

**NOTICE OF MEETING OF THE CHEBOYGAN COUNTY PLANNING AND ZONING COMMISSION ON
WEDNESDAY, SEPTEMBER 2, 2020**

PLEASE TAKE NOTE THAT THE CHEBOYGAN COUNTY PLANNING AND ZONING COMMISSION WILL HOLD A MEETING SCHEDULED FOR WEDNESDAY SEPTEMBER 2, 2020 at (7:00 P.M.) The meeting will be a “hybrid” meeting in that participants may attend remotely, telephonically or in-person (as permitted by Cheboygan County Resolution 2020-06 and Governor’s Executive Order subject to extension to prevent the spread of Coronavirus Disease COVID-19). The in-person meeting will be at the Cheboygan County Building at 870 S. Main Street, Cheboygan, Michigan. *Please note that if the Commissioners’ Room reaches occupancy capacity, physical attendees will be able to listen to and view meeting proceedings from the District and Circuit Court Rooms in the County Building.*

Also note that you may join the meeting remotely from your computer, tablet or smartphone via the following link. (Visit the County’s Website for additional remote participation instructions):

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/422353461>

The public may also join the meeting telephonically by dialing:

United States (Toll Free): [1 866 899 4679](tel:18668994679)

Access Code: 422-353-461

Those that are hearing impaired may dial 7-1-1. Please provide the operator the toll free number and meeting access code to be connected to the phone call with help from MI Relay. If other aids and services are needed for individuals with disabilities please contact the County Clerk. The Planning Commission packet is available for download at: www.cheboygancounty.net.

TELEPHONIC/ELECTRONIC PLANNING COMMISSION MEETING PARTICIPATION

The public will be asked to identify themselves. When you call please state your name until acknowledged for the record.

- Public comment—will be taken only during the Public Comment portion of the meeting agenda.
- Please make your public comment when called upon to do so or state no comment.
- The time limit for an individual’s public comments shall be 3 minutes.

The following Planning Commission members will be attending the meeting remotely:

- Patty Croft, pmattson@freeway.net
- Harold Borowicz, hborowicz@yahoo.com
- Michael Kavanaugh, kavandann@gmail.com
- Stuart Bartlett, sbartlett@cheboygancounty.net
- Sharon Lyon, sjl07@juno.com
- Karen Johnson, karenjohnson@sbcglobal.net
- Ed Delana, edelana@cheboygancounty.net
- Charles Freese
- Chum Ostwald
- Cheboygan County Director of Planning and Zoning – Michael Turisk mturisk@cheboygancounty.net



CHEBOYGAN COUNTY PLANNING COMMISSION

870 SOUTH MAIN ST. ■ PO Box 70 ■ CHEBOYGAN, MI 49721
PHONE: (231) 627-8489 ■ FAX: (231) 627-3646

CHEBOYGAN COUNTY PLANNING COMMISSION MEETING & PUBLIC HEARING
WEDNESDAY, SEPTEMBER 2, 2020 AT 7:00 PM
ROOM 135 - COMMISSIONERS ROOM
CHEBOYGAN COUNTY BUILDING, 870 S. MAIN ST., CHEBOYGAN, MI 49721

AGENDA - Revised 08/31/20

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES

SCHEDULED PUBLIC HEARINGS

1. **Duke/Levenson** - A request for a rezoning from Residential Development (D-RS) to Agriculture and Forestry Management (M-AF). The subject property is located at 7064 Mohawk Avenue in Tuscarora Township, Section 11, parcel id no. 161-C09-000-248-00.

** Douglas Duke requests the public hearing for the subject property rezoning be postponed until the next Planning Commission meeting scheduled for September 16, 2020 in order to research additional facts and options related to the rezoning.*
2. **Brandt/Brandt's Sports Center** - A special use permit application for an Indoor Storage Facility, per Section 9.3.24 of the zoning ordinance. The subject property is zoned Agriculture and Forestry Management (M-AF) and located at 6530 N. M-33 Hwy. in Benton Twp., parcel ID 104-033-100-008-01, Section 33.

NEW BUSINESS

UNFINISHED BUSINESS

1. Proposed Zoning Ordinance Amendment #155 relative to Nonconforming Buildings or Structures, Properties and Uses.
2. Discussion on proposed Zoning Ordinance amendment relative to short-term rental land uses.

STAFF REPORT WITH UPDATE ON MASTER PLAN REVISION

PLANNING COMMISSION COMMENTS

PUBLIC COMMENTS

ADJOURNMENT



CHEBOYGAN COUNTY PLANNING COMMISSION

870 SOUTH MAIN ST., ROOM 103 ■ PO BOX 70 ■ CHEBOYGAN, MI 49721
PHONE: (231)627-8489 ■ TDD: (800)649-3777

CHEBOYGAN COUNTY PLANNING COMMISSION MEETING & PUBLIC HEARING WEDNESDAY, AUGUST 5, 2020 AT 7:00 P.M. ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING

- PRESENT:** Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana
ABSENT: Johnson
STAFF: Mike Turisk, Jen Merk
GUESTS: John Moore, Douglas Duke, Patty Richard, Joe Antkoviak, Russell Crawford, David Clark, Mark Cowles, Andrea Cowles

The meeting was called to order by Chairperson Croft at 7:00pm.

PLEDGE OF ALLEGIANCE

Chairperson Croft led the Pledge of Allegiance.

APPROVAL OF AGENDA

The meeting agenda was presented. **Motion** by Mr. Kavanaugh, seconded by Mr. Bartlett, to approve the agenda as presented. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

APPROVAL OF MINUTES

The June 17, 2020 Planning Commission minutes were presented. **Motion** by Mr. Kavanaugh, seconded by Ms. Lyon, to approve the meeting minutes as presented. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

The July 1, 2020 Planning Commission minutes were presented. **Motion** by Mr. Borowicz, seconded by Mr. Bartlett, to approve the meeting minutes as presented. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

The July 15, 2020 Planning Commission minutes were presented. **Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, to approve the meeting minutes as presented. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

PUBLIC HEARING AND ACTION ON REQUESTS

Clark/Antkoviak – A request for a conditional rezoning under Section 4065 of the Michigan Zoning Enabling Act, MCL 125.3405 (P.A. 110 of 2006). The subject property is currently zoned Agriculture and Forestry Management (M-AF); the applicant requests a conditional rezoning to Commercial Development (D-CM) zoning that if approved would limit the land use to manufacturing, production, processing and fabrication. (Per section 6.3.9 of Zoning Ordinance #200, should the conditional rezoning application be approved the land use would be allowed with approval of a special use permit application). The subject property is located at 10999 N. Extension Rd. in Munro Township, Section 11, parcel id no. 080-011-200-004-00.

Mr. Kavanaugh asked how specific should the Planning Commission have to be regarding a conditional rezoning. Mr. Kavanaugh asked if the Planning Commission should know what materials will be used or how many employees and customers there will be. Mr. Kavanaugh stated that with past conditional rezonings, the Planning Commission received a lot of information regarding the proposed use. Mr. Freese stated that for a conditional rezoning the applicant is proposing a use and the Planning Commission can't place any conditions on that use other than what he offers. Mr. Freese stated that he doesn't believe the Planning Commission has enough information upon which to make a decision unless the applicant provides additional information on the use proposed such as products to be manufactured, materials used, number of

employees, hours of operation, etc. Mr. Turisk stated that during the review of the special use permit application, the Planning Commission would have the authority to review specific characteristics of the project and apply conditions of approval. Discussion was held regarding a previously approved conditional rezoning. Mr. Freese stated that the Planning Commission was informed by legal counsel that they could only approve what the applicant was requesting and that they could not place any conditions on the approval that were not offered by the applicant in his original application for conditional rezoning. Mr. Kavanaugh and Mr. Freese agreed that the Planning Commission will need the basics of what the applicant is proposing. Mr. Freese stated that the Planning Commission will need to know the type of manufacturing that is planned, the hours of operation and whether there will be any hazardous materials involved. Discussion was held. Mr. Ostwald stated that he understands that the applicant is only putting in two machines and they are not that big. Mr. Ostwald questioned why this is an issue when the proposed use is a less intense use than the previous use. Mr. Ostwald stated that the CNC's are quiet operating machines. Mr. Ostwald stated that there will only be two employees who are the husband and the wife. Mr. Kavanaugh stated that the Planning Commission has not received this information. Mr. Kavanaugh stated that the applicant can provide the information during this meeting.

Mr. Clark stated that it will be him and his wife, but eventually they may have an additional 1-2 employees. Mr. Clark stated that right now his business is located down state and he only has one employee besides him and his wife. Mr. Clark stated he has a home on Munro Lake and he plans to move to Cheboygan permanently. Mr. Clark stated that he manufactures tools, fixtures and gauges. Mr. Clark stated that everything is small and that there is nothing big or heavy. Mr. Clark stated that there are no exotic materials. Mr. Clark stated that he only uses one chemical which is a biodegradable coolant for the CNC machines. Mr. Clark stated that he has five CNC machines. Mr. Clark stated that the coolant is made out of animal fats and vegetable oils. Mr. Clark stated the coolant is very expensive, but it is worth it so he doesn't have to worry about environmental problems. Mr. Clark stated he has been in business since 2000. Mr. Clark stated that the majority of the work is for AMI Industries in Sault Sainte Marie, who is a tubing manufacturer and they manufacture different tubing assemblies for the trucking, marine and car industries. Mr. Clark stated he uses aluminum and standard metals. Mr. Clark stated that he does not work with titanium, magnesium or anything that can catch fire while machining it. Mr. Kavanaugh asked Mr. Clark to comment on material storage. Mr. Clark stated that he orders most of his material to size. Mr. Clark stated that there will be scrap which he will put into bins and taken to a scrap yard or someone will pick it up. Mr. Kavanaugh asked if the scrap will be stored inside. Mr. Clark stated yes. Mr. Kavanaugh asked if there will be oil or floor drain materials. Mr. Clark stated no. Mr. Kavanaugh asked Mr. Clark to comment on noise. Mr. Clark stated that the machinery is not loud. Mr. Clark stated that any noise is contained within the building. Mr. Kavanaugh asked Mr. Clark what the hours of operation will be. Mr. Clark stated he plans on eight hours a day, five to six days a week. Mr. Delana asked if the business will stay inside the existing footprint of the building, Mr. Clark stated yes. Mr. Delana asked if Mr. Clark will be changing the building in any way. Mr. Clark stated no. Ms. Lyon asked if there will be an increase in traffic. Mr. Clark stated the only additional traffic will be a UPS truck. Mr. Clark stated that he does not do work for the public unless a farmer, motorcycle guys or snowmobile guys needs help with equipment. Mr. Ostwald asked what are the names of the machines that Mr. Clark uses. Mr. Clark stated that he uses vertical machining centers and CNC lathes. Mr. Freese asked how many vertical machining centers there will be. Mr. Clark stated two. Discussion was held.

Ms. Croft asked for public comments. Mr. Gouine stated that he built the foundation for Joe Antkoviak's building. Mr. Gouine stated that Mr. Antkoviak requested a six inch floor that was reinforced. Mr. Gouine stated that this will be excellent for a machine shop. Mr. Gouine stated that this machine shop will only be a mile from the entrance to I-75. Mr. Gouine stated this is a good project for Cheboygan County.

Mr. Warfield agreed with Mr. Gouine's comments.

Public comment closed.

Mr. Kavanaugh stated that by knowing all of this information, this is a good location for that operation.

Mr. Borowicz stated that the property has no value as an Agriculture and Forestry Management property. Mr. Freese stated that the property has not been used for anything productive for several years and repurposing the building for commercial use will be a benefit to Cheboygan County.

The Planning Commission reviewed the General Findings and added the following:

1. The Planning Commission finds that a use variance and a special use permit were previously granted for an ice manufacturing plant for this location.

2. The Planning Commission finds that the applicant proposes hours of operation to be 8 hours a day, 5-6 days per week.
3. The Planning Commission finds that the applicant proposes 2 employees presently and possibly 2 additional employees in the future.
4. The Planning Commission finds that the applicant proposes to have 5 CNC machines and 2 vertical machining centers.
5. The Planning Commission finds that the applicant proposes inside storage only.
6. The Planning Commission finds that the applicant will use biodegradable lubricant and not other hazardous materials.

The Planning Commission reviewed Rezoning Factor 1. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, that this standard has not been met. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

The Planning Commission reviewed Rezoning Factor 2. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, that this standard has been met. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

The Planning Commission reviewed Rezoning Factor 3. **Motion** by Mr. Freese, seconded by Mr. Borowicz, that this standard has been met. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

The Planning Commission reviewed Rezoning Factor 4. **Motion** by Mr. Freese, seconded by Mr. Borowicz, that this standard has not been met. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

The Planning Commission reviewed Rezoning Factor 5. **Motion** by Mr. Freese, seconded by Mr. Delana, that this standard has been met. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

The Planning Commission reviewed Rezoning Factor 6. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, that this standard has not been met. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

The Planning Commission reviewed Rezoning Factor 7. **Motion** by Mr. Kavanaugh, seconded by Ms. Lyon, that this standard has not been met. Motion carried. 6 Ayes(Bartlett, Kavanaugh, Croft, Ostwald, Lyon, Delana), 2 Nays (Freese, Borowicz), 1 Absent (Johnson)

The Planning Commission reviewed Rezoning Factor 8. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, that this standard has been met. Motion carried. 7 Ayes(Bartlett, Freese, Borowicz, Croft, Ostwald, Lyon, Delana), 1 Nays (Kavanaugh), 1 Absent (Johnson)

The Planning Commission reviewed Rezoning Factor 9. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, that this standard has been met. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

The Planning Commission reviewed Rezoning Factor 10. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, that this standard has been met. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

Motion by Mr. Freese, seconded by Mr. Kavanaugh, that the conditional rezoning be approved based on the General Findings and Rezoning Factors 2, 3, 5, 8, 9 and 10. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

Mr. Turisk noted that this conditional rezoning will be tentatively scheduled for the September 8, 2020 Board of Commissioner's meeting. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, that the conditional rezoning be forwarded to

the Board of Commissioners with a recommendation for approval for their September 8, 2020 meeting. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

Duke/Levenson – A request for a rezoning from Residential Development (D-RS) to Agriculture and Forestry Management (M-AF). The subject property is located at 7064 Mohawk Avenue in Tuscarora Township, Section 11, parcel id no.161-C09-000-248-00.

