August 20, 2020

Name Deleted
Oro-Medonte Resident.

Dear XXX,

The Regulation of Short-Term Rentals in Oro-Medonte: Updated Opinion

Introduction

For the purposes of addressing issues related to short-term rentals (STRs) in Oro-Medonte, Council passed a zoning by-law amendment, Zoning By-law No. 2020-073, (the "Amendment") on July 15, 2020. The stated purpose of the Amendment was to clarify the meaning of commercial accommodation. In response to the passing of this 'clarification', you asked me to consolidate my earlier planning opinions into one document, and to provide you with an updated opinion as to the effect if any, of the Amendment. You also asked me to provide you with an opinion as to the effect of the filing of an appeal of the Amendment to the Local Planning Appeal Tribunal (LPAT). Specifically, whether the appeal would be an impediment to enforcing the existing Zoning By-law now in force.

For reference purposes, my earlier opinion letters are attached to this update and numbered as follows:

Part 1 - November 18, 2019
Part 2 – Update January 14, 2020
Part 3 – Update April 6, 2020

These three earlier letters are reproduced in the attachment that follows. Numbering of Parts and the provision of titles have been added to improve readability and to allow for easier reference. As well, to reduce repetition, introductory biographical information has been omitted. My updated opinion as of August 20, 2020 together with an Executive Summary is below and is labelled Part 4. As before, I have written this opinion letter update with the understanding that the reader will be your Township Council.

Part 4 - Updated Opinion as of August 20, 2020

Executive Summary

- By enacting the Amendment, Council has agreed that short-term rental uses are currently illegal in residential zones in Oro-Medonte.

- Disruptive short-term rentals are very much a question of public health and safety. The Township has been aware of these concerns from the community since 2017 and most recently from the Township's Chief Municipal Law Enforcement Officer.

- Disrupted neighbourhoods are in need of protection now and therefore, injunctive relief to shut down disruptive short-term rentals should be sought without delay. If Council had been properly informed and advised, Council could have acted decisively back in 2017. Waiting for the appeal of the Amendment to LPAT to be heard will lead to further unnecessary delay.

- The clarifying Amendment is helpful, but certainly not necessary for a successful prosecution. The 'clarification' of commercial accommodation established an upper limit of 28 days, but this limit is of no material relevance when it comes to prosecuting short-term rentals which are disrupting residential neighbourhoods.

- Short-term rentals were illegal in residential zones before the Interim Control By-law was passed. Therefore, there was never a need to enact the Interim Control by-law in order to stop new ones. The Interim Control By-law is not an effective enforcement tool for controlling disruptive rentals and it should be rescinded in order to restore the legal rights of owners in the Village One zone in Horseshoe Valley. Since an interim control by-law cannot legalize an already illegal use, the ICBL cannot operate to prevent, or act as a defence to, a legal proceeding brought to stop an illegal short-term rental use in a residential zone in the Township.

- In addition to protecting health and safety in residential neighbourhoods, there are compelling strategic and economic reasons to bring forward a prosecution now.

4.1 Review

As I have concluded in my earlier opinions, there are two ways in which to conclude that a short-term rental is not a permitted use in residential zones. The first way, that I will now refer to as the 'Permitted Use Analysis', is described in Part 1 (November 18, 2019) where I found that a STR use is essentially a commercial use and since STRs are not listed as a permitted use in any residential zone, STRs are prohibited. This fundamental planning principle is stated explicitly in the first branch of Section 3.0 of Zoning By-law 97-95 (the "Zoning By-law") and is determinative:

> "… If a use is not specifically… mentioned as a permitted use in a Zone, … then it is not permitted. " [1]

The second pathway, that I will now refer to as the 'Village One Analysis', was described in Part 2 (update, January 14. 2020) where I concluded that a STR use is not a permitted use in any residential zone and is only permitted in the Village One zone. As I stated in Part 2.2, it does not matter whether the STR use is characterized as commercial or not. A "Village Commercial Resort Unit"[2] is a defined use in Section 6.0 of the Zoning By-law, and describes a short-term rental use. As I have already concluded, since a village commercial resort unit use is defined in Section 6.0 and it is only listed as a permitted use in the mixed-use Village One zone, then short-term rentals are not permitted in any other zone including the R1, R2, RUR1, RUR2, SR, RLS Residential zones. Once again, this conclusion is prescribed in the second branch of Section 3.0 of the Zoning By-law and is determinative:

> "…or if it (a use) is defined in Section 6.0 of the by-law and not listed as a permitted use then it is not permitted."[3]

Therefore, there are two distinct pathways, for concluding that under the Township's Zoning By-law, short-term rentals are illegal in all Residential zones (R1, R2, RUR1, RUR2, SR, RLS) in the Township. In bringing forth the Amendment, Council, with the concurrence of expert municipal law counsel, has accepted this analysis and has agreed that short-term rental uses were already and are currently illegal in residential zones in Oro-Medonte.

