

CITATION: Tiny Township Association v Township of Tiny, 2025 ONSC 1578
BARRIE COURT FILE NO.: CV-23-445
DATE: 20250324

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Tiny Township Association of Responsible Str Owners, Jamie-Lyn Banting, Olga Kolodij, ~~George Karaolis, Karaolis Family Holdings Inc.,~~ Oliver Shaw, Jason Barham, 2691251 Ontario Inc., Justin James Tristan Johnson

Applicants

AND:

The Corporation of the Township of Tiny

Respondent

BEFORE: The Honourable Justice H. Leibovich

COUNSEL: Johnathan Nehmetallah and Lauren Weaver, for the Applicants

Sarah Hahn, Matt Hodgson and Emerson Wargel, for the Respondent

HEARD: October 4, 2024

REASONS FOR DECISION

- [1] The applicants have brought this application to quash licencing by-laws enacted by the respondent, the Corporation of the Township of Tiny (the “Township”) to restrict short term rentals of properties (“STRs”). The Township passed the impugned by-law on August 11, 2022. It was amended on August 31, 2022.
- [2] There is no dispute that the Township’s zoning by-laws allow the properties to be rented as short-term rentals. The applicants submit that the impugned by-laws are, in effect a disguised zoning by law and an illegal attempt to regulate STRs out of existence. The applicants submit that the impugned by-laws are ultra vires the *Municipal Act, 2001*, SO 2001, c 25, and should be quashed. The respondent submits that the application should be dismissed as the impugned by-laws are a valid exercise of the municipalities’ powers and a valid attempt to regulate the STR industry which had previously not been subject to any regulation.
- [3] The only issue on this application is whether the licencing by-laws should be quashed for illegality pursuant to s. 273(1) of the *Municipal Act*. For the reasons set out below, the licencing by-laws are not illegal and should not be quashed. The application is dismissed.

Relevant Facts

The Township's concerns with STRs

- [4] The Township received complaints from the community regarding noise and behaviour from guests at STRs. The 2020 survey conducted by the Federation of Tiny Township Shoreline Association (FoTTSA), which was presented to the Township's Council and filed at this application, most easily illustrates the concerns. The survey noted the following:
- 61% complained about noise – firecrackers, loud music and loud voices
 - 32% complained about inconsiderate/aggressive/rude behavior
 - 25% complained about overcrowding/misuse of the beach/shoreline
 - 21% complained about constant partying happening next door
 - 21% complained about overcrowding of the STR itself – for example cottages that sleep 8 hosting 20 or more
 - More than 10% of comment writers complained about each of the following: trespassing, garbage and recycling issues, problems with cars and parking, loss of quality of life
 - Multiple respondents also complained about problems with fires, dogs and alcohol
- [5] The survey also noted the concern that STRs removed potential homes from the housing market. Further, the survey revealed that STR owners relied on the income to support the costs associated with their cottage. The survey recommended that the Township “create a new “Short Term Accommodation By-law” to govern all renting of STRs for less than 7 nights”.

The creation of the by-laws

- [6] The Township passed four by-laws that regulate STRs: a by-law to amend its Official Plan, a by-law to amend its Zoning By-law, and two new licencing by-laws. On August 11, 2022, Tiny Township passed By-law No. 22-017 and on August 31, 2022, passed By-law No. 2022-067, an amending by-law.
- [7] The Township initiated a review of STRs in 2015. Numerous Council meetings and reports were filed at this application. The history of the creation of the by-laws is set out in the affidavit of Robert Lamb, the Chief Administrative Officer of the Township of Tiny and in the affidavits of Ms. Kolodij and Mr. Sloutsky. A brief timeline of events or steps leading up to the passing of the impugned by-laws is set out below.

October 2019: Council received a report on the history of STRs. Council subsequently directed staff to ascertain what other Ontario municipalities were doing to regulate STR properties, with the aim to 1) increase the availability of affordable housing; 2) increase municipal revenue through licencing/regulation; and 3) decrease community disruption caused by STRs.

March 12, 2020-June 15, 2020: The County of Simcoe hosted a Short-Term Rental Workshop for its municipalities' elected officials and staffs. FoTTSA made a deputation to Council which included the results of a survey on STRs which is set out earlier in these reasons. Council reviewed and discussed the presentations provided.

July 6, 2020: Council recommended that staff report back on a framework for registration and licencing policies for STRs, in conjunction with the Municipal Accommodation Tax.

November 30, 2020: Council received a presentation from Michael Wynia, planner with Skelton, Brumwell & Associates Inc. on STRs.

December 21, 2020: Council directed staff to: 1) report back on options relating to the implementation of a licencing and registration program including the establishment of short-term accommodation regulations, comprehensive public input, the development of a licencing by-law and implementation instruments, graduated implementation and required zoning by-law amendments; and 2) review and report back to Council on the approach utilized by other municipalities in implementing their short-term rental controls.

February 24, 2021: Council directed staff to: 1) proceed with the development and distribution of a public survey; 2) proceed with the drafting of a short-term licencing by-law including a renter's code of conduct, after the public consultation process has been completed; and 3) continue a strict enforcement policy approach, while maintaining a cost-effective response.

April 28, 2021: Council directed staff to draft a short-term rental licencing by-law and a code of conduct, along with a report regarding the development of a short-term rental task force.

June 9, 2021- June 30, 2021: A task force was created. The task force was to be comprised of up to four non-elected citizen members, (two STR owners and two non-STR owners) and two elected members. The Chief Administrative Officer would act as the chair of the task force. Additional staff support for the task force would be provided by a staff member from the by-law, planning and fire departments. All task force meetings were open to the public, and all members of the task force had equal voting rights, including the Chair.