Ms. Merk reviewed the background information contained in the staff report.

Mr. Borowicz asked if there is language in the Zoning Ordinance that states that if a parcel is in a platted subdivision, it is automatically Residential. Mr. Kavanaugh and Ms. Croft stated yes. Mr. Freese referred to Section 3.8.2 "Unless specified otherwise, in this ordinance, all platted subdivisions in the jurisdiction of Cheboygan County Ordinance Number 200 are zoned Residential Development District." Mr. Freese stated that legal counsel has stated that based on the first part of Section 3.8.2 "Unless specified otherwise in this ordinance" gives the Planning Commission the option to rezone. Mr. Borowicz stated that this would be spot zoning. Mr. Kavanaugh and Ms. Croft agreed with Mr. Borowicz. Mr. Turisk stated that this would represent an extension of the existing Agriculture and Forestry Management Zoning District to the north. Mr. Turisk stated that it doesn't meet the full spirit of what constitutes a spot zoning. Mr. Delana stated that future land use for the portion to the North does move it from Agriculture and Forestry Management to Residential. Mr. Delana stated that will leave this as isolated and is spot zoning.

Ms. Croft asked for Planning Commission comments.

Mr. Kavanaugh stated that three sides are Residential and the future land use is going from Agricultural/Forestry to Residential. Mr. Kavanaugh believes that the Planning Commission has to be cautious as Tuscarora Township wanted this to continue as a subdivision and in the future be residential. Mr. Turisk stated that the most significant factor when considering a rezoning is compliance with the master plan.

Mr. Freese stated that the proposed ice shanty business could be located in the middle of the parcel and probably screened so that nobody would know what was there, however, if rezoned to Agriculture and Forestry Management, it would mean that all of the uses listed in that district would be allowed including junk yards, contractor's yards, bars and restaurants and slaughterhouses.

Mr. Duke stated that he is the property owner for this special use permit application. Mr. Borowicz asked if Mr. Duke is the current owner of the property. Mr. Duke stated yes he is the current owner and the paperwork was signed yesterday. Mr. Duke noted that the deforestation that is occurring is not on his property. Mr. Duke stated that nothing has been cut on his property. Mr. Duke stated that he only intends to use the second half of the first lot and the first half of the second lot. Mr. Duke stated that eventually, he would like to build a house at this location also.

Mr. Duke stated that he does not have a problem landscaping and taking very few trees out, but only the ones that are critical. Mr. Duke stated that some of the big Oaks will be left for shade. Mr. Duke stated that he will clean up the Aspen as they are dangerous and they break off and crush things. Mr. Duke stated that he had a tree service business for 15 years and he has done extensive clearing and landscaping work. Mr. Duke stated that he is trying to get the shacks as close to the launch site so they do not have to be hauled down the highway. Mr. Duke stated that if the shanty is six or eight inches over width a permit is required. Mr. Duke stated the parking area is just an empty area with half a dozen trees in the middle of it to create a park like atmosphere. Mr. Duke stated the customers will park there and ride their snowmobiles down Chippewa Beach or Frontenac Avenue to the access on Wahbee Avenue. Mr. Duke stated that there is a lot of congestion and limited parking at the access. Mr. Duke stated there have been problems with parking and litter. Mr. Duke stated that when Hoppies has a tournament there are cars parked all the way up to Chippewa Beach Road and sometimes down Shawnee Avenue. Mr. Duke stated this is his attempt at taking his gear and customers away from the lake and giving them a safe overnight place to park so they are not getting tickets Mr. Duke stated that regarding the concerns about about deforesting the entire four acres, it will not happen and it is not his intention to ever the bring down property values. Mr. Duke stated he plans to build a house at this location. Mr. Duke questioned if a conditional rezoning is an option. Mr. Duke stated he understands the concerns about putting in a slaughterhouse or junkyard in property zone Agriculture and Forestry Management. Mr. Duke stated he would also have his travel trailer and boat at this location. Mr. Duke stated that traffic will be negligible from the first of January until the middle of March and he is gone for the year other than an occasional visit to his travel trailer or to repair a snowmobile that didn't get fixed over the winter. Mr. Duke stated he would like put up one of the Amish barns in the future. Mr. Duke stated that it would be built on site and will be 16ft. x 32ft. and will be used to house gear and to keep the

snowmobiles inside so they are not out in the yard. Mr. Duke stated that he is the only employee and he will never hire anyone else. Mr. Duke stated the business will never get any bigger.

Mr. Kavanaugh stated if the property is rezoned it stays with the property and if Mr. Duke decides to sell the property to someone else it would mean that a restaurant, contractor's yard, junkyard, kennel or feedlot would be allowed. Mr. Kavanaugh stated that the future land use, existing land use and the fact that the parcel is a part of a platted subdivision are concerns to the Planning Commission. Mr. Kavanaugh stated that just because you wouldn't have a plan to do something different than renting shanties, someone else may have a different idea and it may have a different impact. Mr. Kavanaugh noted that someone may want to build on an adjacent lot in the future. Mr. Duke stated that the property owner across the street is planning on building and has told him that he has no problems with this business.

Mr. Duke suggested a conditional rezoning, but stated that he doesn't know how it works. Mr. Duke stated that he went to the Planning & Zoning Department because he knows of several other people in the neighborhood, at least two for sure, that have tried to do their business there.

Mr. Duke stated that he does not see this as blight. Mr. Duke stated that he wanted to come to the Planning Commission and find how to do this legally. Mr. Duke stated that initially the Tuscarora Township Supervisor told him that he didn't have a problem with storing the shanties on his personal property. Mr. Duke stated he does not want angry neighbors as this is his first attempt to try and figure out how this can be done legally.

Mr. Freese stated that there are a lot of objections to rezoning this property to Agriculture and Forestry Management. Mr. Freese asked how many shanties are proposed to be stored. Mr. Duke stated he has 7 and is currently building the 8th shanty for himself.

Mr. Kavanaugh asked if Mr. Duke has looked into the commercial property that is less than a mile away. Mr. Kavanaugh stated that whether it is a rezoning or a conditional rezoning there are people who live in that subdivision and are probably the same people who are attending the meeting. Mr. Duke stated that from what he can see on the maps and roads he has driven, it appears that all of the roads have residential houses. Mr. Duke explained that he looked at an alternate location that was further away, but it was too close to a house. Mr. Duke stated that this location is closer to the lake. Mr. Duke stated he would be willing to look at another launch site if there was commercial property near the launch. Mr. Freese noted that properties along Straits Highway are zoned Commercial. Discussion was held.

Mr. Duke asked if a pole building large enough to house the shanties would be legal. Mr. Freese stated no it would not be legal for this business that has not received an approved special use permit approval from the Planning Commission. Mr. Kavanaugh stated that a pole building would be allowed for Mr. Duke's own personal use. Mr. Freese suggested leasing a parcel along Straits Highway. Discussion was held regarding alternate locations that would be zoned appropriately for the proposed use.

Discussion was held regarding Mr. Duke's options. Ms. Croft suggested postponing this request until the first meeting in September. Mr. Kavanaugh stated that the Planning Commission could review this application if Mr. Duke prefers. Mr. Turisk stated that Mr. Duke could also withdraw his application and seek another avenue for approval.

Mr. Freese suggested finding a parcel to lease on Straits Highway for the shanties. Mr. Freese stated that the customers can park their vehicle or they can take a snowmobile from wherever the parcel is located to the launch site. Mr. Freese stated that this will eliminate the parking problem.

Ms. Croft asked Mr. Duke what he would like to do with the application. Mr. Duke stated he is not sure if he would like to table, postpone or withdraw the application. Mr. Borowicz stated that the Planning Commission can postpone the request to give him time to investigate other options. Ms. Croft stated if tabled, Mr. Duke can also withdraw at a later date if he decides to. Mr. Duke stated that he would like to have the request postponed at this time. **Motion** by Mr. Kavanaugh, seconded by Mr. Delana, to **postpone** Mr. Duke's request until September 2, 2020. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

Amendment #157 - An ordinance that would amend Section 18.12 (Expiration of Special Use), Section 20.16 (Expiration of Site Plan Review) and Section 21.4 (Expiration of a Zoning Permit) of Cheboygan County Zoning Ordinance No. 200 to allow expanded authority for the Zoning Administrator to grant administrative extensions of approved permits.

Mr. Turisk referred to Section 18.12 and Section 20.16 and stated that an applicant must be in full compliance with all the terms and conditions for the extension of a site plan review or special use permit. Mr. Turisk stated that this does not apply to zoning permit extensions. Mr. Turisk stated that Ms. Johnson proposed this at the last meeting. Mr. Turisk reviewed this change with legal counsel. Mr. Kavanaugh stated that he agrees with this change.

Ms. Croft asked for public comment. There were no public comments. Public comment closed.

Mr. Kavanaugh stated that this is a great benefit to the public to speed things up and to make it uniform with Department of Building Safety's expiration date. **Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, to forward Amendment #157 to the Cheboygan County Board of Commissioners with a recommendation for approval. Motion carried. 8 Ayes(Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0 Nays, 1 Absent (Johnson)

NEW BUSINESS

Discussion regarding in-progress and possible future amendments to Zoning Ordinance No. 200.

Mr. Turisk reviewed a list of recently approved amendments and a list of possible future amendments. Mr. Turisk reviewed amendments that were recently approved by the Board of Commissioners and proposed amendments that are currently being reviewed by the Planning Commission. Mr. Turisk stated that Amendment #154 regarding home occupations and storage buildings was recently approved by the Cheboygan County Board of Commissioners. Mr. Turisk stated that Amendment #155 regarding nonconformities will be reviewed by the Planning Commission at the August 19, 2020 meeting. Mr. Turisk stated that the last time Amendment #156 was discussed, the Planning Commission directed staff to propose amending the ordinance so that freestanding signage in the Commercial Development Zoning District be increased from 80 square feet to 100 square feet. Mr. Turisk stated that the Planning Commission recently recommended approval of Amendment #157 to the Board of Commissioners. Mr. Turisk stated that Amendment #158 regarding temporary uses was approved by the Board of Commissioners last month.

Mr. Turisk stated that a future amendment for Planning Commission to consider is PUD. Discussion was held regarding the PUD amendment and reformatting the Zoning Ordinance. Mr. Freese stated that this isn't something that the Planning Commission should be trying to tackle right now due to COVID-19 as there will have to be public input and the current situation for meetings does not work well for public input. Mr. Turisk agreed with Mr. Freese and stated that with some of the amendments he believes it is best to wait until restrictions are lifted at least to the point where there can be an easily accessible public hearing process.

Mr. Turisk stated that he and Mr. Freese have talked about cleaning up zoning boundary problems along Straits Highway where there are properties that have two or sometimes more zoning districts. Mr. Turisk stated that this may be best suited for the full Master Plan update in 2024.

Mr. Turisk stated that site standards in Article 18 for waste haulers is a topic that has been broached. Mr. Freese noted that there have been ongoing problems and this should be addressed.

Mr. Delana referred to Amendment #156 and stated that this was prompted by a marina that had ordered an oversized sign to install in the spring. Mr. Delana asked what happened to the sign. Mr. Freese stated that the property owner installed a sign that complied with the regulation. Mr. Freese stated it is better advertising as all of the franchises that are carried are shown on the sign. Mr. Kavanaugh asked if there is still the need to revise the Zoning Ordinance. Mr. Freese stated that the Board of Commissioners requested that the Planning Commission look at larger signs. Mr. Freese stated that in his opinion, there is no need for the Planning Commission to consider this amendment as there was only one request for a larger sign and that has been resolved as the property owner ordered a sign that complies with regulation. Mr. Freese stated that the language that had been proposed for the amendment to allow 100sf signs could be revised to reduce the 100sf dimension to 80sf and allow the additional signage for parcels with frontage length that complies with the proposed changed language. Mr. Kavanaugh requested that Mr. Turisk talk with the Board of Commissioners to see if this is an amendment that they still want the Planning Commission to address.

Mr. Turisk stated that Mr. Kavanaugh had raised the possibility of taking a look at the screening standards. Mr. Turisk stated that this can be added to the list, but he does not see this as urgent.

Mr. Turisk and Mr. Freese agreed that anything requiring extensive public participation should be postponed. Mr. Turisk stated that the Planning Commission should follow through on the amendments that they are already working on and wait until they can have a normal or typical meeting venue to begin with reviewing new amendments. Ms. Lyon asked if the

Planning Commission should work on getting the amendments ready for the public hearing. Mr. Freese agreed that the Planning Commission could prepare the amendment to the point where public input is needed. Discussion was held.

Mr. Turisk stated that a memo was submitted by Mr. Moore, who is the Nunda Township Supervisor. Mr. Turisk stated that Mr. Moore has talked to the Planning Commission in the past about a short term rental ordinance. Mr. Turisk stated that the last time this subject was raised the Planning Commission determined that it wasn't something that was needed. Mr. Turisk noted that short term rentals will generate a lot of public input.

Mr. Kavanaugh noted that the Planning Commission voted unanimously to approve the previous amendment regarding short term rentals after a battle with the past Planning and Zoning Director. Mr. Kavanaugh stated that the Planning Commission felt that this was a police issue. Mr. Kavanaugh stated that there were a lot of people that were in support of allowing short term rentals. Mr. Kavanaugh stated that at this time there were 3-4 complaints total in the county. Mr. Kavanaugh stated that there may be issues with short term rentals and he believes there are ways to deal with these issues besides an amendment to the Zoning Ordinance. Mr. Freese stated that the amendment was generated by the actions of the prior Planning and Zoning Director who decided that short term rentals were a problem and should not be allowed. Mr. Freese stated that the Planning Commission was opposed to the Planning and Zoning Director's decision. Mr. Freese stated that the Planning Commission may want to consider some restrictions or some conditions on short term rentals. Mr. Freese stated that he believes this is what Mr. Moore is requesting to alleviate existing problems. Mr. Kavanaugh agreed with Mr. Freese. Discussion was held.

Mr. Turisk stated that Mr. Moore is also concerned about adult use marijuana. Mr. Turisk stated that every township in the county formally opted out of MRTA which is adult use marijuana. Mr. Turisk stated that the only community who did not opt out was the Village of Wolverine. Mr. Turisk stated that it is not allowed for a property owner in Nunda Township to grow marijuana because the township opted out. Mr. Turisk stated this precludes an application being submitted to the Planning and Zoning Department and this is per discussion with legal counsel. Discussion was held.

