


# Approaches in Regulating Short- Term Rentals June 2019

1/17/2020

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# AIR-STRs: Approaches In Regulating Short-Term Rentals


**Leelanau County**  
**December 2, 2019**

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## Contributions from:

- **Planning & Zoning News**  
July and August 2018 issues focus exclusively on STRs.
  - Parts One and Two
- Subscribe or order copies at <http://pznews.net> or call 517-886-0555.



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**What we will cover**

- A. Case Law and Other Legal Considerations
- B. Gathering Information and Developing a Strategy
- C. Zoning vs. Police Power Regulations
- D. Examples

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**A. Case Law and Other Legal Considerations**



# Approaches in Regulating Short- Term Rentals June 2017

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## ***Laketon Twp. v. Advanse, Inc., Mich, 773 NW 2d 903, 2009***

- 4 cottages, a guest house and main residence were purchased that were originally zoned commercial, then rezoned residential, and STRs were not allowed.
- Units were rented as STRs after residential rezoning but before STRs were explicitly prohibited.
- STR of a residence is not a valid nonconforming use when the zoning district is restricted to only single family dwelling. By renting the main residence short-term, it was an expansion of a nonconforming use that was not allowed under the zoning ordinance.



## ***Soechtig v. Green bush Twp. ZBA, Mich App, Unpublished No. 301757, 6/12/12***

- Plaintiff alleged rental of cottage every summer since 1957
- In 1984, property was rezoned to prohibit weekly rentals. Twp requested annual receipts prior to 1984 and after.
- Appeals Court ruled the ZBA and trial court misapplied the law – the issue isn't what happened after 1984, but what happened before 1984. Abandonment of a nonconformity must be intentional that clearly shows a voluntary decision to abandon.



***Mirabella v. Twp. of Autrain, et al., Mich App (Unpublished 320191, 6/9/15)***

- Property owner sued township concerning ordinance amendments to allow STRs in residential districts by SLU
- Claimed they had a vested right to continue their SLU under the old ordinance (which did not allow)
- Appeals Court held property owners had no vested right; Twp. had the right to change zoning (and had updated the plan prior to doing so).



***Christians v. Township of Clark, Mich. App. (Unpublished No. 327519, Oct. 20, 2016)***


- Lot with main house and accessory, uninsulated cabin – one or both occasionally rented.
- ZA determined renting both simultaneously constituted a resort use and was not allowed without a special land use permit
- ZBA interpreted there was a distinction between an owner allowing a guest to stay in the cabin vs. rental of one or both (a commercial use).
- CoA concluded the circuit court (and ZBA) properly upheld the zoning ordinance.



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Break #1

**People who provide Air BnB provide quarters for dollars**




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***Concerned Prop. Owners of Garfield Twp., Inc. v. Charter Twp. of Garfield, Mich App (Unpublished No. 342831, Oct. 25, 2018)***

- Prior STR doesn't qualify as a nonconforming use
- Definitions of "dwelling" and "dwelling unit" are central to the case
  - "Because short-term rentals are inherently transitory, by limiting the use to 'family' dwelling units, Ordinance 10 plainly prohibited short-term rentals."
- When ordinance includes specific and general provisions, the specific provision controls.



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***Reaume v. Township of Spring Lake,***  
**Mich App (Published May 21, 2019)**

- Plaintiff began allowing short-term rentals of her property after hearing that doing so was lawful.
- Neighbors complained and defendant township subsequently adopted regulations prohibiting STRs.
- Township denied her application for a STR license. ZBA denied her appeal, and the trial court affirmed the denial.
- Appeals Court rejected her claim that her use of the property was “grandfathered”
- It found that her “argument turns on making untenable extrapolations from statements made by individuals who had no authority to bind” defendant.



***Reaume v. Township of Spring Lake,***  
**Mich App, continued**

- Court also rejected her claim that her use of the property was lawful prior to the adoption of the ordinances, finding that STRs were “not permitted in the R-1 district at any time.” Thus, she was “not entitled to continue doing so as a prior nonconforming use, notwithstanding [defendant’s] failure to enforce its zoning requirements.”
- Court found “...the issues presented in the current matter are of increasing importance and commonality in Michigan, and that the bench and bar would benefit from the certainty that a published opinion would bring.”