August 11, 2021: Council received a presentation and opinions from Jamie Robinson of MHBC Planning, and Sarah Hahn of Barriston LLP.

March 21, 2022: The task force met numerous times during the 6 months following its creation. However, one of the members of the task force threatened legal action in respect

of the Township's proposed regulation of STRs. As a result, on March 21, 2022, it was resolved that the task force be disbanded.

May 11, 2022: Council reviewed various reports and public feedback on the subject of STRs. The task force's work that had been done prior to it being disbanded was presented.

May 18, 2022: Based on the draft Short-Term Rental Accommodation Licencing By-law that was considered, and Council's recommendations made at the May 11, 2022, Special Committee of the Whole Meeting, Council directing staff to: (a) prepare a report on the implementation of a short-term rental accommodation licencing program including additional staff costs for consideration at the June 8, 2022 Committee of the Whole Meeting; (b) enter into an agreement with Granicus as part of the implementation program; (c) Revise proposed By-law 22-017, a By-law to Licence, Regulate and Govern Short-Term Rental Accommodations, for further consideration as follows:

- (a) set the maximum number of licences issued at 300;
- (b) set the occupancy capacity at ten people per short-term rental accommodation or less as sewage system permits; and
- (c) Obtain a legal opinion on the implementation of a black out period prior to confirming the number of permitted rental days per year.

June 8, 2022: Council approved the recommendations stemming from the May 11, 2022 Special Committee of the Whole Meeting and received a legal opinion on blackout dates and limits on the number of guests.

June 23, 2022: The Township issued a public notice stating that: "The Township of Tiny has initiated a proposed Official Plan Amendment and a proposed Zoning By-law Amendment as it relates to Short-Term Rental Accommodations. The Township will be holding a virtual Public Meeting electronically on July 20, 2022, at 6:00 p.m. under Sections 17 and 34 of the Planning Act, to consider the proposed Official Plan and Zoning By-law Amendments."

June 29, 2022: Council passed a recommendation from the June 8, 2022, meeting which directed Township Municipal Law enforcement officers to operate on a zero-tolerance mandate relative to by-law infraction issues related to STRs where evidence supported a charge against the landowner and the renter.

July 6, 2022: The Township issued a public notice that a virtual Special Meeting of Council would be held on Thursday, August 11, 2022, at 4:00 p.m. regarding short-term rentals in the Township of Tiny, including an implementation report and licencing by-law for Council's consideration.

July 20, 2022: A virtual public meeting was held to consider the proposed plan and zoning by-law amendments.

[8] The by-law was passed on August 11, 2022, and amended on August 31, 2022. During the August 11, 2022 Special Meeting, Council also considered a report from the County of Simcoe's Affordable Housing Advisory Committee on the effects of STRs on affordable housing, and policy options, such as thresholds for rental periods. The Simcoe report had recommended prohibitions of the full-time rentals of entire homes, and limiting short-term rental periods to between 60 and 90 days a year. Subsequently, on August 31, 2022, Council passed By-Law 22-067, amending the Licencing By-law to allow renewals post-November 15, 2022, while halting new licence issuance until the total number of licences fell below 300.

The By-laws

[9] The licencing by-laws contain the following restrictions:

- (i) Owners shall not advertise nor permit the rental of a premise for more than 92 combined days per calendar year;
- (ii) Owners must limit the number of renters to 10;
- (iii) Owners shall not rent a premise for fewer than 6 consecutive days between April 15 and October 15, or rent a premises more often than once in every six-day period from October 16 to April 14;
- (iv) Owners shall not permit more than two renters on the premises for each bedroom identified and approved on submitted floor plans at any one time; and
- (v) Owners shall not permit more than 1 guest per bedroom on the premises at any one time.

[10] The by-laws state that a licencing officer may refuse to issue or renew a licence where the operation "may be averse to the public interest". The by-laws create a demerit points system, which can impose fines and also result in the revocation of licences.

[11] The by-laws allowed for all to apply for a licence until November 15, 2022. After that date, the total number of licences was capped at 300. In other words, one could only apply for a licence if the cap had fallen below 300. As explained by Ms. Kolodij in her affidavit, many members of the Association applied for an STR licence under the Licencing By-law during the October 4 to November 15, 2022 application period but many applied under protest. Most members feared, in applying for a licence, that they would be in danger of losing their legal non-conforming rights pursuant to section 34(9) of the *Planning Act*, RSO 1990, c P.13. Accordingly, members applied for licences with language that could be used to notify Tiny ownership that they were applying for an STR licence in protest. As of September 2023, there were 293 licence applications.

[12] The by-laws also contain a prohibition against assigning or transferring a licence to another person.

[13] The by-laws require that each year, owners are required to provide:

- (a) A completed application in the form required by the Township;
- (b) Proof of ownership;
- (c) A statutory declaration signed by each and every owner stating that the premises is used primarily for residential purposes and that each and every owner understands their responsibilities as a licensee;
- (d) A detailed site diagram and floor plan, drawn to scale and fully dimensioned of the premises;
- (e) A certificate of insurance including a liability limit of no less than \$2 million, endorsed to the effect that the Township shall be given notice in writing immediately, and in any event no later than 4 days after becoming aware, of any cancellation or material variation to the policy;
- (f) An electrical general inspection performed by a licenced electrical contractor dated less than 5 years old;
- (g) A Wood Energy Technical Transfer (WETT) report dated less than 5 years old issued by a certified WETT inspector for properties with wood burning appliances;
- (h) An annual inspection report indicating that the chimney, flue pipes etc. have been inspected by a WETT certified chimney sweep and are safe to be utilized;
- (i) An HVAC inspection report issued by an HVAC technician;
- (j) Upon renewal, maintenance and record of tests for all smoke and carbon monoxide alarms after each renter leaves, along with the guest log/register.
- (k) A stipulation that licence applications and issued licences will be posted on the Township's public-facing website and will include personal information, such as the STR owners' addresses and contact information, as well as the contact information for the designated responsible person of the STR;
- (l) The name and contact information of the responsible person who can be readily contacted within 30 minutes and respond to an emergency or contravention of any Township by-law, including attendance on site of the premises within 60 minutes of being notified of the occurrence. The Township's Attestation Form, which all intended licensees must fill out and submit, requires the owner of the property to ensure that the responsible person will be available 24 hours a day, 7 days a week to answer any calls;
- (m) A requirement to provide confirmation of the issuance of an occupancy permit;