Mr. Kavanaugh requested that staff find out how many seasonal rentals there are in Cheboygan County. Mr. Kavanaugh requested that staff research how many complaints there have been regarding short term rentals over the past 10 years. Discussion was held.

UNFINISHED BUSINESS

No comments.

STAFF REPORT

Mr. Turisk stated that the Board of Commissioners approved the moratorium amendment.

PLANNING COMMISSION COMMENTS

No comments.

PUBLIC COMMENTS

No comments.

ADJOURN

Motion by Kavanaugh to adjourn. Motion carried. Meeting was adjourned at 9:52pm.

Charles Freese
Planning Commission Secretary

CHEBOYGAN COUNTY PLANNING COMMISSION

Bruce Brandt/Brandt's Sports Center

Exhibit List

1. Cheboygan County Zoning Ordinance
2. Cheboygan County Master Plan and Future Land Use Map
3. Special Use Permit Application (6 Pages)
4. Location Map/Aerial Photo (1 Page)
5. Zoning Map (1 Page)
6. Amended Site Plan dated 8/26/20 (1 Page)
7. Mailing List (1 Page)
8. Email Dated 8/10/2020 From Kyle Keller, District Health Department #4 (1 Page)
9. Final Approval of Onsite Sewage Disposal System dated 5/1/2019 (3 Pages)
10. Amended Staff Report (4 Pages)
11. Draft Findings of Fact (11 Pages)
- 12.
- 13.
- 14.
- 15.
- 16.

Note: Planning Commission members have Exhibits 1 and 2.



CHEBOYGAN COUNTY PLANNING & ZONING DEPARTMENT

870 S. MAIN ST., RM. 103 ■ PO Box 70 ■ CHEBOYGAN, MI 49721
PHONE: (231)627-8489 ■ FAX: (231)627-3646

1. Describe all anticipated activities (e.g. type of business, hours of operation, number of employees, etc). Attach additional sheets if needed.

SELF STORAGE

Site Plan Standards.

PLEASE EXPLAIN HOW YOUR REQUEST MEETS EACH OF THE FOLLOWING STANDARDS

- a. The site plan shall be designed so that there is a limited amount of change in the overall natural contours of the site and shall minimize reshaping in favor of designing the project to respect existing features of the site in relation to topography, the size and type of the lot, the character of adjoining property and the type and size of buildings. The site shall be developed so as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this Ordinance.

NO CHANGE

- b. The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, and by topographic modifications which result in smooth natural appearing slopes as opposed to abrupt changes in grade between the project and adjacent areas.

NO CHANGE

- c. Special attention shall be given to proper site drainage so that removal of storm waters will not adversely affect neighboring properties.

NO CHANGE

- d. The site plan shall provide reasonable, visual and sound privacy for all dwelling units located therein. Fences, walls, barriers and landscaping shall be used, as appropriate, for the protection and enhancement of property and for the privacy of its occupants.

All Land Already Fenced

- e. All buildings or groups of buildings should be so arranged as to permit emergency vehicle access by some practical means.

YES

- f. Every structure or dwelling unit shall have access to a public street, walkway or other area dedicated to common use.

YES

- g. For subdivision plats and subdivision condominiums, there shall be a pedestrian circulation system as approved by the Planning Commission.

N/A

- h. Exterior lighting shall be arranged as follows:

NO LIGHTING

- i. It is deflected away from adjacent properties.

N/A

- ii. It does not impede the vision of traffic along adjacent streets.

N/A

- iii. It does not unnecessarily illuminate night skies.

N/A

SPECIAL LAND USE PERMIT APPLICATION



CHEBOYGAN COUNTY PLANNING & ZONING DEPARTMENT

870 S. MAIN ST., RM. 103 ■ PO Box 70 ■ CHEBOYGAN, MI 49721
PHONE: (231)627-8489 ■ FAX: (231)627-3646

SPECIAL LAND USE PERMIT APPLICATION

- i. The arrangement of public or common ways for vehicular and pedestrian circulation shall respect the pattern of existing or planned streets and pedestrian or bicycle pathways in the area. Streets and drives which are part of an existing or planned street pattern which serves adjacent development shall be of a width appropriate to the traffic volume they will carry and shall have a dedicated right-of-way equal to that specified in the Master Plan.

_____ NO Change _____

- j. Site plans shall conform to all applicable requirements of state and federal statutes and the Cheboygan County Master Plan, and approval may be conditioned on the applicant receiving necessary state and federal permits.

_____ NO Change _____

3. Size of property in sq. ft. or acres: 3.69 AC

4. Present use of property: Retail + Storage

5. SUP Standards:

- a. Is the property located in a zoning district in which the proposed special land use is allowed?

_____ YES _____

- b. Will the proposed special land use involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on the natural resources of the County or the natural environment as a whole? **Explain.** _____

_____ NO _____

- c. Will the proposed special land use involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on other conforming properties in the area by reason of traffic, noise, smoke, fumes, glare, odors, or the accumulation of scrap material that can be seen from any public highway or seen from any adjoining land owned by another person? **Explain.** _____

_____ NO _____

- d. Will the proposed special land use be designed, constructed, operated, and maintained so as not to diminish the opportunity for surrounding properties to be used and developed as zoned? **Explain.** _____

_____ YES _____

- e. Will the proposed special land use place demands on fire, police, or other public resources in excess of current capacity? **Explain.** _____

_____ NO _____

- f. Will the proposed special land use be adequately served by public or private streets, water and sewer facilities, and refuse collection and disposal services? **Explain.** _____

_____ NO _____



CHEBOYGAN COUNTY PLANNING & ZONING DEPARTMENT

870 S. MAIN ST., RM. 103 ■ PO BOX 70 ■ CHEBOYGAN, MI 49721
PHONE: (231)627-8489 ■ FAX: (231)627-3646

SPECIAL LAND USE PERMIT APPLICATION

- g. Will the proposed special land use will be adequately served by water and sewer facilities, and refuse collection and disposal services? NO
 - h. Will the proposed special land use comply with all specific standards required under this Ordinance applicable to it (i.e. parking, setbacks, etc)? YES
6. Does the proposed use of the property include or involve either:
- Junk or salvage yard (Section 3.6) YES NO
 - Mineral extraction (Section 17.17) YES NO
- If YES, this application must include a written plan as described in the Zoning Ordinance.*
- 7. Attach a copy of Warranty Deed or other proof of ownership.
 - 8. Attach a copy of certified Property Survey or dimensioned property land plat.

AFFIDAVIT

The undersigned affirms that the information and plans submitted in this application are true and correct to the best of the undersigned's knowledge.

Applicant's Signature Ben Buehl Date _____

Does the property owner give permission for County zoning officials to enter his or her property for inspection purposes?

Yes No

Owner's Signature Ben Buehl Date _____

FOR PLANNING /ZONING DEPT. USE ONLY

Date Received:	<u>07/16/20</u>	Notes:
Fee Amount Received:	<u>\$150.00</u>	
Receipt Number:	<u>7390</u>	
Public Hearing Date:	<u>8/19/20</u>	
Planning/Zoning Administrator Approval:		
	<u>Michael Turusk</u>	<u>8.6.20</u>
	<u>Ben Buehl</u>	<u>7-13-20</u>
	Signature	Date

SPECIAL LAND USE PERMIT APPLICATION

SITE PLAN REQUIREMENT CHECKLIST

(TO BE SUBMITTED WITH APPLICATION AND SITE PLAN)

ALL ITEMS LISTED BELOW MUST BE SUBMITTED IN ORDER FOR THIS APPLICATION TO BE DEEMED COMPLETE. INCOMPLETE APPLICATIONS WILL NOT BE REVIEWED OR PROCESSED. EACH SITE PLAN SHALL DEPICT THE ITEMS LISTED BELOW, EXCEPT FOR THOSE ITEMS DETERMINED DURING THE PRE-APPLICATION CONFERENCE TO NOT BE APPLICABLE.

PLACE A CHECK MARK NEXT TO EACH REQUIREMENT TO SHOW THAT THE INFORMATION HAS BEEN SUPPLIED OR THAT A WAIVER IS BEING REQUESTED. IF A WAIVER IS BEING REQUESTED PLEASE NOTE ON THE NEXT PAGE THE REASON FOR THE WAIVER. SIGN AND DATE THIS CHECKLIST WHEN ALL ITEMS HAVE BEEN COMPLETED. PLEASE SUBMIT THIS CHECKLIST WITH YOUR APPLICATION.

INFORMATION SUPPLIED	WAIVER REQUESTED	REQUIREMENT
✓	N/A	a. North arrow, scale and date of original submittal and last revision. Site plan is to be drawn at a scale of 1 inch = 100ft. or less.
✓	N/A	b. Seal of the registered engineer, architect, landscape architect, surveyor, planner, or other site plan preparer. Location of proposed and/or existing property lines, dimensions, legal descriptions, setback lines and monument locations.
✓	X	c. Location of existing and proposed public roads, rights-of-way and private easements of record and abutting streets.
✓	✓	d. Topography at maximum five foot intervals or appropriate topographic elevations to accurately represent existing and proposed grades and drainage flows.
✓	X	e. Location and elevations of existing water courses and water bodies, including county drains and man-made surface drainage ways, stormwater controls, flood plains, and wetlands.
✓		f. Location of existing and proposed buildings and intended uses thereof.
✓	X	g. Details of entryway and sign locations should be separately depicted with an elevation view.
✓	X	h. Location, design, and dimensions of existing and/or proposed curbing, barrier free access, carports, parking areas (including indication of all spaces and method of surfacing), fire lanes and all lighting thereof.
✓	X	i. Location, size, and characteristics of all loading and unloading areas.
N/A	X	j. Location and design of all sidewalks, walkways, bicycle paths and areas for public use as approved by the Planning Commission.
✓	X	k. Location of all other utilities on the site including but not limited to wells, septic systems, stormwater controls, natural gas, electric, cable TV, telephone and steam and proposed utility easements.
N/A	X	l. Proposed location, dimensions and details of common open spaces and common facilities such as community buildings or swimming pools if applicable.

SPECIAL LAND USE PERMIT APPLICATION

SITE PLAN REQUIREMENT CHECKLIST

(TO BE SUBMITTED WITH APPLICATION AND SITE PLAN)

INFORMATION SUPPLIED	WAIVER REQUESTED	REQUIREMENT
✓ All Land Fences at Permit		m. Location and specifications for all fences, walls, and other screening features.
N/A	X	n. Location and specifications for all existing and proposed perimeter and internal landscaping and other buffering features.
N/A	X	o. Exterior lighting locations with area of illumination illustrated as well as the type of fixtures and shielding to be used.
	N/A	p. Location, size and specifications for screening of all trash receptacles and other solid waste disposal facilities.
	/	q. Elevation drawing(s) for proposed commercial and industrial structures.
N/A	X	r. Location and specifications for any existing or proposed above or below ground storage facilities for any chemicals, salts, flammable materials, or hazardous materials as well
N/A	X	s. Floor plans, when needed to determine the number of parking spaces required.

PLEASE LIST THE REQUIREMENT FOR WHICH A WAIVER IS BEING REQUESTED. ALSO PROVIDE AN EXPLANATION/REASON FOR THE WAIVER REQUEST.

SECTION

REASON FOR WAIVER REQUEST

20.7.d

SITE HAS MINIMAL GRADE CHANGE.

20.7.g

NEW BUILDINGS SAME AS EXISTING STORAGE BUILDING.

AFFIDAVIT

I CERTIFY THAT ALL SITE PLAN REQUIREMENTS (A THROUGH S) ARE DRAWN ON THE SITE PLAN, ATTACHED TO THIS APPLICATION AND/OR I AM REQUESTING A WAIVER. I CERTIFY THAT ALL INFORMATION AND DATA ATTACHED TO AND MADE PART OF THIS SPECIAL LAND USE PERMIT APPLICATION ARE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

Bruce Smith

SIGNATURE

7-13-20

DATE

Brandt's Sports Center

6530 N. M-33 Hwy.

Legend

 6530 N. M-33 Hwy.

Mullett View Dr

6530 M-33

Carey Rd

Tatlett View Dr

Google Earth

© 2020 Google

33

4

1000 ft



Cheboygan County Zoning



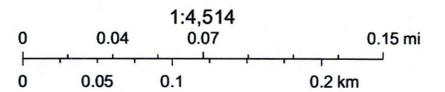
8/13/2020, 3:52:07 PM

 Owner's Name _Query result

Zone - Zoning

 D-RC

 M-AF



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Web AppBuilder for ArcGIS
For reference only. Please call Cheboygan County Zoning for Verification, 231-627-8489

5

104-033-100-008-01
BRANDT, BRUCE A
8101 N M-33 HWY
CHEBOYGAN, MI 49721

104-033-100-006-00
DODDER, KIMBERLY
PO BOX 5186
CHEBOYGAN, MI 49721

104-033-300-001-00
ALOHA TOWNSHIP, BENTON TOWNSHIP &
5104 PARADISE TRL
CHEBOYGAN, MI 49721

104-033-100-007-01
CHARBONEAU, EILEEN LE/WPTS; CHERIE
6544 N M-33 HWY
CHEBOYGAN, MI 49721

104-033-100-009-01
HATT, NICKI (MACZKA)
1322 RICHMOND DR
CHEBOYGAN, MI 49721

104-032-400-004-01
SKAGGS, MICHAEL & SUSAN H/W L/E
6501 N M-33 HWY
CHEBOYGAN, MI 49721

104-032-200-002-20
ARNETT, ALICE J TRUSTEE
6773 N M-33 HWY
CHEBOYGAN, MI 49721

104-033-100-008-01
OCCUPANT
6530 N M-33 HWY
CHEBOYGAN, MI, 49721

104-033-100-006-00
OCCUPANT
6558 N M-33 HWY
CHEBOYGAN, MI, 49721

104-033-300-001-00
OCCUPANT
6490 N M-33 HWY
CHEBOYGAN, MI, 49721

104-033-100-007-01
OCCUPANT
6544 N M-33 HWY
CHEBOYGAN, MI, 49721

104-033-100-009-01
OCCUPANT
6516 N M-33 HWY
CHEBOYGAN, MI, 49721

104-032-400-004-01
OCCUPANT
6501 N M-33 HWY
CHEBOYGAN, MI, 49721

104-032-200-002-20
OCCUPANT
6773 N M-33 HWY
CHEBOYGAN, MI, 49721

104-032-200-002-20
OCCUPANT
6771 N M-33 HWY
CHEBOYGAN, MI, 49721

Michael C. Turisk

From: Deborah Tomlinson
Sent: Monday, August 10, 2020 1:18 PM
To: Michael C. Turisk; Jennifer Merk
Subject: FW: Zoning Projects-Kyle
Attachments: Brandt Sport Shop sewage permit.pdf; Antoviak sewage permit.pdf

Please see the email below from Kyle Keller.