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### STR/Principal Residence Exception (PRE)

- A PRE to property is not lost if the residence is rented for more than 14 days a year.
  - *Rentschler v Township of Melrose*, Mich App (No. 336333. Nov. 28, 2017. Published)

Entitled to one (1) PRE

- Address on Drivers license
- Michigan license plate- SOS office
- Have a Michigan license plate
- Tax return address
- Where registered to vote



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### STR/Deed Restrictions

- Vacation rental use is commercial in nature and can be enjoined where commercial use is prohibited in deed restrictions
  - *Bauckham et. al v Petter et. al*, Mich App (No. 332643. Nov. 28, 2017. Published)
- STRs can be prohibited where restrictive covenants (deed restrictions) bar commercial use and allow only private occupancy residences.
  - *Eager et.al v Peasley et. al*, Mich App (No. 336460. Nov. 30, 2017. Published)




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**Break #2**

**Is it true that several of the justices on the U.S. Supreme Court refer to their homes as 'legal pads'?**



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**B. Gathering Information and Developing a Strategy**



### Weigh the Options

- Regulate and allow or ban in certain areas?
- Differentiate between homestay vs. vacation rental?
- Set maximum number or not?
- Set min. distance between rentals; length of stay?
- Restrict to certain zoning districts?
- Limit the number of nights per year; permits per applicant?
- Limit the number per parcel; type of structure?



### Develop clear intent and objectives for regulation

- Intent should speak to the biggest STR issues as determined by the community
  - e.g. protect single-family homeowners
- By listing objectives that are health, safety, and welfare oriented, if challenged, the court does not have to speculate



### Milton Township (Antrim County)

- “The Planning Commission proposes a limit of six weeks that a dwelling can be rented. The rationale for 6 weeks was based on the **average** weekly rate for an Airbnb in Kewadin in July 2019 - \$2,338 times six weeks = \$14,028 – enough to cover non-homestead taxes and repair & replacement costs.”
- “This is in keeping with the philosophy held by the Board that rental income be used to offset taxes and maintenance as opposed to covering mortgages and generating income.”

Notes, 11/12/19 Vacation Rental Public Hearing, Milton Township




### South Haven (Van Buren County)

- “This article is intended **to strike the appropriate balance** between competing interests.”
- “There is decreased sensitivity to larger occupant loads within the mixed-use areas of the City given **lot sizes, louder average noise, traffic, etc....**”
- The Council has determined that **mixed-use areas of the City are more appropriate....** compared to single-family residential neighborhoods.



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## C. Zoning vs. Police Power Ordinances



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## Zoning vs. Police Power Ordinances

<b>ZONING:</b> Regulates use of <b>land</b>	<b>POLICE POWER:</b> Regulates <b>activities</b>
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Attempting to regulate land use with a separate police power ordinance may not be upheld in court

- *Square Lake Condo Assn v. Bloomfield Twp*, 437 Mich 310 (1991)
- *Forest Hill Energy-Fowler Farms, LLC. v. Township of Bengal*, Mich App (unpublished, No. 319134, Dec. 4, 2014)




Stay Tuned: MSUE Webinar, July 25

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## Zoning vs. Other Police Power Regs

- Cities, villages and townships have general police power ordinance authority
- Counties **do not**




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## Police Power

- Common law recognizes that zoning is a valid application of a community's **police power**.
- **Police power is another way to say “the right to adopt regulations”** that are reasonably designed to protect public health, safety, and general welfare. This is not police officer power.




*Village of Euclid v. Ambler Realty*, 272 U.S. 365 (1926)  
– *Alderton v. City of Saginaw*, 367 Mich. 28 (1962)

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## Zoning and Nonconforming Uses

- Regulating with zoning means **legally established** STRs must be allowed to continue if a regulation is changed
  - As long as it operates in the **same manner** and to the **same extent** as it was when it became nonconforming.
- May not amortize (sunset) nonconformities under zoning
  - *De Mull v. City of Lowell*, 368 Mich. 242 (1962)
- If it was never legal, it is a violation



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## Currently allowed in zoning?