- (n) A requirement to advise the Township, in writing, of any changes to the information contained in the application for a licence within 7 days;
- (o) A requirement that all licencees be individuals, not corporations, partnerships, or businesses except at the licencing officer's discretion;
- (p) A requirement that licencees maintain a register containing information of guests and renters, which must be provided to the Township within 24 hours upon request. The licencees must also confirm in this register that the smoke and carbon monoxide alarms have been checked and are in working condition after each renter leaves.
- (q) A requirement that the property owner contact the Township for an inspection to ensure compliance with governing bylaws and regulations. This requirement is in addition to the inspections and reports required to apply or renew a licence; and
- (r) An application fee of \$1,750 (previously \$1,500) must be paid.

[14] Glen Sloutsky provided an affidavit. He is the President and one of the founding members of the incorporated association "Tiny Township Association of Responsible STR Owners" (the "Association"). The Association is a community of responsible hosts who share their homes and cottages with families, friends, and travelers wanting to experience beautiful Tiny Township. The association was formed in response to the Townships' efforts to create a by-law to regulate the STR industry. He stated that:

The members of the Association are a varied and diverse group of individuals who own property in Tiny Township. All of them rent their properties as STRs from time to time to supplement their income. The funds that they receive through STRs helps them to defray the ongoing carrying costs for their respective properties. This has helped them achieve the dream of property ownership – a dream which has become increasingly out of reach for many Ontarians. In my role as President, I have been advised by many members that they have been increasingly forced to turn to innovative platforms like Airbnb and the use of STRs to enter into the housing market.

[15] Other applicants expressed similar sentiments that renting out their cottage allowed them to defray the cost of owning the cottage.

[16] The Association is not opposed to regulation. Mr. Sloutsky wrote:

I want to be clear that the Association is, in principle, not opposed to the concept of responsibly regulating STRs. In an attempt to offer input on a potential regulatory regime, our members provided Tiny Township with a proposed framework on a fair and balanced licencing model. The presentation, delivered by email to councillors and staff on February 14, 2022 is attached as Exhibit "B". The Township did not incorporate our recommendations, and instead implemented a regime that is extremely restrictive and overly harsh. In my view, the regulations are designed to

effectively regulate STRs out of existence. They represent a severe impact on our member’s property rights that prevent them from making use of their properties as STRs.

[17] Mr. Sloutsky in his affidavit set out his association’s various attempts to have the Township understand their concerns and the effect that the by-laws are having on STR owners. It is the Association’s view that the by-laws are “extremely restrictive and overly harsh and that it is the view of the Association that the regulations are designed to effectively regulate STRs out of existence.” Mr. Sloutsky prepared a chart comparing the restrictions imposed by the Township with other communities. I have reproduced the chart below.

Township	Penetanguishene	Lake of Bays (cat. C)	Grey County	PEC	NOTL	Blue mountains	Lambton Shores	South Bruce Peninsula	Tay	Tiny	Tiny's Regulatory Burden Rank
Fee	\$500/\$900 (# of bdrm dependent)	\$750/yr	\$100/yr	\$325/162 per room	\$68 per room	\$1,150/yr	\$500.00	\$800/\$500	No Licence	\$1,500.00	1
Public Register	Yes			Yes (address only)	Yes (name & address)	Yes	Yes	Yes (address only)	-	Yes	1 (tied)
Max Days	365	365	365	365	365	365	365	365	-	92	1
Min nights rented										6	1
Max # of renters	8	No limit	No limit	8	2/rm +2	2/rm +4	10	2/rm	-	10	2
Max # of licenses			Undisclosed	Undisclosed	Unknown	Unknown				300	1
Grandfathering existing STRs	Yes			Yes	Yes	Yes				No	1 (tied)
Insurance	\$2,000,000			\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	-	\$2,000,000	1 (tied)
HVAC Inspection										Yes	1
Fire Inspection	Yes	Yes	Yes	Yes	Yes	Yes	Yes			Yes	1 (tied)
Electrical Inspection		Yes	Yes		Yes	Yes				Yes	1 (tied)
WETT Inspection						Yes				Yes	1
Responsible person	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	1 (tied)
Guest Register			Yes		Yes	Yes				Yes	1 (tied)

[18] Mr. Sloutsky swore that the ability to cover the costs of owning and operating an STR was reduced by approximately 97%, according to the association’s estimates. In the Association’s view, this made the by-laws so restrictive, that most people could no longer afford to financially carry their properties.

[19] Ms. Kolodij, one of the applicants, set out how the impugned by-laws have affected her use of her cottage in her affidavit:

However, if I were to follow the disputed By-Laws my ability to rent my STR for both the duration and frequency at which I previously did would be severely limited and I would no longer be able to use my property as I previously did contrary to the assurances provided by the Township in the correspondence from its counsel dated October 26, 2023.