Debbie Tomlinson
Assistant to Director of Planning & Zoning
Cheboygan County Planning & Zoning Department
PO Box 70, 870 South Main Street
Cheboygan, MI 49721
(231)627-8489 phone
(231)627-3646 fax
debbiet@cheboygancounty.net
www.cheboygancounty.net/planning

From: Kyle Keller [mailto:kkeller@dhd4.org]
Sent: Monday, August 10, 2020 10:33 AM
To: Deborah Tomlinson
Subject: Zoning Projects-Kyle

CAUTION: This email originated from outside of the Cheboygan County email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Brandt Sporting Center Project: unless they are putting in bathrooms facilities into this new structure they are good on my end-the present structure (newest structure after the fire) had a new on-site sewage disposal system installed and approved last year (see attached permit). They are utilizing the existing well they had prior to the fire which is fine. See attached paperwork.

David/Julie Clark Project: I spoke with David sounds like a basic machine shop operation with just a couple employees-currently the shop has an on-site sewage disposal system installed under permit from DHD4 2004; I could not find a well log for this facility as I am sure that the owner installed his own at the time. Since this system is over 5 years old I would suggest that an existing on-site sewage disposal/drinking water well system evaluation by our office. See attached paperwork.

Douglas Duke Project: Spoke with Doug he indicated that his immediate needs are for just storage of ice shanties (no need for sewage/water at this point), however, he did say that there is a possibility of some form of residential development in the future. That being said he will definitely need DHD4 service at that point. No paperwork.

Kyle Keller RS
Environmental Sanitarian
DHD4-Cheboygan County
PH# 231-627-8850
kkeller@dhd4.org

District Health Department No. 4



Alpena County
100 Woods Circle
Suite 200
Alpena, MI 49707
(989) 356-4507
Fax (989) 356-3529

Cheboygan County
Doris E. Reid Center
825 S. Huron St.
Suite 1
Cheboygan, MI 49721
(231) 627-8850
Fax (231) 627-9466

Montmorency County
P.O. Box 183
12519 State Street
Atlanta, MI 49709
(989) 785-4428
Fax (989) 785-2217

Presque Isle County
106 E. Huron
Suite A
Rogers City, MI 49779
(989) 734-4723
Fax (989) 734-3866

www.dhd4.org

Administrative Services
Alpena County
Office

May 1, 2019

TO: Bruce Brandt

FROM: DISTRICT HEALTH DEPARTMENT #4

Permit Number: CS1352

SUBJECT: FINAL APPROVAL OF ONSITE SEWAGE DISPOSAL SYSTEM

Your onsite sewage disposal system has been approved. Enclosed are the completed permit and final inspection drawing. If there are any questions, please contact your local health department.

Thank you,
Michele Geyer, Environmental Health Secretary
District Health Department #4 - Cheboygan

**District Health Department No. 4
Sewage Disposal System Final Report**

Alpena County
100 Woods Circle
Suite 200
Alpena
MI 49707
989-356-4507

Cheboygan County
825 S. Huron Street
Suite 1
Cheboygan
MI 49721
231-627-8850

Montmorency County
12519 State Street
P.O. Box 183
Atlanta
MI 49709
989-785-4428

Presque Isle County
106 E. Huron Street
Suite A
Rogers City
MI 49779
989-734-4723

ID: 02522764143

TOWNSHIP: BENTON

PERMIT NUMBER: CS1352

6530 M-33
CHEBOYGAN, MI 49721
OWNER/CONTRACTOR:
BRUCE BRANDT

System Type: Absorption bed

Septic tank size	1000 GALLON
Pump chamber size	NA
Gallons/dose	NA
Audio/visual alarm required?	No
Square footage of drainfield installed	450 SQUARE FEET
Absorption bed length	25 FEET
Absorption bed width	18 FEET
Number of tile lines	6
Tile lines on center	3 FOOT ON CENTER

Actions Taken

Inspection Outcome

- Satisfactory

- Final Approval

SIGNATURE EH SPECIALIST:



Environmental Sanitarian

DATE:

5/1/2019

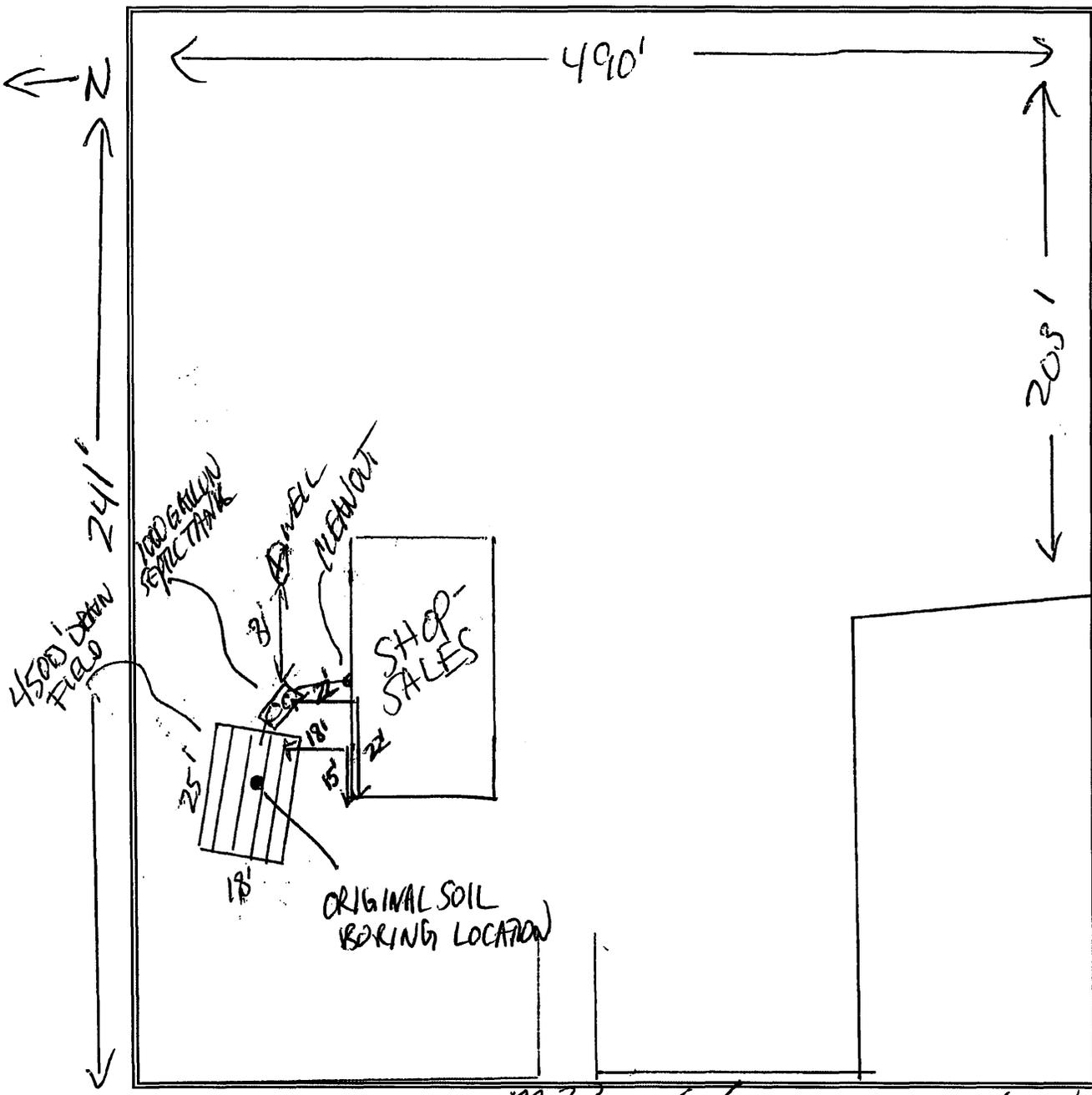
Providing a Healthier Tomorrow Since 1930

DISTRICT HEALTH DEPARTMENT NO. 4
FINAL INSPECTION DRAWING

Owner Name BRUCE BARNOT

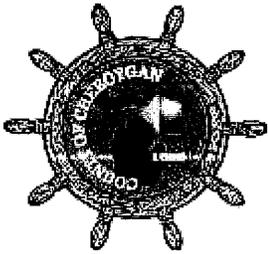
Property Address 05.30 M33 CHEYENNE

Onsite Sewage Permit # OS1352



M.33
Final Approval [Signature] Environmental Sanitarian Date 1/30/19

DHD No. 4 EH-98a



CHEBOYGAN COUNTY

PLANNING AND ZONING DEPARTMENT

CHEBOYGAN COUNTY BUILDING ■ 870 S. MAIN ST., PO BOX 70 ■ CHEBOYGAN, MI 49721
PHONE: (231) 627-8489 ■ FAX: (231) 627-3646; www.cheboygancounty.net/planning/

STAFF REPORT

Item: An application for a special use permit for an Indoor Storage Facility, per Section 9.3.24 of the Zoning Ordinance.	Prepared by: Michael Turisk
Date: REVISED August 27, 2020	Expected Meeting Date: September 2, 2020

GENERAL INFORMATION

Property Owner(s): Bruce Brandt

Applicant: Same

Contact Person: Same

Phone: 231.627.7066

Property Location: The 3.7-acre subject property is located at 6530 N. M-33 Hwy. in Benton Twp.

Requested Action: Approval of a special use permit application for an Indoor Storage Facility land use.

1. INTRODUCTION/HISTORY/ BACKGROUND INFORMATION

**At its regular meeting on August 19, 2020, the Planning Commission postponed this request for a special use permit for an Indoor Storage Facility land use to the September 2, 2020 regular meeting in order to allow the applicant to amend the requisite site plan. The submitted amended site plan now clearly indicates, for example, building setbacks, future slatted/webbed fencing, an existing green belt/buffer (at the south side of the subject property opposite Oak Hill Cemetery, distances between the existing and future storage facilities, and parking area.*

The subject property is home to "Brandt's Sports Center," a longtime locally owned dealer and servicer of snowmobiles, personal watercraft, all-terrain vehicles and motorcycles located at 6530 North M-33 Highway in Benton Township. This special use permit application for an Indoor Storage Facility constitutes a distinct land use, hence the need for a special use permit application. Two (2) new storage buildings would be constructed, including one (1), 40-ft. x 200-ft. (8,000 sq.-ft.) and one (1), 40-ft. x 160-ft. (6,400 sq.-ft.). These buildings would offer storage stalls to be leased to the public for personal storage. If approved there would be six (6) storage buildings on the subject property (two of which are used to serve Brandt's Sports Center), in addition to the 7,500 sq.-ft. showroom and service center.

Brandt's Sports Center has been operating in Cheboygan County for over five decades; as such, the use was considered "legal" nonconforming until a fire event in July 2018 rendered the principal showroom and service building a total loss. In December 2018, the Planning Commission approved a special use permit application for a Motor Vehicle Repair and/or Sales Facility as part of the overall process to rebuild.

Four (4) new storage buildings including one (1) 6,000 sq.-ft., one (1) 1,920 sq.-ft., one (1) 1,536 sq.-ft., and one (1) 1,500 sq.-ft. were constructed after special use permit application approval. The special use permit was required in 2018 due to Section 22.2. (Non-conforming Uses, Structures) of the Zoning ordinance that requires conformity with applicable provisions (of the Zoning Ordinance) for nonconforming uses or structures if the cost of repair or replacement due to fire, for example, exceeds 50% of total replacement cost.

Note that in addition to meeting the general standards for special use permit approval under Section 18.7 of the Zoning Ordinance, Indoor Storage Facility land uses within the Agricultural and Forestry Management (M-AF) Districts shall comply with all of the following applicable supplemental regulations and standards, per Section 17.27:

17.27.1. A solid evergreen hedge, wall or fence a minimum of 6 feet in height shall be placed a minimum of 3 feet from a rear or side lot line which screens all Indoor Storage Facilities from adjoining lots which are under different ownership.

- The amended site plan indicates fencing along property lines except the primary front property line. This will include slats in order to meet the screening requirement, above.

17.27.2. A minimum distance of 30 feet shall be required between Indoor Storage Facility structures where a wall with doors faces another Indoor Storage Facility structure.

- The amended site plan shows 34 feet of separation between the existing 30-ft. x 200-ft. storage building and the proposed 40-ft. x 200-ft. storage building.

Note that the application indicates two (2) site plan waivers – the requirement to show site topography on the site plan, and the requirement for elevation drawings of the proposed structures.



Fig.1; Aerial/location of Brandt's Sports Center (at center) at 6530 N. M-33 Hwy.

2. Adjacent Zoning:

North: Agriculture and Forestry Management (M-AF)

East: Agriculture and Forestry Management (M-AF)

South: Agriculture and Forestry Management (M-AF)

West: Agriculture and Forestry Management (M-AF)

3. Surrounding Land Uses:

As noted above, properties adjacent to the subject property are largely zoned Agriculture and Forestry Management (M-AF). There exists Rural Character/Country Living (D-RC) zoning to the east and north of the subject property. Land uses include agricultural and low-density, rural-residential uses interspersed with large acreages of vacant land. Few conspicuous commercial-type land uses are in the immediate area, save for Chip Drake and Sons Mason Contractors located approximately ½-mile to the north of Brandt's Sports Center along North M-33 Highway.

4. Environmentally Sensitive Areas (steep slopes, wetlands, woodlands, stream corridor, and floodplain):

There are no known environmentally sensitive areas on the subject property. As noted on p. 2 a waiver is requested by the applicant for the requirement to show site topography on the site plan.

5. Historic Buildings/Features:

There are no known historic buildings or historic features on the subject property.

6. Traffic Implications:

As noted, Brandt's Sport Center has been a fixture in the area for about five decades, and during this time, the use has very likely not had any significant negative impacts upon local traffic patterns and volume. With respect to this special use permit application, Indoor Storage Facility land uses typically generate comparatively few vehicle trips, so despite this proposed additional land use on the subject property, it is expected that traffic counts in the area would remain low enough to avoid generating large traffic volumes.