- If a use is not listed as a permitted or special land use in the zoning district, the use is not allowed, generally speaking.
- Most ordinances are written in a permissive manner:
  - “A permissive format states the permissive uses under the classification [zoning district], and necessarily implies the exclusion of any other non-listed use.” (*Independence Twp. v Skibowski*, 136 Mich App 178 (1984)).


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### Zoning vs. Police Power

Zoning Ordinance	Police Power Ordinance
+ Districts	+ No grandfathering or nonconformities
+ Definitions	+ Everyone “starts new”
+ Parking	+ How many, how often, duration
+ Signage	+ Refer to location on a map (zoning district or other)
- Nonconformities	+ Annual fees/license/permit
- “Grandfathering”	+ Additional performance requirements (local contact, garbage, fireworks, noise)
- Districts don’t align with use	


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### Specifically define STR to your intent

Are you allowing just one, or several:

- 1. Hosted sharing** - primary occupants of a residence remain on-site with guests;
- 2. Unhosted sharing** - primary occupants vacate the unit while it is rented to short-term guests;
- 3. Dedicated vacation rentals** - no primary occupants

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### Define as Commercial in ordinance?

- Courts are clear, STRs are a commercial use, so...
- Defining as commercial provides greater ability to regulate differently than long-term rentals
  - “commercial or business uses of property, generally meaning uses intended to generate a profit, are inconsistent with residential uses of property”  
- *Terrien v Zwit*, 467 Mich 56 (2002)
- But, may undermine the intent of the [residential] districts where allowed



### Avoid inconsistencies in ordinances

- The intent sections of residential districts often say no commercial uses are allowed
  - [see slide on ‘commercial’ definition]
- Also check definitions like dwelling, family, single family, commercial, principal use, home occupation





### Exceptions to an STR

- Bed and Breakfast
- Hotel/Motel
- Adult Foster Care Homes
- Nursing Homes
- Substance Abuse- Rehab Facilities
- Dwellings that have been rented yearly since the date the ordinance took effect (i.e. 1972)



### Do Nothing?


- Perhaps the occurrence is infrequent that it is not a problem.
  - Few communities address STRs in instances where a unit is occupied as a primary residence for the vast majority of the year.
- Consider administration and enforcement requirements
  - Start with routine monitoring of listings on home-sharing service websites.
  - [www.hostcompliance.com](http://www.hostcompliance.com)
  - [www.lodgingrevs.com](http://www.lodgingrevs.com)



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**Break #3**

**They argued about their vacation  
and finally stayed at the last resort.**

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**D. Examples**



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### Examples – City of South Haven

- “...in an attempt to strike an appropriate balance between the interests of community residents, community business owners, visitors to the community, and real property owners...”
- (Section 10-241 Purpose of Article 10 “Short-Term Rentals)
- 612 registered short-term units to date
- STRs allowed in all residential districts, with limits on the number of occupants, among other standards
- Registration, inspections required
- Water and sewer fees are higher for STRs
- 3 violations of the ordinance in the same year and you lose the right for the year

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## Frankfort – in transition

**Good Neighbor Guide**  
A Guide for Short Term Renters

City of Frankfort  
412 Main Street | Frankfort, MI 49635 | 231-352-7117 | www.frankfortmich.com

*Welcome to the City of Frankfort on the shores of beautiful Lake Michigan.*

We hope you enjoy our lovely and friendly Up-North community! Frankfort offers a spectacular beach, unique shops, wonderful restaurants & bars, and many nearby opportunities for site-seeing, biking, hiking, water activities and visits to Sleeping Bear Dunes National Park. During your visit please remember that the vacation rental you are staying in is within a residential neighborhood. To help you ensure our residents' peaceful enjoyment of their neighborhood, we have established a "Good Neighbor Guide." Please respect our residents and our city by following these guidelines.

