planning to demolish the existing accessory building? If they are requesting that it remain while the proposed new accessory building is constructed, the Township will require a bond that it is demolished prior to the Certificate of Occupancy being issued for a new accessory building.

Thank you,

Emma M. Posillico, AICP

Zoning Administrator

Office Hours: Tuesday & Thursday: 8 AM – 12 PM, 1 PM – 5 PM

Park Township

52-152nd Avenue

Holland, MI 49424

Phone: (616) 738-4244

www.parktownship.org



From: Randy Schipper [mailto:randy@cunninghamdalman.com]

Sent: Monday, February 03, 2020 2:47 PM

To: Zoning <zoning@parktownship.org>

Cc: Brian P. Skaggs <bpsbuilders@gmail.com>

Subject: RE: 3065 N. Lakeshore Drive/Accessory Dwelling Unit

Caution! This email is from an external address and contains a link. Use caution when following links as they could open malicious web sites.

Emma

Yes, we would like to proceed with the requested variance.

You asked a few question a couple weeks ago. In response, the existing accessory building will be removed. As a result, your second question about whether it would be less than 916 sq. ft. would not apply. The current accessory building is not being used as living quarters. The new one would be temporarily, while the main house is razed and replaced. Thereafter it would be family and guest quarters.

I have asked Brian for building prints and a site plan.

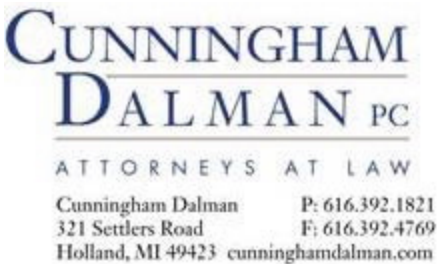
Please let me know what other information you need or would like and whether you need it by Feb. 6, after that but in advance of your report to the ZBA members, or by the date of the hearing on the 24th.

Thank you.

Randy

Randall S. Schipper

schipper@cunninghamdalman.com



No E-Signature: Neither this email nor any attachment contains an electronic signature unless a specific statement to the contrary or a valid VeriSign Digital Signature Certification is included.

Offers of Compromise: This email may contain an offer to compromise or contain a negotiation to compromise or settle a disputed fact or claim. Therefore, this communication is protected pursuant to MRE 408.

NOTICE: This communication may contain confidential information intended for the named recipient(s) only. If you received this by mistake, please destroy it and notify us of the error. Thank you.

From: Zoning <zoning@parktownship.org>

Sent: Thursday, January 30, 2020 4:55 PM

To: Randy Schipper <randy@cunninghamdalman.com>

Subject: RE: 3065 N. Lakeshore Drive/Accessory Dwelling Unit

Randy,

Good afternoon. I have not received any supplemental documents from your client on this variance application. The public hearing notice has to go to the Sentinel on Thursday, February 6th. Prior to

Exhibit 27

From: Emma M. Posillico[emma@freshcoastplanning.com]
Sent: Thur 7/23/2020 1:40:06 PM (UTC)
To: Jerry Hunsburger (Archive)[jhunsburger@parktownship.org]
Cc: Gregory Niewiadomski[gnieuwiadomski@expediagroup.com]; Howard Fink[hfink@parktownship.org]
Subject: Re: Park Township Short Term Rentals

Caution! This email is from an external address and contains a link. Use caution when following links as they could open malicious web sites.

Mr. Niewiadomski,

Good morning. **Park Township does not have short term rental regulations** - however if the property that you are purchasing is zoned for single-family residential use, then you would not be permitted to add a second dwelling unit to the property to rent out. Additionally, if you're considering a bed & breakfast, that is regulated differently than a short term rental. (I realize you did not suggest a bed & breakfast, but it is a common question that is raised when discussing short term rentals.)

Lastly, as Supervisor Hunsburger noted, if there is a Homeowner's Association, they may have regulations that restrict short term rentals, so I would encourage you to check with them if applicable.

Please let me know if you have any further questions.

Thank you,

Emma M. Posillico, AICP
Associate Planner
Fresh Coast Planning
950 Taylor Avenue, Suite 200
Grand Haven, MI 49417
(616) 490-9955
<https://www.freshcoastplanning.com/>

On Wed, Jul 22, 2020 at 5:39 PM Jerry Hunsburger <jhunsburger@parktownship.org> wrote:

Greg,
Good evening.

This is a complicated issue.
It is not only the Township ordinances, but also, in some cases, what an Association, etc. may state in their Rules or By Laws.

I have forwarded your question to our Township Manager and Planner.



Document received by the MI Ottawa 20th Circuit Court.

You will get a response from one of them

Best,
Jerry
Gerald (Jerry) Hunsburger, Supervisor

Gerald (Jerry)Hunsburger, Supervisor
Park Township
Office phone (616) 738-4232

On Jul 22, 2020, at 2:51 PM, Gregory Niewiadomski
<gniewiadomski@expediagroup.com> wrote:

Hello Jerry,

My wife and I are considering purchasing a home in Park Township in which we would reside for part of the year, but we would want to rent it out possibly during periods we are not in MI. Could you point me to the rules and regulations that apply to short term rentals in the township? I was not able to find anything on the Park Township site. I appreciate your time and consideration.

Thanks,

Greg

Greg Niewiadomski

Director, OE Product Integration

Enablement Solutions

<image001.png>

T: 206.481.3268 | M: 425.229.7287

gniewiadomski@expediagroup.com

<image002.png>

Exhibit 28

From: Zoning[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=761DA2C4D64E43919AFC125D6508A80B-AHENDRICK]
Sent: Tue 6/2/2020 7:42:01 PM (UTC)
To: anngyorky@gmail.com[anngyorky@gmail.com]
Subject: Fw: Air bnb

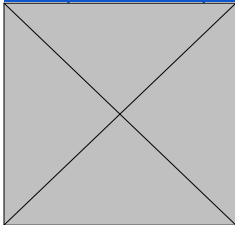
Ms. Yorky,

Good afternoon. **Park Township does not regulate short-term vacation rentals**, both before the stay-at-home order, and now that it has been changed. If you have concerns about the legality of either offering a rental or staying at one, I would encourage you to contact the Ottawa County Sheriff's Department. They may be enforcing various aspects of the stay-at-home order.

Thank you,

Emma M. Posillico, AICP
Zoning Administrator
Office Hours: Tuesday & Thursday: 8 AM – 12 PM, 1 PM – 5 PM

Park Township
52-152nd Avenue
Holland, MI 49424
Phone: (616) 738-4244
www.parktownship.org



From: Julie Northrup <jnorthrup@parktownship.org>
Sent: Tuesday, June 2, 2020 2:02 PM
To: Zoning <zoning@parktownship.org>
Subject: Fw: Air bnb

From: Ann Geisel <anngyorky@gmail.com>
Sent: Tuesday, June 2, 2020 1:41 PM
To: Julie Northrup
Subject: Air bnb

Hello,

I'm wondering if air bnbs are allowed to operate now that the stay home order has changed. Not sure what category it falls under and want to change plans if necessary. Thank you for info or direction to

find out.

Ann Geisel

Exhibit 29

STATE OF MICHIGAN.
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474-CZ

v.

Hon. Jon H. Hulsing

PARK TOWNSHIP, a
Michigan municipal corporation,
Defendant.

DEPOSITION OF: LINDSAY MOHR

DATE: May 14, 2024

TIME: 10:05 a.m.

LOCATION: Thrun Law, PC

3260 Eagle Park Drive NE, Suite 121

Grand Rapids, Michigan

REPORTER: Kelly M. Kane, CSR-1470

Fortz Legal Support

www.FortzLegal.com

844.730.4066

FORTZ
Legal

Document received by the MI Ottawa 20th Circuit Court.

FORTZ
Legal

1 A. I'm just going to grab him.

2 (Brief discussion held.)

3 BY MR. KONWINSKI:

4 Q. Okay. We took a gentleman name Kirk Briggs' deposition.

5 Did you know Kirk Briggs at all?

6 A. I did, not from Park Township though.

7 Q. Okay.

8 A. I worked with him in a previous job, when I was with the
9 City of Zeeland.

10 Q. All right. Did you ever talk to Kirk Briggs in any fashion
11 about short-term rentals?

12 A. Never.

13 Q. All right. Let me get a little bit of background from you
14 now. What's your current age?

15 A. 32.

16 Q. And where do you live?

17 A. Caledonia.

18 Q. All right. Have you ever lived in Park Township?

19 A. I never have, no.

20 Q. All right. What is your -- let's start with what's your
21 highest level of formal education?

22 A. I have a master's in public administration.

23 Q. From where?

24 A. Grand Valley State University.

25 Q. And what year was that?

1 A. It was brief, because I -- you know, we were assigned
2 communities that were like our primary communities. It was
3 never one of my primary communities. Emma Posillico was the
4 planner there, and then she left, and so in the, you know,
5 short-term time of Greg, who owns Fresh Coast Planning,
6 hiring someone else, I filled in the gaps there.

7 So I think it -- it was fall, I remember, of 2020,
8 I want to say like October maybe, through -- up to January
9 potentially.

10 Q. Okay.

11 A. Maybe December.

12 Q. And what is a primary -- you mentioned it wasn't one of your
13 primary communities?

14 A. Right. So, like, when we were hired you were kind of
15 assigned communities, so, like, Sparta Township was one of
16 my main communities where, you know what I mean, I went to
17 all the time, I was the point of contact, it wasn't like a
18 short-term thing.

19 Q. Gotcha.

20 A. You know what I'm saying?

21 Q. How about how many communities did you represent at once?

22 A. I'm trying to think. I was the zoning administrator in
23 three, and then, like, I did side work as well for other
24 communities, like in our free time. So you had office hours
25 in three communities, and then in my spare -- spare time --

Exhibit 30

From: Zoning [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=761DA2C4D64E43919AFC125D6508A80B-AHENDRICK]
Sent: 10/12/2020 12:15:29 PM
To: Jeff Byl [JeffByl@cbdekorne.com]
Subject: Re: * Fw: A question on short term rentals

No problem Jeff! Please let me know if you need anything additional.

Lindsay Mohr
Zoning Administrator
Office Hours: Tuesday & Thursday: 8 AM – 12 PM, 1 PM – 5 PM

Park Township
52-152nd Avenue
Holland, MI 49424
Phone: (616) 738-4244
www.parktownship.org



From: Jeff Byl <JeffByl@cbdekorne.com>
Sent: Thursday, October 8, 2020 5:01 PM
To: Zoning <zoning@parktownship.org>
Subject: Re: * Fw: A question on short term rentals

Caution! This email is from an external address and contains a link. Use caution when following links as they could open malicious web sites.

Thank you Lindsey for the quick answer.
On 10/8/2020 4:46 PM, Zoning wrote:
Good Afternoon Jeff,

The Township does not regulate short-term rentals. The property owner would just need to ensure the home complies with all other ordinances, such as the noise ordinance, etc. Please let me know if you have any further questions.

Thank you,

Lindsay Mohr
Zoning
Office Hours: Tuesday & Thursday: 8 AM – 12 PM, 1 PM – 5 PM

Park Township
52-152nd Avenue
Holland, MI 49424
Phone: (616) 738-4244
www.parktownship.org





From: Julie Northrup <jnorthrup@parktownship.org>
Sent: Thursday, October 8, 2020 4:33 PM
To: Zoning <zoning@parktownship.org>; Cindy Glennie <cglennie@parktownship.org>
Subject: Fw: A question on short term rentals

From: Jeff Byl <JeffByl@cbdekorne.com>
Sent: Thursday, October 8, 2020 4:32 PM
To: Julie Northrup <jnorthrup@parktownship.org>
Subject: A question on short term rentals

Caution! This email is from an external address and contains a link. Use caution when following links as they could open malicious web sites.

Hello,
 I am considering buying a house near Tunnel Park (2320 Perry) with the intention of renting it as a short term rental via AirBNB and VRBO. I am interested in Park Twp.'s policy on short term rental, or any pending discussion that would limit my ability to continue the rental program. Your help would be appreciated. Thank you,
 Jeff 616-915-0117

--
Jeff Byl
 C.B. DeKorne, Inc.
 Office: (616) 363-4866
www.cbdekorne.com

C.B. DeKorn
 INDUSTRIAL SUPPLIES SINC



e Inc.
 E 1945



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Jeff Byl
 C.B. DeKorne, Inc.
 Office: (616) 363-4866
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
corporation,

Defendant.

Kyle P. Konwinski (P76257)
Deion A. Kathawa (P84863)
VARNUM LLP
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Grand Rapids, MI 49501
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kpkonwinski@varnumlaw.com
dakathawa@varnumlaw.com

Daniel R. Martin (P53532)
Kathryn R. Church (P80207)
THRUN LAW FIRM, P.C.
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EXHIBITS 31 TO 40 FOR
PLAINTIFF PARK TOWNSHIP NEIGHBORS' BRIEF IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

Exhibit 31

From: Zoning [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=761DA2C4D64E43919AFC125D6508A80B-AHENDRICK]
Sent: 10/19/2020 3:00:30 PM
To: banninkj@gmail.com
Subject: FW: Air BnB Regulations

Good Morning Jill,

Thank you for reaching out. **No, the Township does not regulate short-term rental properties (Air Bnbs).** The property needs to comply with all other ordinance provisions, such as noise, etc. however nothing specific for being a short-term rental.

If you have any further questions, please let me know.

Thank you,

Lindsay R. Mohr
Interim Zoning Administrator
Office Hours: Monday & Thursday: 8 AM - 12 PM, 1 PM - 5 PM

Park Township
52-152nd Avenue
Holland, MI 49424
Phone: (616) 738-4244
www.parktownship.org

-----Original Message-----

From: Julie Northrup
Sent: Monday, October 19, 2020 8:31 AM
To: Zoning <zoning@parktownship.org>
Subject: FW: Air BnB Regulations

-----Original Message-----

From: banninkj@gmail.com [mailto:banninkj@gmail.com]
Sent: Saturday, October 17, 2020 10:06 PM
To: Julie Northrup <jnorthrup@parktownship.org>
Subject: Air BnB Regulations

Hello,

I am just checking in to see if there are specific regulations for Air BnB homes in Park Township? I didn't see anything on the website.

Thanks!
Jill

Sent from my iPhone



Exhibit 32

PARK TOWNSHIP BOARD OF APPEALS

SEPTEMBER 28, 1987

The Regular Meeting of the Park Township Board of Appeals, held September 28, 1987, at 7:30 p.m., was called to order by Chairman John Bantjes. Present were Bantjes, Gord Brower, Jay Van Wieren, and Bob Smit; Zoning Administrator. Absent were Wes Waldron and Paul Van Dyke.

Item #1

An appeal by Leonard Van Regenmorter from the decision of the Building Inspector denying a building permit for an addition to his house leaving a side yard setback of 2 1/2 feet. Said land and premises are located at 2314 South Shore Dr. and is more specifically described as 70-15-33-463-004.

Smit said this was located near the old post office in Macatawa on South Shore Dr. The addition to the house would bring this within 2 1/2 feet of the northerly lot line. Bantjes asked if any correspondence had been received. Smit replied no. Smit said he received one telephone inquiry. Mr. Van Regenmorter stated there were two reasons for this request. The first is he no longer owned the land across the street which he had used for parking. The second reason was his wife had arthritis, and it was becoming more difficult for her to climb the two flights of steep stairs. The addition would only require her to climb one set of stairs that weren't as steep.

Bantjes stated the practical difficulty was Mrs. Van Regenmorter's difficulty climbing stairs. The proposed addition would make it easier for her. A discussion was held on chair glides. It was stated that the Van Regenmorter's current stairs were too steep for this. The new stairs would allow a chair glide if it were ever needed. Brower asked if variances in this area were common. Smit replied yes, the lots are small with tight setbacks. About six months ago the Appeal Board granted a variance in this area for remodeling a cottage with tight setbacks. Van Wieren asked if the parking for the tennis courts was to the south of this. Van Regenmorter replied it was one lot over.

MOTION MADE, MOTION SUPPORTED, MOTION CARRIED: A motion to grant the variance of a 2 1/2 side yard was made by Brower and supported by Van Wieren.

Item #2

An appeal by A. O. Wood from the decision of the Building Inspector denying a building permit for a new home with a 20 ft. front yard setback and a 15 ft. rear yard setback. Said land

and premises are located at 2321 Auburn Ave. and is more specifically described as 70-15-33-274-009.

Smit explained that Wood's lot was 56 ft. wide and 76 ft. deep and vacant. Smit explained that the side yard requirements were met. He also explained that this house would be setback farther than most homes in the area and have a smaller back yard. The variances being requested were a 20 ft. front yard setback instead of the required 40 ft., and a 15 ft. back yard setback instead of the required 50 ft. No correspondence were received. Brower asked why Wood wanted to have the house set farther back than the other homes in the area. Smit explained one reason was for the home would be built on the side of the hill. Wood said the house would also have a garage underneath it. By setting the home farther back, it would allow more room for on site parking. Brower asked what other neighbors do about parking. Wood said they usually park in front of the homes on the road right of way.

Bantjes asked what was located behind the proposed home. Wood replied vacant land. It was asked if this would be vacant forever. Wood stated he owned it. Bantjes stated that if the two lots were combined that he would have a legal back yard. Brower asked if Wood planned on building on the vacant property. Wood replied no, currently he had a "card game" shack on this property. Tom Postmus of 2311 Auburn Ave., who owned the two lots east of Wood, was curious if the proposed home would have enough parking for the home. He stated the parking the area has always been a problem. He also wanted to know if this would be Wood's residence or would it be a rental unit. Wood stated he didn't rent out property. Postmus asked if Wood rented out his home in the winter time. Wood replied yes. Postmus also asked if Wood rented out his "card game" shack. Wood replied no, he did let people live there, however. Postmus said if the parking was adequate, he had no problem with it.

Wood said the reason he wanted to be so far off the road was for parking purposes. Van Wieren asked how far off the road right of way was the property line. Wood replied about 4 - 5 feet. Van Wieren said the road is 40 ft. wide with 18 ft. being for the traveled portion. Smit said the property line should be 11 ft. off the road right of way. It was possible, however, that the road wasn't built in the center of the right of way. Smit said the Board of Appeals had to determine the practical difficulties or unnecessary hardships in granting the variances. The Board didn't have any jurisdiction on whether or not this would be a residential home or a rental home. Bantjes said the practical difficulties would be the parking spaces needed for the home. Wood said the Board of Appeals also granted a variance to Van Til at the end of the road. He also is set farther back due to parking.

Exhibit 33

PARK TOWNSHIP
ZONING BOARD OF APPEALS
MARCH 22, 1999

DRAFT COPY

The regular meeting of the Park Township Zoning Board of Appeals was called to order at 6:00 pm by David Smeenge.

Present: Dave Smeenge, Dan Timmer, Jim DeGraaf, Jim Hertel, Rod Schermer, attorney, and Sandy Brodie, staff

Absent: Candace Dugan

Smeenge announced that David Clark, chairman, had resigned his position on the ZBA.

