

Short Term Rentals: Zoning By-laws must be clear and non-discriminatory to be effective

Municipal, Land Use, and Development

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In the recently decided case of [Puslinch v. Monaghan, 2015 ONSC 2748](#) (the “**Puslinch case**”), the Ontario Superior Court has confirmed that Zoning By-laws that purport to regulate short-term rental use of a property cannot do so in a way that is discriminatory, vague, uncertain, or insufficiently specific.

In the Puslinch case, the Township of Puslinch (the “**Township**”) brought an application against the owner of a residential property on the shores of Puslinch Lake. The Property was being used both for the owner’s personal use as a vacation property and at times by short-term renters. The Township sought an injunction enjoining the owner from allowing her property to be used by short-term renters.

The Township argued that, under its Zoning By-law, use of the property by short-term renters was use as a “Tourist Establishment”, which was not a permitted use of the property under the Zoning By-law. The Zoning By-law defined this term as:

“... any premises operated to provide sleeping accommodation for the travelling public or sleeping accommodation for the use of the public engaging in recreational activities, and includes the services and facilities in connection with which sleeping accommodation is provided, and without limiting the generality of the term, also includes a cabin establishment, a tourist home, a tourist cottage and a housekeeping cottage ...

Counsel for the owner (represented by [David Sunday](#) and [Michael Letourneau](#) of SorbaraLaw) argued that while the Township had the capacity to regulate short-term rental use of residential properties, the Zoning By-law was ineffective in this regard because the use of the property by short-term renters was substantively the same as personal use by the owner, which the Township conceded was permitted as a “single detached dwelling” use.

The Township ultimately took the position that only the owner, by virtue of her ownership of the property, could use it on a short-term basis, notwithstanding that she (like her renters) resided elsewhere and only occupied it for short periods of time and generally for recreational purposes. The Township also took the position that the owner could not loan the property to her friends and family, as such use would also constitute use as a “Tourist Establishment” and offend the Zoning By-law.

The Court rejected the Township arguments and found that “*to the extent the Tourist Establishment by-law seeks to regulate short term use in the RR Zone, it seeks to regulate people not use and, therefore, is ultra vires the Planning Act*”. The Court further noted that the Township reasoning “*fails to explain Ms. Monaghan's exemption from the application of the Tourist Establishment bylaw. Ms. Monaghan's primary residence is in Cambridge. The primary residences of vacationers, friends and family of Ms. Monaghan are also at a different location than [the property].*”

Short-term rentals continue to receive significant attention throughout Ontario and beyond. As municipalities grapple with these issues, the lesson of the Puslinch case is that those municipalities that seek to regulate short-term rental use through their Zoning By-laws need to do so in a way that is clear and non-discriminatory, otherwise such regulation is likely to be ineffective.

* This article is intended only to inform and educate. It is **not legal advice**. Be sure to contact a lawyer to obtain legal advice on any specific matter.

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