<p><b>Noise, Disturbances, Fires &amp; Fireworks</b> Keep noise to a level that is considerate of neighbors. Fires and fireworks are regulated in Frankfort. Quiet time is 11:00 p.m. to 7:00 a.m. Visit <a href="http://www.frankfortmich.com">www.frankfortmich.com</a> for ordinance info.</p> <p><b>Parking</b> Please use your rental's off-street parking spaces or off-site Municipal parking (see <a href="#">map on reverse</a>) before parking in the street. Note that on-street parking is only allowed between April 1 and November 1.</p> <p><b>Garbage</b> Garbage in public view must be in proper containers. The trash collection day for this property is:</p> <p><b>Recycling</b> Frankfort maintains single-stream recycling collection bins on 10th street south of Main. Please feel free to take your recycle material.</p>	<p><b>Pets</b> Please keep all pets on leashes whenever they are in an un-enclosed area, including parks, the beach, and on public streets. Please pick up and dispose of their waste.</p> <p><b>Beach</b> Please enjoy our beautiful beach and remove any trash you accumulate during your visit. Trash receptacles are located at all the beach entrances. "Mutt Mitts" are provided for use in disposal of your pets' waste.</p> <p><b>Public Restrooms</b> Public restrooms are available at the beach parking lot, City Hall, and at Mineral Springs Park (see map on reverse).</p> <p><b>Occupancy</b> The occupancy limit for this property is:</p>
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[https://www.frankfortmich.com/how\\_do\\_i/index.php](https://www.frankfortmich.com/how_do_i/index.php)

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### Examples – City of Marquette

600 Feet

Address on longer street segment

min. separation 100 Ft

Address on shorter street segment

one of each kind allowed due to block face < 500'

two of each kind allowed due to block face > 500'

Address on shorter street segment

one of each kind allowed due to block face < 500'

<https://library.municode.com/mi/marquette/codes/>

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### STR Examples – City of St. Joseph

<p><b>Lodging/Accommodations</b> A facility offering transient lodging accommodations to the general public and possibly providing additional services, such as Restaurants, meeting rooms, entertainment, and recreational facilities as Accessory Uses. Includes Short-term Rental establishments.</p>	a. Hotels, motels, auto courts, lodges, residence inns, and other resident lodging facilities.	a. "P" in C, D "PUD" in W
	b. Bed and Breakfast establishments.	b. "S" in R3 "PUD" in W
	c. <u>Short-term Rental establishments</u> .	c. "C" in W "C" in R3 (if not adjacent to residential District or Use) "S" in R3 (if adjacent to residential District or Use)
	d. Special Event Rentals (Temporary Use)	d. "P" in all zoning Districts; Temporary Use (see requirements of Chapter 8 of the St. Joseph Code of Ordinances)

C= Conditional Use; P = Permitted Use; S = Special Use

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### East Lansing

- College town
- Neighborhoods around campus concerned about rentals (ALL forms of rental)
- Residential Rental Restriction Overlay District where neighborhoods can petition to opt-in with 2/3 of the parcel owners within the proposed boundary of the district.
- Allows neighborhoods some level of choice of rental restrictions.

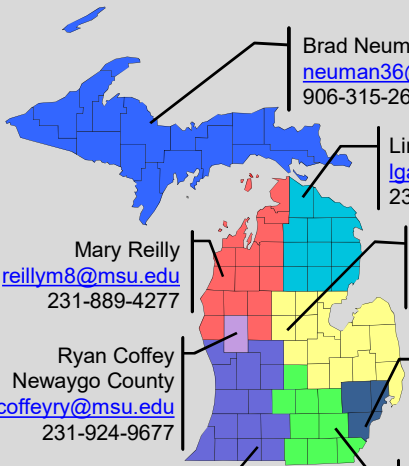
[www.cityofeastlansing.com/documentcenter/view/1642](http://www.cityofeastlansing.com/documentcenter/view/1642)

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### Land Use Educators

Contact the MSU Extension land use educator closest to you with your planning and zoning questions.



Brad Neumann <a href="mailto:neuman36@msu.edu">neuman36@msu.edu</a> 906-315-2661	Lindsey Gardner <a href="mailto:lgardner@msu.edu">lgardner@msu.edu</a> 231-627-8815
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# Approaches in Regulating Short- Term Rental June 2019

1/17/2020

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## Thank you!

## Questions?

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