4.2 Zoning By-law Amendment No. 2020-073 – Clarifying "Commercial Accommodation"

I will now turn my attention to the consideration of the Amendment that was passed on July 15, 2020. The Amendment as passed states:

> "**Commercial Accommodation** - Means temporary accommodation, lodging, or board and lodging, or occupancy in a building, dwelling or dwelling unit, hotel, motel, inn, bed & breakfast, or boarding house by way of concession, permit, lease, license, rental agreement or similar commercial arrangement for any period of 28 consecutive days or less throughout any part of a

[1] Township of Oro-Medonte Zoning By-law 97-95, Office Consolidation May 2020, Section 3.0 page 3
[2] Zoning By-law 97-95, p. 6-28
[3] Zoning By-law Section 3.0, p. 3

calendar year. For the purposes of this By-law, Commercial Accommodation does not include Village Commercial Resort Units."[4]

Council's stated purpose in passing this Amendment was to provide clarity with respect to the pre-existing prohibition of commercial accommodation in dwelling units. Dwelling units are listed as a permitted use in residential zones but in 2015, commercial accommodation was specifically excluded from dwelling units.

> "**Dwelling Unit** - means one or more rooms in a building, designed as, or intended as, or capable of being used or occupied as a single independent housekeeping unit and containing living, sleeping, sanitary and food preparation facilities or facilities for the installation of kitchen equipment and has an independent entrance. For the purposes of this By-law, ***a dwelling unit does not include any commercial accommodation*** (emphasis mine) or a recreational trailer."[5]

The effect of this 2015 amendment further strengthens the Permitted Use Analysis. Not only are STRs not listed as a permitted use and therefore not permitted in residential zones and are only permitted in the mixed-use Village One zone, but also 'commercial accommodation' was specifically excluded from dwelling units. Given that STRs have been found to be a commercial use by the courts and tribunals by excluding commercial accommodation in 2015, Council further strengthened the conclusion that STRs are not a permitted use in dwelling units in residential zones.

At the time that the 'commercial accommodation' exclusion was passed in 2015, it was not defined in Section 6 of Zoning By-law 97-95. When a phrase or term is not defined in a by-law, courts and tribunals will frequently refer to the ordinary dictionary meaning. I believe that we all know what commercial means and what accommodation means; therefore, prior to the Amendment, if there was ever any doubt about the meaning of commercial accommodation, reference to a dictionary such as Merriam Webster could have been made.

Although the ordinary dictionary definition of commercial accommodation may have sufficed, by enacting the Amendment, Council has provided additional clarity by defining a limit of 28 consecutive days or less for a commercial accommodation. Prior to enacting the Amendment, the courts or tribunals would have had to decide the limit of the commercial accommodation exclusion. By providing a limit of 28 consecutive days or less, clarity was provided and presumably potential conflict with the Residential Tenancies Act perhaps avoided.[6]

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[4] Oro-Medonte Zoning By-law No. 2020-073 enacted on the 15th day of July, 2020.
[5] Zoning By-law No. 2015-192, A By-law to Amend Zoning By-law 97-95, paragraph 16 at page 5.
[6] Residential Tenancies Act, 2006, S.O. 2006, c. 17

4.3 The Effect of the Appeal of the Zoning By-law Amendment

Given that an appeal of the Amendment has been filed, how should a reasonable and responsible Council respond? I would expect the Township to vigorously defend the appeal to ensure that the intended clarification is upheld. Initially, the Township should seek to have the appeal set aside if it is without merit, frivolous or vexatious and therefore, only designed to attempt delay.

I would also expect Council and the Township to recognize that a successful prosecution of a disruptive short-term rental does not need to await the outcome of an appeal of the Amendment. The clarifying Amendment is helpful, but it is certainly not necessary for a successful prosecution. Although the implementation of the Amendment is suspended by the appeal, the Zoning By-law in existence prior to the enactment of the Amendment remains in full force and effect. Even without the new Section 6 definition of commercial accommodation, the existing Zoning By-law is still very robust in terms of not permitting short-term rentals in Residential zones. A successful prosecution of a disruptive short-term rental is not dependent on whether 'commercial accommodation' is, or is not, defined in Section 6. A successful prosecution need only rely on the Village One Analysis, or it could be combined with a Permitted Use Analysis which would be further reinforced by the 'commercial accommodation' exclusion where the exclusion is defined by the Court.

In passing the Amendment, Council has acknowledged and publically disclosed that short-term rental uses were already illegal in residential zones under the existing Zoning By-law prior to the Amendment being passed. In my view, there is no benefit to be gained by, or reason for delaying prosecutions of disruptive short-term rentals pending the outcome of the appeal. In fact, there are compelling reasons, as discussed below, for proceeding with enforcement action now.

As I have stated above, the success of a prosecution is not dependent on whether there is limit of 28 days on the commercial accommodation exclusion. The disruptive short-term rentals that need to be prosecuted involve rental periods that are much shorter. Therefore, in my opinion, the 'clarification' of commercial accommodation contained in the Amendment is of no material relevance when it comes to prosecuting short-term rental rentals that are causing disruptions in residential zones.