7. Parking:

The Zoning Ordinance does not include an on-site parking standard for Indoor Storage Facility land uses due to the nature of the use. However, despite the number and size of the existing and proposed structures, the approximately 3.7-acre subject property provides ample space to satisfy on-site parking demands for the additional land use proposed. The submitted site plan indicates that there is adequate space to for safe internal vehicle movements. Note that Section 17.6. of the Zoning Ordinance indicates that for all uses one (1) parking space per two (2) employees is required, so two (2) would need to be provided for the four (4) employees.

8. Access and Street Design: (secondary access, pedestrian access, sidewalks, residential buffer, ROW width, access to adjacent properties):

Access is provided via the existing and improved two-way driveway cut located off the east right-of-way of North M-33 Highway.

9. Signs:

One (1) existing banner sign that advertises the availability of public storage is located under the previously approved illuminated freestanding sign. Banner signs are permitted in the Agriculture and Forestry Management (M-AF) zoning districts.

10. Fence/Hedge/Buffer:

No new fencing, vegetative screening or buffers are proposed as part of this application. However, the existing chainlink fencing will include slatting or webbing to meet the screening standard as set forth in Section 17.27.1. (as noted on p. 2 of this report).

11. Lighting:

The submitted special use permit application indicates that no exterior lighting would be installed on the new Indoor Storage Facility structures.

12. Storm Water Management:

It is anticipated that the project would not generate significant changes to storm water runoff patterns and/or on- or off-site flow rates, as the subject property includes sizeable pervious surface area that would allow surface water to infiltrate to help mitigate sheet flow and flooding potential. Although not far from the eastern shore of Mullett Lake, the subject property does not lie within 500-ft. of the lake (or river or stream); thus, the project is not subject to soil erosion and sedimentation pollution control permit review. As noted on p. 3 of this report, a waiver is requested by the applicant for the requirement to show site topography on the site plan.

13. Review or Permits From Other Government Entities:

Construction of the Indoor Storage Facility buildings will require building permit application review and approval by the Department of Building Safety/Construction Code. The District 4 Health Department has reviewed the application and indicated that a new on-site sewage disposal system was approved and installed in 2019, so no need exists at this time for permit review by the Health Department.

14. Consistency with the Cheboygan County Master Plan/Future Land Use Map:

The *Cheboygan County Master Plan* and *Future Land Use Map* designates the immediate area in which the subject property is located as Forest/Agricultural. As the Planning Commission is aware, these are areas where anticipated future uses include forestry and farming activities and residential uses (that are properly located and designed with rural character in mind). In addition, appropriate land uses include small- to mid-size campgrounds and similar rural tourist lodging uses. However, other types of commercial or non-residential land uses are considered appropriate in Forest/Agricultural (and by extension the Agriculture and Forestry Management zoning districts) as evidenced by the current list of permitted and special uses in Article 9 of the Zoning Ordinance that includes Indoor Storage Facilities. In addition, a Goal of the Cheboygan County Master Plan (p. 18) speaks to protecting and enhancing existing commercial development and maximizing new growth opportunities -- "The most important work to create greater economic development is to support a community's existing businesses and assist in their efforts to grow."

15. Public Comment:

No written or verbal public comments have been received as of the date of this report (August 27, 2020).

16. Recommendation (proposed conditions):

1. The applicant shall provide the Planning and Zoning Department the Acceptance of Conditions form (to be attached to the special land use approval letter) within thirty (30) calendar days from the date of the approval letter. This form shall be signed by the owner(s) or legal representative of the subject property. The applicable building permit application(s) shall include a site plan in conformance with this special land use that meets all applicable site development standards (such as minimum required setbacks from property boundaries) and appropriate building permit fees, as applicable. Permits must be issued within twelve (12) months from the date of the special land use approval letter (unless a special use extension request is approved by, pursuant to Section 18.12., as amended), otherwise the special land use may be deemed void upon thirty (30) days written notification to the applicant.
2. The applicant shall obtain building permits, as applicable, from the Department of Building Safety.
3. Any changes to the approved special use shall be subject to review by the Planning and Zoning Department and may require an application for special use amendment and approval by the Planning Commission.
4. It is the applicant's responsibility to obtain any additional permits or meet additional conditions, if any, that may be applicable to the proposed land use pursuant to other federal, state, or local laws or regulations.

**CHEBOYGAN COUNTY
PLANNING COMMISSION
SPECIAL USE PERMIT REQUEST**

Applicant: Bruce Brandt
6530 North M-33 Highway
Cheboygan, MI 49721

Owner(s): Bruce Brandt

Parcel(s): Benton Township, Section 33; Parcel ID 104-033-100-008-01

Hearing Date: Wednesday, September 2, 2020; 7:00 PM

APPLICATION

The Applicant seeks approval for a Special Use Permit for an Indoor Storage Facility, per Section 9.3.24 of the Zoning Ordinance.

GENERAL FINDINGS OF FACT

1. The Planning Commission finds that the property is located in an Agriculture and Forestry Management (M-AF) zoning district. (See Exhibits 3, 5 and 10)
2. The Planning Commission finds that, per the Cheboygan County Master Plan and Future Land Use Map, the property is located in an area designated by the Plan and Map as Forest/Agricultural. (See Exhibits 2 and 10)
3. The Planning Commission finds that the proposed Indoor Storage Facility land use requires a special use permit in the M-AF zoning districts. (See Exhibits 1, 3 and 10)
4. The Planning Commission finds that Brandt's Sport Center was formerly a legal, nonconforming use. (See Exhibit 10)
5. The Planning Commission finds that Brandt's Sport Center suffered total loss due to a fire event in July 2018. (See Exhibit 10)
6. The Planning Commission finds that Section 22.2 of the Zoning Ordinance (Nonconforming Uses, Structures) requires conformity with the applicable provisions of the Zoning Ordinance for nonconforming uses or structures if the cost of repair or replacement due to fire, for example, exceeds 50% of total; replacement cost. (See Exhibit 1, 5 and 10)
7. The Planning Commission finds that the Planning Commission approved a special use permit for a Motor vehicle sales and/or repair facility in December 2018. (See Exhibit 10)
8. The Planning Commission finds that the applicant proposes two (2) new storage buildings, including a 40-ft. x 200-ft. (8,000 sq.-ft.) and a 40-ft. x 160-ft. (6,400 sq.-ft.) that would be leased to the public. (See Exhibits 3, 6 and 10)

FINDINGS OF FACT UNDER SECTION 18.7 OF THE ZONING ORDINANCE

The Planning Commission makes the following findings of fact as required by Section 18.7 of the Zoning Ordinance for each of the following standards listed in that section:

a. The property subject to the application is located in a zoning district in which the proposed special land use is allowed.

1. The Planning Commission finds that the Applicant requests a special use permit for an Indoor Storage Facility on private land in Benton Township. (See Exhibits 3 and 10)
2. The Planning Commission finds that the subject property is zoned Agriculture and Forestry Management (M-AF). (See Exhibits 3, 5 and 10)
3. The Planning Commission finds that Indoor Storage Facility is a land use allowed pursuant to a special use permit in the M-AF zoning district pursuant to Section 9.3.24 of the Zoning Ordinance. (See Exhibits 1, 3 and 10)
- 4.
5. Standard has been met.

OR

1. The Planning Commission finds that uses classified as special land uses are recognized as possessing unique characteristics (relative to location, design, size, public infrastructure needs, and other similar characteristics) which require individual review and approval standards in order to safeguard the general health, safety, and welfare of the County. (See Exhibits 1, 3 and 10)
2. The Planning Commission finds that special land uses have been determined to have such characteristics that a discretionary, site-specific review by the Planning Commission is necessary to evaluate whether the particular use, as proposed, is compatible, or can be made compatible, with neighboring land uses and other uses permitted in the zoning district. Special land uses may not be appropriate at all locations within a particular zoning district. (See Exhibits 1, 2, 3 and 10)
- 3.
4. Standard has not been met.

b. The proposed special land use will not involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on the natural resources of the County or the natural environment as a whole.

1. The Planning Commission finds that the subject parcel is zoned Agriculture and Forestry Management (M-AF). (See Exhibits 3, 5 and 10)
2. The Planning Commission finds that the property was previously known and used as Brandt's Sports Center which suffered a total loss to a fire in July, 2018. As such, the property is being rehabilitated such that the proposed use is an improvement subsequent to the fire and will have no negative impact on the natural resources of the county or the natural environment as a whole. (See Exhibit 10)

Standard has been met.

OR

1. None found.
2. Standard has not been met.

c. The proposed special land use will not involve uses, activities, processes, materials, or equipment, or hours of operation that will create a substantially negative impact on other conforming properties in the area by reason of traffic, noise, smoke, fumes, glare, odors, or the accumulation of scrap material that can be seen from any public or private highway or seen from any adjoining land owned by another person.

1. The Planning Commission finds that the subject parcel is zoned Agriculture and Forestry Management (M-AF). (See Exhibits 3, 5 and 10)
2. The Planning Commission finds that Indoor Storage Facilities are permitted by special use in the Agriculture and Forestry Management (M-AF) zoning district pursuant to Section 9.3.24 of the Zoning Ordinance. (See Exhibits 1, 3 and 10)
3. The Planning Commission finds that Indoor Storage Facilities require a special use permit in accordance with Section 18.7. of the Zoning Ordinance. (See Exhibits 1, 3 and 10)
4. The Planning Commission finds that the proposed Indoor Storage Facility land use would not create a substantially negative impact on other conforming properties in the area because use of the property as a storage facility will only result in sporadic traffic and will not result in noise, smoke, fumes, glares or odors or the accumulation of scrap material. As such, impacts are not in the normal course of business of use at a storage facility. (See Exhibits 3, 4, 6 and 10)
5. Standard has been met.

OR

1. None found.
2. Standard has not been met.

d. The proposed special land use will be designed, constructed, operated, and maintained so as not to diminish the opportunity for surrounding properties to be used and developed as zoned.

1. The Planning Commission finds that the proposed Indoor Storage Facility would comply given that anticipated traffic counts at the time of operation would likely be negligible. (See Exhibits 3, 4, 6 and 10)
2. The Planning Commission finds that the design, construction, operation, and maintenance of the proposed Indoor Storage Facility would not diminish opportunities for surrounding property owners to use and develop their properties as zoned. The proposed Indoor Storage Facility would not generate negative off-site impacts from traffic, noise, smoke, fumes, glare, odors, or waste materials that would negatively impact the ability to use or develop surrounding properties. The proposed Indoor Storage Facility would be designed and constructed to comply with the minimum applicable zoning standards (e.g., building setbacks; screening) that are intended to help minimize the potential for negative off-site impacts. (See Exhibits 1, 3 and 10)
3. The Planning Commission finds that the primary uses of surrounding parcels are agricultural and rural-residential, land uses that would not be diminished by the addition of an Indoor Storage Facility land use on the subject property. (See Exhibits 4, 5, 6 and 10)
- 4.
5. Standard has been met.

OR

- 1.
2. Standard has not been met.

e. The proposed special land use will not place demands on fire, police, or other public resources in excess of current capacity nor increase hazards from fire or other dangers to the subject property or adjacent properties.

1. The Planning Commission finds that the proposed Indoor Storage Facility would not require public resources greater than current capacity, nor increase hazards from fire or other dangers. (See Exhibits 1, 3, 4 and 10)
2. The Planning Commission finds that the proposed Indoor Storage Facility would comply given that anticipated traffic counts at the time of operation would likely be negligible. (See Exhibits 3, 4 and 10)
3. The project site is served by the Alverno Fire Department and Cheboygan County Sheriff's Department. (See Exhibits 4 and 10)
- 4.
5. Standard has been met.

OR

- 1.
2. Standard has not been met.

f. The proposed special land use shall not increase traffic hazards or cause congestion on the public or private highways and streets of the area in excess of current capacity. Adequate access to the site shall be furnished either by existing roads and highways or proposed roads and highways. Signs, buildings, plantings, or other elements of the proposed project shall not interfere with driver visibility or safe vehicle operation. Entrance drives to the use and to off-street parking areas shall be no less than 25 feet from a street intersection (measured from the road right-of-way) or from the boundary of a different zoning district.

1. The Planning Commission finds that the proposed Indoor Storage Facility would not create traffic congestion or increase traffic-related hazards adjacent to (and in the vicinity of) the project site, located in an area of the County with an established circulation system with conditions that allow easy access with minimal, if any, changes to existing circulation or traffic patterns anticipated during operation. (See Exhibits 3, 4, 6 and 10)
2. The Planning Commission finds that the subject property is located in Benton Township along North M-33 Highway. (See Exhibits 3, 4, 5 and 10)
3. The Planning Commission finds that the proposed Indoor Storage Facility does not require water service to operate. (See Exhibits 3 and 10)
4. The Planning Commission finds that North M-33 Highway would adequately provide an adequate level of service capacity. Given negligible trip generation at operation, associated traffic would likely be unnoticeable. (See Exhibits 3, 4, 5, 6 and 10).
- 5.
6. Standard has been met.

OR

- 1.
2. Standard has not been met.

g. The proposed special land use will be adequately served by water and sewer facilities, and refuse collection and disposal services.

1. The Planning Commission finds that the proposed Indoor Storage Facility would be served by well and septic. (See Exhibits 3, 9, and 10)
2. The Planning Commission finds that a permit for an onsite sewage disposal system was approved on May 1, 2019 by the District Health Department No. 4. (See Exhibits 9, 10 and 10)

The Planning Commission finds that the proposed Indoor Storage Facility would not utilize significant volumes of water. Trash and other refuse is and would be hauled offsite to an authorized area landfill.

3. Standard has been met.

OR

- 1.
2. Standard has not been met.

h. The proposed special land use will comply with all specific standards required under this Ordinance applicable to it.

1. The Planning Commission finds that the proposed Indoor Storage Facility will meet or exceed all specific standards required under the Zoning Ordinance, including the standards for granting site plan approval in Section 20.10 and the standards applicable to Indoor Storage Facilities in Section 17.27 of the Zoning Ordinance. (See Exhibits 1, 3 and 10)
2. The Planning Commission finds that the proposed Indoor Storage Facility is permitted with a special use permit in the Agriculture and Forestry Management (M-AF) zoning districts. (See Exhibits 1, 3 and 10)
- 3.
4. Standard has been met.

