

January 03, 2024

REGULATING SHORT-TERM ACCOMMODATIONS: PLANNERS IN THE TOWN OF THE BLUE MOUNTAINS HAVE LED THE WAY

Many municipalities continue to struggle to control short-term accommodations (STAs) located in residential zones. Besides removing dwellings from long-term housing, STAs operating in residential neighbourhoods create serious disruptions and safety issues that municipalities in Ontario and beyond are confronting on a regular basis.

To deal with the safety and disruption issues, STA lobbyists often encourage municipalities to legalize STAs in residential zones and then control them under a business licensing by-law. Proponents of this 'Legalize then License' approach often tout the Town of The Blue Mountains (Blue Mountains) as a success story.

Blue Mountains is a success story, but not the planning success story claimed by the STA lobbyists. Upon examination, Blue Mountains didn't 'legalize' STAs in residential zones. In fact, they still prohibit them. Blue Mountains resorted to licensing to try and control STA uses in residential zones that obtained legal non-conforming use (LCNU) status. Licensing STAs did not put an end to the negative impacts on residential neighbourhoods. For taxpayers in Blue Mountains, especially neighbours of STAs, licensing has not been a success story, but a very costly failure.^[1]

Licensing may have failed, but there have been notable planning successes. Beginning in 2009, Blue Mountains' planners led the way in regulating STAs. After years of disruptions, the planners recognized STAs as a new land use and introduced Official Plan and the Zoning By-law amendments (Amendments) that defined a 'short-term accommodation'. Understanding that STAs are distinctly different and incompatible with residential land uses, the planners separated these uses. The planners permitted this new STA use in a zone called 'Resort Residential' (RR). The RR zone is listed as 'Commercial and Employment' and occupies an area adjacent to the Blue Mountain Resort. To protect residential neighbourhoods, the Amendments continued to exclude STAs from residential areas. A similar zoning structure has been used in Oro-Medonte Township and in Niagara Falls.^[2]^[3] Just like Blue Mountains, short-term accommodations are not a permitted land use in any low-density residential zones.

Adopted in 2009, the Blue Mountains' Official Plan and Zoning By-law amendments were appealed to the Ontario Municipal Board (Board) ^[4] by some STA operators. In 2011, the Board upheld the Amendments that excluded STAs from residential zones. The Board reached several significant conclusions including these five: ^[5]

(1) STAs are commercial entities with the goal of making a profit.

- (2) STAs provide temporary accommodation which is not a residential use.
- (3) Evidence of STAs conflicting with the character and stability of existing neighbourhoods was 'categorical'.[\[6\]](#)
- (4) The paramount objective must be the "preservation and protection of the integrity and character of these established neighbourhoods... when considering whether commercial uses should be established within those residential areas."[\[7\]](#)
- (5) The Town addressed compatibility and acted prudently and consistently with the Official Plan by prohibiting STA uses in low-density residential areas.

The appeal to the Board decision to the Divisional Court was denied [8\]](#) The work of the Blue Mountains' planners that many see as exemplary was affirmed by the judiciary.

After the Board upheld the Amendments, Blue Mountains undermined the good works of the planners. Since owners of more than 50 STA properties were carrying on business at the time the Amendments were passed, they were permitted to continue to operate in residential zones.[\[9\]](#) It is not known how these previously unlawful uses were granted status as a legal non-conforming use. Prior to amalgamation in 1998, using a dwelling for short-term, temporary accommodation rather than as a residence was not a permitted use under the previous zoning by-law.[\[10\]](#) Since STAs were not listed as a permitted use in residential zones, they were prohibited. Prohibited uses should never have acquired the status of a legal non-conforming use.