4.4 Protection of Public Health and Safety

The Township has confirmed that, since 2017, it has been aware of the many issues that are created by disruptive short-term rentals, including public safety.[7] It is evident that the problems created by disruptive short-term rentals are a continuing and growing concern. Delaying enforcement for another year or two as the COVID19-induced LPAT appeal backlog is managed is not in my view something that a responsible Council would do, particularly since such a delay would continue to leave residential neighbourhoods unsafe and unprotected. Four years of residents being victimized is four years too

[7] https://www.oro-medonte.ca/municipal-services/planning-information

many, particularly since, if Council had been properly informed and advised, the Township could have acted decisively back in 2017.

Proceeding with the enforcement of the Zoning By-law to shut down disruptive short-term rentals in residential zones is in alignment with Council's responsibilities under section 2 of the Planning Act, and specifically the following matters of provincial interest[8]:

> (h) the orderly development of safe and healthy communities;
> (o) the protection of public health and safety;

The seriousness of the situation and the safety concerns arising from the operation of disruptive short-term rentals was recently reinforced to Council by the Township's Chief Municipal Law Enforcement Officer, Curtis Shelswell. In his recent report to Council, he advised that there has been an increase in the number of complaints to the Township related to short-term rentals, including after-hours complaints:

> "2019 continued to be an eventful year with a growing number of complaints related to the operation of short-term rentals in relation to noise, occupant numbers, parking, garbage and land use issues throughout the Township. As a result, MLEO staff have experienced an increase in after-hours call associated with noise complaints."[9]

Mr. Shelswell goes on to report that enforcement officers feel unsafe when attending a disruptive short-term rental at night, to the point where a monitoring company was retained to try and improve officer safety.

> "Typically, responding to residential concerns related to music and/or yelling after the 11:00 pm prohibition… When MLE staff are attending these type of calls, it is important to note that they are typically late at night and require addressing a large number of individuals that have possibly been consuming alcohol or drugs raising safety concerns for staff to attend alone."[10]

The safety concerns on the part of MLE staff are so great that Mr. Shelswell recommended to Council that MLE staff should no longer respond to after-hours residential complaints, and that either the OPP respond to these situations or the affected neighbours be required to gather the required after-hours evidence and provide it to MLE Staff when they are back on shift the next day. Mr. Shelswell asked Council for direction to proceed with a by-law amendment to implement one of these alternatives so that MLE Staff involvement in after-hours residential complaints is no longer required.[11]

Given the nature of the disruptions, it is understandable that MLE staff are afraid for their personal safety when attending to a complaint concerning a short-term rental. It is also self-evident that adjacent neighbours are being placed in the same if not greater jeopardy whenever disruptive short-term rental

[8] Planning Act, R.S.O. 1990, c. P.13, s.2
[9] Shelswell, C., Report No. DS2020-083, "Review of Township By-laws", August 12, 2020, p.4
[10] Note 9 at p. 18
[11] Note 9 at p. 19

occupants are present, as they are exposed to that same unsafe behaviour on an almost continuous basis.

In view of the long term awareness by the Township of the problems created by disruptive short-term rentals in residential areas and the advice provided to Council by the Township's chief enforcement officer, I believe it is clear that Council and the Township have an obligation to take enforcement action forthwith to shut down these disruptive short-term rentals in order to prevent further harm to neighbouring residents. The Township should not delay enforcement while the appeal of the Amendment is proceeding.

4.5 Improving Chances of Success

By prosecuting disruptive short-term rentals now, the Township will not only be protecting the safety and security of residential neighbourhoods, but it will also be improving the Township's chances of success at the appeal of the Amendment. The Township, by seeking to uphold the Amendment, is asserting that 'commercial accommodation' needs to be clarified. Evidence that the Amendment is merely a clarification as opposed to a change can be demonstrated by successfully prosecuting cases using the existing Zoning By-law. A successful prosecution would establish illegality under the existing Zoning By-law. Therefore, a conviction would be clear evidence that the Amendment is merely a clarification and that short-term rental uses were already illegal and remain illegal under the existing Zoning By-law.

A conviction would send a powerful message that short-term rentals will be shut down if they disrupt the neighbours or the neighbourhood. One or two successful prosecutions is likely all that would be necessary as others would quickly fall into line.

A conviction would also provide a co-benefit of deterring spurious claims of legal non-conforming use.

4.6 The Interim Control By-law

Some people may try to persuade Council and the public that short-term rentals will be controlled and neighbourhoods will be protected because the Interim Control By-law[12] remains in force pending the outcome of the appeal. This simply is not true. Even though the Interim Control By-law has been in place for over two years, it is my understanding that disruptive short-term rentals have continued to operate and proliferate during this time period without any effective action being taken by the Township under the Interim Control By-law to stop these illegal uses. There is no basis on which to conclude that this would change while an appeal is pending.