MOTION MADE, MOTION SUPPORTED, MOTION CARRIED 4-0: A motion was made by DeGraaf and supported by Timmer to nominate David Smeenge as Zoning Board of Appeals chairman.

The nominations for vice-chair were postponed until next meeting.

MOTION MADE, MOTION SUPPORTED, MOTION CARRIED 4-0: A motion was made by DeGraaf and supported by Hertel to approve the February 22, 1999 regular meeting minutes as presented.

Item #1 An appeal by Dan Trombley from the decision of the Building Inspector denying a building permit for an addition to an accessory building enlarging it beyond the maximum size allowed for the lot size. per ordinance section 4.11 Said land and premises are located at 16933 Quincy St. and are more specifically described as tax parcel number 70-15-04-400-014.
Tabled from February 22, 1999

Mr. Trombley was not in attendance so the item was moved to the end of the meeting.

Item #2 An appeal by Stanton W. & Gail Todd from the decision of the Building Inspector denying a building permit for an addition to the front of the house that will not comply with Park Township Ordinance section 4.14A. Said land and premises are located at lot 111 on Lakeside Rd. and are more specifically described as tax parcel number 70-15-33-388-012.

Smeenge asked if there was any additional correspondence regarding this item.

Brodie stated a Department of Environmental Quality (DEQ) permit had been received.

DeGraaf read a letter from Christian & Lois Helmus.

Tom Lefler, of Tom Lefler Design & Architecture, spoke for the appeal. He stated the side yard setbacks would stay the same. The sight line is strange because the house to the south is so far back.

Dirk Walcott, 2421 Crescent Walk, asked if there were any construction drawings. He asked if the addition will be heated. He stated he was not opposed to the project.

Smeenge stated the addition is a covered, screened porch on pillars.

The public hearing was closed at 6:15 pm.

Questions and comments from ZBA members

Q: DeGraaf asked how much time the cottage is rented as opposed to being occupied by the owners.

A: Lefler stated he did not know.

A: Lois Helmus, 745 Lakeside Rd., stated that the Todds rent out the cottage all but one week out of the summer. Sometimes there are as many as twelve people there.

Q: DeGraaf asked if Kirk Briggs, Zoning Administrator, had suggested more of a patio or deck style.

A: Lefler stated he had not.

C: Smeenge clarified that the house to the south does not encroach the lot. There are several lots combined into one tax parcel. He stated the porch would be in line with the house to the north and there is no stated opposition from the house to the south.

Q: Schermer asked for clarification on the sight line.

MOTION MADE, MOTION SUPPORTED, MOTION CARRIED 3-1 (Timmer): A motion was made by DeGraaf and supported by Hertel to approve the appeal as presented.

Schermer clarified that there were no side yard setback changes.

Item #3 An appeal by Stanton W. & Gail Todd from the decision of the Building Inspector denying a building permit for a house on lot 112 with front, side, and rear setbacks that do not comply with Park Township Ordinance section 10.04 and 4.14A, and no parking per section 17.01.a and on a lot whose size will not comply with section 4.03.b. Said land and premises are located at lot 112 on Lakeside Rd. and are more specifically described as tax parcel number 70-15-33-388-044.

Exhibit 34



A G E N D A
PARK TOWNSHIP PLANNING COMMISSION
Regular Meeting
July 18, 2000
6:00 pm

CALL MEETING TO ORDER
APPROVAL OF AGENDA
APPROVAL OF MINUTES:
June 20, 2000

- Item #1 - Rezoning - AG to R-3
Joe Aubert
2948 N. 152nd Ave.
Driesenga & Associates
Public Hearing
- Item #2 Special Use - Site Plan Review
Harderwyk Christian Reformed Church
1627 Lakewood Blvd.
Mike Bosgraaf
Public Hearing
- Item #3 Special Use - Move house onto a lot
Lakeridge Dr., Lot #7
Ralph Walker
Public Hearing
- Item #4 Special Use - Private Road
Diane McMahon
3804 N. 168th Ave.
Nederveld Associates
Public Hearing
- Item #5 Special Use - Private Road
856 Pine Bay Ave.
Richard & Glenda McKinley
Public Hearing
- Item #6 - Preliminary Subdivision Recommendation
Olde Hunters Crossing, LLC
Olde Hunters Crossing, Phase II
James St.
Nederveld Associates
- Item #7 - Preliminary Subdivision Recommendation
Bosgraaf Enterprises
Wild Flower, Phase I
160th Ave. & James St.
Exxel Engineering

ANNOUNCEMENTS

ADJOURNMENT



PARK TOWNSHIP
PLANNING COMMISSION
JULY 18, 2000

DRAFT COPY

The regular meeting of the Park Township Planning Commission was called to order at 6:00 pm by Chairman John Van Iwaarden.

Present: Harold Burrell; Renee Kolean; Phil Hill; Carol Bowerman; Amanda Price; Frank Beltman; John Van Iwaarden; David Smeenge; Mark Southwell and Kirk Briggs, Zoning Administrator.

Absent: None

MOTION MADE; MOTION SUPPORTED; MOTION CARRIED (9-0): A motion was made by Price and supported by Beltman to approve the agenda.

MOTION MADE; MOTION SUPPORTED; MOTION CARRIED (9-0): A motion was made by Price and supported by Beltman to approve the minutes of the June 29, 2000 regular meeting as presented.

ITEM #1: REZONING - AG TO R-3; JOE AUBERT, 2948 N. 152ND AVE

Dan Driesinga, 485 Windrift Way of Driesinga and Associates represented Mr. and Mrs. Joe Aubert who are requesting to rezone their property from AG to R-3. Driesinga said the masterplan shows the property to be rezoned into planned residential development and the plan presented shows the surrounding property to be of residential type flavor. The property to the east is proposed to be an extension of Timberline West. Mr. and Mrs. Aubert would like to do two lot splits of 100' wide each with his residence to remain on the property of 204'. We think that R-3 is the right zoning even though the masterplan shows it to be a PRD.

Comments from PC members:

Southwell: Is this the best way to approach this? Is there no other way to achieve this kind of split? Maybe this is the most efficient way to do it?

Driesinga: The AG zoning would not allow us to do two splits because of minimum lot size requirements. This is the most efficient way.

VanIwaarden: Given that Timberline West is a PUD and this piece is basically abutting the Aubert parcel, across 152nd on the west side of the road is AG, the masterplan shows the northern half to be AG and the southern half to be PRD.

Southwell: There is a stretch of R-1 in there and those require two acre lots. Basically across the street is the R-1.

VanIwaarden: Everything north of that is AG to R lev. Sticking a piece of R-3 here is not the way to go. Seems to me the way to go is PUD or PRD. As to PUD, it would fit in with Timberline West and then we are living by what we envision it is supposed to be.

Driesinga: This is not connected to Timberline West.

VanIwaarden: They are back to back.

Driesinga: It is all going to look the same whether you go PUD or PRD or R-3.

VanIwaarden: We now have a spot of R-3 on the east side of 152nd and next month someone comes in and wants R-3 on the west side. Who knows where that would go. That line of consistency is important to us and not to spot zone. This is my preference, to retain some consistency there.

Public hearing opened:

Joe Aubert, 2948 N. 152nd Ave.: I am the owner. I bought this property back in 1966. It was not AG. There were four pieces of property and that was residential. How we ever got into AG, I don't understand. Now Timberline West has two lots adjacent and they are identical in size to my lots. I don't see why they would not be approved.

VanIwaarden: We are trying to decide what is the correct zoning category for the lots. Be aware that just because the house is a residence is not making the property residential land.

Joe Aubert: I always considered those zoned residential. There were four lots and none were AG. I don't understand how it ever became AG.

Public hearing closed.

Southwell: When I got my package, the cover letter was requesting R-1 rezoning, and when I first looked at this with the masterplan, R-3 did not make any sense. You can see how this is really surrounded by the R-3 approach. I don't think this is the right approach. In my opinion, it should be PUD. I like the PUD approach better. I don't have any trouble with what Mr. Aubert is trying to do.

Smeenge: Other than the issue that you raised about the spot zoning that would be happening if we approve this, I took a look at the masterplan and what it called for and it is PUD. I think a piece that is 2.7 acres in size, I just don't see that there is a whole lot of what PRD and PUD is set up for on a parcel that is that small. I don't particularly like

the spot zoning that would happen if something like this is done. The homes across the street, that is pretty well filled in. I don't really think that someone else will come in and say we want to put R-3 or R-1 there in the future is really going to happen unless they buy a lot of houses. Looking at what Timberline West has done, I like the way it lines up with 76 and 77. This is not real complicated. There does come a time when the strict letter of the masterplan, the zoning, the way it looks and what's across the street - I think that starts to get a little too tough on property owners. I think forcing them to go PRD is not necessary. It will look just like this. I think he can go real simply by going R-3.

Beltman: My biggest concern is deviating from the masterplan, and I realize that is not set in stone, but also the spot zoning that this would bring about. My preference is that it would come in PUD or PRD.

Price: I go along with Frank's comment.

Southwell: Do you want to withdraw and make another run?

Oriesinga: If it is not approved, we would have to come back with a PUD or PRD. Kirk suggested we come in with R-3, that would be the simplest and most efficient way to go. I appreciate the spot zoning concern, but you should look at the land use and not what the map looks like. The masterplan is a guide and not the zoning ordinance itself. There are circumstances in each zoning approval you can cite.

Briggs: This R-3 would be the same lot sizes if it came back PUD. The streets and density would be the same. They meet the PUD density. The only difference is it is going to be a little piece on the map that is going to say R-3, a little different color whereas PUD would be the same color on the map. But, the cost would be \$350.00 application for the R-3 zoning as opposed to \$2000.00 to come in with a PUD.

Price: I am concerned about the precedence somebody coming in and say you approved that and that was spot zoning. But we could put in a lot of verbage around the approval, does that protect us? \$350.00 versus \$2000.00 affects an individual much more than a developer.

Southwell: I change my mind strictly on the \$ amount, and with the surrounding neighborhood and configuration. We should put that in the motion.

MOTION MADE, MOTION SUPPORTED, MOTION CARRIED (9-0): A motion was made by Smeense and supported by Beltman that we recommend to the Park Township Board to approve the request to rezone from AG to R-3 the parcel owned by Joe Aubert, 2948 N. 152nd Ave. with the following observations:

1. It is a small parcel of 2.7 acres.
2. The lots to the rear of the proposed splits line up with the PUD approved preliminarily.
3. Lots across the street are 2.5 acres or more and it is developed.
4. Lots north and south are similar size as far as the footage.
5. To enforce a PRD would cause undue hardship in this case given there are only two splits.

ITEM #2: SPECIAL USE - SITE PLAN REVIEW; HARDERWYK CHRISTIAN REFORMED CHURCH; 1627 LAKEWOOD BLVD.

Mike Bosgraaf, 1963 Bower St.: Our company along with Seenen and DeKock have been asked to provide an extension to the parking lot at Harderwyk Chr Ref Church. We primarily need it for Sunday services and some additional activities that have been going on there. We do plan on doing a certain amount of grading in the front, cutting down that hill, landscaping with grass and putting in underground sprinkling and some berms and trees.

Comments from PC members:

Southwell: The existing house, is that a Harderwyk owned house, #1543, and the one that doesn't have an address?

Bosgraaf: Yes.

Southwell: When we approved the community building 2 to 3 years ago, I believe there was not enough parking and the parking use was shared. There was plenty of parking space at that time?

Bosgraaf: We are out of space as far as the 11:00 service goes.

Southwell: Do you use both buildings at the same time?

Bosgraaf: Yes. We have a 10:00 service and the 10:00 service is leaving when the 11:00 church service is arriving, overlapping.

KClean: Are there any more residences in the area that are concerned?

Bosgraaf: Not that I am aware of.

Vaniwaarden: We will find that out later in the meeting.

Price: It looks like there is lighting that is going in that was not there before.

Bosgraaf: We are extending the lighting that is already out there. We will have the same style lights that are out there now.

Price: The deceleration lanes is that staying the same?

Bosgraaf: We are not changing the current entrance going into the church. I think there is a going to be a new entrance further down to the east.

Vanlwaarden: Requested the secretary to enter the letters received into the record.

Beltman: Read letter from the following:

1. Alton and Marilyn Harrington; 291 N. 160th Ave; stating they have no objection to an additional parking lot if adequate drainage is installed as the current parking lots do not have adequate drainage and as a result there is flooding in the neighbor's yards on 160th Ave. when there is a hard rain. Any additional pavement without proper drainage will add to that problem.
2. Letter from Steve Van Hoeven; Ottawa County Drain Commissioner addressed to Andrew J. Nesbitt of Holland Engineering stating he will be waiting feedback concerning reestablishment of the retention basin which will apparently be filled in due to parking lot enlargement. Approval of drainage plans for Harderwyk Church will be placed on hold until this issue is resolved.

(These letters are on file with the minutes.)

Beltman: How far will the drainage ditch be covered past the new parking lot?

Bosgraaf: It looks like 120'. We are going to readdress the drainage ditch with the drain commissioner to get approval.

Beltman: To the east of the proposed parking lot you have marked 'place light'. Will that ditch be covered that far?

Bosgraaf: The ditch will be covered all the way through the parking lot. It will be underground.

Beltman: Moving 1 1/2" to the right across the drainage that says place 2 sq yds of rip rap over filter fabric, #13; is it safe to assume that is how far that ditch will be covered?

Bosgraaf: Correct.

Beltman: I have a number of concerns. On the left hand side of the plan says proposed location of temporary trailer. Is that part of this revised site plan?

Bosgraaf: I was not aware of that and I was going to ask what is the best way to address that.

Briggs: It is not noted on the special use and you should address that separately.

Beltman: Going back to the 1995 site plan approved Nov 17, 1998, there are a number of things that are deficient from the site plan. The deceleration lane does not exist. You were supposed to put in a 55' to 60' deceleration lane and it didn't happen. That drainage ditch sits there open. I was there 4:30 this afternoon and there was 150 kids running around the parking lot and I am concerned about the safety of that open drainage ditch for close to 170'. I think something had to be done about that. On the plan that was presented to us in 1998 there is a note on here that says the contractor is to overexcavate and widen to 10' for 70' for a temporary sediment basin. That hasn't happened. The bottom of that drainage ditch is only 2' wide. I really have a problem approving a new site plan when the things in the old site plan have not been done. There is no approval from the drain commissioner for the change in the drainage ditch. The drainage ditch is too deep, and I realize why it has to be that deep and I am afraid that is a safety hazard. To the east of the house # 1625, there is a drainage pipe that is 4 1/2 to 5' from the bottom of that drainage ditch. When a hard rain occurs, that drainage ditch is a big safety hazard. That has to be filled before any water can drain out into the county drain.

VanIwaarden: I would like to echo my concern about the deceleration lane, the failure of Harderwyk to put that in there. In considering what we should require for a deceleration lane, another PC member and I went and measured deceleration lanes trying to get a handle on what would be the correct length in trying to prevent problems with traffic flow, allowing other cars to continue to travel on Lakewood Blvd. There are in existence three other properties that have deceleration lanes within 1/2 mile: Titaney Shores - 178', Silveridge - 180', Waterway Pines - 210'. I think Harderwyk should reconsider extending the length of their deceleration lane, 50-55' as Harderwyk is woefully short.

Bosgraaf: I think we went through the Ottawa County Road Commission. It would be interesting to see what the minutes did say about that. I think the road commission approved that and we are subject to the Ottawa County Road Commission and I think we constructed it to their specs.

Price: I remember going through a discussion back then and discussing lengths of deceleration lanes back then and I thought they were only going to use the parking lot one day a week.

Bosgraaf: I think we can address these issues and would be willing to build to Ottawa County Road Commission specs. I think the open ditch is definitely going to be addressed and some restriction in that would be in our approval. We haven't heard from the drain commissioner since we built the ditch. I think there can be some verbiage in the approval. It looks like he has an outlet restricter and it goes into an Ottawa County Drain. Subject to his approval and the board, I think we can work that through.

Smeenge: Has the Ottawa County Road Commission looked at the second drive?

Bosgraaf: I can't believe so.

Smeenge: Does water actually flow through the pipe by the parking lot on a regular basis now?

Bosgraaf: Asked Paul Breuker, Custodian of Harderwyk Church to address that.

Paul Breuker, 1798 Lakeview Drive, Zeeland: Hard rains bring water into that ditch. I noticed the level does not exceed 2' at any point in time on a hard rain. Anything else is less than that and it does settle out. As to 291 N 160th, the water from our parking lot tends to run onto that property on a hard rain because it runs a little down hill through there. Immediately north we had no concerns.

Smeenge: I see there is nothing about volleyball courts. Is that something that should be on the plan?

Vaniwaarden: In November 1998, we were presented with a plan. Then when construction began, there were some different configurations that were taking place and they were not on the plan. They then asked for a hardship considering they needed to make some changes. We approved an alternate plan. Nothing was ever mentioned about sand volleyball courts. They were not on any site plan that we approved.

Smeenge: I looked at the deceleration lane and it doesn't look like what is drawn on the plan. Most of the drainage ditch that I saw, close to the buildings a most a 45 degree angle and I think current widths per Steve are 1-6/1-12 as far as any thing that is going to contain any water. I think a lot of significant issues were brought up this evening. I think we should table this and look at the issues before us and give them an opportunity to revise their plans, their parking, deceleration lane and drainage problem.

Bosgraaf: Keep in mind Harderwyk is trying to work with you here. The Anchor building is bringing additional problems for us. There has been a lot of things going on there. We did not realize that was going to happen and it has

surpassed what we thought it would do.

Vaniwaarden: The Planning Commission would like to see Harderwyk conform to the previous site plan that was approved such as the deceleration lanes, construction and closing of the ditches, the width of the ditch.

Bosgraaf: I am not so sure we did not conform to the Ottawa County Drain Commission.

Vaniwaarden: When a plan comes in and you say you are going to do that and don't do that, the PC has a problem with that. Do the things in the order in which they were approved.

Public hearing opened.

No comments were received.

Public hearing closed.

MOTION MADE; MOTION SUPPORTED; MOTION CARRIED (9-0): A motion was made by Price and supported by Beltman that this item be tabled until next month.

Vaniwaarden: On the plan we were presented now it refers to a pond to be widened. If that is truly a pond, then we have to get ZBA approval. If it is going to be a ditch, you better call it a ditch and get the side slope to conform.

Harderwyk Church representatives were advised to make sure that they come back with something that the PC can say that looks like a reasonable detention basin. If the way your site is now is acceptable to the road and drain commission, then maybe they approved a site plan and never looked at what you have done. Bring them out there. We are concerned about safety. Show your approval and make your print match that approval.

ITEM #3: SPECIAL USE - MOVE HOUSE ONTO A LOT, LAKERIDGE DR., LOT #7:

Price: My home is within 300' and I have to excuse myself.

PC members excused Price.

