



Larkin Hoffman Daly & Lindgren Ltd.

1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431-1194

GENERAL: 952-835-3800
FAX: 952-896-3333
WEB: www.larkinhoffman.com

May 27, 2010

Russ Conrow, Lake County Attorney
Lake County Courthouse
601 Third Avenue
Two Harbors, MN 55616

Re: Minnesota Vacation Rental Association; Our File #33,145-03

Dear Mr. Conrow:

We represent the Minnesota Vacation Rental Association (MNVRA) and have been asked to provide comments on Interim Ordinance No. 19-1, which placed a temporary moratorium upon the rental of single-family residences in all zoning districts within the unincorporated areas of Lake County (the "County") until August 11, 2010, or until the final adoption of regulations governing vacation home rental use. While MNVRA does not oppose the reasonable regulation of rental property, it has serious concerns that the County will propose regulations on vacation rentals that unreasonably distinguish the short-term rental of private housing in a way that infringes on individual property rights.

Background

The current County Ordinance does not prohibit single-family rental, and there are no specific limitations regarding single-family rental in any zoning districts. County staff has asserted that short-term rentals of less than one month in duration constitute a "commercial use" and therefore prohibited. Under the County Ordinance, commercial uses include: "[i]n the case of lodging establishments, any rental for a period of less than one month." *County Ordinance 3.14*. The limited time rental of less than one month is specific to "lodging establishments," not single-family homes. It should also be noted that there is no discussion in the Ordinance of single-family rental as a commercial use.

Lodging establishments are not specifically defined under the County Ordinance. However, the phrase "lodging facility" is included in references to define hotels, motels and resorts. See *County Ordinance 3.37*. Under the County Ordinance, a single-family dwelling is "a building or portion thereof containing one dwelling that is not attached to any other dwelling by any means and is designed for and used by one family." *County Ordinance 3.24*. A single-family home is not a hotel, motel or resort.

Moreover, under the use regulations for the RC Resort-Commercial District, both "lodging establishments" and "single-family dwellings" are allowed permitted uses. The distinction in identifying both as permitted uses illustrates that the County Ordinance interprets the two as separate and distinct types of uses. If lodging establishments included single-family homes, then such uses would not be listed separately under the permitted uses for the RC District.

We understand the desire to more clearly define the existing uses in the County Ordinance. However, creating a regulatory or licensing scheme directed at short-term rentals may create additional legal issues for the County.

Discussion

Any licensing program is founded on the police power to regulate for public health, safety and welfare. Accordingly, any exceptions to the regulation must be supported by a rational basis and cannot be arbitrary, capricious, or unreasonable. We feel that it is likely that the County will attempt to create an exception for single-family home rentals of more than one month without any rational distinction between that and a rental of one month or less. In fact, if there are problems associated with short-term rentals, it is easier to remove the tenant under a short-term rental than under a long-term rental.

It is established Minnesota Law that regulations affecting property interests are clearly construed against the regulator and that the courts must give weight to an interpretation that, while still within the confines of the term, is least restrictive upon the rights of the property owner. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608-609 (Minn. 1980). This is because regulatory and licensing programs directed at controlling the use of real estate are in derogation of private property interests protected by state and federal constitutions.

We are concerned that the County may attempt to arbitrarily regulate short-term rentals as lodging establishments or a commercial uses, when they have few if any of the indicia of public lodging. Private rentals do not have public facilities, such as pools, spas, lobbies, restaurants or other services; nor do they provide accessory uses, such as public parking, transit and shuttle services, recreational or maintenance facilities or storage. This is arbitrary treatment of a long-standing private use of property that cannot be supported in law or in practice.

MNVRA Supports Reasonable Regulation of Vacation Rentals

MNVRA is not opposed to the reasonable regulation of single-family homes as short-term vacation rentals. In fact, MNVRA has developed a set of working principles that may be helpful to the County moving forward.

MNVRA starts from the legal principle that homeowners have the right to rent their property subject to reasonable licensing requirements. It shouldn't matter if the rental is for two days, two weeks, two months or two years, regulatory treatment of rental property should be the same or similar.

Treating vacation rentals like resorts, hotels, motels or even bed and breakfast operations misses the point. As noted, private rentals offer a different experience and involve different facilities. While rental owners are happy to comply with reasonable licensing regulations applicable to all rental properties, MNVRA does not agree that the County should compare lodging establishments to private rentals because of significant differences in the size, scope and location of vacation rentals as compared to public lodging establishments.

However, MNVRA does agree that the County Ordinance should be amended to recognize vacation rentals as an allowed use of single family homes, apartments, condominiums, cabins or other single-family dwellings, and provide clear authority to license vacation rentals in the same manner as other

rental property. The County would then have the same authority to take complaints and revoke licenses where property owners are not following the licensing regulations.

If vacation rentals are not allowed in single family homes or in single family neighborhoods, this unfairly removes 80-90 percent of the existing housing stock from this important opportunity to use property legally. Vacation rentals provide a number of benefits to the communities in which they are found. They provide for longer stays for families, groups of friends, reunions and corporate stays. Prohibiting or limiting this use would not only affect vacationers, but visiting professors, pilots and flight attendants, military personnel and many others who plan extended stays, but don't change their primary residences.

As noted by the Explore Minnesota tourism office, vacation rentals attract a solid demographic that spends discretionary dollars at local attractions, entertainment venues, restaurants and shopping. Vacation renters become repeat visitors to the area, often returning the same time each year, establishing relationships with neighbors, shop keepers and vendors.

MNVRA offers its resources to the County to develop an ordinance that allows the County to reasonably regulate vacation rentals while respecting long-standing private property principles. At a minimum, we request that the County share its draft Ordinance relating to this issue with time to comment and provide input to County staff.

Thank you.

Sincerely,

William C. Griffith, for
Larkin Hoffman Daly & Lindgren Ltd.

Direct Dial: 952-896-3290
Direct Fax: 952-842-1729
Email: wgriffith@larkinhoffman.com

Julie L. Perrus, for
Larkin Hoffman Daly & Lindgren Ltd.

Direct Dial: 952-896-3308
Direct Fax: 952-842-1763
Email: jperrus@larkinhoffman.com

cc: Matt Huddleston, Planning & Zoning Administrator
Minnesota Vacation Rental Association (MNVRA)