I have rented, and continue to rent, out my STR for a number of stays that fall below the disputed By-laws 6-day stay minimum requirement. Occasionally, I would rent out my STR for a number of days per year that would exceed disputed By-laws 92-day annual maximum. In addition, my STR property has 4 bedrooms and as a consequence of the disputed By-laws the number of

guests I can rent the STR out to is reduced. This limitation on the number of renters exists even though my STR has space to accommodate over 10 guests.

The disputed By-laws also set out a limited cap of 300 STR licences to be distributed. This is important because, while my STR is presently licenced, if I wish to sell my STR and the new owner is required to apply for a licence – they may be unable to continue the use of the property as an STR if the number of STR licences is met.

Beyond the above limitations on my use of the property as an STR, the process of applying for an STR licence is yet another hurdle that works to prohibit STRs in Tiny Township. In addition to the \$1,750 annual licence fee, I must pay for regular electrical inspections (typical cost of \$300- \$450) and HVAC inspections (typical cost of at least \$300). These are costs and inspections that are not required of any other landlord but appeared to be directed solely at operators of STRs.

- [20] Another applicant, Mr. Johnston, provided an affidavit and echoed similar concerns about not being able to rent out his cottage as he previously did, and on the restrictions that the STR cap causes, if he wants to sell his cottage. He swore:

However, if I were to follow the disputed By-Laws my ability to rent my STR for both the duration and frequency at which I previously did would be severely limited and I would no longer be able to use my property as I previously did contrary to the assurances provided by the Township in the correspondence from its counsel dated October 26, 2023.

While I typically rent for 7-day periods during the summer months, I have rented, and continue to rent, out my STR for a number of stays that fall below the disputed By-Laws 6-day stay minimum requirement. Occasionally, I would rent out my STR for a number of days per year that would exceed disputed By-Laws 92-day annual maximum. In addition, my STR property has 3 bedrooms and as a consequence of the disputed By-Laws the number of guests I can rent the STR out to is reduced. This limitation on the number of renters exists even though my STR has space to accommodate over 10 guests.

The disputed By-Laws also set out a limited cap of 300 STR licences to be distributed. This is important because, while my STR is presently licenced, if I wish to sell my STR and the new owner is required to apply for a licence – they may be unable to continue the use of the property as a STR if the number of STR licences is met.

- [21] Mr. Barnham, another applicant, provided an affidavit setting out similar concerns that he had regarding the cap affecting his ability to sell the cottage, the limits on income he can

generate to help maintain the cottage, and remarked that the by-laws affected his previous use of the cottage.

- [22] Another applicant, Oliver Shaw, provided an affidavit. He discussed the unique concern his property poses with the by-laws in that he has two cottages on his land:

One of the unique features of my property is that it has two dwelling units that we rent out as one STR. We have never rented out to two separate groups but we rent out the two dwelling units to one group. I am prohibited from obtaining a licence for my property as property owners are no longer allowed to rent out 'more than one dwelling per property'. Under the disputed ByLaw I would only be permitted a licence for one of the dwellings.

- [23] Mr. Shaw stated that this would result in limiting him on the amount of rent that he can generate. He stated that he paid a significant premium and secured a mortgage based on his ability to rent out the cottages.

Position of the parties

- [24] The applicants submit that the impugned by laws scheme are so restrictive that it is in effect a zoning by-law which can only be done through the *Planning Act*:

In this regard, the intent and effect of the Licencing By-laws are to effectively prohibit, or at a minimum to severely curtail, STRs in the Township by making applications onerous and arbitrarily limited, by limiting the uses of the properties and ability to cover costs of ownership and by extinguishing, or effectively extinguishing, existing legal rights of property owners to rent and alienate their properties. The Licencing By-laws are, in effect, harsh zoning by-laws, unlawfully dressed up as a licencing regime.

- [25] The respondent submits that by-laws go beyond the *Municipal Act* only when they effectively regulate where the business occurs. The impugned by-laws do no such thing. Rather, the licencing by-laws are rationally connected to legitimate municipal objectives, such as the licencing of a business, the promotion of the health, safety, and well-being of individuals, the protection of persons, property, and consumers, and regulating the economic, and social well-being of the municipality.

Law and Analysis

Relevant provisions under the Municipal Act

- [26] The Township of Tiny's ability to create by-laws stems from s. 8 and s. 11 of the *Municipal Act*. Section 8(3) states:

8 (3) Without limiting the generality of subsections (1) and (2), a by-law under sections 10 and 11 respecting a matter may,

- (a) regulate or prohibit respecting the matter;
- (b) require persons to do things respecting the matter;
- (c) provide for a system of licences respecting the matter. 2006, c. 32, Sched. A, s. 8.

[27] Section 11 states:

11 (1) A lower-tier municipality and an upper-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public, subject to the rules set out in subsection (4). 2006, c. 32, Sched. A, s. 8.

By-laws

(2) A lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting the following matters:

1. Governance structure of the municipality and its local boards.
2. Accountability and transparency of the municipality and its operations and of its local boards and their operations.
3. Financial management of the municipality and its local boards.
4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act.
5. Economic, social and environmental well-being of the municipality, including respecting climate change.
6. Health, safety and well-being of persons.
7. Services and things that the municipality is authorized to provide under subsection (1).
8. Protection of persons and property, including consumer protection. 2006, c. 32, Sched. A, s. 8; 2017, c. 10, Sched. 1, s. 2.

(3) A lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting matters within the following spheres of jurisdiction:

1. Highways, including parking and traffic on highways.
2. Transportation systems, other than highways.

3. Waste management.
4. Public utilities.
5. Culture, parks, recreation and heritage.
6. Drainage and flood control, except storm sewers.
7. Structures, including fences and signs.
8. Parking, except on highways.
9. Animals.
10. Economic development services.
11. Business licencing. 2006, c. 32, Sched. A, s. 8.