Ralph Walker, 2722 Valley N.W., Grand Rapids, owner of the house in consideration proposes to move the house, formerly the State Park Ranger's home, onto Lot 7 in the Sandy Shores Subdivision. Walker presented photos of houses on the west side of Lakeshore Drive and explained that he would have a house of the same style and design, and size, and especially noted the lot directly across from Lot 7 which is the identical style as the home he wants to move there. I think my home will be a good blend. It was built in 1980. I had

this house inspected and found it was of sound structure. I found there was a couple of small things to be brought up to code, electrical switches in the kitchen, bathrooms and hall s. The exterior appearance looks like a 1980 appearance and I plan to decorate the outside with new vinyl and a new roof and also put in new landscaping. It looks like the street is fully developed except for one lot down here. It is my intention to make this home beautiful. I really appreciate the area and the standards. I am also working with Dave Westrate, a professional builder of Creative Custom Homes, and he has given me some good advice.

Comments from PC members:

Bowerman: Did you say it was going to have a walkout basement? Is there going to be an elevation of the driveway?

Walker: Yes, walkout in the rear and garage on the front. The front will be 2' (could not understand how many feet he said) lower. There are a couple of homes down the street that do have a walkout and the garage set back about the 40' distance. I also had the lot surveyed and found I could place the house in a nice placement between these two homes. It will be right in line.

Beltman: You gave us a revised site plan when you decided to add the garage in front. On the new plan you gave us, it appears you are going to construct a garage under the living area. What is your intent for that garage, and how would you get to that? I understand Eagle is a private drive and my concern is to have a garage facing Eagle which is a private road, and legally you could not have access to that garage door off Eagle.

Walker: The garage will be mostly for storage space for a lawn mower, without an extra shed in the back. I would get to it through an entry door going in the lower level of the basement. I wasn't planning on putting a concrete drive or anything involved to actually make it look like a driveway, even though I wonder if a beaten path from Eagle up to that garage door would be OK.

Smeenge: It looks like a start of a kitchen there on the lower level. It looks like one up and one down. I guess I get suspicious. It is not going to be converted into a two-family home or a Bed and Breakfast, is it?

Walker: No. Our intention is to have more room for relatives to visit.

Smeenge: The first plan showed a basement about 9' from the bottom of the floor to the top of the floor, and now the revised plan shows 11'. I am concerned that this house might stand higher than the neighboring homes. The one-story

homes; you might be sticking 2' above them. I would like to see some elevations or put that control in the motion.

Walker: It should be a 9' wall. The homes to the west would be higher and to the right is also much higher; and the one across the street.

Southwell: I would like to see what the style of the house is and in this case, I couldn't find the house.

Smeenge: Kirk; what is your impression as to the soundness of this house.

Briggs: It looks like a basic ranch right now. It might be structurally sound. The garage doors are basically almost rotted out; the walls are wavy. By the time you move the house and put a foundation under it; roof it; reside and meet code; rewiring; sometimes it is just as cheap to build a home and advised Walker he could consider whether it is going to be economically feasible. You need a lot of detectors and there is a lot of wiring involved. You need GFI breakers in the bathroom; kitchen and garage.

Vaniwaarden: Were you involved in moving the house from the state park to its present location.

Walker: Just because I wanted to be on site to watch the whole process.

Vaniwaarden: The process of moving this house back onto that lot will be a sizeable process; and asked Briggs it when a house is moved through the township; do you have to apply to the township first?

Briggs: No; I think that goes through the county.

Public hearing opened:

Kick Zavadii; 3954 Lakeridge Dr.: I live across the street from the lot that is being proposed at this time. Will this meet all the building requirements for new construction? I want to know if an older structure has to meet the same codes as a new home.

Briggs: Yes; it will have to meet all the present codes when it is placed on this lot.

Vaniwaarden: An occupancy permit will not be given until all the codes are met.

Zavadii: Is this going to turn into a duplex or more of a beach rental with a number of families. We have a problem with beach access with a certain number of parking spaces up above. I don't want to see it turning into a beach rental.

I have a real concern with that. I would like to see the township involved inspecting this house prior to the move. I have a concern about the structural soundness. Will the township be involved inspecting this house?

Briggs: The home owner should be instructed by the Planning Commission to hire a structural engineer to tell the township if it is going to be OK to move this house.

Cliff Halmarst, 3925 Lakeridge Dr.: I think this house would be a nice addition to our neighborhood. I live on Lot #5.

Ken Albrecht, 3955 Lakeridge Dr.: Would this be done by a licensed builder or is this going to be a do it yourself project?

Walker: I am planning to contract a builder for part of the work, but not all of the work. It has to be approved and finalized by Kirk. I have friends that are builders and they are going to supervise me.

Vaniwaarden: Using it as a rental property - this is a residential neighborhood and restricted to single family dwellings; and if Mr. Walker should deviate from that mode of living; it would behoove the neighbors to report that to the township and Kirk would investigate that, and say he should be renting out the basement; that would be a violation. The neighbors have to be watch dogs.

Mrs. Dieleman, 3935 Lakeridge Dr.: I own lot #6.

I am wondering about the time element and site plan; if he is going to be doing most of the work himself; if it is going to be in construction a long time. We would like to know that.

Briggs: Building permits are good for one year and can be renewed after one year for another year.

Vaniwaarden: That would be a total of two years.

Walker: I am expecting to have everything finished by March. The actual move and placing the house will take one day if the lot is prepared. The exterior should be finished in a few months.

Amanda Price, 3975 Lakeridge Dr, Lot #10: When will you move and begin renovation? Will it be yet this summer? We have a lot of traffic on our street and it would be very difficult for us to have you move it in the summer; especially on a weekend.

Walker: If all goes well and everything is approved, by the end of the summer. As far as the move itself; I was hoping it to be in place soon. If there are any events or days to

avoid as far as the neighbors are concerned, I would like to know that.

Frank Dieleman, 3935 Lakeridge, Lot #6: I understand that the home was on a slab. Was there a basement in that home? What condition is that home in now? I talked to some of the people from the park and they said it was pretty much of a wreck. Is he going to put a basement under the front of the house as well as the whole house or is it a slab?

VanIwaarden: There is going to be a basement under the entire home.

Price: This street is the street that leads up to Spyglass. We don't have another outlet. We would need time before it starts to get out and need a lot of notification.

VanIwaarden: The fact is that Mr. Walker has to give every resident on Lakeridge and Spyglass the exact time when the street might be closed.

Smeenge: This was on a slab? Does it have a floor in it now?

Walker: It was on a full basement before. It does have a floor.

Burrell: What are the confines before this Planning Commission that we must be concerned with and abide by? If it meets code, he gets a moving permit and it is in compliance with use; what other criteria is there?

VanIwaarden: It has to be compatible with the neighborhood, the height of the house.

Briggs: Referred the members of the PC to page 33, the 3 parts at the top of page 3 to be considered. This would be authorized as a special use. These were read by Beltman.

Public hearing closed.

MOTION MADE, MOTION CARRIED, MOTION SUPPORTED (9-0): A motion by Smeenge and supported by Hill to approve the special use request of Mr. Walker to move the house onto Lot #7, Sandy Shores Subdivision with the following 6 requirements:

1. Obtain permission from the Ottawa County Road Commission.
2. Coordinate move with neighborhood as to time. Notice given at least two weeks prior to the move and the residents should receive notification of the move by placing a notice at the entrance to Lakeridge Dr. off Lakeshore and notify by mail of the move to all property owners affected.
3. The house must be brought up to code.
4. That it be done to the revised plan that was provided as

- far as the placement with the garage in front and walkout.
5. Have Briggs inspect the existing structure with a structural engineer to be sure it is going to make the move and when it is placed there make the necessary repairs per the engineer such as adding joists, trusses.
 6. Every attempt be made to have the house done within three months from date after it is set on the property.
 7. There were concerns about rental. You can have a single rental in any district. If it looks like it is going to become a two-family home, the township wants to know about it. There are provisions in the ordinance to take care of that.

ITEM #4: SPECIAL USE - PRIVATE ROAD; DIANE MCMAHON, 3804 N. 168TH AVE.

Rick Pulaski, 2102 Mary Ave.; Norton Shores of Noderveld Associates represented Pheasant Woods Development Co. LLC., Andrew and Diane McMahon, owners. The property in consideration is located in Section 10 across the street from the Lakeshore Elementary School. This site is heavily wooded and they want to put in a 525' private road on this site with 4 lots, one lot has the existing McMahon home plus three additional lots. They will extend the water main 110' to the north and bring water into the site. Does have a big bend in the road itself and they are working with the BFW on that. We meet all the requirements of the private road with a 66' right-of-way over the whole thing. The name of Pheasant Trail is OK with the road commission. Will install a street sign. There is a 20' driveway around the island in the culdesac. The pavement will be 3" of asphalt with 6" of gravel which is in excess of your ordinance. The drain commission already approved this as well as the road commission. Have their permits. We are going to have underground utilities, electric, phone, gas, and we show a lighting plan. Notice the path of this road winds through here. When you visited the site you noticed coming along here you see large trees and coming around this turnaround, the reason our road is this configuration we wanted to follow that existing driveway as much as possible there in saving the trees that are there. We want to disturb the trees as minimal as possible. We are showing a 35' buffer zone. It is basically a flat road with road side ditches. The road to the property line is not less than 50' so we have a 50' buffer from the road to the west property line. They will be upscale homes in here - a resort type setting. The benefits of going with a private road is that we can do this type of winding road and can save trees and trails as much as possible and keep this entrance as pristine as possible.

Burrell: Any estimates on the total number of trees to be removed?

Pulaski: No estimate. The road is 22' wide and a 25-28' wide

swath through there for the road. We would like a little bit of flexibility. We are trying to go around some larger trees. If a tree is too close, we would like to be able to pull that tree out.

Kolean: Do I understand you are looking for summer type people to live in these homes? They wouldn't be year around residents?

Pulaski: That is one option, but they could be year around residents.

Price: I served on a committee regarding private roads and flag lot ordinance. We wanted to avoid private roads and flag lots. We tried not to have situations like this happen. I thought we wanted 85' frontage.

Briggs: I think this is what we wanted. These road widths are 129', 131', 214'. I think they accomplished the 85' frontage. The road right-of-way is 66'. It is the same road right-of-way a county road would require. The road is wide enough to be used for fire trucks. We were trying to avoid flag lots in the past as you said.

Price: Is the school on septic?

Polaski: They are connected to the water main. I don't know about septic.

VanIwaarden: They have a drain field.

Beltman: I was looking at the declaration of common driveway easement rights and responsibilities and I didn't find anything in here regarding the township to have the authority, but it is the obligation to make repairs by the owners of the property.

Pulaski: I think it is in there. I thought I read it. I can check into that.

Beltman: Section 4.34 of the Park Township Road Ordinance; Section 7, Item D - I can't find that in the presentation.

Smeenge: Street lighting - I don't see anything that addresses that. The two properties on Lakeshore Drive, either side of the 66' wide easement, would those become corner lots?

Briggs: Yes.

Smeenge: Do they maintain 40' setbacks

Briggs: That doesn't show on this drawing?

Smeenge: I want to be sure these people realize they are getting new front yards. If they want to expand their homes, it is something they are giving up.

VanIwaarden: Put into the motion that they be notified of this.

Smeenge: Did you provide anything, some kind of verbiage regarding construction financing? There is a provision for that, with a bond or letter of credit to make sure that everything gets done? There is no provision to provide for a professional engineer's report and verification that all necessary items were recorded.

Briggs: There will be a contract in recordable form and that will be in the contract. They need to sign the contract with the township so that will be covered in the contract. It should have been covered in the narrative.

Prace: Item 19 in the agreement says no public funds in this township are to be used to build, repair or maintain the private street and the township will be held harmless of any property damage claims in connection with the private street.

Smeenge: It is set up so that the township can do the repairs and rebill the property owners. I like #15 - the agreement shall not be modified, except by unanimous vote of all unit owners.

Public hearing opened:

Rick Ruprecht, 3895 Vermae Dr.: I live directly east of the proposed development. I have a question about the statement regarding the sort of residences that will be coming here - resort type partial year residences. Are they going to be residences and part of the year or renters? What are we talking about here? The basic look of it looks attractive to me. I would like to get a little more clarification on that.

VanIwaarden: It was my understanding that he wanted the structures to be upscale housing units. If a person from Chicago builds a \$300,000 house, we don't care whether they live in it 3 or 6 months or year around as long as it is properly maintained. I would assume that the covenants that we are talking about here are the maintenance arrangements.

Southwell: It has to be a single family residence. All township rules would apply here too. They could rent them if they wanted to.

Joe Nellis, 3939 Vermae Dr.: Is there any way I can tell if my property abuts this property?

VanIwaarden: We can determine that by having you or someone look in the plat book with you.

Nellis: By approving this special use; will you also approve the four parcels?

Briggs: That would be done under the lot split act. It is not a requirement of this board.

VanIwaarden: This is in the R-1 Zone requiring all lots to be a minimum of two acres which is what he has.

Nellis: Is there a requirement as to how far back the house can be placed? The one house is fairly close to the street.

Briggs: They can be within 50' of the rear lot line. You have front, rear and sideyard requirements. You can build anywhere inside that envelope.

Smeenge: There are also height restrictions, square footage restrictions, number of stories.

Jason VanderKooij, 2315 Marshall S.E., Grand Rapids, with Nederveld and Associates: With respect to sanitary sewer system, there is no sewer in this area and we do have preliminary approval from the Ottawa County Health Dept. The residences were intended to be full time residences, year around. If the property owner wishes to use them otherwise, that is at their discretion.

Public hearing closed.

MOTION MADE, MOTION SUPPORTED, MOTION CARRIED (9-0): A motion was made by Beltman and supported by Southwell to approve this private road with one provision that the declaration of common driveway easement be brought into compliance as specified in Section 4.34.

Smeenge: Amended the motion to include that one lighting district be established and that a provision be included to pay for that. That the item listed as far as construction financing with a letter of credit for completion of it be addressed. That provisions be made that verification be made for recording of all documents at completion of the project be done, and that a final engineer's report be prepared that it be built to plan.

Beltman and Southwell agreed the motion be amended to include Smeenge's recommendation.

ITEM #5: SPECIAL USE - PRIVATE ROAD, 856 PINE BAY AVE., RICHARD & GLENDA MCKINLEY:

McKinley: We are applying for a private road. We have 4.2

acres and we want to make 2 lots of a little over one acre. We followed the guidelines Briggs had given us of two splits and are initially putting in a gravel road. Once the property is sold, we would like to blacktop it. We are putting in a 22' road with a 66' easement. We want to save a few big trees there. Our 2 neighbors have agreed to trade a piece of property in order to enlarge the entrance to the property as wide as possible. There is a maintenance agreement with the two parties involved. We followed the ordinance and guidelines all the way down. The road commission asked that the street name be changed to Pine Bay Ct.

Smeenge: Have you got permission from the Ottawa County Road Commission?

McKinley: Yes.

Smeenge: Are there any provisions where the water and sewer main will go?

McKinley: We have investigated that and the sewer is going to be in front of the other one. Water main presently ends here. We did have water tests done and our water is perfect.

Smeenge: Do you have any elevations for the road, cross sections indicating the slopes? where you turn it looks like it goes up and down hills. If sewer is available, I would like to make that a provision being so close to the water.

McKinley: The road is level going all the way in. Have to angle the road. Eleven trees will have to come out.

Smeenge: Any provisions as to what maximum slopes are as required in road ordinance easement and you will be complying with that? Anything on financing construction?

McKinley: Yes, there are provisions which will comply and the project will be paid for and finished --- (? couldn't understand.)

Smeenge: What is the actual length of the road?

McKinley: 300'.

Smeenge: Drain commissioner been out there?

McKinley: Yes.

Smeenge: Add a provision making sure engineering report and recording are done.

Beltman: You did get permission from the Ottawa County Road Commission to name it Pine Bay Ct?

McKinley: They agreed, but I didn't look to see if they changed the typing.

Hill: I am curious about the gas line easement.

McKinley: Actually every home in Wintersun has a gas line easement.

Price: I had one question about the gravel drive. Is that permitted by the Ottawa County Road Commission?

Briggs: If it only services two houses or less, it can be gravel.

Public hearing opened:

Barbara Bedemeier, 822 Pine Bay: Everything is OKay with the property owners right next to them.

Public hearing closed.

MOTION MADE, MOTION SUPPORTED, MOTION CARRIED (9-0). A motion was made by Smeenge and supported by Price to approve the private road Pine Bay Ct. subject to the following conditions:

1. Driveway permission from the Ottawa County Road Commission; proof of it.
2. Examine the possibility of extending water and sewer to the property to provide those services, if it is feasible.
4. Provide drain commissioner approval in writing.
5. Provisions for final engineering report.
6. Make sure all documents have been recorded.

ITEM #6: PRELIMINARY SUBDIVISION RECOMMENDATION; OLDE HUNTERS CROSSING, LLC; OLDE HUNTERS CROSSING, PHASE II; JAMES ST.:

Rick Pulaski of Nederveld Associates: We are proposing 29 lots in this phase with approximately 2300' of public road on road commission standards. Lot sizes are in excess of the R-3 requirements. We are going with the same concept as original phase. We are going to ride the land in terms of grade of the road to save as many trees as we can. There will be full utilities -sanitary sewer, water and storm sewer will be provided with underground utilities - electric, phone and gas. It is going to make a nice setting and add some character to this development as it has a lot of nice natura trees. The road commission commented on Old Deer Trail used to run out to James Street and Fox Haven Dr. used to be Fox Haven Ct. The road commission said second phase had a site distance problem on the west side of James Street. So we asked can we now make Fox Haven Ct. Fox Haven Dr. and connect it to James St. Ken Souter of the road commission said that

would be a great idea. There are four parcels on the north side of James Street and we brought it right between two parcels so that you wouldn't have a headlight shining in someone's eyes at night; so we have road commission approval on that.

Comments from PC members:

Price: The signage for the subdivision; are you planning on doing that again? It is beautiful. What do you plan to do there? If you do it again; it might be overkill.

Pulaski: If you do it twice; it might be too glitzy. Would like to put less lights up there along the same line. It will be the same flavor; but not the same size.

Smeenge: Going back to Phase 1. We moved a couple of lot lines there between 9 and 10 and it doesn't look like that is on the drawing. The outbuilding on lot 43. Is that something that is going to be grandfathered; Kirk; as far as location of placement to the lot?

Kirk: Yes; I would say that would be grandfathered.

VanIwaarden: Mr. Van Wyk; the occupant of the property needs to know that he can't add other outbuildings.

Smeenge: Looking at the lot lines; lot 44; are you going to be able to get a placement that is going to be appealing to the other homes around it?

Pulaski: In this case it is ideal to put it at a right angle as you have 150' of frontage.

Beltman: Was that electrical box removed when we changed lot lines between 9 and 10?

Jim Boursema; 4217 Beeline Rd: To my recollection; we were not asked to move it.

Beltman: I thought that was the intent. We approved the lot line change and you were going to move that over. Maybe I am wrong about that.