OR

1. None found.

2. Standard has not been met.

SPECIFIC FINDINGS OF FACT UNDER SECTION 20.10 OF THE ZONING ORDINANCE

The Planning Commission makes the following findings of fact as required by Section 20.10 of the Zoning Ordinance for each of the following standards listed in that Section:

a. The site plan shall be designed so that there is a limited amount of change in the overall natural contours of the site and shall minimize reshaping in favor of designing the project to respect existing features of the site in relation to topography, the size and type of the lot, the character of adjoining property and the type and size of buildings. The site shall be developed so as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this Ordinance.

1. The Planning Commission finds that minimal changes to natural contours would occur during site preparation and construction given the site's level terrain. (See Exhibits 3, 6 and 10)
2. Standard has been met.

OR

1. None found.
2. Standard has not been met.

b. The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, and by topographic modifications which result in smooth natural appearing slopes as opposed to abrupt changes in grade between the project and adjacent areas.

1. The Planning Commission finds that Indoor Storage Facilities are typically sited on terrain with little slope, as is the case with the subject property, and therefore minimal changes to the natural contours would occur during site preparation and construction. The Planning Commission finds that the property was previously known and continues to be used as Brandt's Sports Center, which suffered a total loss to a fire in July 2018. As such, the property is being rehabilitated such that the proposed use is an improvement subsequent to the fire and will have no negative impact on the natural resources of the county or the natural environment as a whole. Slopes that may have been natural had already been modified for the construction and operation of Brandt's Sports Center. Therefore, re-using the property for this purpose will not have impact on the natural state, as the natural state of the property did not exist prior to this special use permit request for an Indoor Storage Facility land use. (See Exhibits 3, 6 and 10)

- 2.
3. Standard has been met.

OR

1. The Planning Commission finds that some measure of grading will occur during site preparation and construction. (See Exhibits 3, 6 and 10)
- 2.
3. Standard has not been met.

c. Special attention shall be given to proper site drainage so that removal of storm waters will not adversely affect neighboring properties.

1. The Planning Commission finds that storm water would be maintained on the subject property. (See Exhibits 3, 6 and 10)
- 2.
3. Standard has been met.

OR

1. None found.
2. Standard has not been met.

d. The site plan shall provide reasonable, visual and sound privacy for all dwelling units located therein. Fences, walls, barriers and landscaping shall be used, as appropriate, for the protection and enhancement of property and for the privacy of its occupants.

Not applicable, as no dwelling units are proposed.

e. All buildings or groups of buildings should be so arranged as to permit emergency vehicle access by some practical means.

1. The Planning Commission finds that a practical means for access by emergency vehicles is provided via a commercial driveway from North M-33 Highway. (See Exhibits 3, 4, 5, 6 and 10)
- 2.
3. Standard has been met.

OR

1. None found.
2. Standard has not been met.

f. Every structure or dwelling unit shall have access to a public street, walkway or other area dedicated to common use.

1. The Planning Commission finds that the Indoor Storage Facility land use would have access to a public roadway, North M-33 Highway. (See Exhibits 3, 4, 5, 6 and 10)
2. Standard has been met.

OR

1. None found.
2. Standard has not been met.

g. For subdivision plats and subdivision condominiums, there shall be a pedestrian circulation system as approved by the Planning Commission.

Not applicable, as no subdivision condominiums or subdivision plats are proposed.

h. Exterior lighting shall be arranged as follows: a. It is deflected away from adjacent properties, b. It does not impede the vision of traffic along adjacent streets and c. It does not unnecessarily illuminate night skies.

1. Not applicable, as no exterior lighting is proposed as part of the project (See Exhibits 3 and 10)
- 2.
3. Standard has been met.

OR

1. None found.
- 2.
3. Standard has not been met.

i. The arrangement of public or common ways for vehicular and pedestrian circulation shall respect the pattern of existing or planned streets and pedestrian or bicycle pathways in the area. Streets and drives which are part of an existing or planned street pattern which serves adjacent development shall be of a width appropriate to the traffic volume they will carry and shall have a dedicated right-of-way equal to that specified in the Master Plan.

Not applicable. No public common ways are proposed.

j. Site plans shall conform to all applicable requirements of state and federal statutes and the Cheboygan County Master Plan.

1. The Planning Commission finds that the site plan conforms to the applicable requirements of state and federal statutes and the Cheboygan County Master Plan ("Plan"), as the proposed Indoor Storage Facility is a special land use identified in Agriculture and Forestry Management (M-AF) zoning district. (See Exhibits 1, 2, 3 and 10)
2. A Goal of the Cheboygan County Master Plan (p. 18) speaks to protecting and enhancing existing commercial development and maximizing new growth opportunities -- "The most important work to create greater economic development is to support a community's existing businesses and assist in their efforts to grow." These businesses offer employment, pay taxes and are invested in the community. (See Exhibits 2 and 10)
3. Standard has been met.

OR

1. None found.
2. Standard has not been met.

DECISION

TIME PERIOD FOR JUDICIAL REVIEW

State law provides that a person having an interest affected by the zoning ordinance may appeal a decision of the Planning Commission to the Circuit Court. Pursuant to MCR 7.101, any appeal must be filed within twenty-one (21) days after this Decision and Order is adopted by the Planning Commission.

DATE DECISION AND ORDER ADOPTED

Wednesday, September 2, 2020

Patty Croft, Chairperson

Charles Freese, Secretary



CHEBOYGAN COUNTY PLANNING AND ZONING DEPARTMENT

CHEBOYGAN COUNTY BUILDING ■ 870 S. MAIN STREET, PO BOX 70 ■ CHEBOYGAN, MI 49721
PHONE: (231) 627-8489 ■ FAX: (231) 627-3646
www.cheboygancounty.net/planning/

MEMORANDUM

Date: August 26, 2020 for the September 2, 2020 Planning Commission meeting

To: Planning Commissioners

From: Michael Turisk, Planning Director 

Re: Draft of Zoning Ordinance Amendment #155 (Article 22; Nonconforming Buildings or Structures, Properties and Uses)

Planning Commissioners, _____ 

Attached is the latest draft of proposed Zoning Ordinance Amendment #155 that regards Article 22, Nonconforming Uses, Structures. As a reminder, the purpose of Amendment #155 is to clarify and ease standards governing the continuance, discontinuance and expansion of nonconformities. Zoning nonconformities are existing uses, structures or lots legally established prior to adoption of the Zoning Ordinance (and subsequent amendments), and which do not comply with ordinance standards. It is worth reiterating that most communities with zoning allow for the continuation of nonconformities despite their disputable harm (to the extent nonconformities, generally speaking, contradict the zoning ordinance). Because of this contradiction, a general planning/zoning-related rule of thumb is to seek to reduce nonconformities over time.

During our most recent conversation about Amendment #155, some specific terminologies in Section 22.4 (*Lots of Record*) generated the most discussion. The latest draft of Section 22.4:

- Indicates that an owner may hold, develop, and convey their nonconforming lots of record as distinct or separate nonconforming lots of record, and that each nonconforming lot may be individually developed whether held by the owner or conveyed to and developed by a new owner, but with development in compliance with applicable dimensional requirements, namely minimum building setbacks.
- Would possibly preclude dimensional variances for such lots when the desire and/or need for a dimensional variance would be eliminated by combining lots into a single, undivided lot. From a Zoning Board of Appeals perspective, this speaks to having "options" that would render compliance with the Zoning Ordinance and thus would possibly preclude dimensional variance approval.
- Clarifies that if a conforming lot results from combining nonconforming lots of record, then that conforming lot may be developed as any other conforming lot in Cheboygan County.

(Recall that a conforming lot is one that *does* conform to minimum applicable dimensional requirements such as lot area, whereas a nonconforming lot is one that *does not* conform to minimum applicable dimensional requirements). As is the case with all conforming lots, development would need to comply with the minimum applicable dimensional requirements, namely building setbacks (as measured from the exterior lot lines of the new lot).

- Also clarifies that if combining nonconforming lots of record *does not* create a conforming lot, then the newly created lot -- *although remaining nonconforming* -- may be developed as any other nonconforming lot in Cheboygan County.

Given the effort put forth to date and the length of time that has passed since our last discussion, we will reacquaint ourselves with Amendment #155 in its entirety (and Section 22.4, in particular) on Wednesday evening.

As always, feel free to reach out to me should you have questions.

Sincerely,

A handwritten signature in black ink that reads "Michael Turusk". The signature is written in a cursive, slightly slanted style.

Enclosure(s):

Amended draft of proposed Zoning Ordinance Amendment #155

CHEBOYGAN COUNTY ZONING ORDINANCE
AMENDMENT #155

AN ORDINANCE TO AMEND CHEBOYGAN COUNTY ZONING ORDINANCE NO. 200 RELATIVE
TO NONCONFORMING BUILDINGS OR STRUCTURES, PROPERTIES AND USES

Section 1. Amendment of Article 22

Article 22 of the Cheboygan County Zoning Ordinance No. 200 is hereby amended to read in its entirety as follows:

ARTICLE 22. – NONCONFORMING BUILDINGS OR STRUCTURES, PROPERTIES AND USES

SECTION 22.1 INTENT AND PURPOSE

Nonconformities are buildings or structures, lots, and land uses that do not conform to one or more of the requirements of this Ordinance or any subsequent amendment, which were lawfully established prior to the effective date of this Ordinance or any subsequent amendment. Such nonconformities are generally incompatible with the current or intended use of land in the district in which located. Accordingly, the purpose of this article is to establish regulations that govern the completion, restoration, reconstruction, extension, and/or substitution of nonconformities, discontinuance and conditions under which nonconformities shall be permitted to continue.

Section 22.2 NONCONFORMING LAND USE PERMITTED; COMPLETION ALLOWED

- A. If the use of a building or structure or the use of the land was lawful at the time of enactment of this Ordinance or any subsequent amendment, then that use may be continued although the use does not conform to the provisions of this Ordinance or any subsequent amendment, under the terms and conditions of this Article.
- B. To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of a building or structure on which substantial construction has been lawfully begun prior to the effective date of this Ordinance or any subsequent amendment.

SECTION 22.3 NONCONFORMITY REGULATIONS

The following regulations shall apply to all nonconforming uses, buildings and structures:

- A. Normal maintenance and incidental repairs, including repair or replacement of nonbearing walls, windows, fixtures, wiring, or plumbing, may be performed on any nonconforming building or structure or on any structure containing a nonconforming use.
- B. A nonconforming building or structure or a building or structure that contains a nonconforming use which is unsafe or unlawful due to a lack of repairs or maintenance, as determined by the County Building Official, may be restored to a safe, habitable condition.
- C. If a nonconforming building or structure or a building or structure that contains a nonconforming use is damaged or destroyed by any means or is removed by the property owner, then such nonconforming building or structure may be restored, rebuilt, or repaired to no greater than its original configuration and on its original foundation or footprint.

- D. A nonconforming building or structure or a building or structure that contains a nonconforming use may be enlarged or altered in any way, provided such enlargement or alteration does not:
1. Create any nonconformity that did not exist prior to the enlargement or alteration.
 2. Increase the degree of new nonconformity (i.e., the enlargement or alteration is closer to the property line than the nonconforming building or structure prior to the enlargement or alteration).
 3. Increase the extent of nonconformity (i.e., a larger portion of the nonconforming building or structure is within the setback area than was present prior to the enlargement or alteration).
- E. If a nonconforming sign is damaged or destroyed by any means or is removed by the owner to the extent that the cost of necessary repairs will exceed fifty percent (50%) of the replacement cost of the sign, then such nonconforming sign shall only be repaired or reconstructed in complete conformity with the applicable provisions of this Ordinance.
- F. Except for repairs or maintenance, a nonconforming building or structure or a building or structure or portion of which that contains a nonconforming use shall not be enlarged or altered, unless in complete conformity with the applicable requirements of this Ordinance.
- G. A non-conforming use, building or structure shall not be replaced with another non-conforming building or structure unless approved by the Zoning Board of Appeals pursuant to the requirements of the subsection.
1. The owner of a nonconforming use, building or structure who desires to replace that nonconformity with another nonconforming use, building or structure shall file an application with the Zoning Administrator and shall provide all information necessary to show compliance with the standards contained in Subsection 3, below.
 2. Upon receipt of a complete application, the Zoning Administrator shall schedule a public hearing following the requirements of Section 23.7.2 of this Ordinance.
 3. Following the public hearing the Zoning Board of Appeals shall approve the proposed new nonconforming use, building or structure if it finds that all of the following standards have been met:
 - a. The proposed new nonconforming use, building, or structure would not create any nonconformity that did not exist on the property prior to the requested replacement.
 - b. The proposed new nonconforming use, building, or structure would make the property more conforming to the zoning regulations that made the use, building, or structure nonconforming and/or to the zoning regulations applicable to the property.
 - c. The proposed new nonconforming use, building, or structure would improve the property and would not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.

SECTION 22.4 NONCONFORMING LOT OF RECORD

The following regulations shall apply to all nonconforming lots of record:

If two (2) or more contiguous lots, parcels, or portions of lots or parcels are under the same ownership and do not individually meet the lot width, depth, and/or area requirements of this Ordinance, then the owner of those lots or parcels may hold, develop, and convey those lots or parcels under one of the following options:

- A. The owner may hold, develop, and convey those nonconforming lots or parcels as separate nonconforming lots of record. Under this option, each nonconforming lot or parcel may be individually sold and, except as provided herein, may be individually developed as a nonconforming lot of record. Each individual nonconforming lot or parcel shall comply with all applicable setback regulations. Provided, however, no dimensional variance shall be granted for such lot or parcel when the desire and/or need for that dimensional variance would be eliminated by combining those contiguous lots, parcels, or portions of lots or parcels as an undivided lot or parcel for the purposes of this Ordinance under Subsection B, below.
- B. The owner may prepare and record in the Register of Deed's Office a deed restriction approved by the Zoning Administrator combining those nonconforming lots or parcels, or portions of lots or parcels, into an undivided lot or parcel for the purposes of this Ordinance. Under this option, if combining the lots or parcels, or portions of lots or parcels results in a conforming lot, then that undivided lot may be developed as authorized by the zoning district in which it is located, and all applicable setbacks shall be measured from the exterior lot lines of the undivided lot without regard to any interior lot sizes that existed prior to recording the deed restriction. If combining the lots or parcels, or portions of lots or parcels, does not result in a conforming lot, then that undivided lot may be developed as a nonconforming lot of record under Subsection A, above, including the right to seek any desired and/or needed dimensional variances.