[28] Section 151 of the *Municipal Act* permits a municipality to provide for a system of licences with respect to a business and permits a municipality to differentiate its licencing requirements between different types of businesses and between different classes of the same business. “Since rental housing is a business, it is subject to licencing.”: *Ontario Ltd. v. Waterloo (City)*, 2015 ONSC 6541, 46 M.P.L.R. (5th) 1, at para. 39.

[29] Section 151 of the *Municipal Act* states:

151 (1) Without limiting sections 9, 10 and 11, a municipality may provide for a system of licences with respect to a business and may,

- (a) prohibit the carrying on or engaging in the business without a licence;
- (b) refuse to grant a licence or to revoke or suspend a licence;
- (c) impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;
- (d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (e) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence; and
- (f) licence, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it.

- [30] Section 153 of the *Municipal Act* contemplates that the licencing power of a municipality does not extend to where a business is located. Section 153 states:

153 (1) Despite sections 9, 10, 11 and 151, a municipality shall not, except as otherwise provided, refuse to grant a licence for a business under this Act by reason only of the location of the business. 2006, c. 32, Sched. A, s. 82.

Compliance with land use control by-law

(2) Despite subsection (1), a by-law providing for a system of licences for a business may require as a condition of obtaining, continuing to hold or renewing a licence that the business comply with land use control by-laws or requirements under the *Planning Act* or any other Act. 2006, c. 32, Sched. A, s. 82.

Continuation

(3) Despite subsection (2), a municipality shall not refuse to grant a licence by reason only of the location of the business if the business was being lawfully carried on at that location at the time the by-law requiring the licence came into force so long as it continues to be carried on at that location. 2006, c. 32, Sched. A, s. 82.

General Principles in reviewing the legality of municipal by-laws

- [31] This application is brought pursuant to section 273 (1) of the *Municipal Act* which allows the Court to quash City by-laws in whole or in part for "illegality." Illegality refers generically to any non-compliance with a law and the decision to quash is discretionary.
- [32] Municipalities are creatures of provincial legislation and a municipality's law-making authority is limited to the powers conferred on it by the provincial legislature. Section 8(1) of the *Municipal Act* provides that a municipality's powers "shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues. Further, as stated in *Clublink Corporation ULC v. Oakville (Town)*, 2019 ONCA 827, 148 O.R. (3d) 558, at para. 35, citing *Croplife Canada v. Toronto (City)* (2005) 75 O.R. (3d) 357, (Ont. C.A.), leave to appeal refused, [2005] S.C.C.A. No. 32:

...the *Municipal Act* is intended to give municipalities in Ontario "the tools they need to tackle the challenges of governing in the 21st century", and as a consequence, municipal powers are to be "interpreted broadly and generously within their context and statutory limits, to achieve the legitimate interests of the municipality".

- [33] Municipal by-laws benefit from a presumption of validity. The standard of review was recently reiterated by the Ontario Court of Appeal in *Windsor Housing Providers Inc. v. Windsor (City)*, 2025 ONCA 78, at para. 9:

As the application judge correctly noted, a generous, deferential standard of review is to be adopted toward the decisions of municipalities: *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, at p. 247, *per* McLachlin J. (dissenting, but not on this point); *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13, [2000] 1 S.C.R. 342, at paras. 35-37; *Equity Waste Management of Canada v. Panorama Investment Group Ltd.* (1997), 35 O.R. (3d) 321 (C.A.), at pp. 339-340. A municipality has broad by-law-making authority to enable it "to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues": *Municipal Act, 2001*, S.O. 2001, c. 25 s. 8(1). Therefore, a municipality may make by-laws respecting a wide variety of matters, including the health, safety and well-being of persons and the protection of persons and property: *Municipal Act, 2001*, S.O. 2001, c. 25, ss. 8(1), 10, 11; *2211266 Ontario Inc. (Gentlemen's Club) v. Brantford (City)*, 2013 ONCA 300, 307 O.A.C. 34 at paras. 8-11.

Also see *Clublink*, at para. 36.

- [34] In assessing whether a municipality has acted within their statutory authority, it is necessary to have regard both to the stated purpose and actual substance of the impugned instrument. As stated by the majority in *Clublink* at para. 37:

...This point was made by Doherty J.A. in *Barrick Gold Corp. v. Ontario (Minister of Municipal Affairs and Housing)* (2000), 2000 CanLII 16929 (ON CA), 51 O.R. (3d) 194, [2000] O.J. No. 4426 (C.A.), at para. 59:

Municipalities must, however, do more than conform with the strict letter of the law in order to remain within the boundaries of their lawmaking powers. As indicated in *R. v. Greenbaum*, *supra*, the purpose of the provincial enabling legislation also constrains the municipal lawmaking power. In Rogers, *The Law of Canadian Municipal Corporations*, *supra* at 1021, it is put this way:

A by-law which is ostensibly within the authority of a council to enact may be set aside or declared invalid if its real purpose and attempt is to accomplish by indirect means an object which is beyond its authority . . . Hence, the court must always 'in examining a by-law, see that it is passed for the purpose allowed by a statute and that such purpose is not resorted to as a pretext to cover an evasion of a clear statutory duty'. [Emphasis in original.]