VanIwaarden: I recall that builders came in and said that they made a mistake in placing the house. We were going to help you correct the mistake and move the electrical box and we moved the lot lines between 9 and 10 so that the box was not in the line of site of the occupant's house. It was a compromise. We now find power boxes in the middle of some front yards.

Boursema: We were looking for a way to obscure that and put a grove of pine trees around that. I don't think we were

required to move it.

Briggs: I remember it was in front of the front door and I don't think the occupant wanted to landscape around that. I will have Sardy look that up in a couple days to see if that was a requirement. If it was, we will ask them to move it.

MOTION MADE; MOTION SUPPORTED; MOTION CARRIED (9-0). A motion was made by Smeenge and supported by Beltman to recommend preliminary approval of Olde Hunters Crossing as presented.

ITEM #7: PRELIMINARY SUBDIVISION RECOMMENDATION; BOSGRAAF ENTERPRISES; WILD FLOWER; PHASE 1; 160TH AVE. AND JAMES ST.

Todd Stuve; 7918 Oak Tree Lane, Hudsonville with Exxel Engineering: This is located at the southeast corner of James Street and 160th Ave. The property consists of almost 38 acres total. It abuts the Silveridge Subdivision. There is use of two major roads. There is a larger parcel here with a homesite on it, on the south. This has been before you several months now with PUD requests and on all of which lot sizes were smaller than the R-3 Zone allowed and were not approved. Ted Bosgraaf is proposing a more traditional subdivision here with 80 lots 90' wide and 15,000 square feet served by sewer and water. There is a detention area on the south according to drain commission requirements. All the roads are public with two roadways coming out to James St. and 160th Ave. will have frontage lots along that stretch. We are calling for landscaping along James Street to buffer James Street and also along this exception piece. Phase I is the phase highlighted here on the easterly side of the project adjacent to Silveridge with 21 lots. We plan to bring this into three phases progressing from east to west.

Comments from PC Members:

Burrell: Do we have any open space left?

Stuve: No.

Bowerman: He is going back 40 years like my grandpa used to do. That's all I have to say.

Price: I would like to know why Ted is doing this.

Stuve: I can't answer that, but I think he is saying this is what he can do, so this is what he would like to do.

Price: Do you know when he plans to start construction if it is approved?

Stuve: Probably this Fall.

Price: Was there any provision to connect the two subdivisions, Silveridge and this one?

Stuive: Under this proposal there is no provision to connect the two Subdivisions. His intent is to finish off with a culdesac on Silveridge scale.

Price: The reason behind the phasing at this point?

Stuive: The lift station is planned for along this lot on James St. This is the first utility that will take place. So the reasoning is to progress from downstream into the sewer on up.

Price: The buffering along James St. is it just buffering and no berming?

Stuive: Correct.

Southwell: I know that some of those that were in favor of the PUD may be saying it looks like you got what you wanted. I never thought Ted would bring this thing to us. I am appalled by this design. I poked through the subdivision ordinance. I am excited in a bad way about this design. Referring to the subdivision ordinance, page 30, section 5.4.L, I would like to see a greenbelt similar to what you have on James and 160th. Section 5.4.M allows us to, street trees, I would like to see street trees on 160th and James. The very first sentence in the subdivision ordinance was written to promote public health, safety and general welfare. I don't think 13 lots exiting on 160th does that. Based on that alone, you are not going to get my approval on this design. I don't know if the Ottawa County Road Commission has seen that. These are my concerns.

Beltman: I too am less than excited about this plan as presented to us. I went through the subdivision ordinance and I found a couple of things that are a glaring deficiency. Two of the soil borings that you are presenting are not even on the property. The one is located across the intersection of James and 160th. The other is one adjoining Silveridge. The other two are on the south boundary. There is no indication as to what the water table may be in the center of the property or any other place. My understanding is that there is a very high water table here. I question how are you going to build houses above that water table and keep them out of the water?

Stuive: The roads will have to be built up to a certain extent and the homes could be bi-level, tri-level.

Beltman: Do you have any indication as to what the water table may be on Lot 35?

Stuive: It is probably a little higher site, it's level is within a foot basically. I don't have a boring in the middle of the property.

Beltman: Is there a reason why you don't?

Stuive: No, I am not aware why these particular borings were shown.

Beltman: In my judgement, they are not even appropriate to this property. I would like to address Section 4.4 of the Subdivision Ordinance. It talks about blocks. Blocks shall be designed to provide two tiers of lots. I am addressing first of all the tiers of lots on 160th Ave. Except in those cases where those lots back onto an arterial street, a natural feature of subdivision boundary. That tells me that lots 55 through 80 should be separated by something. Lots on 160th should not exit on 160th Ave.

Stuive: I don't believe that is what that is saying. This is a block, two tiers of lots. I think that is saying that this is a block except where it comes to a street, and when you come to a subdivision boundary, you can't have two tiers of lots here.

Beltman: What about the fact that 160th is an arterial street? It says except those lots that back onto an arterial street. I think that issue is pertinent. Primerose Dr. and Wildcreek Dr., you are saying then that lot 28 through 40 could constitute a block.

Stuive: I guess I really don't know what the definition of a block is. This is what I would consider a block, two tiers of lots.

Beltman: Then I think the streets are too long. There is a maximum of 1000' for a street on a block. Primerose is 1205' and Wildcreek Dr. is 1105' long.

VanIwaarden: This plan has shortcomings galore as presented to us.

Briggs: Referred the members of the PC to the subdivision ordinance, Section 1.2 page 1, and read Sections A and B. I believe this subdivision is not in compliance. It says the subdivision shall provide for the orderly growth and harmonious development consistent with the township's masterplan. On B, it says secure adequate traffic circulation through coordinated street systems with property relation to major thoroughfares of adjoining subdivisions and public facilities. I think they missed the adjoining subdivision when they should have connected to Silveridge through that little piece of AG they left out. Briggs further referred to Section 4.13, page 1, at the top. The

arrangement of streets shall provide for the continuation of existing streets and adjoining areas into new subdivisions, and they missed it on that # there. Section 4.4 on page 22; a block shall be designed to provide two tiers except in those cases where the lots back onto an arterial street. The intent here is not to allow access to major arterial streets. The block lengths shall not be less than 500' from the center of the street and the maximum length of 1300' for streets. The water table borings show water table at about 5' down and sometimes it is described as 22" below grade. There is some variation there. It is supposed to be 24" below the basement floor. How will they achieve enough space to put a basement in. Are they going to build them on slabs then? This doesn't seem like Ted has lived up to his full capacity. I think Ted is shorting us and himself.

Southwell: Section 2, page 15, C.1, says if the preliminary plat does not meet all the requirements, the PC shall notify the developer by written notice indicating any additional information or changes.

MOTION MADE, MOTION SUPPORTED, MOTION CARRIED (9-0). A motion by Smeenge and supported by Southwell, that we deny the preliminary subdivision, Wild Flower, with the different concerns that we have and let the minutes of discussion be the notification.

VanIwaarden: The safety concerns. I am appalled that 13 driveways will be put out on those major arterial roads with less than 1200' of frontage. I think that is extremely poor designing and definitely a safety concern.

Smeenge: He can come in with a PUD within this zoning.

Burrell: This is nothing more than a cookie cutter approach and it is not typical of what Ted has done in the township. He does have the option of coming back to us with a plan that will satisfy the Planning Commission that shows creativity. He has great ideas and he can come back with something that we would like.

PC ANNOUNCEMENTS:

Southwell suggested that the PC may want to assess how we charge for a PUD. We may want to base it on the number of lots, or maybe there is another way to approach that. In the future it would give us more flexibility if it were based on the size of the PUD.

MOTION MADE, MOTION SUPPORTED, MOTION APPROVED 9-0: A motion was made by Price and supported by Southwell to adjourn at 9:15 pm.

Velma Myrick, Recording Secretary

Exhibit 35



Park Township

From the Desk of Howard Fink,
Township Manager

8/4/2017

Happy Friday. Enjoy your weekend. For those who are planning on attending the Macatawa Community Meeting, I will see you on Tuesday. If not, see you on Thursday at our board workshop. As always, if there are any questions on any agenda items, please let me know.

Benjamins Hope

Recently, Benjamins hope requested the construction of a green house and on site home for staff supervision. The process did not fit well into our new PUD ordinance, given their time frame and construction specifics. I suggested that the Planning Commission postpone the request and allow staff to review how we could best apply internal process to help them with their request. Myself, staff and Benjamins Hope met and devised a fast track model that was flexible, yet still requiring all the elements of the ordinance to be followed. Frankly, this is what all planning efforts should look like. We want to work with applicants to ensure that all our regulations are adhered while also meeting their needs. It's a model and culture that I hope to continue.

Keppel Forest

We continue to work on the design plans for Keppel forest. We met with MC Smith and refined some of the drawings that they provided. We indicated a strong desire to complete all the tail loops as part of the project and try to find savings on some of the more luxury items. We anticipate having a complete design to present to the board at the September meeting and get a thumbs up for bidding.

Macatawa Hills Participatory Process



The August 22nd 6:00 pm meeting at the Maatman Center is right around the corner. I have been working with Mr. Denenfeld to create a process for the meeting that is open and positive, but still allows for constructive dialogue and opinions of residents to be expressed. I believe the meeting will be successful. In general, I can tell you that our process has been very positively received. The Township is seen as attempting to do “right” by the residents.

Vacation Rental Complaints

I wanted to let the board know we have had multiple complaints received on Vacation Rentals. I have had detailed conversations with all the complainants explaining that we have no regulations on the books regarding this issue. Furthermore, there is legislation pending that might limit our ability to regulate vacation rentals. I have encouraged those who have complained to call the police anytime they feel a noise or nuisance violation has occurred, particularly if it is after hours. We have had complaints on the south side of Lake Macatawa and in Chippewa Point.

Winstrom Disc Golf Course

Work continues on the Disc Golf Course. A meeting has been set up with the condo association behind the course to try and address issues they have. While we won't be able to accommodate everything, we will do all possible to keep both groups happy.

Health Insurance

Evaluating health insurance options is picking up steam. We have looked at over 15 different plan options with multiple carriers; Blue Cross Blue Shield, Priority Health, State VEBA's. We are working on narrowing down our options and trying to identify the best value for our dollar and a structure that the employees will support. My goal for this year is not to see any increase from past years, keeping our costs flat. We do intend to offer two plans. The richer benefit plan will either have lower H S A funding or increased employee costs. If you have any questions on Health Insurance renewals, please let me know.

168 Street Bike Path

This year we budgeted dollars to repair the 168th Street Bike Path. I reviewed the section with our engineer and am making the recommendation that we wait until the bike path capital improvement plan is complete before committing to any maintenance projects. An additional winter of deterioration will not cause any additional costs for this section. Once the report is complete, we will have a better understanding of our project priorities.

Road Paving

I met with the Idelwood Subdivision Association and the road commission regarding some road maintenance issues. The road commission has committed to some edging repair in their subdivision, but in general acknowledged that the roads are in decent condition. Idelwood uses the roads for both vehicular and pedestrian access, whereas the road commission is only concerned with vehicular access.

There are a few roads in the subdivision that are scheduled to be repaved. We are looking into the possibility of using some newer technology as a test. One road would be the newer technology where the other would be the standard re-pave. We would evaluate for 5 years and analyze how rapidly the pavement is deteriorating. We will be looking at both fiber mesh asphalt and possibly pervious asphalt in this area. Spring Lake uses fiber mesh effectively in some similar subdivisions as Idelwood. They have been very pleased with the results.

As follows is a link to an asphalt fiber mesh product. <http://nycon.com/nycon-fibers-for-asphalt/>

As follows is a link to a pervious asphalt product.
http://www.asphaltpavement.org/index.php?option=com_content&view=article&id=359&Itemid=863

Hazard Mitigation

On the agenda for the upcoming meeting is further discussion on Hazard Mitigation and disaster preparedness for mostly weather related events. Beth Thomas will be providing us with a presentation on the issue and possibly some solutions to our issues. We are looking into some grants and collaboration with surrounding municipalities. More to come at the meeting.

Exhibit 36

From: Ed deVries[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C0D7DE4E957B477E93098569E8483709-EDEVRIES]
Sent: Tue 7/31/2018 4:41:53 PM (UTC)
To: Siebers, Jack[JSiebers@fosterswift.com]
Cc: Jerry Hunsburger[jhunsburger@parktownship.org]; Howard Fink[hfink@parktownship.org]
Subject: RE: 2005 Driftwood - Formal Complaint - Air BandB

Jack,

I have entered a noise complaint violation in our records, and a warning letter is being mailed to the owners. **At this time the only Township Ordinance violation is the noise.** We can't substantiate if a violation of the single family zoning occurred as we do not know the relationship status of those occupying the home at that time. As to the parking, the photo shows a violation of Michigan Vehicle Code, but that is not enforceable by the Township. I did add in the letter that the home can only be rented to a family.

I did some checking on the AirBnB site, and found that the owners began renting their home this year. They advertise it as being in a residential area, with a maximum of six cars allowed, four bedrooms with eight beds, and two baths. They have a prohibition on loud parties, specifically "bachelor and bachelorette parties." It seems they have the intent on preventing or discouraging this type of behavior. They also advertise it as family friendly. This appears to be the first problem that has been reported to us since the rentals began.

I have a couple of observations concerning your comment on regulating rentals, and who should call the police. First, regulating rentals does not address noise, trash, or parking violations as those are already covered under ordinances or statutes. Most of the problems people cite with rental properties are already covered by existing rules.

Secondly, regardless of ownership or occupancy, violations of the noise ordinance should be reported by those persons affected by the noise. If your neighbor who owns his home has a loud party, who would then report it? Reporting violations is not the same as "regulating" the issue. I will say that in my 33 years of Law Enforcement, I responded to at least as many noise complaints in owner occupied homes as in rentals, if not more so.

Ed de Vries
Park Township Community Development Director
Phone: 616-738-4238
Email: edevries@parktownship.org

From: Siebers, Jack [mailto:JSiebers@fosterswift.com]
Sent: Monday, July 30, 2018 4:24 PM
To: Ed deVries <edevries@parktownship.org>



Cc: Jerry Hunsburger <jhunsburger@parktownship.org>
Subject: 2005 Driftwood - Formal Complaint - Air BandB

Hi Ed,

Please treat this email as a formal complaint against the homeowner at 2005 Driftwood. My wife, Mary, and I live at 1991 Woodlark, one street over from Driftwood. My complaint consists of noise, public disturbance, violation of low density single family housing zoning, and violation of parking requirements. I also have concerns for the safety of pedestrians, especially children, in the area. Mary and I have resided in Park Township for nearly 30 years, and we have never encountered such an abusive situation as this.

The homeowner is renting her home out on a short term rental basis. Last week she rented it to a raucous group from Thursday through Sunday. Attached is a photo of the cars of the people who stayed in the home those days and nights. It was taken early Saturday (the garage lights are still on). Yes, there were 9 cars of people staying in the house! There were three aisles of cars in the drive. Can you imagine that many people sleeping in a small, ranch home, which likely only has one bathroom!

On Thursday night, they had a drunken pool party that lasted well into the early morning on Friday. Mary found herself reading in a chair at 1:15 a.m. because of the yelling and screaming going on in their pool one block over from our home (I wear hearing aids and was able to take them off). And that was on a week night. Fortunately, it was too cold for them to have another pool party on Friday night, and they had a wedding somewhere Saturday.

On Friday, Mary spoke with you on the phone about the situation. Your advice was for us to call the police the next time it occurs. But Ed, that isn't fair to the neighbors because you are charging the neighbors with the responsibility of regulating what transpires at that home. If the homeowner wants to engage in a commercial enterprise in a low density single family residential district, it should be incumbent on the homeowner to regulate what takes place on her property, not us.

Obviously, the homeowner has no regard whatsoever for the neighbors or she wouldn't rent her home to a crowd like this and allow a drunken pool party that lasted into the early hours. Nor would she overburden the neighborhood with 9 cars at one small home. She was informed of the problem on Friday, but she still let the whole gang of people with 9 cars stay until Sunday so she could collect her rent.

If she had any concern for the neighbors, it would be very easy for the homeowner to control this. She could limit the no. of people in the home, limit the hours for the pool, and install ring type surveillance cameras over her driveway and pool. She could monitor it from her cell phone. Then she could call the police, instead of asking the neighbors to do it. Better still she could return to the house and kick them out.

In addition to the violations I mentioned, I am very concerned about pedestrians with that much traffic going in and out of the drive of that house. There are no sidewalks. I regularly see children on bikes, mothers pushing strollers, and people walking their dogs. Last evening, Mary and I came home about 10 p.m. in the dark. We encountered three young children riding their bikes in the street in the dark. Anyone who would rent a house and fill it to overflowing with people from 9 cars would have

no appreciation for the situation. They just want a cheap place to party.

Ed, I have offered some proactive steps the homeowner can easily take to avoid these problems. Obviously, she isn't about to take them without some urging by the township because it will encroach on her own time, wherever she may be at the time, and will require her to spend a little of her rental income on the cameras, and she has no regard for the neighbors or she wouldn't be doing this. Otherwise, she would have kicked them out of the house when she learned of the problem on Friday.

Therefore, I am personally filing this complaint with the hopes that the Township will do the right thing and put a stop to such an extreme, abusive overburdening of the property by the homeowner.

Park Township is a great township, and the officials and employees work consciously to make it so. Mary and I greatly appreciate that. When we sold our home of 25 years on Lake Michigan, we bought another nearby in Windstream because Park Township is a great place to live.

Thank you so much, Ed, for your hard work.

Jack A. Siebers

Attorney

Foster Swift Collins & Smith PC

151 Central Avenue, Suite 260

Holland, MI 49423-2831

Phone: 616.796.2501

Fax: 616.796.2520

jsiebers@fosterswift.com

www.fosterswift.com



 Please consider the environment before printing this email.

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Exhibit 37

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation, Case No. 2023-7474-CZ
Plaintiff, Hon. Jon H. Hulsing

v
PARK TOWNSHIP, a Michigan
municipal corporation,
Defendant.

DEPOSITION OF: PAUL MOERLAND

DATE: June 27, 2024
TIME: 1:00 p.m.
LOCATION: Thrun Law Firm, P.C.
3260 Eagle Park Drive NE, Suite 121
Grand Rapids, Michigan
REPORTER: Lori J. Cope, RPR, CSR-4113

Fortz Legal Support
www.FortzLegal.com
844.730.4066

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Document received by the MI Ottawa 20th Circuit Court.

FORTZ
Legal

1 A. I don't know.

2 Q. By the way, I should have said this case involves short-term
3 rentals. I am going to use that term. It involves -- I
4 represent a group of property owners who have an organization
5 called Park Township Neighbors, and they all own properties
6 that they use for short-term rentals, which, when I use that,
7 means less than 28 days. So I just wanted to clarify that.

