

Local Government Law

The newsletter of the Illinois State Bar Association's Section on Local Government Law

Short-Term Housing Rental Found to Violate R-1 Zoning Code

BY JOHN M. O'DRISCOLL & COURTNEY WILLITS

Short-term housing rentals have become a popular alternative to hotels for people traveling and visiting different destinations. As vacation rental companies such as VRBO and AirBnb expand their property bases, it is important for municipal attorneys to understand what regulations are contained in zoning codes, and how the courts have interpreted them.

Recently, the Illinois appellate court heard a matter regarding zoning

regulations as they pertain to short-term housing rentals in *Wortham v. Village of Barrington Hills*, 2022 IL App (1st) 210888.

In this case, homeowners in the Village of Barrington (the "Village") were renting out their home as a short-term rental property on the platform VRBO.com. The Village issued the homeowners numerous citations providing that short-term rental uses were not allowed in the R1 district,

Continued on next page

Tax Increment Financing
Concepts for the Future
1

End of 2022 Spring Legislative
Session
1

End of 2022 Spring Legislative Session

BY BRAD COLE

The 102nd General Assembly adjourned its 2022 Spring Legislative Session on April 9, 2022, after finalizing a state budget and numerous other pieces of legislation. The Senate adjourned at 3:23 a.m., while the House adjourned at 6:09 a.m. Illinois Municipal League (IML) staff monitored both the Senate and House throughout the night.

This date represents the earliest adjournment in recent memory and, combined with the fact that this is an election year, created unique challenges for building consensus on legislation and passing items through both chambers.

Despite these challenges, IML remains a leading voice at the Illinois State Capitol, representing the interests of all 1,296 cities,

Continued on page 3

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CONTINUED FROM PAGE 1

which only permits single-family uses. The homeowners ignored the citations and continued renting out their home. The Village sent the homeowners a notice to appear before a hearing officer due to the alleged Zoning Code violations. The hearing officer determined the short-term rental use was an unlawful commercial lodging use that was not a permitted use in the R1 district. The Village imposed fines totaling \$32,250 and issued a cease and desist order to the homeowners to stop renting their home. The homeowners failed to follow the Village's order and appealed the decision to the trial court. This appeal followed and the appellate court upheld the trial court's decision holding that the homeowners violated the Zoning Code.

In this case, the appellate court determined whether short-term vacation rentals in the R1 district are a commercial/business use and prohibited by the Zoning Code as the Village argued, or a residential use and a permitted use in R1 as the homeowners argued.

The Zoning Code provides the only business or commercial use of residential property allowable in the R1 district are certain "home occupations" as defined in the code. Further, the Zoning Code sets forth the intent of the R1 zoning district was for regulation of a home occupation, so the general public is unaware of its existence so as to not "infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their dwelling units or infringe upon or change the intent or character of the residential district."

The court found that the vacation short-term rental business was not a permissible use in the R1 district under the Zoning Code for two reasons. First, a permissible home occupation must be conducted by a full-time occupant of a dwelling unit. In this case, homeowners were not present when the property was rented out, therefore giving renters exclusive control and use of the property during the rental period. Second, a permissible home occupation must be conducted in a way so that the

general public is unaware of the business. The court cited reasons it was apparent there was existence of a business including: installation of a keypad on the door with an access code, advertisement of the property on the vrbo.com website, and various vehicles being parked in the driveway.

Second, the court determined the vacation rental business runs counter to the Village's intent to prevent harmful encroachment of residential areas by incompatible uses, as homeowners are providing services similar to hotels or lodging houses which are only allowed in the B-4 district. In its reasoning, the court explained that the short-term rental use was not consistent with the "intent and purpose" of the Zoning Code. The court ultimately held that the short-term vacation rental of the property constituted a vacation rental business or commercial activity because homeowners were providing renters with a service and a product (use of the property for residential occupancy in exchange for payment).

Lastly, the court rejected the homeowners' argument the Zoning Code prohibited short-term rentals but allowed longer term leases and therefore was unconstitutionally vague because the Zoning Code did not define the appropriate time-frame for leasing, and determined it to be an impermissible facial challenge to the Zoning Code.

In its determination, the court provided that when a court construes a zoning ordinance, effect should be given to the intent of the drafters, and the ordinance's language should be given its plain and ordinary meaning. Therefore, it is recommended that municipalities review their zoning codes and revise them accordingly to ensure they contain clear language as well as the intent and purpose for zoning districts. Further, zoning codes may need to be revised if the municipality desires to prohibit vacation rental properties in certain residentially zoned districts. ■

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End of 2022 Spring Legislative Session

CONTINUED FROM PAGE 1

villages and towns in Illinois. Our advocacy ranged from stopping harmful mandates and preemptions, to protecting local revenues and preserving municipal authority.

In total, legislators introduced more than 9,600 bills during the 102nd General Assembly, of which IML has taken a position on more than 2,600 items. The General Assembly has adjourned until the call of the Speaker and/or President, the scheduled Fall Veto Session or unless called into special session. IML staff will continue its efforts for the benefit of our members and will be pursuing several remaining legislative initiatives at that time, as detailed further in this message.

This End of Session Summary will be

supplemented by future documents and reports detailing several aspects of what happened during the session. We value and appreciate our members, and we are pleased to provide this comprehensive overview of the legislative session for your information.

As always, if you have any questions or comments, please feel welcome to contact Brad Cole at any time either by phone at (217) 525-1220 or by email at bcole@iml.org ■.

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