As I explained in Part 1 of my opinion, it must be recognized and accepted that illegal uses are illegal uses and an interim control by-law cannot legalize a use that is illegal. For a use to be grandfathered

[12] By-law No. 2018-071

under Section 38 of the Planning Act, the use must be a legal use at the time a zoning by-law amendment is passed. Here, except possibly for short-term rentals in existence prior to 1997, all other short-term rentals were illegal in residential zones at the time the Amendment was passed. Therefore, there can be no grandfathering under Section 38 of the Planning Act for these uses.

An interim control by-law can only create a pause on a use in a zone where that use is already legal. There is no authority under the Planning Act that allows an interim control by-law to legalize a use that was not already permitted under the zoning by-law. This means that the Township's Interim Control By-law has only created a pause on new short-term rentals in a zone where short-term rentals were legal - the Village One Zone. I would expect that owners in the Copeland House at Horseshoe Valley would be rather surprised to learn that since 2018, all new short-term rentals are illegal.

Since short-term rentals were already illegal in residential zones before the Interim Control By-law was passed, there was never a need for the Township to enact the Interim Control by-law in order to stop new ones. In my opinion, the Interim Control By-law is a redundant document. It is badly drafted, and it is misaimed as it only affects the Village One zone. Since an interim control by-law cannot legalize an already illegal use, the ICBL cannot operate to prevent, or act as a defence to, a legal proceeding brought to stop an illegal short-term rental use in a residential zone in the Township. Council should be very wary of anyone who tries to convince them that the Interim Control By-law serves a useful purpose.

In my opinion, since the Interim Control By-law was never needed, and it is of no practical effect in terms of stopping short-term rentals in residential zones, it should be rescinded immediately. As long as it is in place, it does nothing more than create the false illusion that the Township is trying to protect residential neighbourhoods. Protecting neighbourhoods is something that this Interim Control By-law simply cannot do. Further, the Interim Control By-law needs to be rescinded in order to restore the legal rights of owners in the Village One zone in Horseshoe Valley so that they can once again legally carry on their short-term rental businesses, something which the Township had previously agreed to when it approved the zoning structure for the Village One zone in 2014. It is ironic that for the past two years, the only ratepayers who have Council's approval to legally carry on short-term rental businesses have ended up being prohibited from legally doing so by a very misguided Interim Control By-law.

4.7 Proceeding with Enforcement Action

As I have already written, creating a definition of 'commercial accommodation' is helpful, but it is certainly not necessary for bringing a successful prosecution. Constituents do not want to continue to be victimized by the disruptive occupants of short-term rentals operating in residential neighbourhoods and Council has a duty to protect the safety and the security of these residential neighbourhoods. In passing the Amendment, the Township has acknowledged that short-term rentals are prohibited uses in residential zones under the existing Zoning by-law and the Township needs to take the next step and begin prosecutions against those short-term rentals that are disrupting residential neighborhoods as soon as possible.

The most effective legal action to stop an illegal use is an application by a municipality under Section 440 of the Municipal Act for an injunction against the offending property owner to prohibit any further continuation of the illegal use. As I noted in Part 3 (April 6, 2020 update), this was in fact successfully done by the City of Burlington. The City shut down an illegal short-term rental in a residential neighbourhood in that municipality. This enforcement route is highly preferable to charges being laid for a violation of the Zoning By-law. Proceeding just with charges of this nature could result in only modest monetary fines which would be absorbed as a mere cost of doing business and would not stop the disruptive behaviour. In contrast, if legal proceedings under Section 440 of the Municipal Act for violating the Zoning By-law are commenced by the Township by mid-September, the judgment with an injunction may be available in time to help control disruptive short-term rentals next summer. So time is of the essence, particularly since residential neighbourhood safety and security are at stake.

Finally, there is another good reason to proceed with an enforcement action now rather than delaying pending the outcome of the appeal. Once an enforcement action is successful, should the appeal not be discontinued, the Township could still save the possible six figure costs of the appeal by merely withdrawing the Amendment.

I trust that this will assist you and ultimately, the municipality.

Yours truly,

Attachment to Updated Opinion August 20, 2020

1. Part 1 - The Original Opinion: November 18, 2019

For your information, I am a retired Urban Planner, who worked mainly within Simcoe County for just under forty years and was the Planner of Record for over a dozen Municipalities writing many of their initial Official Plans and Zoning By-laws and have appeared as an expert witness before the OMB on over 200 occasions.

My initial review of the Townships Official Plan and Zoning By-law, particularly the Zoning By-law and the provision that commercial uses were specifically prohibited in single detached dwellings, brought me quickly to the opinion that STR's were, by their nature commercial, and therefore, not permitted uses and therefore illegal.

My review of the Blue Mountains OMB (2011) decision and the decision of the Superior Court of Justice (Menzies case) heard by Mr. Justice Beaudoin (2016) further solidified my opinion that STR's were commercial uses and should not be permitted in single detached residential zones. In my opinion both matters were well considered and provided a clear understanding as to what these uses constituted. Again, both cases outlined that STR's are commercial land uses and for other noted reasons should not be expected or permitted in single detached dwelling areas.