8 A. Yes.

9 Q. Okay. What time period did you work for Park Township?

10 A. September of 2018, I believe it was, until August of 2023.

11 Q. And what position did you hold there?

12 A. Code enforcement.

13 Q. And was that a full-time position?

14 A. No.

15 Q. About -- was there any -- could you estimate about how many
16 hours per week or hours per month that was?

17 A. I was doing about 12 hours a week.

18 Q. And do you remember what your hourly rate was, pay rate?

19 A. \$23.

20 Q. And did you hold any other employment at the same time as
21 being code enforcement for Park Township?

22 A. Yes.

23 Q. Let's step back a little bit. What is your highest level of
24 education?

25 A. I have a bachelor's degree.

1 Q. From where?

2 A. Michigan State University.

3 Q. And what year approximately?

4 A. '83.

5 Q. All right. I am just going to kind of start from there and
6 get your employment history kind of up to present. So after
7 MSU, what was your first full-time employment?

8 A. Three years at Meridian Township Police Department in
9 Okemos.

10 Q. As a police officer?

11 A. Yes.

12 Q. And how about after that?

13 A. I was 29 years at Holland Police Department as a police
14 officer.

15 Q. All right. And what ranks did you hold there?

16 A. Patrolman.

17 Q. In those 29 years, that would have been -- what --
18 approximately 1986 to two thousand and --

19 A. From '88 to 2017.

20 Q. All right. Then how about after Holland?

21 A. I was part-time bailiff for 58th District Court in Hudsonville
22 at the same time I was part-time at Park Township as code
23 enforcement, and I was part-time at Port Sheldon Township as
24 code enforcement.

25 Q. Got you.

1 anything like that?

2 A. No.

3 Q. All right. While you were code enforcement at Park Township,
4 I saw some emails which I will show you later that over the
5 years you got a few questions about short-term rentals. I am
6 curious if -- did you know that there were short-term rentals
7 in Park Township the entire time that you were serving as code
8 enforcement there?

9 A. Yes.

10 Q. And you knew that those short-term rentals were in residential
11 areas?

12 A. Yes.

13 Q. And how did you get the code enforcement position job? Is
14 that -- for example does someone appoint you? Do you apply
15 for it and they hire you?

16 A. I applied for it, went through an interview process and was
17 hired.

18 Q. Do you remember was there a person in particular that hired
19 you?

20 A. The township manager, Howard Fink.

21 Q. Who did you report to as the code enforcement officer?

22 A. To Howard Fink.

23 Q. And did anyone work for you, like report to you?

24 A. No.

25 Q. How about training for the job, when you first got it, did you

1 ticket, you know, you give it out on the street, it is the
2 same format, it is the same ticket, it is just for
3 municipal.

4 Q. Okay. Do you recall if -- during the time that you were the
5 code enforcement officer, did you ever write a municipal civil
6 infraction ticket for someone using their house as a
7 short-term rental?

8 A. No.

9 Q. How about even the -- you know, one of these initial letters
10 asking for compliance, did you ever have to write one of those
11 solely because that house was being used as a short-term
12 rental?

13 A. No.

14 Q. And any particular -- well, let me ask you this: I think, as
15 you said earlier, you knew short-term rentals existed. Why
16 did you not issue any letters for violations or municipal
17 civil infractions?

18 A. Because the township was working on a short-term rental
19 zoning -- I don't know what you would call it -- policy.

20 Q. And what do you mean there? Was -- how did that relate to
21 whether or not you were issuing code violation letters or
22 tickets?

23 A. By the time I received complaints on short-term rentals, the
24 township was working on a short-term rental zoning policy.
25 That is the best I can describe it.

1 17th, 2020 thank for your email. Park Township does not have
2 any regulations on rental units and short-term rentals.

3 Do you see that?

4 A. Yes.

5 Q. And this is -- I guess this is over a year after our last
6 email, but as of December 17th, 2020, at least, it was your
7 understanding that Park Township did not have regulations that
8 governed short-term rentals. Correct?

9 A. Correct.

10 Q. And then, to kind of square this with the last email we looked
11 at, as you were just explaining before, in 2019 it was your
12 position that there was -- you simply weren't enforcing the
13 zoning ordinance, but now you are saying there was no zoning
14 ordinance on short-term rentals. Why the change of belief?

15 A. I guess I am not clear on your question.

16 Q. Yeah. If I understand correctly, from the previous email,
17 Exhibit 46, you were saying as of 2019 you did believe the
18 ordinance existed to govern short-term rentals, you just had
19 misspoke, but now here you are clearly answering a question
20 whether or not rental regulations exist and you say no. I am
21 just curious, did you have a change in belief as to what the
22 zoning ordinance said, or something else?

23 A. I guess I was looking at we don't have a specific -- at that
24 time -- yeah, at that point I believe we were -- they were
25 working on a short-term rental policy, and at that time Park

1 yet gotten to the board. The board makes the ultimate
2 decision on that, so --

3 Q. For you as code enforcement officer why did the policy
4 matter?

5 A. Well, it's -- I mean, that gives us direction on what we are
6 going to -- how we are going to operate in reference to the
7 short-term rentals.

8 Q. Right, but your job as code enforcement officer, your job is
9 to follow the zoning ordinance and enforce it as written.
10 Correct?

11 A. With the direction of the board.

12 Q. Direction being what, whether or not to enforce it?

13 A. Correct.

14 Q. So I -- okay. So when you are talking here the board hasn't
15 addressed it, you are saying the board hasn't given me
16 direction whether or not to enforce it or not?

17 A. Correct.

18 Q. Did the board ever give you direction at any time in your code
19 enforcement position as to whether or not to enforce
20 regulations with respect to short-term rentals?

21 A. No.

22 Q. So, again, thinking about the code enforcement position in
23 general, in the absence of direction, so isn't the default
24 that you enforce it as written?

25 A. In my career as law enforcement, there are many times when

1 Q. I get it. I am just giving you an example. I am not talking
2 about -- I think you are thinking of a specific example. I am
3 probably giving you one.

4 In this case the township is taking the position
5 that every short-term rental in the township violates the
6 zoning ordinance, and we know for a fact there was hundreds.
7 I guess, but I am -- the township's position is we just didn't
8 enforce our ordinance for 50 years. I guess what I am asking
9 is: In that case, which is our case, is that a decision that
10 you believe a code enforcement officer could make, that we are
11 not going to enforce our ordinance, or is that a decision that
12 would have had to have been made by the board or someone
13 else?

14 A. I guess someone above my pay grade.

15 Q. Okay. So you would say that's not a decision for the code
16 enforcement officer to make. Correct?

17 A. Correct.

18 Q. And if the board made that type of decision, similar to the
19 firewood example that you gave, would you expect the board to
20 actually make a decision, something in a meeting minute, with
21 a motion that the board is telling the code enforcement
22 officer to not enforce their ordinance? Is that what you
23 would expect?

24 A. I don't know. I don't have any expectations of that. I'm not
25 aware of what I would do.

1 investigations into -- from Ms. Clark's complaints?

2 A. I left shortly after this, so that investigation was kept
3 open.

4 Q. Okay. And do you remember -- it sounds like there may have
5 been other complaints as well too. Did Ms. Clark ever have a
6 complaint about there being a short-term rental which you then
7 investigated and confirmed it was a short-term rental?

8 A. I don't recall.

9 Q. All right. Do you recall if you -- during your time as code
10 enforcement officer there, did you ever issue any citations
11 for someone operating a short-term rental?

12 A. I did not.

13 Q. Don't divulge any attorney-client communications if any exist,
14 but did anyone at the township ever just come out and tell you
15 we are going to take the position that our ordinance ever
16 allowed short-term rentals?

17 A. Can you repeat that?

18 Q. Yeah. Yeah.

19 What we know happened is that there were hundreds of
20 short-term rentals in Park Township. And I should add do you
21 know what a nonconforming use is.

22 A. Yes.

23 Q. So if short-term rentals had been allowed, but then Park
24 Township changed the zoning ordinance to disallow them, you
25 understood that everyone who had them under that scenario that

Exhibit 38

From: Code Enforcement[/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=855e935247674d33bd2face3a6ab21c3-codeenforce]
Sent: Thur 12/17/2020 6:46:08 PM (UTC)
To: john h[jch015@outlook.com]
Subject: Re: Property Rentals

John,
Thank you for your email.

Park Township does not have any regulations on rental units and short term rentals. There are a few ordinances that may cover some incidents such as noise and trash, but no ordinances directly addressing rentals.
Paul

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: john h <jch015@outlook.com>
Sent: Thursday, December 17, 2020 10:48:26 AM
To: Code Enforcement <codeenforcement@parktownship.org>
Subject: Property Rentals

Dear Mr. Moerland,

My wife and I purchased a home at 306 Big Bay Drive in 2010. We've put considerable resources and money into renovating it as we plan to make it our retirement home. However, during the past several summers we've been haunted by more and more renters in adjacent and nearby homes.

I've looked for the requirements or regulations for rentals in the Park Township ordinances, but haven't found them. Could you please provide me the code/s that apply to home rentals in a residential neighborhood?

I appreciate your help with this matter. I can also be reached by phone at (907) 398-1665.

Sincerely,

John Hammelman

Sent from [Mail](#) for Windows 10



Document received by the MI Ottawa 20th Circuit Court.

Exhibit 39

From: Code Enforcement [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=855E935247674D33BD2FACE3A6AB21C3-CODEENFORCE]
Sent: Wed 7/17/2019 7:58:16 PM (UTC)
To: rachelmc1126@yahoo.com [rachelmc1126@yahoo.com]
Subject: RE: Residential rental permit

Right. At this point the township does no inspections or regulations on rental property of any kind.

From: Rachel Nadolsky [mailto:rachelmc1126@yahoo.com]
Sent: Wednesday, July 17, 2019 3:56 PM
To: Code Enforcement <codeenforcement@parktownship.org>
Cc: Karl Nadolsky <drkarl@leanerliving.com>
Subject: RE: Residential rental permit

Thanks Paul,

To confirm, even for weekly vacation rental, no permit is is required?

Rachel

[Sent from Yahoo Mail on Android](#)

On Wed, Jul 17, 2019 at 13:42, Code Enforcement <codeenforcement@parktownship.org> wrote:

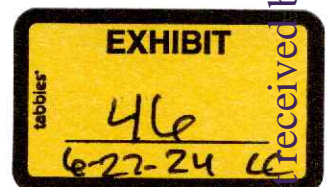
Rachel,

Park Township does not have any rental regulations. They do not need a permit to be a rental.

Paul Moerland

From: Rachel Nadolsky [mailto:rachelmc1126@yahoo.com]
Sent: Monday, July 15, 2019 2:59 PM
To: Code Enforcement <codeenforcement@parktownship.org>
Cc: Karl Nadolsky <drkarl@leanerliving.com>
Subject: Residential rental permit

Good afternoon,



Document received by the MI Ottawa 20th Circuit Court.

I was wondering if you could tell me if 816 Pine bay Ave Holland MI 49424 has a permit to be a rental, or if I have contacted the wrong person, kindly forward my email.

Thank you,

Rachel Nadolsky

765-714-5450

[Sent from Yahoo Mail on Android](#)

Exhibit 40

From: Code Enforcement [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=855e935247674d33bd2face3a6ab21c3-codeenforce]
Sent: Tue 12/21/2021 7:17:02 PM (UTC)
To: Sue Schroeder [Sue.Schroeder@Haworth.com]
Subject: Re: Lake Breeze Drive

Susan,

Thank you for the email. I will look into the first 2 issues in your email. The issues with the rentals, I will bring up to Howard Fink, the Township Manager. **There is currently no ordinances on short term rentals in Park Township as the board has not addressed this issue.**

I will get back with the result of my investigation into the storage and unwholesome items.

Paul

From: Sue Schroeder <Sue.Schroeder@Haworth.com>
Sent: Thursday, December 16, 2021 2:08 PM
To: Code Enforcement <codeenforcement@parktownship.org>
Subject: Lake Breeze Drive

To Paul Moerland,

Hello, my name is Susan Schroeder and I've lived at 1925 Lake Breeze Drive, since the house was built and I have some complaints. I've been thinking of writing for awhile now. I'll make each subject its own paragraph.

First, the abandoned house that is kitty corner from me at the corner of Lake Breeze and Harbor Inn, has a bunch of black garbage bags sitting in the yard for more than a month now. Here's the view in front of our home.



In the back yard is the boat storage building. When this was first built, nothing was supposed to be



stored outside of the building. Now there is outside storage all the way to Ottawa Beach Road. Here's our backyard view.



The house next door to us was just sold to a rental company, Lakeshore rentals, I think. They're allowing 14 people to rent at a time! Is this legal in a residential neighborhood? At times there are people parking all down the street, coming and going at all hours. Our dog thinks they're coming to our house.

The house directly across the street (that was built on wetlands), I think may also be a rental. If it is, we haven't had an issues so far. Is there anything that can be done about these issues, or is all this allowed in our sub-division now?

I bet you're glad these aren't your neighbors...

I certainly hope that Park Township is not planning to raise our taxes again this year. Please let me know if there is anything that can be done about these issues legally.

Thank you.

David and Susan Schroeder
1925 Lake Breeze Dr
Holland, MI 49424

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474- CZ
Hon. Jon H. Hulsing

v.

PARK TOWNSHIP, a Michigan municipal
corporation,

Defendant.

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Deion A. Kathawa (P84863)
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cliff@bloomsluggett.com

EXHIBITS 41 TO 50 FOR
PLAINTIFF PARK TOWNSHIP NEIGHBORS' BRIEF IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

Exhibit 41



Park Township

52 S. 152nd Avenue, Holland, Michigan 49424-6201
Phone (616) 399-4520 • Fax: (616) 399-8540
Website: www.parktownship.org • E-mail: info@parktownship.org

FOR IMMEDIATE RELEASE

Media contacts:

Howard Fink, Township Manager
hfink@parktownship.org
616.738.4520

Meika Weiss, Community Development Director
mweiss@parktownship.org
616.738.4238

Park Township Bans Short-Term Rentals ***All short-term rental activity must end by October 1, 2023***

Holland, MI – The Township Board of Park Township voted 6-0 to ban short-term rentals in residential zoning districts at their regular meeting on Thursday, November 10, 2022. All short-term rental uses in Residential Zoning districts must end by October 1, 2023.

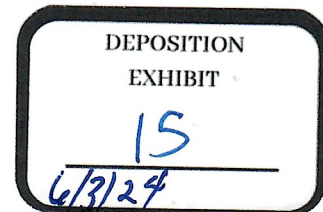
Short-term rentals have been a topic of discussion at both the Planning Commission and Township Board for the past few years, with increasing calls for regulation being presented to both bodies by members of the public. The Planning Commission has been studying and debating this consequential policy issue for nearly two years, with numerous positions from a multitude of stakeholders. On March 10 of this year, the Township Board placed a moratorium on enforcement against short-term rentals in order to allow the Planning Commission time to write an ordinance regulating short-term rentals. March 31, Park Township issued a press release clarifying that short-term rentals were not a permitted use in residential districts, and asking realtors and property owners to refrain from advertising their for-sale properties as short-term rentals.

The Planning Commission’s policy work on short-term rental regulation was to explore and create a policy for “more than zero” short-term rentals. Through the lengthy and sometimes contentious process, both the Planning Commission and Township Board heard from hundreds of residents and short-term rental owners and operators. In the end, the Township Board determined that eliminating Short Term Rentals in residential districts was in the best interest of Park Township by maintaining the character of our residential community.

According to data from Granicus, as of October there were approximately 248 active short-term rental units in Park Township. That is a 16% increase from last year.

Park Township is a suburban general law township located on the shores of Lake Macatawa and Lake Michigan, with a population of 18,770.

###



Document received by the MI Ottawa 20th Circuit Court.
Document received by the MI Ottawa 20th Circuit Court.

Exhibit 42

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

Case No.: 2023-7474-CZ

v.

Hon. Jon H. Hulsing

PARK TOWNSHIP, a
Michigan municipal corporation,
Defendant.

DEPOSITION OF: JIM GERARD

DATE: June 6, 2024

TIME: 1:56 p.m.

LOCATION: Thrun Law, PC

3260 Eagle Park Drive NE, Suite 121

Grand Rapids, Michigan

REPORTER: Kelly M. Kane, CSR-1470

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Document received by the MI Ottawa 20th Circuit Court.

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1 Q. I took the deposition of Meika Weiss two days ago.

2 A. Okay.

3 Q. At one point she told me that she had heard of a saying --

4 A. You're saying Meika?

5 Q. Meika.

6 A. Okay.

7 Q. I'm sorry, Meika Weiss.

8 A. I didn't know who Meika was, so it took me a little bit, but

9 now I know who you're talking about.

10 Q. Sorry. And she told me there was a saying she had heard

11 amongst Township -- I can't remember who she said said it.

12 She said she had heard, when talking about short-term

13 rentals, someone used the phrase we tried to decide if we

14 want to, quote, use zero or -- we want to allow, quote, zero

15 or more than zero. Sorry, that was -- I butchered that.

16 The quote was zero or more than zero. I'm curious if you

17 ever heard that phrase used before by any Township folks

18 when discussing short-term rentals.

19 A. Not that I can ever remember.

20 Q. Okay. Do you remember, was there ever a discussion amongst

21 the board, at any time since you've been on the board,

22 discussing this concept of do we want to either have no

23 short-term rentals in the Township or do we want to allow

24 them in the Township? Did that ever occur?

25 A. We've had that conversation at board meetings.

1 Q. And do you remember what the conclusion was?

2 A. The conclusion was not to have them.

3 Q. Okay. Do you remember which -- when that decision was made?

4 A. It was in the fall. What year was it. Was it -- I think it
5 must have -- I'm guessing 2022.

6 Q. Okay.

7 A. I'd have to go back and look at minutes to know for sure.

8 Q. I think I have some minutes that may jog your memory, but --
9 okay. I'm going to hand you here Exhibit 40.

10 (Deposition Exhibit 40 was marked for
11 identification.)

12 BY MR. KONWINSKI:

13 Q. Dr. Gerard, is this a memo that you wrote to the
14 Park Township board?

15 A. Certainly looks like it.

16 Q. Okay. And do you think -- well, first off, after you read
17 it, do you remember this was a memo you wrote to the board?

18 A. I don't remember writing it, but it would certainly appear I
19 did. But there's a lot of things I don't remember.

20 Q. If you did in fact write this, do you think you did send it
21 to the board?

22 A. If I wrote this I sent it to the board. Because it looks
23 like an executive summary for one of the items on a board
24 meeting, at a board meeting.

25 Q. And kind of going into my next question, why did you write

1 this?

2 A. Because the board needed to make a decision for the planning
3 commission of whether we wanted short-term rentals or not.

4 Q. And was this leading up to the meeting where it was decided
5 that the board did not want the short-term rentals?

6 A. Correct.

7 (Deposition Exhibit 41 was marked for
8 identification.)

9 BY MR. KONWINSKI:

10 Q. I'm going to hand you here Exhibit 41, Dr. Gerard. These
11 are the minutes from the November 10, 2022, meeting, which
12 is just seven days after your memo is dated. You were at
13 this meeting, correct?