No evidence of bad faith

- [35] The applicants submit that the by-laws were made in bad faith and that bad faith is a basis to have them declared illegal. The applicants do not allege malice and are not making a personal criticism of Township officials or Council nor alleging individual wrongdoing. The applicants correctly state that bad faith in the municipal law context does not require proof of malice, wrongdoing, or desire for personal advantage, rather “[b]ad faith by a municipality connotes a lack of candor, frankness and impartiality. It includes arbitrary or unfair conduct and the exercise of power to serve private purposes”: *wpd Sumac Ridge Wind Incorporated v. Kawartha Lakes (City)*, 2016 ONCA 496, 132 O.R. (3d) 529, at para. 86; *Friends of Lansdowne v. Ottawa (City)*, 2012 ONCA 273, 110 O.R. (3d) 1, at para. 79.
- [36] The applicants’ submission that the respondent acted in bad faith was not pursued heavily in oral argument. While I appreciate that the applicants clearly believe that the Township is wrong, that does not mean that the Township acted in bad faith. The record shows that the evolution, drafting and creation of the by-laws in question took place over many years. There were numerous reports and consultations, including with the applicants. Experts and legal counsel were retained. A task force was created with representation from different stakeholders, including STR owners. It is evident from Mr. Sloutsky and Ms. Kolodij’s affidavit that the Township heard their concerns regarding the anticipated by-law but simply didn’t agree with them. The task force had to be disbanded when one of its members, an STR owner, threatened legal action. It is clear from the voluminous material provided that the by-laws were created as a result of concerns expressed in the community. Other communities across Ontario have passed by-laws in this area. The applicants themselves support regulation just not the one designed by the Township. There was no lack of candor, frankness or impartiality. There is no evidence of bad faith and I find that the Township created the by-laws in good faith.
- [37] This does not of course end matters. The impugned by-laws must still be anchored in the powers set out in the *Municipal Act*.

The by-laws are not an illegally disguised zoning by-law

- [38] As stated, to determine whether a municipality has acted within their statutory authority, it is necessary to have regard both to the stated purpose and actual substance of the impugned instrument.
- [39] There can be no doubt that on its face, the impugned by-laws fall well within the jurisdiction of the Municipality. The preamble of By-law 22-017 states:
- WHEREAS pursuant to Municipal Act, Part II, Section 11(2), paragraph 6 of the Municipal Act, authorizes a municipality to pass a By-law respecting the health, safety and well-being of persons.
- [40] Prior to the passing of the impugned by-laws, there were numerous complaints about the noise and behavior emanating from STRs which was clearly affecting the well-being of the community. I also note that a number of the by-law provisions require the owner of the

STR to take a number of steps to ensure that the cottage is safe, such as electrical and HVAC inspections, chimney sweeps, carbon monoxide and smoke alarm testing. These by-laws are clearly made in furtherance of s.11(2)(6) and s. 11(2)(8) of the *Municipal Act*; and fall under “Health, safety and well-being of persons” and “Protection of persons and property, including consumer protection.”

- [41] Furthermore, STRs are a business and s. 11(3) of the *Municipal Act* clearly allows municipalities to licence a business. As stated by the Court of Appeal in *2211266 Ontario Inc. (Gentlemen's Club) v. Brantford (City)*, 2013 ONCA 300, 10 M.P.L.R. (5th) 238, at paras. 13 and 14:

We agree. As noted by the application judge, both the preamble and the content of the By-law reveal that it is aimed at the promotion of these legitimate municipal purposes. In addition, in our view, the authority to pass the By-law could also be anchored in the objectives of s. 10(2).8 of the Act – protection of persons and property, including consumer protection – and s. 10(2).11 – business licencing.

On this ground alone, the appellant’s attack on the validity of the Licencing Provisions fails. As the By-law reflects the valid exercise by the City of its licencing authority under ss. 8(3) and 10(2) of the Act, it follows that the Licencing Provisions, which form part of the overall licencing system established by the By-law, are similarly valid.

- [42] The applicants’ main point is that the by-law scheme is so restrictive that it is in effect a zoning by-law which can only be done through the *Planning Act*. In *Hill & Hill Farms Ltd. v. Bluewater (Municipality)* (2005), 74 O.R. (3d) 352 (Div. Ct.), aff’d (2006), 82 O.R. (3d) 505 (Ont. C.A.), the Divisional Court commented at para. 35 on why provisions of the *Planning Act* prevail where there is a conflict with the provisions of any other Act:

The reason for this is obvious. Land use matters, especially those which involve zoning issues, can have enormous ramifications not only for owners of the land involved but also for the community as a whole. They can also have similar ramifications for the municipality itself in the way that it performs its duties to plan, service, secure and finance orderly urban development. These are matters which require consideration of factors much different and broader than those which the Board is required to consider in carrying out its functions under the Act. They are also matters which must be considered by persons who have expertise in areas of law and land planning who are required to safeguard the public interest. As well, to the extent that they are addressed by municipal councils, zoning matters must reflect the views of ratepayers who are also entitled to participate in the process.

- [43] The applicants submit:

In this regard, the intent and effect of the Licencing By-laws are to effectively prohibit, or at a minimum to severely curtail, STRs in the Township by making applications onerous and arbitrarily limited, by limiting the uses of the properties and ability to cover costs of ownership and by extinguishing, or effectively extinguishing, existing legal rights of property owners to rent and alienate their properties. The Licencing By-laws are, in effect, harsh zoning by-laws, unlawfully dressed up as a licencing regime.

- [44] The applicants raise the following concerns regarding the expense of the regime and its onerous conditions:

The Licencing By-laws are designed to prohibit instead of regulate and yet are either the most restrictive or second-most restrictive in 14 categories of licence conditions or limitations amongst different jurisdictions in Ontario's cottage country. The Township has the most expensive application fee together with the least amount of days available for rental. The Township is one of the few jurisdictions that limits the amount of licences and makes no allowance for the "grandfathering" of existing STRs. Finally, the Township requires the most amount of inspections – including fire, HVAC, and electrical – while being the only jurisdiction to require WETT (Wood Energy Technical Training) inspections. Taken together, this is a regulatory regime that is the most expensive for STR owners in Ontario and requires the most onerous inspections while at the same time limiting the amount of days the STR may be rented militating against the owner's ability to recoup those costs.