In reviewing the two planning reports provided to Council concerning this matter, I was struck initially by the fact that staff had failed to offer Council with one additional option. That is that STR's are illegal land uses in single detached residentially zoned areas and unless it could be proven that these business activities had existed prior to 1997 and beyond, then the Township could and should enforce its by-laws and shut these uses down.

I think we can all agree that if someone wanted to convert their residential use in a residentially zoned area to a shoe store, restaurant or manufacturing facility, the Township response would be swift in stopping these types of activities. Since the decisions cited above concluded that STR's presented a motel-like land use for short term transient users i.e. a motel, i.e. a commercial use, why would the Township ignore this when it wouldn't ignore the others for a moment?

I understand that STR's have appeared unannounced across the Province and beyond and have to a degree caught many Municipalities by surprise. However a number of Municipalities such as the Town of The Blue Mountains, Wasaga Beach, and others have specifically prohibited STR's in single detached residential areas, and as far as I know have not recognized, as legal non-conforming, any uses that may have started up illegally. Unless the Zoning By-law is amended, an illegal use remains an illegal use.

In my opinion, STR's in Oro-Medonte are illegal. In the future, should the Township not take action to shut down these uses, it is reasonable to predict that the ratepayers may take the Township to Court and ask that the Township be directed to enforce its by-laws to eliminate STR's.

In the alternative, the Township could amend the zoning by-law to allow STR's and in the process notify every land owner in an R1 or SR zones. However it would seem inevitable that this move would be challenged resulting in a Tribunal hearing. Given past OMB and Court decisions I would think that the Township would have a very steep hill to climb. I should also suggest that to decide to license these uses, under current circumstances, would not make them legal but probably would put the Township in a very awkward spot if investments were made and in the end STR's are declared illegal.

In regard to the Interim Control By-law (ICB), it is difficult to understand what has apparently happened and the position taken by the Township. It only makes sense if the Township mistakenly decided STR's were legal, which in my opinion they are not. It would seem to me that the only way to legalize an STR would be by way of a Section 34 (Zoning By-law) amendment. As Section 38 (ICB) was only intended to create a pause, intended to stop a building permit for an unwanted use, to preserve the intent of an Official Plan designation; it cannot be believed that this Section can in any way legalize an illegal use or somehow "grandfather" the illegal use.

I very much appreciate that Council may not have been provided with all the information related to STR's and I also understand that this may be a difficult issue to tackle. At the end of the day, however, it seems to me that Council has a duty to protect its citizens. From what I have learned, STR's can be extremely disruptive and costly to neighbours.

The final test for each member of Council is how would you feel if having purchased your home with the belief and knowledge that you were in a safe and quiet place only to have an uncontrolled STR pop up next to you, unannounced and be turned into the party house from hell? If you are anything like me, I know you wouldn't like it nor would you put up with it. Can you imagine thinking that there is really nothing you can do about it, but it has been suggested that licensing will somehow control it, which given the experience of others I can't believe. How would you feel because this is all about good land use planning, which in essence is about respecting and protecting your neighbour?

I trust that my opinion will be helpful to Council in dealing with this matter.

2. Part 2 - Updated Opinion: January 14, 2020

Further to my opinion letter dated November 18, 2019, you asked me to provide you with some additional comments regarding the recent Toronto LPAT decision, and the impact of the V1 zone with the residential permitted use of 'village commercial resort units'. As before, I have written this addenda to my original opinion letter with the understanding that the reader will be the Council of the Township of Oro-Medonte.

2.1 The Toronto Case

I will begin with the Local Planning Appeal Tribunal (LPAT or Tribunal) decision in the Toronto case. The City of Toronto (City) stated, on its public website and in its submissions to LPAT, that all short term rentals of dwelling units (STR) were prohibited in residential zones under the City's existing zoning by-laws in place prior to the amendments giving rise to the appeal. This was based on the structure of the City's zoning by-laws which authorizes only those uses listed in the by-law as being permitted in a particular zone. This is the same structure as the Township of Oro-Medonte Zoning By-law.

For policy reasons though, Toronto decided to proceed with zoning changes to allow short term rentals (STRs) to be operated in residential zones but only in a dwelling that was the principal residence of the STR operator. The changes were designed to balance the objectives of supporting tourism but at the same time addressing the shortage of permanent housing in the City and limiting commercialization of residential neighbourhoods.