14 A. Correct.

15 Q. And if you go to ART 9(b), the board passed a couple, at
16 least, motions related to short-term rentals. Do you see
17 that?

18 A. Correct.

19 Q. And this is where the board decided to not allow the
20 short-term rentals?

21 A. Correct.

22 Q. We're going to keep moving on.

23 This was previously marked as Exhibit 15. This
24 was a press release issued after that November 10, 2022,
25 meeting. And I know you're not listed as a media contact

1 by providing a definition of short-term rentals and reaffirm
2 our existing regulations.

3 Had you ever seen an ordinance passed before while
4 you were on the board of trustees that was passed solely to
5 provide clarity and reaffirm an issue?

6 A. Not that I remember.

7 Q. And do you remember, did you have any reaction to this, like
8 thinking that was odd, or, gee, why are we passing an
9 ordinance that does what our ordinance already says?

10 A. No, because we have short-term rentals in commercial
11 districts.

12 Q. So what are you saying as it relates to this ordinance?

13 A. I'm saying we have short-term rentals in Park Township. We
14 have them in commercial districts. So it would make sense
15 to have a definition when they're actually being used in the
16 Township.

17 Q. Ms. Weiss's memo says one of the reasons was to provide
18 clarity. Did you ever feel that the zoning ordinance was
19 not clear as to whether short-term rentals were allowed or
20 not in residential districts?

21 A. It was clear -- when I read that, I read that to mean
22 clarity as to what a short-term rental is. What one person
23 thinks a short-term rental is can be very different from the
24 next one. That's where -- that's how I read the word
25 clarity in this.

Exhibit 43

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PARK TOWNSHIP NEIGHBORS, a
Michigan nonprofit corporation,

Plaintiff,

v

File No: 2023-7474-CZ
Hon. Jon J. Hulsing

PARK TOWNSHIP, a Michigan municipal
Corporation,

Defendant.

DEPOSITION OF SKIP KEETER

taken before Shawn M. Breimayer, Certified Shorthand Reporter,
at the office of Thrun Law, 3260 Eagle Park Drive NE, Suite
121, Grand Rapids, MI, Monday, June 24, 2024, commencing at
11:05 a.m., pursuant to notice.

APPEARANCES:

FOR THE PLAINTIFF: Kyle P. Konwinski (P76257)
VARNUM LLP
333 Bridge Street NW, Ste 1700
Grand Rapids, MI 49504
(616) 336-6000

FOR THE DEFENDANT: Daniel R. Martin (P53532)
THRUN LAW FIRM, P.C.
3260 Eagle Park Drive NE, Suite 121
Grand Rapids, MI 49525
(616) 588-7702

Reported by: Shawn M. Breimayer, CSR-6888

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Document received by the MI Ottawa 20th Circuit Court.

1 A. We had a commercial zone that once had a resort in it
2 and an amusement park and if there's a way for them to
3 do short-term rental in a commercial district where
4 they belong I'm good with it.

5 Q. And do you think there are problems with having
6 short-term rentals in residential districts?

7 A. According to many of our citizens, yes.

8 Q. Okay. And what -- what do you perceive the problems to
9 be based upon it sounds like what these other folks
10 have told you?

11 A. Overcrowded, too many cars, too much noise, lack of
12 stability in the neighborhood.

13 Q. Any others?

14 A. That should be enough.

15 Q. Okay. I understand, but are there any other problems
16 that come to your mind besides those?

17 A. No.

18 Q. And how about, do you think there is any benefit to
19 short-term rentals in the residential districts in Park
20 Township?

21 A. Park Township has no -- has very limited commercial.
22 We have three marinas and I think three restaurants, so
23 is there a benefit to the Township, no. Benefit to the
24 City of Holland and Holland Charter Township, probably.

25 Q. Are there any motels or hotels in Park Township?

1 A. None.

2 Q. Sounds like you said you've been in the same house in
3 Park Township for the 24 years. Are there any
4 short-term rentals in proximity of where you live? I
5 say proximity, close, you know, nearby that you see?

6 A. I -- I have a neighbor who has an extra house that he
7 rents, but I think he's renting to college students at
8 Hope College, so I'm not aware of -- I'm not aware of
9 any short-term rentals within three, four, 500 feet.

10 Q. Okay. Have you ever made any complaints about a --
11 someone using their house as a short-term rental?

12 A. No.

13 Q. As I mentioned, I represent this group called Park
14 Township Neighbors, which is comprised of a number of
15 folks who own properties in Park Township.
16 Understanding you may not know everyone who is in Park
17 Township Neighbors, do you know of any people in Park
18 Township Neighbors that you know that's part of the
19 group?

20 A. We've had a number of people come to board meetings and
21 either support or oppose short-term rentals. I don't
22 know their names.

23 Q. And also, do you know whether or not they are a -- in
24 the Park Township Neighbors group?

25 A. I -- I -- no, I don't.

1 A. I do.

2 Q. And do you know if the board ended up undertaking that
3 request of Mr. Gerard's here?

4 A. I think there were many discussions about short-term
5 rentals. I'd have to go back and look at minutes to
6 determine dates, but there were a lot of discussions.

7 Q. All right. And I heard it described by one of the
8 persons I took the deposition of, Ms. Weiss. She said
9 at -- I can't remember if she said this to the board or
10 the planning commission. She said they were trying to
11 make the decision of zero or more than zero as in
12 whether we -- whether Park Township should have zero
13 short-term rentals or more than zero, and I'm curious
14 if you ever recall the board coming to that?

15 A. I -- I don't even understand that.

16 Q. Never heard that term before, zero or more than zero?

17 A. No.

18 Q. And do you know if the board ever made a determination
19 if short-term rentals are to be made lawful use in
20 residential districts?

21 A. I think the only discussion the board ever made was
22 just the opposite.

23 Q. Which is what?

24 A. That they were not to be lawful in Park Township.

25 Q. And I'm going to hand you here -- this was previously

Exhibit 44

PARK TOWNSHIP
OTTAWA COUNTY, MICHIGAN

(Short-Term Rentals)

ZONING ORDINANCE AMENDMENT

(Ordinance No. 2024-01)

At a regular meeting of the Township Board for Park Township held at the Township offices on March 14, 2024, beginning at 6:30 p.m., this Ordinance/ordinance amendment was offered for adoption by Township Board Member Spoelhof and was seconded by Township Board Member Steggerda :

**AN ORDINANCE/ORDINANCE AMENDMENT TO AMEND
THE PARK TOWNSHIP ZONING ORDINANCE, AS
AMENDED, REGARDING ALLOWED USES, SHORT-TERM
RENTALS AND SIMILAR MATTERS.**

THE TOWNSHIP OF PARK (the “TOWNSHIP”) ORDAINS:

Article 1 – Intent and Legislative History.

The current Park Township Zoning Ordinance (the “Zoning Ordinance”), and the past zoning ordinances for Park Township going back to 1946, have not used the now commonly used term short-term rentals phrase (“STRs,” as defined below), but rather have used terms such as “transient lodging,” “lodging house,” “hotels,” “motels,” “tourist cabins,” and “tourist homes” to address and regulate such transient uses. The Zoning Ordinance adopted in 1946 allowed hotels and tourist cabins in the residential zoning district when approved by the Board of Appeals, and transient lodging and boarding as an accessory use like a home occupation. The Zoning Ordinance adopted in 1963 similarly allowed hotels and motels in each of the residential zoning districts when approved by the Board of Appeals, and allowed tourist rooms in only one of the two residential zoning districts. However, the current Zoning Ordinance adopted in 1974 removed these as

permitted uses within the residential zoning districts, and only allows hotels, motels, and tourist homes (e.g., lodging for transient guests) in the commercial/business zoning districts dedicated to accommodate the needs of tourists and associated recreational purposes (which is the C-2 Resort Service zoning district in the current Zoning Ordinance). Accordingly, STRs have not been lawfully allowed within the Township (except in the C-2 commercial/business zoning district) since the current zoning regulations were enacted by the Township in 1974, with the exception of nonconforming uses that were lawfully established prior to 1974 and lawful licensed Bed and Breakfast Establishments. Absent an STR located in a commercial or business zoning district or a lawful Bed and Breakfast Establishment, the only way that an existing STR could be lawful today is if it is a lawful nonconforming use (i.e. it lawfully existed before February 7, 1974, and perhaps even earlier, has been in constant operation or use ever since and has not been expanded, abandoned, etc.). To the best of the knowledge of current Township officials and after a careful review of Township records, the Township cannot locate any records, documents, minutes or evidence that an STR has ever been approved by the Township within the AG Agricultural and Permanent Open Space zoning district, the R-1 Rural Estate zoning district, the R-2 Lakeshore Residence zoning district the R-3 Low Density Single-Family Residence zoning district, the R-4 Medium Density Single- and Two-Family Residence zoning district, or the R-5 Low Density Multifamily Residence zoning district by the then-Park Township Zoning Administrator, code official or any other Township official with such approval authority. It is also likely that some or all of the STRs that may currently exist within the Township do not meet all of the applicable building codes, fire codes and/or similar codes or laws. Accordingly, the Township Board finds that any STR that currently exists in Park Township (except for any lawful STRs within the C-2 Resort Service zoning districts, lawful and licensed Bed and Breakfast Establishments, or any

lawful nonconforming use) are unlawful under the Zoning Ordinance (and potentially, the building code and/or fire code as well) and that the STR use of such unlawful operations must cease. That should not constitute a hardship for any property owner, because the dwelling involved presumably can still be used for non-commercial non-transient residential use and would likely remain a valuable property.

Article 2 – Findings.

The Township Board hereby finds that there are potentially many problems and negative consequences associated with STRs that are not located within the C-2 Resort Service zoning district. Such negative and adverse impacts can include, but are not necessarily limited to, the following:

- (a) The Township Board expressly finds that STRs are a commercial or business activity which is generally incompatible (and often in conflict) with non-commercial nearby single-family residential uses, neighborhoods and areas. That is particularly true regarding dwellings that are rented or leased out to transient guests entirely or for most of the calendar year or the majority of days during the summer season.
- (b) Although the ability to utilize a dwelling as an STR may enhance the value of the specific property being rented or leased out, the same may not be true regarding adjoining and nearby properties. An STR can devalue other single-family residential dwelling lots adjoining the STR and for some distance away from the STR due to the real or perceived negative impacts caused by the STR. It is not a reasonable policy or trade off to enhance the value of one property (which is utilized

for STR use) while causing the devaluation of other more adjoining or nearby residential lots or parcels in the area.

- (c) Even though most STRs in residential or agricultural zoning districts are supposed to be used for occupancy by only one family at a time, that often is not the case for STRs. STRs are frequently rented, used, or occupied by two or more families at the same time, which constitutes a multi-family use that is inconsistent with the zoning districts allowing only single-family residential use.
- (d) The transient nature of STRs and the constant “coming and going” of new renters (and their invitees) is akin to a hotel, motel or boarding house, potentially causes many problems, and is inconsistent with adjoining and nearby conventional noncommercial single-family residential uses. In many cases, new tenants or renters check into the STR dwelling (and vacate the same) within only two or three days. Such constant “turnover” is a characteristic of a commercial facility and is not consistent with single-family residential use.
- (e) In many cases, people who rent or lease a residential property for short time periods do not take the same level of care of that property as the owner of a property who resides thereon. Further, these transient occupants do not reside in the STR but merely occupy it on a short-term basis, and have no on-going relationship with the adjoining property owners akin to a residential neighborhood.
- (f) Park Township simply does not have the staff or resources to fully police STR properties and situations.
- (g) Although many advocates for STRs assert that problems with STRs can be minimized by the enactment and enforcement of local noise ordinances, blight

ordinances, barking dog ordinances, parking ordinances, etc., the enactment or full enforcement of such ordinances is frequently not feasible or practical for a municipality such as Park Township. Furthermore, to the degree that such ordinances can be enforced and might help in some situations, it is an “after-the-fact” solution reacting to a problem once it has already arisen.

- (h) In general, STR uses are more intensive, transitory, and problematic than conventional single-family and other residential uses.
- (i) Persons renting or leasing an STR property are often not familiar with the area involved, do not know local customs, and rarely know about local government ordinance requirements.
- (j) A significant number of STRs in a community can decrease the number of long-term residents.
- (k) STRs can decrease the availability of long-term housing stock, drive up dwelling prices and make long-term residency less affordable.
- (l) STRs can significantly increase the number of vacant homes and dwellings during the winter months or off-season times.
- (m) The presence of STRs in a neighborhood can increase levels of noise, traffic, and parking issues during the summer months.
- (n) Many of the problems associated with STRs can also occur in duplex and multi-family residential areas and neighborhoods.

Article 3 – Enforcement

Although Township officials believe that there are few if any lawful STR uses anywhere within the Township (apart from licensed Bed and Breakfast Establishments and potentially within

the C-2 Resort Service zoning district), the Township also recognizes that property owners who have been conducting unlawful STR uses within houses, cottages and cabins may need some time to cease such STR operations, particularly if third-parties have made arrangements for reservations ahead of time or entered into contracts to rent or lease those premises. Accordingly, absent a health or emergency situation for a specific property, the Township will generally not enforce these new Zoning Ordinance amendments regarding STRs or existing regulations or prohibitions in the Zoning Ordinance prohibiting STRs (except for Article 9 of this document) prior to October 1, 2024. It is anticipated that Township officials will attempt to find and ascertain the properties within the Township on which unlawful STRs are occurring and to notify the owners of those properties about these Zoning Ordinance amendments and the October 1, 2024 deadline. The Township Board expressly finds that such “wind down” period regarding enforcement is reasonable and still protects the health, safety and welfare of residents, property owners and visitors in and to the Township.

Article 4 – The following definition of a “Short-Term Rental” is hereby added to Section 38-6 of the Park Township Zoning Ordinance, as amended:

Short-Term Rental (“STR”): A dwelling unit, cabin, home, cottage or house (or part or portion thereof) that is available for rental, leasing, or use for habitation, accommodation or lodging of guests, renters, third-parties, or others paying a fee, money, charge or other compensation, for a period of 28 or fewer consecutive days and nights at a time. A “tourist home” is a type of STR.

Article 5 – The following new Section 38-521 is hereby added to Article IV (entitled “Supplemental Regulations”) of the Park Township Zoning Ordinance, as amended:

Section 20.31 - Short-Term Rentals.

Short-Term Rentals are prohibited in all zoning districts except for the C-2 Resort Service zoning district.

Article 6 – The following Subsection 38-452(27) is hereby added to the Park Township Zoning Ordinance, as amended, for the C-2 Resort Service zoning district:

(27) Short-term rentals and tourist homes.

Article 7 – The following Subsection 38-2(9) is hereby added to the Park Township Zoning Ordinance, as amended:

If a use, building, structure, fixture or activity is not expressly allowed by this Ordinance, it is unlawful and prohibited. In addition, if a specific use, building, structure, fixture or activity is not expressly listed as a permitted use or use with special land use approval for a specific zoning district, it is prohibited and unlawful in that zoning district.

Article 8 – Severability.

If any section, clause, or provision of this Ordinance/ordinance amendment is declared to be unconstitutional or otherwise invalid by a court of competent jurisdiction, that declaration shall not affect the remainder of the Ordinance/ordinance amendment. The Township Board hereby declares that it would have passed this Ordinance/ordinance amendment and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections,

subsections, phrases, sentences or clauses be declared invalid.

Article 9 – The Balance of the Park Township Zoning Ordinance (as amended) Remains Unchanged and in Effect.

Except as expressly amended by this Ordinance/ordinance amendment, the balance of the Park Township Zoning Ordinance, as amended, remains unchanged and in full force and effect.

Article 10 – Effective Date.

This Ordinance/ordinance amendment shall become effective upon the expiration of seven (7) days after this Ordinance/ordinance amendment (or a summary thereof) appears in the newspaper as provided by law.

The vote to adopt this Ordinance/ordinance amendment was as follows:

YEAS: Spoelhof, Serne, Steggerda and Keeter

NAYS: none

ABSTAIN/ABSENT: Gerard, DeHaan, and Jones

THIS ORDINANCE/ORDINANCE AMENDMENT IS HEREBY DECLARED
ADOPTED.

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance/Ordinance amendment adopted by the Township Board for Park Township at the time, date, and place specified above pursuant to the required statutory procedures.

Respectfully submitted,

By: 

Skip Keeter

Park Township Clerk

Exhibit 45



MEMORANDUM

To: Park Township Board of Trustees
From: Meika Weiss, Community Development Director
Date: March 7, 2024
Re: Short-Term Rental Zoning Ordinances

Short-Term Rental Zoning Ordinance Amendment: Definitions and Uses

This is one of two ordinances being recommended concerning short-term rentals for your consideration this month, at the recommendation of legal counsel and following a public hearing and review by the Planning Commission. It is intended to provide clarity (e.g., by providing a definition of short-term rentals) and reaffirm our existing regulations. It is not intended to change the regulatory effect of what is in the current zoning ordinance, as presently understood by staff.

This Zoning Ordinance amendment describes the history of transient lodging in Park Township, describes the rationale for past and current limitations on such transient uses by describing their impacts on the community, and describes intended enforcement practices beginning on October 1, 2024.

This Ordinance amends the Park Township Zoning Ordinance by defining short-term rentals, adding a section specifically describing what is lawful with regard to short-term rentals in Park Township, adding short-term rentals and tourist homes as a permitted use in the C-2 Resort Service district.

Additionally, this Ordinance explicitly states that anything not expressly allowed by the Park Township Zoning Ordinance is prohibited.



PARK TOWNSHIP
OTTAWA COUNTY, MICHIGAN

(Short-Term Rentals)

ZONING ORDINANCE AMENDMENT

(Ordinance No. _____)

At a _____ meeting of the Township Board for Park Township held at the Township offices on _____, 2024, beginning at ___ p.m., this Ordinance/ordinance amendment was offered for adoption by Township Board Member _____ and was seconded by Township Board Member _____:

**AN ORDINANCE/ORDINANCE AMENDMENT TO AMEND
THE PARK TOWNSHIP ZONING ORDINANCE, AS
AMENDED, REGARDING ALLOWED USES, SHORT-TERM
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Article 1 – Intent and Legislative History.