- [45] In *Neighbourhoods of Windfields Limited Partnership v. Death* (2008), 49 M.P.L.R. (4th) 183 (Ont. S.C.), at paras. 73 and 74 aff'd 2009 ONCA 277, leave to appeal refused, [2009] S.C.C.A. No. 253, the court provided the following helpful guidance in assessing whether legislation is a properly enacted by-law or a disguised amendment to the zoning by-law:

- a) A zoning by-law "enables local governments to control the use of land and the erection and use of buildings and other structures. Licencing by-laws regulate *how* a business operates.
- b) Zoning is the deprivation for the public good of certain uses by owners of property to which the property might otherwise be put. Underlying planning statutes is the principle that the interest of land owners in securing the maximum value of their property must be controlled by the community.
- c) A municipality cannot, by adopting a descriptive disguise by way of a recital to a by-law, transform it into a regulatory by-law under the *Municipal Act*, when in substance it is a zoning enactment pursuant to the *Planning Act*. The Rogers text [*Canadian Law of Planning and Zoning*, 2nd edition] gives the following examples of invalid by-laws that were in effect zoning by-laws:

- a by-law prohibiting the location of a gas station in a specified area,
 - a by-law restricting the operation of self-service stations at certain locations;
 - a by-law prohibiting a public garage within a certain radius of single dwellings; and
 - a by-law restricting the operation of an adult entertainment parlor to certain defined areas.
- d) Under sections 150 and 151 of the *Municipal Act*, a licencing by-law is concerned with the regulation of a particular business or activity and with providing standards in the interests of public health or other public interests. The licencing function does not include restricting the use of lands or prohibiting certain uses in certain areas (sections 153(2) and 154(1), *Municipal Act*).
- e) A zoning by-law restricts the use of land in the areas to which it applies with a view to reducing impacts on neighboring properties and implementing the official plan of a municipality.

[46] I find that the impugned by-laws are not a disguised zoning by-law. Nowhere in the impugned by-laws does it regulate location or where a person can operate a STR. Rather it regulates the business of running a STR. As noted in *London Property Management Association v. City of London*, 2011 ONSC 4710, 90 M.P.L.R. (4th) 30, at para. 108, the court found that the by-law licencing and regulating residential tenancies was:

...not trying to prohibit a particular business or stop it from operating in particular areas. Rather, the Licencing By-law applies citywide. I find that the Licencing By-law is regulating a business.

[47] Similarly, in *Upper Canada Land Titles v. Regional Municipality of Niagara et al*, 2022 ONSC 5257, 36 M.P.L.R. (6th) 244, the court noted at para. 45:

The Bylaw is not in substance a zoning bylaw under the *Planning Act* as suggested by the Applicant but rather a regulatory bylaw under the *Municipal Act*. It is concerned with the regulation of the particular activity regarding injuring or destruction of trees thereon and with providing standards in the public interest and does not restrict the use of the lands. [Citation omitted.]

[48] The by-laws are a lawful use of the Township's ability to licence and regulate the business of STRs. A business that beforehand was not regulated in the Township as STRs, unlike hotels or residential tenancies, are specifically exempt from regulation by the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17.

[49] Many of the applicants' complaints are that the by-laws change how they rented out their property before. I agree. Of course they do, that is part of the aim of the by-laws. Owners of STRs are now being regulated and before they were not. It follows that due to the new regulations that STR owners are subject to restrictions, including restrictions relating to the

manner in which they may generate income from their property. The regulations and restrictions have been implemented lawfully and properly by the Township based on a detailed investigation of the issues with community participation and feedback.

[50] I do not accept the assertion that the homeowner’s ability to generate income has been lessened by 97 per cent as asserted by Mr. Sloutsky. I do not understand by the material provided how he arrived at this number. There certainly is no evidence that he has in fact earned 97 per cent less as a result of the new by-laws. I also do not accept the various statements attributed to third parties that were filed by the applicants. They are inadmissible hearsay.

[51] In any event, restrictions are inherent to any by-law scheme. Furthermore, such changes to use or restrictions are expressly contemplated by the *Municipal Act*. Paragraph 151(1)(f) states a municipality may “licence, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it.” The applicants state that the regime is the most restrictive in the province. Whether it is or is not is not relevant. The role of the court is not to second guess the policy decisions made by the Township. The role of the court is to determine whether the by-laws are rationally connected to legitimate municipal objectives. They clearly are:

- 1) They regulate the business of STRs, with limits on permissible rental period, number of renters, consecutive rental days, guests per bedroom and parking requirements. The restrictions imposed are not prohibitory. I agree that the applicants now have to pay additional fees. I do not see how these fees equate to a prohibition. The by-laws still allow the applicants, although perhaps not in the exact same manner, to rent their property from time to time.
- 2) The restrictions are meant to promote the health, safety, and well-being of individuals in the community because of the concerns resulting from the prior unregulated use of STRs.
- 3) The various requirements for inspections and insurance to promote the health, safety, and well-being of individuals renting the property and the surrounding area and provide for consumer protection.

The licencing cap

[52] The applicants point heavily to the licencing cap as an example, in conjunction with the other restrictions and administrative hoops that must be complied with, as evidence that the by-laws are a prohibition of STRs. The by-laws cap the number of licences at 300¹, after which a new licence cannot be obtained no matter if an applicant has complied with all the pre-requisites.