To strike the balance between these competing policy objectives, the City decided to continue to prohibit short term rentals where the operator was not the principal resident, what the Tribunal called 'dedicated' short term rentals. Thus, the City chose to only allow and license STRs where the operator was the principal resident. This principal residence requirement triggered the LPAT appeal as a group of dedicated short term rental operators appealed the zoning by-law amendment. The Tribunal upheld the City's right to restrict STRs to only those operated from principal residences. STRs where the operator was not a principal resident (dedicated STRs) were found to be a commercial use and the Tribunal upheld the principal residence requirement stating that "the ZBAs (Zoning By-law Amendments) represent good planning in the public interest."[13]

Although the Tribunal was only dealing with appellants who were dedicated short term rental operators, the Tribunal stated that short rental uses comprised a spectrum. At one end of the spectrum were dedicated STRs which were found to be commercial. At the other end of the spectrum, was home sharing where a principal resident utilized "excess space (e.g., bedrooms) or occasional absences (e.g., entire unit) for STR purposes as a direct extension of the occupancy of the dwelling unit as a place of

[13] At [150] Local Planning Appeal Tribunal ISSUE DATE: November 18, 2019 CASE NO(S) PL180082

permanent residence."[14] The Tribunal was offering an opinion that it is possible that, at the opposite end of the STR spectrum from dedicated STRs, some level of occasional STR use may fall within the definition of a residential use. However, the Tribunal noted that such a finding would depend upon the intensity of use and went on to say, "although the context and facts differ, various authorities have found that temporary forms of accommodation for tourists and others do not constitute a residential use."[15]

Significantly, the Tribunal also reiterated the established planning principle that residential areas are designed to be non-commercial areas where people reside and that commercial areas are intended as locations for business, with zoning by-laws routinely separating uses to prevent one type of use from infiltrating another.[16]

It must be noted that The Toronto LPAT decision dealt only with the City of Toronto's authority to enact zoning by-law amendments to allow STRs to operate but only in the principal residence of the operator. It did not make any finding or decision as to whether STRs were permitted in residential zones under the Toronto zoning by-law prior to its amendment. It is also my understanding that the City of Toronto did not have a permitted use in place in its existing zoning by-law that specifically applied to STRs unlike the situation in Oro-Medonte (the Township) where there is already specific zoning in place permitting STRs to operate in the V1 zone as discussed below.

Having considered the Toronto LPAT decision, I still find that all STRs, with the exception of de minimis circumstances, are essentially a commercial use separate and distinct from any use of the dwelling for ordinary residential purposes. It is possible that the intensity of the activity may be so low, that perhaps when a home owner 'home shares' only once or twice a year, the STR use may fall within the definition of a residential use. This is not however the situation at issue in the Township. What is clear from the decisions on point is that temporary forms of accommodation have been repeatedly found to be commercial uses, and therefore, it is my opinion that non-occasional (i.e. more than de minimis) STR use of a dwelling unit, being a temporary form of accommodation, are essentially commercial in nature and a distinct and separate use of the dwelling unit. Under well-established planning principles, unless a STR use is specifically listed as a permissible use in a residential zone, they are prohibited. This principle is expressly stated in the Township Zoning By-law. [17]

Accordingly, I continue to be of the opinion that these STRs are not a permitted use and are illegal in the six Residential zones in the Township (i.e.R1, R2, RUR1, RUR2, SR, RLS).

[14] Note 13 at [87]
[15] Note 13 at [91]
[16] Note 13 at [90]
[17] Township of Oro-Medonte Consolidated Zoning By-law 97-95, page 3, Section 3.0

2.2 The Village One zone

In addition to this analysis, there is another basis on which I have concluded that STRs are illegal in Residential zones. This is the point that I outlined to Council on December 10, 2019 - the creation by the Township of the Village One (V1) zone and the listed permitted residential uses in that zone that include 'village commercial resort unit'.[18] This use specifically captures and includes dwelling units that are used for STR purposes and therefore permits STRs to be operated in the V1 zone.

Back in 2014, when the V1 zone was created, it appears that Council addressed the issue of short-term rentals and established a specific use for that zone that expressly described short-term rentals. Council likely established the permitted use of 'village commercial resort unit' for the V1 zone because both the Township and the applicant for the new zoning believed that under the existing zoning by-laws STRs were illegal. Thus, when the V1 zone was established it was considered appropriate to include a new permitted residential use of village commercial resort unit in order to allow STR uses of residential dwelling units within that new zone.

It is evident from the manner in which this use is defined in the Zoning By-law that short term rental of an entire dwelling unit is considered as separate and distinct use from that of ordinary residential use. This use of a dwelling unit is not listed as a permitted use in any other zone in the Township and is therefore not permitted outside of the V1 zone.

This decision by Council to allow STRs in the V1 zone would necessarily have taken into account the nature of the V1 zone which is a mixed use commercial / residential zone with a wide variety of commercial uses permitted and only medium to high density residential allowed.

This restriction of STRs uses to the V1 mixed use zone is consistent with the Township zoning structure that does not allow other types of temporary accommodations in Residential zones. In particular hotels and motels are only permitted in the Local and General Commercial and Future Development zones. Bed and breakfast establishments are only permitted under the Zoning By-law in the Agricultural / Rural and Private Recreation zones. Boarding lodging and rooming houses are not permitted in any zone. Since the Township has already defined a permitted use that describes a short term rental and has permitted that use in only the V1 zone, an operator of a STR who wants to carry on that business is restricted under the Zoning By-law to doing so only in the V1 zone. An operator who wishes to operate a STR in another zone, such as a Residential zone, can only do that legally if a site-specific variance is obtained which allows that use as an exception to the permitted uses designated for that zone.