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permitted uses within the residential zoning districts, and only allows hotels, motels, and tourist homes (e.g., lodging for transient guests) in the commercial/business zoning districts dedicated to accommodate the needs of tourists and associated recreational purposes (which is the C-2 Resort Service zoning district in the current Zoning Ordinance). Accordingly, STRs have not been lawfully allowed within the Township (except in the C-2 commercial/business zoning district) since the current zoning regulations were enacted by the Township in 1974, with the exception of nonconforming uses that were lawfully established prior to 1974 and lawful licensed Bed and Breakfast Establishments. Absent an STR located in a commercial or business zoning district or a lawful Bed and Breakfast Establishment, the only way that an existing STR could be lawful today is if it is a lawful nonconforming use (i.e. it lawfully existed before February 7, 1974, and perhaps even earlier, has been in constant operation or use ever since and has not been expanded, abandoned, etc.). To the best of the knowledge of current Township officials and after a careful review of Township records, the Township cannot locate any records, documents, minutes or evidence that an STR has ever been approved by the Township within the AG Agricultural and Permanent Open Space zoning district, the R-1 Rural Estate zoning district, the R-2 Lakeshore Residence zoning district the R-3 Low Density Single-Family Residence zoning district, the R-4 Medium Density Single- and Two-Family Residence zoning district, or the R-5 Low Density Multifamily Residence zoning district by the then-Park Township Zoning Administrator, code official or any other Township official with such approval authority. It is also likely that some or all of the STRs that may currently exist within the Township do not meet all of the applicable building codes, fire codes and/or similar codes or laws. Accordingly, the Township Board finds that any STR that currently exists in Park Township (except for any lawful STRs within the C-2 Resort Service zoning districts, lawful and licensed Bed and Breakfast Establishments, or any

lawful nonconforming use) are unlawful under the Zoning Ordinance (and potentially, the building code and/or fire code as well) and that the STR use of such unlawful operations must cease. That should not constitute a hardship for any property owner, because the dwelling involved presumably can still be used for non-commercial non-transient residential use and would likely remain a valuable property.

Article 2 – Findings.

The Township Board hereby finds that there are potentially many problems and negative consequences associated with STRs that are not located within the C-2 Resort Service zoning district. Such negative and adverse impacts can include, but are not necessarily limited to, the following:

- (a) The Township Board expressly finds that STRs are a commercial or business activity which is generally incompatible (and often in conflict) with non-commercial nearby single-family residential uses, neighborhoods and areas. That is particularly true regarding dwellings that are rented or leased out to transient guests entirely or for most of the calendar year or the majority of days during the summer season.
- (b) Although the ability to utilize a dwelling as an STR may enhance the value of the specific property being rented or leased out, the same may not be true regarding adjoining and nearby properties. An STR can devalue other single-family residential dwelling lots adjoining the STR and for some distance away from the STR due to the real or perceived negative impacts caused by the STR. It is not a reasonable policy or trade off to enhance the value of one property (which is utilized

for STR use) while causing the devaluation of other more adjoining or nearby residential lots or parcels in the area.

- (c) Even though most STRs in residential or agricultural zoning districts are supposed to be used for occupancy by only one family at a time, that often is not the case for STRs. STRs are frequently rented, used, or occupied by two or more families at the same time, which constitutes a multi-family use that is inconsistent with the zoning districts allowing only single-family residential use.
- (d) The transient nature of STRs and the constant “coming and going” of new renters (and their invitees) is akin to a hotel, motel or boarding house, potentially causes many problems, and is inconsistent with adjoining and nearby conventional noncommercial single-family residential uses. In many cases, new tenants or renters check into the STR dwelling (and vacate the same) within only two or three days. Such constant “turnover” is a characteristic of a commercial facility and is not consistent with single-family residential use.
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- (f) Park Township simply does not have the staff or resources to fully police STR properties and situations.
- (g) Although many advocates for STRs assert that problems with STRs can be minimized by the enactment and enforcement of local noise ordinances, blight

ordinances, barking dog ordinances, parking ordinances, etc., the enactment or full enforcement of such ordinances is frequently not feasible or practical for a municipality such as Park Township. Furthermore, to the degree that such ordinances can be enforced and might help in some situations, it is an “after-the-fact” solution reacting to a problem once it has already arisen.

- (h) In general, STR uses are more intensive, transitory, and problematic than conventional single-family and other residential uses.
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- (j) A significant number of STRs in a community can decrease the number of long-term residents.
- (k) STRs can decrease the availability of long-term housing stock, drive up dwelling prices and make long-term residency less affordable.
- (l) STRs can significantly increase the number of vacant homes and dwellings during the winter months or off-season times.
- (m) The presence of STRs in a neighborhood can increase levels of noise, traffic, and parking issues during the summer months.
- (n) Many of the problems associated with STRs can also occur in duplex and multi-family residential areas and neighborhoods.

Article 3 – Enforcement

Although Township officials believe that there are few if any lawful STR uses anywhere within the Township (apart from licensed Bed and Breakfast Establishments and potentially within

the C-2 Resort Service zoning district), the Township also recognizes that property owners who have been conducting unlawful STR uses within houses, cottages and cabins may need some time to cease such STR operations, particularly if third-parties have made arrangements for reservations ahead of time or entered into contracts to rent or lease those premises. Accordingly, absent a health or emergency situation for a specific property, the Township will generally not enforce these new Zoning Ordinance amendments regarding STRs or existing regulations or prohibitions in the Zoning Ordinance prohibiting STRs (except for Article 9 of this document) prior to October 1, 2024. It is anticipated that Township officials will attempt to find and ascertain the properties within the Township on which unlawful STRs are occurring and to notify the owners of those properties about these Zoning Ordinance amendments and the October 1, 2024 deadline. The Township Board expressly finds that such “wind down” period regarding enforcement is reasonable and still protects the health, safety and welfare of residents, property owners and visitors in and to the Township.

Article 4 – The following definition of a “Short-Term Rental” is hereby added to Section 38-6 of the Park Township Zoning Ordinance, as amended:

Short-Term Rental (“STR”): A dwelling unit, cabin, home, cottage or house (or part or portion thereof) that is available for rental, leasing, or use for habitation, accommodation or lodging of guests, renters, third-parties, or others paying a fee, money, charge or other compensation, for a period of 28 or fewer consecutive days and nights at a time. A “tourist home” is a type of STR.

Article 5 – The following new Section 38-521 is hereby added to Article IV (entitled “Supplemental Regulations”) of the Park Township Zoning Ordinance, as amended:

Section 38-521 - Short-Term Rentals.

Short-Term Rentals are prohibited in all zoning districts except for the C-2 Resort Service zoning district. Notwithstanding such prohibition, a lawful single-family or other dwelling may be rented or leased to one (1) family at a time, with the total of such rentals or leasing not to exceed fourteen (14) consecutive days during a calendar year for the lot or parcel involved (i.e. in no event shall a lot or parcel be rented or leased for more than fourteen (14) days in total during a calendar year and such fourteen (14) days must be done in a row or consecutively).

Article 6 – The following Subsection 38-452(27) is hereby added to the Park Township Zoning Ordinance, as amended, for the C-2 Resort Service zoning district:

(27) Short-term rentals and tourist homes.

Article 7 – The following Subsection 38-2(9) is hereby added to the Park Township Zoning Ordinance, as amended:

If a use, building, structure, fixture or activity is not expressly allowed by this Ordinance, it is unlawful and prohibited. In addition, if a specific use, building, structure, fixture or activity is not expressly listed as a permitted use or use with special land use approval for a specific zoning district, it is prohibited and unlawful in that zoning district.

Article 8 – Severability.

If any section, clause, or provision of this Ordinance/ordinance amendment is declared to be unconstitutional or otherwise invalid by a court of competent jurisdiction, that declaration shall not affect the remainder of the Ordinance/ordinance amendment. The Township Board hereby declares that it would have passed this Ordinance/ordinance amendment and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections,

subsections, phrases, sentences or clauses be declared invalid.

Article 9 – The Balance of the Park Township Zoning Ordinance (as amended) Remains Unchanged and in Effect.

Except as expressly amended by this Ordinance/ordinance amendment, the balance of the Park Township Zoning Ordinance, as amended, remains unchanged and in full force and effect.

Article 10 – Effective Date.

This Ordinance/ordinance amendment shall become effective upon the expiration of seven (7) days after this Ordinance/ordinance amendment (or a summary thereof) appears in the newspaper as provided by law.

The vote to adopt this Ordinance/ordinance amendment was as follows:

YEAS: _____

NAYS: _____

ABSTAIN/ABSENT: _____

**THIS ORDINANCE/ORDINANCE AMENDMENT IS HEREBY DECLARED
ADOPTED.**

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance/Ordinance amendment adopted by the Township Board for Park Township at the time, date, and place specified above pursuant to the required statutory procedures.

Respectfully submitted,

By: _____
Skip Keeter
Park Township Clerk



MEMORANDUM

To: Park Township Board of Trustees
From: Meika Weiss, Community Development Director
Date: March 7, 2024
Re: Short-Term Rental Moratorium Ordinance

Ordinance to Impose a Moratorium on New Short-Term Rentals

This is one of two ordinances being recommended concerning short-term rentals for your consideration this month, at the recommendation of legal counsel and following review by the Planning Commission. This Ordinance would impose a moratorium on new short-term rentals.

There has been some confusion in the community regarding the impact of the temporary injunction imposed by the Ottawa County Circuit Court which currently prevents Park Township from enforcing the prohibition on short-term rental activity. As a result, some believe that short-term rentals are now a permitted use in Park Township and others have begun new short-term rental operations. This Ordinance is part of a belt-and-suspenders approach to protecting the long-term well-being of the community.

This Ordinance describes the rationale for this Ordinance in part by recognizing the incompatibility of short-term rental uses particularly in residential areas, explains how short-term rental use in defined areas has been unlawful since zoning regulations were established in 1946, and notes that a short-term rental is a commercial or business use.

It goes on to define short-term rental for the purposes of this Ordinance and makes explicit Park Township's existing policy and regulation that no short-term rental activity should occur in Park Township, as well as describing guidelines for the use of any short-term rental that may be lawful.

Further, this Ordinance explicitly states that it shall be interpreted to be consistent with and not in conflict with the injunction/Order issued by the Ottawa County Circuit Court on December 1, 2023 in the case of *Park Twp Neighbors v Park Twp* (Ottawa County Circuit Court Case No. 2023-7474-CZ). There is no intent on the Township's part to begin enforcement practices as long as the injunction is in effect.

PARK TOWNSHIP
OTTAWA COUNTY, MICHIGAN
(Ordinance No. _____)

At a _____ meeting of the Township Board for Park Township held on _____, 2024, beginning at _____ p.m., the following Ordinance was offered for adoption by Township Board Member _____, and was seconded by Township Board Member _____:

AN ORDINANCE TO IMPOSE A TEMPORARY MORATORIUM ON THE ISSUANCE OF ANY PARK TOWNSHIP PERMIT, APPROVAL OR LICENSE FOR THE USE OF ANY PROPERTY, BUILDING, COTTAGE, CABIN OR DWELLING AS A SHORT-TERM RENTAL AND ALSO TO PROHIBIT UTILIZING ANY PROPERTY, CABIN, COTTAGE, DWELLING OR HOUSE AS A SHORT-TERM RENTAL OR FOR SHORT-TERM RENTAL PURPOSES WITHIN THE TOWNSHIP DURING THE MORATORIUM.

THE TOWNSHIP OF PARK (the "Township") ORDAINS:

Section 1. Findings.

The Township Board finds as follows:

- a. There is significant concern by the Township, as well as an increasing number of citizen complaints, about the proliferation of short-term rentals ("STRs") within the Township.
- b. There can be numerous problems associated with many STRs in single-family residential, multi-family residential and agricultural areas, including, but not limited to, improper use by multi-families, excessive noise, nuisances, overcrowding of neighborhoods and lake areas within the Township, negative impacts on adjoining and nearby property values and other negative matters.
- c. In many cases, STRs may not be consistent with adjoining and nearby lawful single-family residential uses and some multi-family residential uses, and are often more akin to commercial or business uses such as motels, hotels, tourist cabins, boarding or tourist rooms facilities, and bed and breakfast operations.

- d. STRs have always been unlawful within the residential and agricultural zoning districts (currently the AG Agricultural and Permanent Open Space District, the R-1 Rural Estate Residence District, the R-2 Lakeshore Residence District, the R-3 Low Density Single-Family Residence District, the R-4 Medium Density Single and Two-Family District and the R-5 Low Density Multi-Family Residence District) since the time when zoning regulations first went into effect in Park Township in 194__.
- e. Where a dwelling, house, cottage or other property is utilized solely or primarily as an STR, such use is clearly commercial and business in nature and not residential.
- f. The Township is diligently working on an ordinance or ordinance amendments to confirm the prohibition of STRs in the AG Agricultural and Permanent Open Space District, the R-1 Rural Estate Residence District, the R-2 Lakeshore Residence District, the R-3 Low Density Single-Family Residence District, the R-4 Medium Density Single and Two-Family District and the R-5 Low Density Multi-Family Residence District and to regulate STRs where lawful in the C-2 Resort Service zoning district, but the Township needs more time to complete such an ordinance/ordinance amendment and enact the same.
- g. The Township Board finds that this temporary moratorium is both reasonable and prudent, and will promote the public health, safety and welfare of the residents, property owners and visitors of and to the Township.

Section 2. Definition.

For purposes of this moratorium ordinance, a “short-term rental” (also, “STR”) shall be defined and mean as follows:

“Short-term rental” means a dwelling, cabin, cottage or house that is available for use or is used for habitation, accommodations or lodging of guests, renters or others, paying a fee, charge, money or other compensation, for a period of 30 or fewer consecutive days and nights at a time.

Section 3. Administrative Action; Prohibition of STR use.

- a. A moratorium is hereby imposed upon the processing or issuance of any Township permit, license, zoning approval, rezoning, variance, or similar approval for any STR. During the moratorium term specified in this Ordinance, no Township official, employee, body, commission or agent shall process, issue or approve any permit, zoning approval, rezoning, license, variance or other approval for any STR.
- b. In addition, during the time that this moratorium is in effect:

- (i) No STR shall commence, be operated, occur or be present within the Township.
 - (ii) No house, dwelling, cottage, cabin, property or building shall be used, advertised, promoted, rented or leased out, maintained or utilized as an STR.
 - (iii) No lawful existing STR shall be expanded, intensified, extended or increased in size, area or magnitude.
- c. Every existing lawful STR shall be rented or leased to only one (1) single family at a time and shall be used by only one (1) single family at one time.

Section 4. Exemptions. This Ordinance shall not apply to any existing STR use on a specific parcel or lot that:

- a. Is lawful and located within the C-2 Resort Service zoning district; or
- b. Is a fully lawful nonconforming use in any zoning district.

* * *

During the term of the moratorium pursuant to this Ordinance, even a lawful STR as specified in a. or b. above, shall not be expanded, increased in intensity, extended or increased in size, area or magnitude.

Section 5. Term of This Ordinance. The moratorium imposed by this Ordinance shall remain valid and in effect for six (6) months following the effective date of this Ordinance or until the regulatory, zoning or other ordinance (or ordinance amendment) discussed above is enacted by the Township Board and becomes effective, whichever occurs first. Prior to the expiration of this moratorium, the Township Board may extend the moratorium term to allow sufficient time to complete and enact any such ordinance (or ordinance amendment) and until it becomes effective.

Section 6. Compliance with the Injunction. This Ordinance shall be interpreted to be consistent with and not in conflict with the injunction/Order issued by the Ottawa County Circuit Court on December 1, 2023 in the case of *Park Twp Neighbors v Park Twp* (Ottawa County Circuit Court Case No. 2023-7474-CZ). To the extent that this Ordinance is inconsistent with, in violation of or conflicts with such injunction/Order, such portion of this Ordinance shall be unenforceable to the extent not allowed by that injunction/Order. However, to the extent that final court action in *Park Twp Neighbors v Park Twp* (Ottawa County Circuit Court Case No. 2023-7474-CZ) validates, affirms or otherwise upholds any prohibition or regulations in the Park Township Zoning Ordinance and/or this Ordinance or other Township ordinance regulating or prohibiting STRs, the provisions of this Ordinance shall “relate back to” and be deemed effective and enforceable as of the date of publication of this Ordinance to the extent allowed by law. Given that the injunction/Order only applies on its face to the enforcement of Park Township ordinance provisions regarding STRs and not as to the validity or effectiveness of any such Township

ordinance or regulations, this Ordinance should be fully consistent with the injunction/Order so long as Township enforcement efforts do not occur while the injunction/Order is in effect.

Section 7. Effective Date; Repeal; Extension. This Ordinance is declared to be an emergency ordinance and shall become effective on the day after a notice of adoption appears in the newspaper.

The vote in favor of this Ordinance was as follows:

YEAS: _____

NAYS: _____

ABSENT/ABSTAIN: _____

ORDINANCE DECLARED ADOPTED.

CERTIFICATION

I hereby certify that the above is a true copy of an emergency Ordinance adopted by the Township Board for Park Township at the time, date, and place specified above pursuant to the required statutory procedures.

Respectfully submitted,

By _____
Skip Keeter
Park Township Clerk

Exhibit 46



Dictionary

Thesaurus

establish



Games & Quizzes

Word of the Day

Dictionary

Definition

Synonyms

Example Sentences

Word History

Phrases Containing

Entries Near

Show More

Save Word

establish verb

es·tab·lish (i-'sta·blish)

established; establishing; establishes

[Synonyms of establish](#)

transitive verb

1 : to institute (something, such as a law) permanently by enactment or agreement

2 **obsolete** : SETTLE sense 7

3 **a** : to make firm or stable

b : to introduce and cause to grow and multiply
establish grass on pasturelands

4 **a** : to bring into existence : FOUND

established a republic

b : BRING ABOUT, EFFECT

established friendly relations

5 **a** : to put on a firm basis : SET UP

establish his son in business

b : to put into a favorable position

c : to gain full recognition or acceptance of
the role established her as a star

Exhibit 47

BLACK'S LAW DICTIONARY®

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

SIXTH EDITION

BY

THE PUBLISHER'S EDITORIAL STAFF

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WEST PUBLISHING CO.
1990

when such tax cannot be paid by the donor making the transfer. I.R.C. §§ 6901-6905.

Transfer in contemplation of death. A transfer made under a present apprehension on the part of the transferor, from some existing bodily or mental condition or impending peril, creating a reasonable fear that death is near at hand. See Contemplation of death.

Transfer of a cause. The removal of a case from the jurisdiction of one court or judge to another by lawful authority. 28 U.S.C.A. §§ 1404(a), 1406(a), 1631. See Forum non conveniens; Removal of causes.

Transferor. One who makes a transfer.

Transfer payments. Payments made by the government to individuals for which no services are concurrently rendered in return. A transfer payment might be a Social Security check or an unemployment check.

Transferred intent doctrine. If an illegal yet unintended act results from the intent to commit a crime, that act is also considered illegal. Under doctrine of "transferred intent," original malice is transferred from one against whom it was entertained to person who actually suffers consequence of unlawful act. *Provenzano v. State, Fla.*, 497 So.2d 1177, 1181. For example, if a person intentionally directs force against one person wrongfully but, instead, hits another, his intent is said to be transferred from one to the other and he is liable to the other though he did not intend it in the first instance. See also Intent (*Transferred intent*).

Transfers to Minors Act. The Uniform Transfers to Minors Act (UTMA) revises and replaces the Uniform Gifts to Minors Act (UGMA). As expanded, the Act allows the transfer of any type of property, real or personal, tangible or intangible, and wheresoever located (within or without the state) to a custodianship. In addition, the UTMA permits (in addition to outright lifetime gifts) transfers from trusts, estates, and guardianships even if the trust, will, etc., instrument does not expressly permit such transfers. Transfers from persons indebted to the minor also may be made to the custodianship if the minor does not have a conservator. The UTMA also permits the legal representative of the minor to transfer other property of the minor to the custodianship for the purpose of convenience or economy.