¹ As of November 18, 2024, the Town of Collingwood has imposed a licencing cap of 200; Corporation of the Town of Collingwood, by-law No. 2024-078, *Short-Term Accommodation Licencing By-law* (18 November 2024).

[53] In justifying the cap of 300 licences, the Township relies on its objective in regulating the economic, and social well-being of the municipality by ensuring the retention of an appropriate amount of affordable housing for the community as set out in s.11 of the *Municipal Act*. The Township relies on the Court of Appeal's decision in *Toronto Livery Association v. Toronto (City)*, 2009 ONCA 535, 58 M.P.L.R. (4th), that states that municipalities have a legitimate interest in regulating the extent of economic competition among businesses they licence. The Court of Appeal stated at para. 73:

I agree with the application judge that the Ratio Requirement addresses a "goal of limitation" - that is, the control of the number of limousines in the City. For several reasons, I also agree that, on this record, the Ratio Requirement cannot be said to be irrational or arbitrary.

[54] The Township submits that the "goal of limitation" is rational: an excessive number of STRs could lead to harmful competition, as noted by the Court of Appeal, and divert residential properties from long-term housing to STRs, thereby affecting the availability of housing for Township residents.

[55] I agree with the Township. One of the concerns that the Township sought to address was the availability of affordable housing and to control the competition in this area. Mr. Lamb, speaking on behalf of the town, noted that while housing is a complex issue, one of the goals of the by-laws was to increase the availability of houses for people to live in as opposed to renting out for income. He noted in cross-examination:

We had some local residents speak with council about the lack of affordable housing and the fact that housing prices were increasing quickly. In fact, we had firsthand testament of a staff member who was born and raised in the municipality who ultimately left and had to take a job somewhere else because could no longer find affordable housing within our municipality that he could afford to buy or live in.

[56] As noted in *Toronto Livery*, deference is owed to the Township regarding how they regulate the business of STRs. It is not for the court to say whether a cap of 300 licences, or more, or less, is appropriate. The policy decision to limit the cap at 300 was well within the Township's authority to determine. There is nothing arbitrary or irrational about their determination. Rather, the Township's 300 cap determination was the result of years of study and discussion on the issue and represents a compromise between those community members who sought a complete ban on STRs and those who sought no restrictions. In my view, the 300 cap appears to be logical and well-chosen considering that at the time of the hearing, two years after the cap was installed, the number of STRs is still below the cap.

[57] In any event, while the cap may require an applicant to wait for a licence it does not preclude a person based on their location from applying for a licence. Again, nowhere in the by-laws does the Township purport to restrict a person's ability to run an STR based on their location. The by-laws apply Township-wide. The by-laws are not ultra vires of the Township.

No Infringement of privacy rights

[58] Section 3.4 of the Licencing By-laws stipulates that licence applications and issued licences will be posted on the Township's public-facing website and will include personal information, such as the STR owners' addresses and contact information, as well as the contact information for the designated Responsible Person of the STR. The applicants submit that the collection and publication of personal information mandated by the licencing by-laws violates provincial privacy protections afforded under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("MFIPPA").

[59] I disagree. Section 2(2.1) of MFIPPA states:

“Personal information” does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[60] Accordingly, the information collected is not personal information. This issue was decided against the applicants by the Court of Appeal in a decision that was released after the application was argued. In *Windsor Housing Providers Inc v. Windsor (City)*, 2025 ONCA 78, the Court of Appeal concluded, at para. 19:

Finally, the requirement that landlords provide certain information does not violate s. 7 of the *Charter* nor does it infringe the protections under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("MFIPPA"). The application judge correctly concluded that the information required to be disclosed is not personal information and therefore comes within the exclusion set out in s. 2(2.1) of MFIPPA, see: *London Property Management Association v. City of London*, 2011 ONSC 4710, at para. 92

No infringement of section 2(b) of the Charter

[61] The licencing by-laws prohibit advertising STRs without a licence. The freedom of expression protected by s. 2(b) of the *Charter* includes commercial speech such as advertising, even though the *Charter* was not intended to protect economic interests, because advertising aims to convey a meaning and hence involves more than economics. As stated by the Court of Appeal in *Vann Media Group Inc v The Corporation of the Town of Oakville et al*, 2008 ONCA 752, 95 OR (3d) 252, at para. 42, one must look to see if the restriction falls within a range of reasonable solutions to the problem confronted:

In order to establish that legislative action minimally impairs a *Charter* right, it is not necessary to show that the "least restrictive means" have been enacted. It is sufficient if the "means adopted fall within a range of reasonable solutions to the problem confronted". The law must be "reasonably tailored to its objectives" or "impair the right no more than reasonably necessary". The minimal impairment inquiry should be "nuanced" and take "into account

the difficulty of drafting laws that accomplish [the legislator's] goals, achieve certainty and only minimally intrude on rights". The requirement of minimal impairment is a crucial stage in the overall s. 1 analysis, which "[a]t its heart . . . is a matter of balancing": *Sharpe*, at paras. 96-97.

[62] The restriction clearly falls within a range of reasonable solutions. The restriction prevents the advertising for illegal non-licensed STRs. I do not see what legitimate purpose could be served to allow for the advertising of STRs that are not allowed to operate in the Township. Such advertising would only serve to confuse the consumer. The restriction was necessary to enforce the by-law scheme and to protect consumers.

Conclusion

[63] The by-laws are not ultra vires. The application is dismissed.

[64] If the parties cannot agree on costs the respondent shall provide its Bill of Costs and its written submissions, totalling not more than 4 pages within 20 days of the release of this decision. The applicants will have 30 days from the release of this decision to provide their written submissions, totalling not more than 4 pages.



The Honourable Justice H. Leibovich

Released: March 24, 2025