It should be noted that in establishing the V1 zone, Council decided that STRs would not be permitted in single- detached dwellings. This presumably was based on Council's assessment that STR uses would be

[18] Oro-Medonte Zoning By-law Amendment 2014-112

appropriate for higher density residential but not for single-detached residential zones. This is similar to the approach taken in The Town of The Blue Mountains (Blue Mountains) where new short term rentals are currently not permitted in low density residential (R1,R2,R3) zones.

Finally, it must be noted that the Township zoning structure which only permits STRs in the V1 zone is not in any way dependent upon whether the STR use is a commercial activity. The permitted use for village commercial resort units does not specify any requirement that the STR use be commercial in nature. In other words all STRs are permitted in the V1 zone and consequently all STRs are not permitted in any other zone, including residential zones, regardless of whether any particular STR operation is viewed as being commercial in nature.

2.3 Enforcement and Licensing

This leads me to the question of enforcement. Further to my appearance before Council on December 10, 2019, I would like to provide some further thoughts about the enforcement of the existing zoning by-law. I understand from the questioning that there is a concern for accommodating the casual cottage rental operator. I think that we all can agree that such rentals, also known as the "Ma and Pa" rental or traditional rental are not the problem. Someone who owns a cottage doesn't want a disruptive short term rental carrying on business next to them. Nobody does, including the Ma's and Pa's. The casual rental has never been, and never will be a problem. The Ma and Pa operators are usually self-governing because they themselves primarily use the cottage as their own residence and are therefore respectful of their neighbours and their community.

Licensing was originally proposed as a solution to controlling bad behaviour that inevitably arises when the operation of an unsupervised hotel business is allowed in a residential neighbourhood. The most efficient and effective means of controlling bad behaviour is to avoid the conflicts in the first place by enforcing the existing zoning by laws. In my opinion, licensing is not the answer. Enforcing the existing zoning by-laws is. Zoning by-laws exist to protect the integrity and character of residential neighbourhoods and prevent the intrusion of commercial uses into those zones.

It is my understanding that licensing isn't working in Blue Mountains, as it is extremely costly to administer, property values next to a licenced STRs have declined, and condo boards are amending by-laws to prohibit STR uses. It is my understanding that the planning department in Blue Mountains is informing condo owners that if they want to prohibit STRs they can by amending their by-laws. I have also learned that four condo complexes are currently changing their by-laws. These are: 'Far Hills''; 'Rankin's Landing'; 'Apple Jack'; and 'Apple Ridge'.[19] In Oro-Medonte, the same thing is occurring at

[19] This information was kindly provided by Mr. C., a resident of the Town of The Blue Mountains who has been a part of the by-law amendment process. If you wish to follow up with him, I would be pleased to seek his permission to disclose his contact information.

Horseshoe Valley. It is my understanding that the 'High Vista' condo has recently prohibited STRs in their by-laws.[20] This leads me to believe that even in higher density zones, residential property owners, particularly if they are a resident, don't want STRs, nor do they trust the municipality to control these land uses. It also leads me to conclude that in Blue Mountains, even when there is diligent enforcement to control adverse and disruptive behaviour in STRs, licensing is not effective.

If you try to develop a licensing scheme to allow the Ma and Pa to continue, you will be solving a non-problem and you will be needlessly adding a regulatory burden to the Ma and Pa that is completely unnecessary and you could end up opening a loop hole for the commercial operators to continue to carry on their short term rental business under the pretence or guise of being a casual rental operator. I would not be surprised to learn that commercial operators will ask you to amend the zoning with or without licensing in order to protect the Ma's and Pa's, and if you do, Council will have been duped into playing into their hands.

Enforcing the existing by-law is what Clearview and Collingwood did. They enforced their existing zoning by-laws on a complaints-made basis. Although the Township has a duty to uphold their by-laws, the Township also has discretion when it comes to laying charges. So long as that discretion is exercised consistently and fairly, this can be an effective means of controlling and preventing the operation of commercial businesses in residential neighbourhoods. An isolated complaint of a minor nature against a Ma and Pa operator need not result in charges being laid; instead, a simple warning may suffice.

Finally, I understand that some Council members are worried about enforcing the existing zoning. What if we lose? Well, if the Blue Mountains Case, plus the Menzies case, plus the Toronto LPAT case doesn't reassure you, then I would suggest that you assist the Crown in preparing the best file you can to make sure that you don't lose. Clearview hasn't lost, Collingwood hasn't lost. Five cases before the courts in Collingwood, I believe is what Council was told. Well, if you go the licensing route and you diligently enforce your licensing provisions, I believe you will have far more than 5 cases before the courts and it will be a recurring problem that will burden future Councils, just like in the Town of The Blue Mountains. Ultimately, the safety and security of residential neighbourhoods is at stake here. I can't imagine where we would be if we didn't enforce our laws that prohibit theft because of concerns that the case might not be successful. I think everyone would agree that this would not represent the values of the society in which we all live and enjoy.