Many states have repealed the former UGMA and substituted this new UTMA. See also Gifts (or Transfers) to Minors Act.

Transfer tax. A tax upon the passing of the title to property or a valuable interest therein out of or from the estate of a decedent, by inheritance, devise, or bequest. See Estate tax; Inheritance tax; Unified transfer tax.

Tax on the transfer of property, particularly of an incorporeal nature, such as bonds or shares of stock, between living persons. A tax imposed by New York State when a security is sold or transferred from one person to another. Also, a tax imposed by states on

each deed conveying real estate. The tax is paid by the seller. See also Revenue stamps.

Transfer ticket. An undertaking on the part of a common carrier to continue the carriage further without additional charge if the passenger, in accordance with its terms, again presents himself at the proper place for carriage. It generally designates the point at which the journey is to be renewed, but contains no contract, express or implied, for safety in making the transfer. *Anton v. St. Louis Public Service Co.*, 335 Mo. 188, 71 S.W.2d 702, 706.

Transferuntur dominia sine titulo et traditione, per usucaptionem, scilicet, per longam continuam et pacificam possessionem /trãnsfôrîntôr dãmîni(y)ã sãyniy tit(y)ãlôw êt trãdishiyôwniy, pãr yûwzyuwkãpshiyôwnãm, silãsat, pãr lóngãm kãntinyuwãm êt pãsifãkãm pãzãshiyôwnãm/. Rights of dominion are transferred without title or delivery, by usucaption, to-wit, long and quiet possession.

Transfretatio /trãnzfrãtêysh(i)yôw/. Lat. In old English law, a crossing of the strait [of Dover]; a passing or sailing over from England to France. The royal passages or voyages to Gascony, Brittany, and other parts of France were so called, and time was sometimes computed from them.

Transgressio /trãnzgrêsh(i)yôw/. In old English law, a violation of law. Also trespass; the action of trespass.

Transgressio est cum modus non servatur nec mensura, debit enim quilibet in suo facto modum habere et mensuram /trãnzgrêsh(i)yôw êst kãm môwdãs nôñ sãrvêytãr nèk ments(y)ûrã, dêbãt iynãm kwãylãbãt in sy(y)ûwôw fãktôw môwdãm hãbîriy êt ments(y)ûrãm/. Transgression is when neither mode nor measure is preserved, for every one in his act ought to have a mode and measure.

Transgressione /trãnzgrêshiyôwniy/. In old English law, a writ or action of trespass.

Transgressione multiplicata, crescat poena inflictio /trãnzgrêshiyôwniy mãltãplãkêyts, krêskãt piyniy infliktsh(i)yôw/. When transgression is multiplied, let the infliction of punishment be increased.

Transgressive trust /trãnzgrêsv trãst/. See Trust.

Transshipment. In maritime law, the act of taking the cargo out of one ship and loading it in another.

Transient, n. /trãnzsh(i)yãnt/. One who, or that which, is temporary. Synonymous with transitory, fugitive, fleeting, momentary.

Transient, adj. Passing across, as from one thing or person to another; passing with time of short duration; not permanent; not lasting; temporary. *Tilly v. Woodham, La.App.*, 163 So. 771, 772.

Transient foreigner. One who visits the country, without the intention of remaining.

Transient merchant. A merchant who engages in the vending or sale of merchandise at any place in the state

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Exhibit 48

ORDINANCE NO. 2023-02

AMENDMENT TO THE PARK TOWNSHIP CODE OF ORDINANCES

AN ORDINANCE to add new definitions to Section 8-1 of the Park Township Code of Ordinances; add a new Section 8-15 Short-Term Rental Registration to Chapter 8 Bed and Breakfast Establishments of the Park Township Code of Ordinances requiring all short-term rentals to register with the Township by _____; and to provide for the effective date of this ordinance.

THE TOWNSHIP OF PARK, IN THE COUNTY OF OTTAWA AND STATE OF MICHIGAN, ORDAINS:

Section 1. Definitions.

Add the following definitions to Section 8-1 of the Park Township Code of Ordinances:

Short-Term Rental. The rental of a dwelling unit for compensation for a term of 27 nights or fewer. However, the following shall not be considered short-term rentals: health, nursing, and similar rehabilitation facilities; hotels, motels, resorts, bed and breakfast establishments or campgrounds as defined elsewhere in the Code of Ordinances; employee or client temporary housing; family occupancy; house-sitting; and dwelling sales.

Short-Term Rental Agent. The individual or entity responsible for managing the short-term rental on behalf of the owner of the rental dwelling unit.

Section 2. Registration Requirements.

Add Section 8-15 Short-Term Rental Registration to Chapter 8 Bed and Breakfast Establishments as follows:

Any short-term rental operating or advertising that they are operating in Park Township as of November 30, 2022 must register with Park Township by providing the following information to the Community Development Director by _____ [date]. Short-term rentals are not a permitted use in Park Township and all short-term rental units operating contrary to Township regulations must end short-term rental use by October 1, 2023.

- (a) Full street address of short-term rental, including unit number, if applicable.
- (b) Name and full contact information of owner of short-term rental unit, including phone number, email address, and home address.
- (c) Name and full contact information of short-term rental agent if different than owner, including phone number, email address, and business address.
- (d) Date when short-term rental operation began at above-stated address with above-stated owner.

Section 3. Severability.

The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section, or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

Section 4. Effective Date.

This Ordinance was approved and adopted by the Township Board of Park Township, Ottawa County, Michigan, on _____, 2023 and is ordered to take effect on _____, 2023, which date is more than 7 days after publication of the notice of adoption in the *Holland Sentinel*, a newspaper having general circulation in the Township, as is required by Section 401 of Act 110 of 2006, as amended, provided that this effective date shall be extended as necessary to comply with the requirements of Section 402 of Act 110 of 2006, as amended.

Jim Gerard, Supervisor

E.O. Skip Keeter, Clerk

Exhibit 49

Dictionary

Definition

noun

adverb

adjective

verb

Synonyms

Example Sentences

Word History

Phrases Containing

Related Articles

Entries Near

Show More

Save Word

home

1 of 4 noun

ˈhōm

plural homes

Synonyms of home

- a** : one's place of residence : **DOMICILE**

 - has been away from *home* for two weeks
 - a place to call *home*
- b** : **HOUSE**

 - several *homes* for sale in the area
- a** : the social unit formed by a family living together

 - trying to make a good *home* for their children
 - comes from a loving *home*
- a** : a familiar or usual setting : congenial environment

 - also* : the focus of one's domestic attention
 - home* is where the heart is
- b** : **HABITAT**

 - the *home* of the kangaroo
 - The island is *home* to many species of birds.

Exhibit 50

2022 WL 17870467

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.

Emily REIF, Plaintiff-Appellant,

v.

AUTO CLUB INSURANCE ASSOCIATION,

Liberty Mutual Insurance Company,

and Luke Morrell, Defendants,

and

Alan Renz and Julie Renz, Defendants-Appellees.

No. 359741

|

December 22, 2022

Oakland Circuit Court, LC No. 2020-179790-NI

Before: M. J. Kelly, P.J., and Murray and Riordan, JJ.

Opinion

Per Curiam.

*1 Plaintiff, Emily Reif, appeals as of right the trial court order granting summary disposition under [MCR 2.116\(C\)\(10\)](#) to defendants, Alan and Julie Renz. Because there are no errors warranting relief, we affirm.

I. BASIC FACTS

In July 2019, Reif and her then-boyfriend, Steven Jackson, travelled to the Renzes' lakefront property in Hale, Michigan for a 4th of July party. The party was hosted by the Renzes' son, Luke Morrell,¹ and the Renzes were present.

On July 4, 2019, both Reif and Morrell consumed alcohol. Later, at approximately 1:00 p.m., Reif's boyfriend was playing with his dog in the lake in front of the Renzes' dock. Reif was sitting on the front edge of the dock with her legs in the water. She testified that when her boyfriend was standing in the water, she could see that the water "wasn't very high" and that it only came up "around his belly button or so."

She added that her boyfriend was approximately 6' or 6'1" tall. Morrell also observed that the water level reached Reif's boyfriend's "chest range." He decided to push Reif in the water so that she could be with her boyfriend. He came up behind her without doing anything to warn her of his presence and pushed her lower back to get her into the lake. She entered the water feet first. Reif testified that "everything happened really fast." She described the mechanism of her injury as an impact with the bottom of the lake that caused her leg to hyperextend.

Reif could not get out of the lake on her own. She was pulled out of the water by her arms and was laid on the dock. She was provided with pain medication and ice, then, because the pain persisted, she was carried to her boyfriend's truck. He drove her to the hospital, and it was determined that she had [broken her leg](#) and needed surgery.

On February 20, 2020, Reif filed a complaint against the Renzes, bringing one count of premises liability and one of negligent entrustment.² Following discovery, the parties filed cross motions for summary disposition. Thereafter, the trial court entered an opinion and order summarily dismissing Reif's premises liability claim against the Renzes. Subsequently, the court entered a stipulated order dismissing with prejudice Reif's negligent entrustment claim against the Renzes. This appeal follows.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Reif argues that the trial court erred by granting summary disposition in favor of the Renzes. We review de novo a trial court's decision on a motion for summary disposition. [Barnard Mfg Co, Inc v Gates Performance Engineering, Inc](#), 285 Mich App 362, 369; 775 NW2d 618 (2009). "A de-novo review means that we review the legal issue independently, without deference to the lower court." [Bowman v Walker](#), — Mich App —, —; — NW2d — (2022) (Docket No. 355561) (quotation marks and citation omitted); slip op. at 2. Reif also argues that the trial court erred by disregarding admissions that the Renzes made in their answer to her complaint. Resolution of that issue requires this Court to interpret court rules, which is a question of law reviewed de novo. See [Bint v Doe](#), 274 Mich App 232, 234; 732 NW2d 156 (2007).

B. ANALYSIS

1. ADMISSIONS IN ANSWER TO COMPLAINT

*2 Both Reif's complaint and the Renzes' answer are pleadings. See [MCR 2.110\(A\)\(1\) and \(5\)](#) (stating that the term "pleading" includes "a complaint" and "an answer to a complaint"). A party is required to "file and serve a responsive pleading" to a complaint. [MCR 2.110\(B\)\(1\)](#). Thus, the Renzes' answer was a responsive pleading. Relevant to responsive pleadings, [MCR 2.111\(C\)](#) provides:

(C) **Form of Responsive Pleading.** As to each allegation on which the adverse party relies, a responsive pleading must

(1) state an explicit admission or denial;

(2) plead no contest; or

(3) state that the pleader lacks knowledge or information sufficient to form a belief as to the truth of an allegation, which has the effect of a denial.

Reif made the following allegations as it relates to her premises liability claim against the Renzes:

15. Defendants Alan and Julie Renz were in possession of said premises ..., and had welcomed Plaintiff *as an invitee* at the time of the accident.

16. Defendants Alan and Julie Renz had a duty to provide a safe place *for invitees such as Plaintiff* and other similarly situated individuals, and to exercise due care in the operation and maintenance of said premises, so as to prevent injury *to its invitees*.

17. Further, Defendants Alan and Julie Renz had a duty *to Plaintiff and other invitees* to inspect the premises for dangerous conditions and to warn them of any dangerous conditions which they knew or should have known existed. [Emphasis added.]

In their answer, the Renzes responded to those allegations as follows:

15. Admitted upon information and belief.

16. Defendants admit any duties imposed by law but deny the breach of any such duties.

17. Defendants admit any duties imposed by law but deny the breach of any such duties.

It is apparent that the Renzes did not explicitly deny the allegations in paragraphs 15 through 17 of Reif's complaint, they did not plead no contest, and they did not state that they lacked knowledge or information sufficient to form a belief as to the truth of the allegations. Instead, they admitted each allegation. Although they included a proviso that the admission to paragraph 15 was upon "information and belief," such language does not transform their admission into an explicit denial, a plea of no contest, or a statement that they lack knowledge to admit or deny the allegation. Further, in paragraphs 16 and 17, they admit that they owe the duties alleged and deny only that they breached those duties. At best, the wording of the admissions to paragraphs 15 through 17 of Reif's complaint result in a failure to "state an *explicit* admission" as required by [MCR 2.111\(C\)\(1\)](#).

Under such circumstances, the Renzes' answer to paragraphs 15 through 17 of Reif's complaint arguably failed to comply with the mandatory provisions set forth in [MCR 2.111\(C\)](#). Under [MCR 2.111\(E\)\(1\)](#), "[a]llegations in a pleading that requires a responsive pleading, other than allegations of the amount of damages or the nature of the relief demanded, *are admitted if not denied in the responsive pleading.*" (Emphasis added). Thus, under the facts of this case, either the Renzes' statements in response to paragraphs 15 through 17 of Reif's complaint were sufficient to constitute explicit admissions under [MCR 2.111\(C\)\(1\)](#) or, because the allegations were not denied, they must be treated as admitted under [MCR 2.111\(E\)\(1\)](#). It is a long-standing principle of law in Michigan that an admission is "binding and may be acted upon when made in the pleadings which the rules require to be filed." [Detroit Trust Co v Smith](#), 256 Mich 376, 379; 240 NW 12 (1931). Moreover, the trial court was required to consider the pleadings—which included the Renzes' admission that Reif was an invitee—when ruling on the motions for summary disposition. See [MCR 2.116\(G\)\(5\)](#).

*3 Without explanation, the trial court disregarded the Renzes' admission that Reif was an invitee and determined that, based on the documentary evidence, she was only a licensee. Because the Renzes' statement in response to the allegations in paragraphs 15 through 17 of Reif's complaint were either explicit admissions under [MCR 2.111\(C\)\(1\)](#) or

were treated as admissions under MCR 2.111(E)(1), and because such admissions—at least in the absence of an amendment to the pleadings—are binding, *Detroit Trust Co.*, 256 Mich at 379, the trial court erred by determining that, contrary to the Renzes’ admissions, Reif was a licensee.³

The error, however, is not dispositive. “In a premises liability action, a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff’s injury, and (4) the plaintiff suffered damages.” *Buhalis v Trinity Continuing Care Servs.*, 296 Mich App 685, 693; 822 NW2d 254 (2012) (quotation marks and citation omitted). The duty owed differs depending on the visitor’s status. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). Generally, “a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land.” *Lugo v Ameritech Corp.*, 464 Mich 512, 516; 629 NW2d 384 (2001). A landowners duty to a licensee, however, is “a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved.” *Stitt*, 462 Mich at 596.

Reif takes issue with the trial court’s determination that the allegedly hazardous condition on the Renzes’ property was the lake bottom and the depth of the water, not the dock. Yet, Reif’s expert opined that the dock was “dangerous and defective” because it lacked a ladder and did not have a sign to warn users not to dive into the shallow water at the end of the dock. Viewing this evidence in the light most favorable to Reif, we conclude that the trial court erred by limiting its analysis of the allegedly dangerous condition to the lake bottom and the depth of the water.

The court, however, did not err by determining that Reif had presented no evidence that the allegedly hazardous condition on the Renzes’ land was a cause in fact or a proximate cause of Reif’s injuries. In *Ray v Swager*, 501 Mich 52, 63-64; 903 NW2d 366 (2017), our Supreme Court explained:

Proximate cause is an essential element of a negligence claim. It involves examining the foreseeability of consequences, and whether a defendant should be held legally

responsible for such consequences. Proximate cause is distinct from cause in fact, also known as factual causation, which requires showing that “but for” the defendant’s actions, the plaintiff’s injury would not have occurred. [Quotation marks and citation omitted.]

Here, even viewing the evidence in the light most favorable to Reif, there is no evidence that the Renzes’ actions or inactions caused Reif’s injuries. Rather than willingly or intentionally confronting the allegedly hazardous condition, Reif was injured when she was pushed into the lake by Morrell. Reif posits that, if Morrell had been aware of the allegedly hazardous condition, he would not have pushed her. In support, she directs this Court to the following statement by her expert:

*4 If a ladder and/or sign were present, they would display a warning/reminder of the hazards of diving/jumping into shallow water. Considering there is no evidence of mal intent, it is presumable if Mr. Morrell understood the danger, he would not have pushed Ms. Reif into the water, and this accident would not have occurred.

The expert’s statement, however, is nothing more than speculation. See *Skinner v Square D Co.*, 445 Mich 153, 164; 516 NW2d 475 (1994) (explaining that speculation is “an explanation consistent with known facts or conditions, but not deducible from them as a reasonable inference.”). “Speculation cannot create a question of fact.” *Estate of Trueblood*, 327 Mich App 275, 289; 933 NW2d 732(2019). Here, although there was evidence supporting that Morrell did not intend to injure Reif when he pushed her into the water, that fact does not lead to a reasonable inference that he would not have pushed her if he had “understood the danger.”

Instead, the record, viewed in the light most favorable to Reif, allows for a reasonable inference that Morrell’s decision to push Reif would not have been impacted by either a ladder

or a warning sign. Morrell was undisputedly aware of the allegedly hazardous condition. He testified at his deposition that he knew that the water was approximately four feet deep at the end of the dock, and he described that, just before he pushed Reif, the water reached the “chest area” on her six-foot tall boyfriend who was standing in the lake in front of the dock. Morrell, who grew up visiting the lakefront property, was “fairly familiar with the dock, and he stated that a “lot” of people would usually jump off it in order to swim in the lake. Despite his awareness of the shallow depth of the water, Morrell never advised anyone not to jump off the edge of the dock or warned them not to do so. Moreover, even after the incident in this case, he viewed what happened to Reif to be a “freak accident.” Thus, this record does not support a reasonable inference that Reif would not have been injured

but for the Renzes’ failure to install a ladder and post a warning sign.⁴

Because Reif cannot establish that her injuries were caused by a dangerous condition on the Renzes’ property that they failed to warn her about, the trial court did not err by summarily dismissing her premises liability claim.

Affirmed. The Renzes may tax costs as the prevailing party. [MCR 7.219\(A\)](#).

All Citations

Not Reported in N.W. Rptr., 2022 WL 17870467

Footnotes

- 1 Morrell was Julie Renz's son and Alan Renz's stepson.
- 2 Reif also brought a negligence claim against Morrell; however, the court entered a stipulated order dismissing that claim with prejudice.
- 3 We note that no motion to amend the pleadings was made in this case, and that, Reif stated that she would object in the event that such a request were made.
- 4 Reif's expert addresses at length the dangers of diving headfirst into water and he provided examples of warning signs that warned of the dangers of diving, rather than jumping feet first into the water. Many of the sample warning signs, in fact, depict individuals diving headfirst into water. In this case, however, Reif did not *dive* headfirst into the water. Instead, she was pushed into the water by Morrell. The push from Morrell did not cause her to dive forward; instead, she entered the water vertically and made contact with the lakebed. Reif's insistence that the Renzes are liable for allowing people to enter the water by diving is, therefore, misplaced.