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November 30, 2018

VIA ELECTRONIC MAIL

Mayor Barnett
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

City Council
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Re: ***Short-Term Rentals of Single Family Dwellings***

Dear Mayor Barnett and City Council:

I have been requested to consider and advise you concerning the City's existing and possible options to regulate short-term rentals of private single-family dwellings in the City. The advent of websites like Airbnb and VRBO, among others, has made such short term rentals easier and more popular. But, as a consequence of that comes concerns about transients, overcrowding, parking problems, excessive noise, party houses, and even crime associated with short-term rentals.

Until recently, short-term rentals have rarely been a source of problems or complaints, and Rochester Hills is not a tourist area. So, not surprisingly, the City of Rochester Hills does not have in place regulations that specifically relate to short-term rentals. We do not currently regulate or distinguish between short-term or long-term rentals, we do not have a rental housing licensing or registration program, nor do we necessarily even know or have a means to detect which houses in the City are being leased or rented, unless or until an incident or complaint brings a rental to the City's attention.

Nevertheless, the City does have authority to regulate short-term rentals if it desires to do so. There is case law consisting of several unpublished cases¹ and one recent published opinion. In *Eager v Peasley*, 322 Mich App 174 (2017), the Michigan Court of Appeals considered whether a short-term rental use violated a restrictive covenant (i.e., a deed restriction) prohibiting commercial use. In *Eager*, the defendant did not reside at the subject lake house, but she rented it out to tourists, hunters, and business travelers, and used a website to advertise. The Court, in a split decision, focused not on how the tenants' residential use of the property, but rather on the owner's use of the property for rental income purposes, which the Court deemed to be a commercial use and, therefore, in violation of the restrictive covenant.

¹ In Michigan, unpublished appellate court opinions are not binding precedent, but they may be considered as instructive or persuasive.

A more recent, unpublished case decided by the Michigan Court of Appeals a little over a month ago reached a similar conclusion in regard to the application of a local zoning ordinance to a short-term rental situation. In *Concerned Property Owners v Garfield Charter Twp*, unpublished per curiam opinion of the Court of Appeals, issued October 25, 2018 (Docket No 342831), the Court determined that short-term rentals are not a “single-family dwelling” use and that uses of a transitory nature are excluded from a “residence” use, which term connotes an intent to establish a permanence to the occupants’ presence there.

This case law would appear to support taking a position that short-term rentals of a private single-family dwelling are not a permitted use of a single-family residential dwelling. But, these decisions also leave some important questions unanswered. For instance, both the *Eager* and *Garfield Twp* cases involved circumstances where the property owner did not reside on the premises, but owned and used the premises exclusively for rentals. But, the Court decisions do indicate that “incidental” short-term rental use of the premises may be permissible. So, we are left not knowing where is the line between what is “incidental” use and “commercial” use of the premises for short-term rentals?

Also, the court decisions imply that although short-term rental scenarios may be deemed commercial in nature, a long-term rental may not be. Again, we are left uncertain where to draw the line or what length of rental term is the tipping point?

We must also consider that our City zoning ordinance defines and permits bed and breakfasts as a home occupation in single-family residential districts. Our home occupation regulations allow up to four guest rooms and allow transients to stay up to fourteen consecutive days. A bed and breakfast may be operated on a continuous basis. Really, the principal difference or distinction between the circumstances in the *Eager* and *Garfield Twp* cases and what our City zoning ordinance allows as a home occupation is that to be a lawful home occupation in our City the use must be subordinate to the principal use of the dwelling as a single-family dwelling unit. This connotes – but does not expressly state –that the owner must reside on the premises. But, an argument can be made that it would be a lawful bed and breakfast if there is a live-in operator, and not necessarily the owner residing on premise.

So, in terms of options for dealing with short-term rentals:

- The City could take the position that short term rentals are commercial uses that are not permitted under our existing single-family residential zoning. But we have practical problems of detecting and enforcing this without greater surveillance and perhaps even search warrants. We also have the nuances and perhaps even vagaries to deal with in determining incidental use vs. more than incidental, short-term vs. long term rentals, and bed and breakfast or not?
- To avert or perhaps mitigate some of the foregoing concerns and enforcement issues, and perhaps to provide more clarity to our residents and property owners, the City can develop and adopt an ordinance or ordinances to:

- Provide for house rental registration, licensing, and perhaps inspection.
- Specifically define and prohibit short rentals (other than bed and breakfasts) in single-family residential zoning districts. For instance, the City may define as short-term rental and prohibit rentals of less than six months.
- Tighten, supplement and clarify our bed and breakfast regulations to prevent or eliminate any misuse or loopholes.

In considering what the City can or should do concerning short-term rentals, we do so with the backdrop that proposed legislation has been introduced in both the State House and Senate that, if enacted, could severely limit our local authority to regulate short-term rentals. Both HB 4503 and SB 329, which were introduced last year, would amend the Michigan Zoning Enabling Act to declare that short-term rentals of less than 28 days are permitted residential uses.

Very truly yours,



John D. Staran

JDS/ijd

cc: Ms. Sara Roediger
Mr. Scott Cope