2.4 Conclusion

In conclusion, I think the time has come to stand back and express my dismay at what has been happening here. How is it that the Township, together with their legal counsel and the 'legal opinions'

[20] This information was kindly provided by Ms. D., a resident of Oro-Medonte who has first hand knowledge of the condominium corporation known as 'High Vista'. If you wish to follow up with her, I would be pleased to seek her permission to disclose her contact information.

that have been referred to, were not aware of the V1 Zone and the obvious consequences of its existence, particularly in light of the fact that the Township adopted this rather significant zone only 5 ½ years ago? Or how was the Township not aware that a commercial activity is not permitted in residential zones? I can understand, if Council was not provided with complete information, that there was, for Council, a possibility that this topic was "a grey area of the law". In my opinion it never was a grey area of the law. With the existence of the Village One zone, the legality of short term rental uses is about as black and white as the subject can be. Outside of the V1 Zone, STR's are prohibited. There can be no other explanation or conclusion.

I trust that this has been helpful.

3. Part 3 - Updated Opinion: April 6, 2020

Further to my opinion letters dated November 18, 2019, and January 14, 2020, you asked me to provide you with some additional comments regarding the recent City of Burlington case involving enforcement. You also asked me to comment on proceeding with a zoning change in the absence of a public meeting and whether or not, given the COVID-19 crisis, there was any urgency in bringing forth such a zoning change at this time. As before, I have written this addenda to my previous two letters with the understanding that the reader will be the Council of the Township of Oro-Medonte.

3.1 'What If We Lose'

As you are aware my last opinion letter, dated January 14, 2020, contained in the second to last paragraph comments concerning enforcement. At that time I suggested that the Township might be concerned about enforcing the Zoning By-law in seeking a conviction against an illegal STR. I used the words "What if we lose".

I am now happy to report that this concern is or should no longer be a problem. I have attached for your information a Superior Court of Justice decision (January, 2020) brought about by the City of Burlington laying charges against an illegal STR. As you will see, the Court appeared to have little hesitation in convicting the owner, ordering the Municipality and the Sheriff's department to use whatever means necessary to ensure the use was discontinued and fined the owner $9500.00. Documents attached to the decision set out how the City proceeded and the evidence required to secure this decision. A decision that I would suggest is available to any Municipality that wishes to protect its citizens from these intrusive and disruptive commercial uses within residential areas. This decision is in addition to previous OMB/LPAT decisions and court decisions on point which have concluded that STRs are undeniably a commercial use.

3.2 An Electronic Public Meeting

It my understanding that the Township apparently intends to proceed with Zoning By-law amendments regarding STRs in the absence of a Public Meeting held in the manner required by the Planning Act. I would very much warn against such a move. In regard to a matter in another Simcoe County municipality, planning staff recently provided the following direction given the COVID-19 crisis: "Unless we can have a public meeting - we will not make a decision on this rezoning. We cannot move this project forward until we can hear from residents in a Public Meeting". Not only is this the correct thing to do, I also suspect they may understand that to proceed otherwise would in all likelihood result in any zoning amendments enacted, without a public meeting, being found to be ultra vires and beyond the legislative power and authority of the Municipality. There are no provisions in the Planning Act that contemplate or permit a public meeting to be held by electronic means and I believe that to proceed in this manner would require clear legislative direction from the Province.

It is difficult if not impossible to see how holding a public meeting by electronic means would, as required by the Planning Act, afford every Township resident the opportunity to make representations in respect of proposed zoning amendments particularly, in this case, given the highly controversial nature of the STR issue, the virtual certainty, particularly given the attendance at the Lakehead public information session, that there will be a significant number of residents wishing to make submissions, and the fact that internet services in rural areas are often unreliable, unavailable or have insufficient capacity or have limiting data caps, or in the case of the elderly, have no access to the internet at all, any of which preclude effective participation.

Moreover, as I have previously concluded, under the existing Zoning By-law, STRs are not a permitted use and are illegal in any zone outside of the V1 zone. The Interim Control By-law cannot legalize or grandfather an illegal use. The expiry date attached to the ICB is therefore not of any consequence in terms of whether new or existing STRs are permitted to operate after that date in residential zones. Neither will be permitted and both will still be illegal. There is therefore no urgency or deadline for bringing forward potential zoning amendments that justify or require holding a public meeting by electronic means and for which, as noted above, there is no authority under the Planning Act.

Since I was unable to find my previous opinions of November 18, 2019 and January 14, 2020 on the Township's publically available records, I have included those below to form part of this letter so that they can be placed on the public record in this combined form.

I trust that this will assist you and ultimately, the municipality.