Section 2. Severability.

If any section, clause, or provision of this Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the validity of the remainder of the Ordinance as a whole or any part thereof, other than the part so declared unconstitutional or invalid.

Section 3. Effective Date.

This Ordinance shall become effective eight (8) days after being published in a newspaper of general circulation within the County.

CHEBOYGAN COUNTY

By:
John B. Wallace
Its: Chairperson

By:
Karen L. Brewster
Its: Clerk



CHEBOYGAN COUNTY

PLANNING AND ZONING DEPARTMENT

CHEBOYGAN COUNTY BUILDING ■ 870 S. MAIN STREET, PO BOX 70 ■ CHEBOYGAN, MI 49721
PHONE: (231) 627-8489 ■ FAX: (231) 627-3646
www.cheboygancounty.net/planning/

MEMORANDUM

Date: August 27, 2020 for the September 2, 2020 Planning Commission meeting

To: Planning Commissioners

From: Michael Turisk, Planning and Zoning Director 

Re: Proposed Zoning Ordinance Amendment RE: Short-term Rental Uses

Planning Commissioners,

The purpose of this memo is to outline at least some of the various issues and concerns surrounding the short-term rental of properties as a discussion springboard regarding an amendment that would govern short-term rental uses in Cheboygan County. Creating and implementing an effective approach to regulating short-term rental uses will require a broad effort to form community consensus and will certainly involve interested and/or affected stakeholders on the scope and nature of the issue and the most appropriate regulatory response. A range of options exists for the Planning Commission to consider in drafting an ordinance directed at short-term rental uses. The enclosure titled "Short Term Rental Ordinance Considerations" by Networks Northwest, provides an excellent foundation for an effort to draft a short-term rental ordinance.

BACKGROUND

Where there is a market for short-term rentals, particularly in tourism-based economies such as ours, the earnings potential can be enticing for homeowners. With the increasing popularity of companies like Airbnb and VRBO, short-term rental uses have grown to become a significant issue in some communities, including in Northern Michigan. Residents in typical single- or multi-family neighborhood environments typically expect other homes in the area to be occupied by other long-term residents with similar standards for property maintenance, neighborhood-minded behavior, and overall "good-neighbor" concern for other nearby residents. On the other hand, within the limits of the law, property owners are entitled to capitalize on the value of their property, and ought to be able to generate income, so long as doing so does not unreasonably impact neighbors and the broader community. However, this perspective does not mean neighboring residents must tolerate unruly, messy or dangerous behavior by short-term renters. A reasonable balance between property rights and community rights should be achieved, not unlike other land use considerations. A major question for consideration -- when do short-term rental uses become commercial uses? (like a hotel or motel)

There are three sources of prohibitions on short-term rentals: government ordinances, deed restrictions, and association bylaws. As of yet there is no statewide statute governing short-term rentals, though bills were introduced in 2017. Local ordinances range from complete bans of short-term rentals in some zoning districts to no regulation at all. The following examples represent perhaps the most notable reasons for drafting a local regulatory scheme dedicated to short-term rental uses:

- **Protection of neighborhood/residential character and property values**

A frequent basis for regulating short-term rentals is the perceived need to protect residential character. Short-term rental activities can generate complaints from permanent residents about associated disturbances, including, for example, excessive noise, overcrowding, late night parties, trespassing, increased traffic and parking, frequent guest turnover and inadequate waste capacity. The rationale being that at least some vacationers and short-term renters – those that likely are not vested in the neighborhood or community (or do not have strong ties to the community) are more concerned with maximizing their “fun factor” than with being a “good neighbor.” The underlying rationale is that because short-term rentals are generally not owner-occupied they are less likely to be maintained to the same standard, as would likely be the case with permanent residents. The presumption is that absentee owners are less inclined to be as conscious of routine maintenance as owner-occupants and consequently, the neighborhood will slowly deteriorate (and possibly experience a corresponding decline in property values, especially if more owners opt to make their properties available for short-term rental use).

- **Competition with more conventional lodging**

Regulatory oversight on short-term rentals can also be intended as a means of “leveling the playing field” between short-term rentals and more conventional overnight lodging facilities in a given area (e.g., motels and bed and breakfasts).

- **Public information**

The County might take action either independently or in conjunction with other local or regional organizations to mount a public information effort to encourage “good neighbor” property maintenance and visitor behavior. This could take the form of brochures distributed to known short-term rental owners asking to post various rules intended to protect neighborhood character and quality of life.

- **Limits on rental duration**

One of the objections often expressed concerning short-term rentals is the frequent turnover of strangers into the area. Some communities require minimum stays of two weeks or more. (Our short-term rental definition in Article 2 of the Zoning Ordinance limits stays to less than 30 days). The rationale for this approach is the longer the short-term lease, the greater the likelihood that guests will respect the neighbors and neighborhood.

Other Possible Standards to Consider For Short-Term Rental Uses:

- Approved as special use subject to distinct set of review and approval standards. (e.g., operation and maintenance standards, such as requirement for regular garbage collection).
- Occupancy limitation.
- Available local contact person(s) responsible for handling potential problems.
- Requirements for off-street parking.

- Noise and nuisance provisions.
- Proof of building code compliance; adequate water and sewer; infrastructure.
- Isolation standards to preclude concentrations of short-term rental uses.
- Restrict to particular zoning district(s).
- Establish overlay district.

Pending legislation

House Bill 4046:

- Would permit short-term rentals in any zoning district; shall be treated as a single-family use.
- Not subject to special use approval or limitations.
- Not considered commercial use.

House Bill 4554 (Michigan Short Term Rental Promotion Act):

- Would provide regulatory scheme for short-term rental uses.

House Bill 4563:

- Would amend Michigan Zoning Enabling Act.
- If rented 14 days or less per year, would be permitted in all residential zoning districts.
- Cannot be prohibited by zoning ordinance.

We look forward to our discussion on this topic on Wednesday evening. Please feel free to reach out should you have questions.

Sincerely,



Michael Turisk

Enclosure(s):

1. Oliver, David. 'Short-term rentals bouncing back.' USA Today 27 August 2020.
2. Munster, Jared E. 'Short-Term Rentals: Regulation and Enforcement Strategies.' Planning Advisory Service Memo January/February 2019.
3. Neumann, Brad. 'Considering regulation of short-term rentals in light of the sharing economy: Part 1.' Michigan State University Extension. 22 December 2015.
1. Neumann, Brad. 'Considering regulation of short-term rentals in light of the sharing economy: Part 2.' Michigan State University Extension. 22 December 2015.
2. Networks Northwest. 'Short Term Rental Ordinance Considerations.'
3. House Bill 4046
4. House Bill 4554
5. House Bill 4563

6. Relevant Definitions -- Article 2 of Zoning Ordinance No. 200

Short-term rentals bouncing back

They are recovering quicker than hotels

David Oliver
USA TODAY

8.27.20

Sean Malin and his friends, like many Americans this summer, were desperate to get the heck out of (quarantine) Dodge despite the coronavirus pandemic.

"We needed to vacation somewhere," Malin, 28, told USA TODAY.

But they didn't want to go just anywhere over July Fourth weekend. They were looking for safety and seclusion, but also weren't willing to drive more than two or three hours away.

The group of five crammed into a Toyota Camry and wound through narrow uphill roads to reach their Airbnb in Sugarloaf, California, outside Big Bear. Perhaps it was too secluded, considering they had no Wi-Fi signal there and were given an incorrect address.

Still, Malin managed to enjoy himself, given the circumstances.

"It wasn't paradise, unfortunately, but we enjoyed the company and the natural surroundings were beautiful," Malin, of Canyon Country, California, told USA TODAY. "It sufficed."

Their choice mirrors a trend in the industry as travelers have sought out socially distanced excursions within half a day's drive from home. Some are also opting to stay in private homes where they can prepare their own food and won't come into contact with strangers from outside their quarantine bubble.

And traditional hotels have paid the price, literally. For the week ending Aug. 15, U.S. weekly hotel occupancy occupancy was down 30% from the same period in 2019, according to data firm STR.

The news is not all bad for hotels: Occupancy topped 50% for the first time since March, and it has ticked up for 17 of the past 18 weeks, though growth in demand for rooms has slowed.

Still, short-term rentals have bounced back faster since the coronavirus pandemic pummeled travel interest in March. They have also benefited from a weakened business travel environment and a shift in travel preferences to more rural and remote areas where guests can opt for longer stays.

Which is safer?

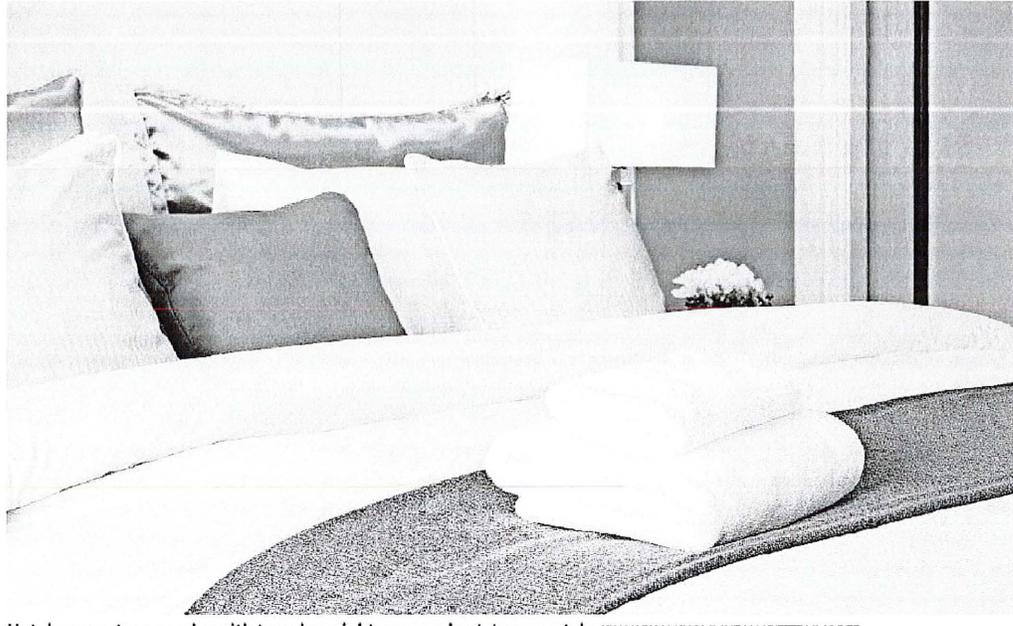
Both hotels and short-term rentals have announced extensive cleaning measures and social distancing procedures to reassure cautious travelers that it's safe to stay there during COVID-19.

Augusto Amorim, 41, always stays at hotels when he travels.

"Especially under the current circumstances, I'd expect a hotel to be cleaner," said Amorim, a market researcher from Detroit. "I think that chains like Hilton, Accor, SPG, etc., have more strict rules in place and that they're holding each property accountable."

Still, when he stayed at the Swissotel in Chicago over the July Fourth weekend, he bought his own supplies and cleaned the entire room anyway.

James Alexander, 32, rented a car with his boyfriend and drove from New York to the Berkshires the week after July Fourth. They stayed at boutique hotel Seven Hills Inn in Lenox, Massachusetts, in an effort to support small



Hotels are not as popular with travelers right now as short-term rentals. KWANCHAI KHAMMUEAN/GETTY IMAGES

businesses, and also because they weren't sure whether they'd get refunds on anything if they prepaid.

"We were very impressed with the social distancing and cleanliness measures they had in place," Alexander told USA TODAY.

But Dr. Keith Armitage, a professor at the Case Western School of Medicine in Cleveland, told the USA TODAY Network earlier this summer that a home rental might actually be safer.

"The ideal situation would be an Airbnb or a rental that had been empty for a couple of days," he said.

Regardless of which is safer, the data is clear: Short-term rentals are more popular right now.

"It looked like one of those viral videos you see with way too many people."

Mike Naypauer, vacationer in Virginia Beach, Virginia speaking of an encounter at his hotel

'An unequal impact'

Hotels have traditionally had higher occupancy rates than short-term rentals, according to a global analysis of 27 markets around the world from January 2019 through June 2020. Data firms STR and AirDNA, which analyze short-term rental trends, worked together on the analysis.

But then the pandemic struck. Hotel occupancy fell 77.3% at the end of March compared with the previous year. Rental occupancy fared better, dipping 45.1% for studio and one-bedroom rentals, and 46.2% for two- or more bedroom rentals.

The crisis for hotels was twofold.

"First, as quarantine restrictions, social distancing and economic troubles took hold, many business meetings, conferences and other events were canceled," wrote authors Will Sanford, a research analyst at STR; and Dillon DuBois, a product marketing manager at

AirDNA. "Given the hotel sector's reliance on demand from group and business travel, this had an unequal impact on hotel occupancy."

Short-term rentals initially saw a dip in bookings, plummeting 47% from more than 2.3 million in January to 1.2 million by April. Bookings crept up in the following months, which researchers attribute to several factors:

- Short-term rentals could make social distancing more feasible, with multiple bedroom-units and whole homes to rent.

- More homes are in rural and/or remote vacation markets, a boon for travelers seeking to leave urban areas amid spiking COVID-19 cases.

- Most have full-service amenities, including kitchens, making longer-term stays more convenient.

The average length of a guest stay has ticked up 58% during the pandemic.

This thinking played out earlier in the pandemic. Omer Rabin, property management software company Guesty's managing director of the Americas, told USA TODAY earlier this year about the increasing length of stay trend. Historically, the average length of stay was consistent at around 3.6 to 4.2 days. That average shot up to an unprecedented eight days at the end of March.

From June 1 to Aug. 24, the average length of stay in the U.S. was 4.24 days, a 19% increase from the same time last year. The average length of stay peaked in the last week of July at 7.5 days.

When will hotels recover?

U.S. hotel demand likely won't see a full recovery until 2023, according to a forecast from STR and consultant Tourism Economics. The industry is also facing a historic wave of foreclosures, according to a report from trade group American Hotel & Lodging Association, which also noted that the number of delinquent hotel loans is higher now than even during the Great Recession of 2007-2009. The AHLA is pushing for legislation in Congress to further aid in the ailing industry.

STR and Tourism Economics said re-

cently that it expects average hotel occupancy of 40% this year, slowly climbing to 52% in 2021. That's down from a healthy 66% in 2019.