This is the same starting point for most municipalities in Ontario. If temporary accommodations including STAs are not listed as permitted in residential zones, they are prohibited. Municipalities who haven't amended their zoning by-laws to permit STAs, should consider following the Blue Mountains' lead but they need to avoid the 'legal non-conforming use pitfall' by vigorously defending LNCU claims. Just as in Blue Mountains, other municipalities can define a new land use, an STA, and permit STAs in specific zones outside of residential areas and know that existing STAs in residential areas will not qualify as a LNCU. For operators who try to continue to carry on business in residential areas, as long as no permission has been granted, prosecutions under Section 440 of The Municipal Act can be successfully obtained, ultimately resulting in a court order to end the operation.[\[11\]](#)

Blue Mountains only resorted to licencing to try and control LNCU STAs in residential zones. After 10 years, and despite developing an extensive and costly licencing system, many LNCU STAs still continue to significantly disrupt the surrounding community. Indicators that licencing and enforcement methods in Blue Mountains have failed to control the adverse impacts have been summarized by Terry Kellar, Chair of the Blue Mountains Ratepayers' Association STA Committee. Frequency of calls to the Ontario Provincial Police is one compelling indicator of failure. According to Terry Kellar, "In the period 2017 to 2022, the frequency of calls for OPP help occurred at the average annual rate of 15 per 100 licensed STAs, while in the same period the frequency of calls for OPP help occurred at the average annual rate of 1.4 per 100 for all other dwellings."[\[12\]](#) Using licencing to control STA uses that fundamentally conflict with residential uses has been futile and very costly. Although the actual costs are unknown, they are significant, reportedly in the millions. [\[13\]](#) Unfortunately, it is my understanding that Blue Mountains' staff have advised ratepayers that the true costs of administering and enforcing the Blue Mountains' STA licencing program cannot be broken out. The reason for this is not clear.

Conclusions

Beginning in 2009, Blue Mountains planners did progressive work. By separating temporary accommodation STA uses from residential uses, the planners developed Official Plan and Zoning By-law amendments that addressed compatibility issues and avoided conflicts. This approach is an

exemplar that other municipalities are strongly encouraged to follow. It was endorsed and validated by the Ontario Municipal Board in 2011^[14] and again by the Ontario Land Tribunal in 2021.^[15]

[1] Terry Kellar, “Short-term Accommodation Lessons for Tiny (Township)”, The Tiny Cottager Newsletter - Federation of Tiny Township Shoreline Associations, site accessed p. 5, Spring 2023. See: <https://www.tinycottager.org/wp-content/uploads/2023/05/TinyNLSpring2023p1-10.pdf> Site accessed May 20, 2023

[2] In 2014, the Township of Oro-Medonte adopted a similar zoning structure. Temporary accommodations including STAs are not permitted in any residential zones but are permitted in the V1 zone adjacent to the Horseshoe Valley Resort.

[3] In 2018 the City of Niagara Falls adopted zoning amendments that permit short-term rentals of entire dwellings only in the Tourist Commercial, General Commercial and Central Business commercial zones and not in residential zones. The amendments were upheld by the Ontario Land Tribunal in 2021 in *Keenan v. Niagara Falls (City)* [2021] PL180774.

[4] The Ontario Municipal Board is now known as the Ontario Land Tribunal

[5] *Sheldon Rosen and the Lodges at Blue Mountain Corporation v. Town of The Blue Mountains* [2011] PL080455 at p.15. Highly recommended reading accessed at: <p1080455-Jun-22-2011.pdf> (gov.on.ca)

[6] To assist the Board in reaching this 3rd conclusion, Blue Mountains called 12 disrupted neighbours as witnesses.

[7] Note 5 *Sheldon Rosen and the Lodges at Blue Mountain Corporation v. Town of The Blue Mountains* Note at p.16.

[8] *Rosen et al. v. Blue Mountain (Town)*, 2012 ONSC 4215.

[9] Terry Kellar, Note 1.

[10] Subject lands were in the previous Township of Collingwood and regulated by Zoning By-law 83-40

[11] See for example: *City of Burlington v. Sohebur R. Sheik et. al.*, OSJ CV-19-0000-5228-0000, January 23, 2020

[12] Note 1 Tiny Cottager Newsletter

[13] Note 1 Tiny Cottager Newsletter

[14] Note 5 *Sheldon Rosen and the Lodges at Blue Mountain Corporation v. Town of The Blue Mountains*

[15] Note 2. *Keenan v. Niagara Falls (City)* [2021] PL180774

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