Hilton CEO Chris Nassetta said during the company's second-quarter earnings call this month that he expected Hilton hotels to be in the 45% to 50% occupancy range, and that summer leisure travel will bleed into fall given that kids won't be going back to school, or will be doing so virtually. Marriott CEO Arne Sorenson said he was "optimistic" about travel's recovery.

The coronavirus will weigh heavily on travel through at least the first quarter of 2021, said Adam Sacks, president of Tourism Economics. Sacks expects a cautious recovery in the first half of next year, with stronger growth in travel in the second half.

But for now, it's up to guests to decide whether they can stomach potentially uncomfortable encounters with fellow travelers.

Vacationer Mike Naypauer and his family mostly ordered food through DoorDash and ate in their room at the Hilton Oceanfront in Virginia Beach, Virginia, earlier this summer, but also did some outdoor dining. They went to the beach and pool when it wasn't crowded; elevators were a spot where they encountered close contact with others, and they had to avoid the rooftop pool.

"It looked like one of those viral videos you see with way too many people," Naypauer said.

U.S. hotels have been busier this summer in beach locations like Norfolk, Virginia.

According to STR data, the only area to hit more than a 60% occupancy level the week ending Aug. 15 was Norfolk/Virginia Beach, Virginia, at 65.3%. Some of the lowest occupancy levels occurred in Orlando, Florida (29.9%), and Oahu Island, Hawaii (22.8%), where Gov. David Ige recently extended the ban on out-of-state tourists through September and reinstated the interisland quarantine rule.

Contributing: The Associated Press



American Planning Association

Creating Great Communities for All

January/February 2019

PAS MEMO

Short-Term Rentals: Regulation and Enforcement Strategies

By Jared E. Munster, PHD, AICP

Short-term rentals, home sharing, vacation rentals, Airbnb: regardless of what you call the concept, it is clear that the new sharing economy has worked its way into virtually every residential area in the country.

Short-term rentals (STRs) can be defined as the rental of all or part of a residential dwelling unit for a duration of occupancy of less than 30 days. They have raised the passions of free-market advocates who believe that the government should not regulate property rentals, as well as neighborhood activists who fear that STRs will degrade neighborhood cohesion and price out the very culture and experience visitors are venturing into neighborhoods to embrace. This conflict, as well as the challenge of attempting to regulate what is at its very core a residential occupancy, make the role of the planner critical in developing clear regulations that balance neighborhood concerns with practical limitations on how far local government can intervene in rental agreements for private property.

The City of New Orleans Department of Safety and Permits (DSP) has developed and implemented a regulatory regime that has been internationally cited as a model for balancing the inescapability of this use with the protection of neighborhoods and residents. Over the course of several years, through formal planning studies, zoning ordinance text amendments, and prolonged negotiations with listing platforms, residents, interest groups, and neighborhoods, the city developed a robust package of practical and enforceable regulations that provided the market flexibility required by private industry.

This *PAS Memo* provides a case study of New Orleans's experience with this phenomenon and offers strategies and lessons learned for planners as they navigate this highly contentious issue.

Background and History of Short-Term Rental Regulations in New Orleans

New Orleans's history with transient rentals begins far before the age of digital bookings and informs the conversations of the last several years. In the 1960s, the Vieux Carré, or French



Figure 1. New Orleans's Vieux Carré (French Quarter).
Flickr photo by Pedro Szekely (CC BY-SA 2.0).

Quarter, the oldest residential neighborhood in the city (Figure 1), was losing its inhabitants at an unsustainable pace. Hotel and tourism-supportive development were destroying the historic buildings that made the area attractive to tourists and pricing out the residents, businesses, and artists that created the unique nature of the neighborhood.

In 1969, a New Orleans City Council moratorium on hotel or transient lodging development in the Vieux Carré stemmed the tidal wave of hotel development and stabilized an otherwise at-risk community. This moratorium was converted to a permanent prohibition on hotel development through subsequent zoning changes. Even today the basis for opposition to tourist lodging in the Vieux Carré is still the nearly 50-year-old moratorium.

Early Attempts to Regulate Short-Term Rentals

As the nature of tourism changed through the years, residents began renting out homes or apartments during major festivals, such as Mardi Gras or the Jazz and Heritage Festival. New Orle-

ans, as a major tourism destination hosting large-scale events on an annual basis, became a laboratory of creative ways to rent property.

The practice benefitted both parties to the transaction. New Orleans residents could vacation out of town during periods of high tourist volume when many businesses temporarily close or become overwhelmed. Visitors had access to a new pool of accommodations that could host families or groups too large to share a single hotel room or afford a traditional hotel.

This very capitalistic pairing of supply and demand naturally coalesced into a local cottage industry with unintended—but certainly not unforeseen—consequences. Over time, local property owners and outside investors noticed the demand for non-hotel accommodations and began acquiring property for the sole purpose of renting to tourists. This began displacing local residents, turning once-thriving neighborhoods into seasonal entertainment venues.

To address this burgeoning concern, the New Orleans City Council adopted Ordinance 21606 M.C.S. in 2004. This strong attempt by the city council to rein in vacation rentals ordained that:

[i]t shall be unlawful for any person to knowingly offer to rent for monetary compensation for a period of less than 30 days or, in the case of premises located in the Vieux Carré District, 60 days, any living accommodations in the city if the premises offered for rent are not lawfully licensed or permitted for such use. (§54-491.1(b))

Should a property owner or lessor be prosecuted for the offense, the publication of such an offer to rent in print or electronic media would “create a rebuttable presumption that the person had knowledge of the offer to rent” (§54-491.1(d)).

At the time, the city’s comprehensive zoning ordinance contained a defined use category of “Transient Vacation Rental” that provided three primary criteria in the classification of the use:

- the property was successfully rented for periods of less than 30 days (not just advertised as such)
- the property was rented to “non-residents”
- these rentals occurred over the course of a year or longer

Transient Vacation Rentals were allowed only within the Central Business District zoning districts, not any residential or business districts.

Unfortunately, however, the construction of these laws made enforcement virtually impossible, which led to growing frustration among neighbors who believed that the city was unwilling to enforce its own regulations regarding these uses.

The language of the 2004 ordinance outlawed only the “offer to rent” a living accommodation—it did not prohibit the action of executing such a rental. Additionally, the restriction was housed within the city’s criminal code, which meant that any citation for the misdemeanor would have to be issued by the police department and the violation adjudicated by a

judge in the city’s municipal court. A second concern was the potential for a constitutional claim that the city was violating the free speech rights of property owners, because the restricted speech was not advertising a service prohibited by law.

DSP had administrative jurisdiction over the Transient Vacation Rental zoning provisions, but as noted above, the city was required to prove that rental actions of less than 30 days had physically occurred over a period of one year or longer.

Even with these limitations, in 2015 DSP chose to bring nine properties known to be in violation through its administrative adjudication process. Success would establish that DSP could build a prosecutable case under existing law where suitable documentation for violations existed and take actions against the hundreds of properties that had received complaints. However, if after years of compiling evidence, building cases, and partnering with neighbors to collect evidence the city was judged unable to meet its burden of proof in the administrative hearings, the cases would be dismissed.

A primary element of DSP’s cases was the user reviews publicly available on websites such as airbnb.com. By matching neighbor complaints and documentation against the dates provided in the published reviews, DSP was confident in its ability to adequately meet the three-pronged burden of proof for operation of a Transient Vacation Rental. Recognizing the limitations of this body of evidence, DSP concentrated its efforts on the most egregious violators for which there was significant documentation.

But the adjudication hearings were never held. Days before the scheduled hearing, one of the property owners filed for a temporary restraining order against further proceedings due to vagueness of the charges and a constitutional challenge to the city’s administrative hearings process. After several weeks of correspondence with the plaintiff’s attorney, the city agreed to suspend prosecution of the nine cases. This agreement marked the end of active enforcement efforts against alleged STRs pending a new body of law.

Developing the New Regulatory Regime

The need for an updated regulatory package was now clear. Beginning in late 2014, a rough framework of reform began to take shape. If transient vacation rentals were legalized, the regulation process would have to be understandable and transparent to inspire confidence in the community. From these guiding principles, DSP, in coordination with the City Planning Commission and community stakeholders, began to formulate a new approach to regulation.

Whatever framework emerged had to be easily enforceable with a readily demonstrable burden of proof. But before the city could create a solution, it had to understand the problem.

The Short-Term Rental Study

In response to the now-demonstrated inability of the city to administratively enforce its transient vacation rental regulatory structure, in August 2015 the New Orleans City Council directed the City Planning Commission to study the regulation of these uses.

Over the course of nearly six months, the commission solicited information from neighborhoods, industry groups, hosting platforms, peer cities, and other agencies within the city to gain a full understanding of the nature of STRs as a land use—from the regulatory issues faced by DSP, to perception and documentable issues from neighborhoods, to the projected benefits of legitimizing the use fostered by the hosting platforms. Staff held more than a dozen meetings and multiple public hearings, and over 400 written comments were submitted to the commission (Rivers 2017).

In addition to these outreach efforts, the commission embarked on a study of documentable evidence and national best practices. In evaluating the practices of cities throughout the United States to determine previous regulatory successes and failures, the study found several key points (New Orleans City Planning Commission 2016):

- these uses fall into different categories and should be regulated differently based on location and rental type
- there must be performance standards to which operators can be held responsible to ensure the stability of neighborhoods
- fees and fines must be set at the appropriate level to encourage compliance while being impactful enough to penalize illegal behavior

Based on this study, staff presented four use types to the commission for consideration before a recommendation was made to the City Council: accessory, temporary, principal residential, and commercial (Figure 2). The commission voted to remove the “principal residential” type on the concern that this would cause exactly the scenario community groups feared most—turning residences into hotels and displacing residents.

In consultation with DSP, commission staff also recommended a series of requirements and performance standards creating an easily enforceable, comprehensive list of guidelines to ensure neighborhood compatibility, guest safety, and meaningful regulatory enforcement. These standards also provided many requirements with a low burden of proof for administrative enforcement, considered key to a high rate of compliance with the new regime.

Negotiation and Policy Priorities

The city knew that not gaining buy-in from the listing platforms would be a recipe for failure. Throughout policy negotiations, only Airbnb actively engaged with the process, which created the unintended result that compliance was easier for its platform than others. However, the city would work with other platforms following launch to bring compliance as close as possible in consideration of demonstrated technical and data considerations.

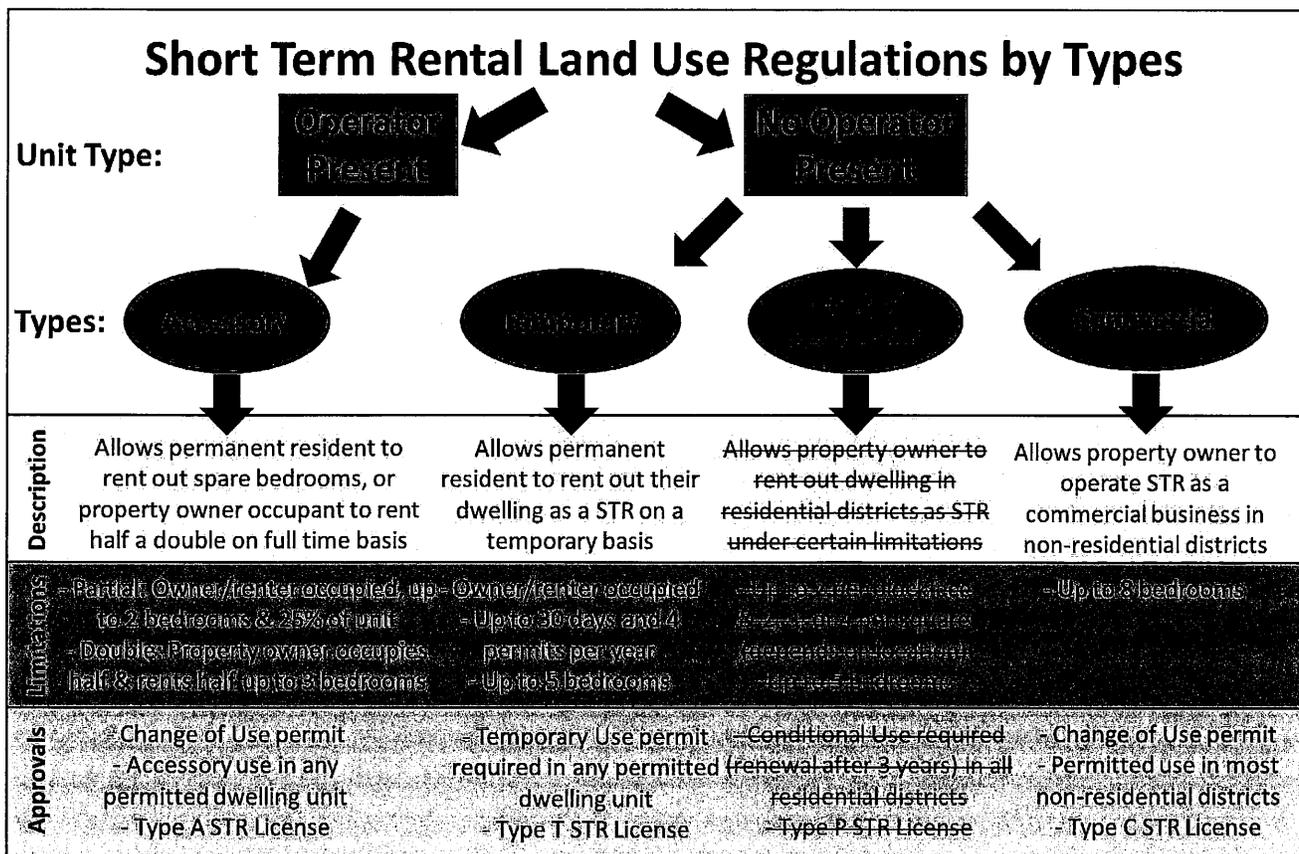


Figure 2. Short-Term Rental Types. Courtesy New Orleans City Planning Commission.

The New Regulations

The four ordinances adopted by the New Orleans City Council in 2016 established the provisions in the city code and zoning ordinance required to successfully implement the recommendations of the City Planning Commission’s study and regulate STRs in New Orleans. Ordinances 27209 and 27204 provided the framework of the enforcement regime, including easily enforceable standards to allow swift citations of property owners who did not comply with the regulations. The other two ordinances addressed taxation and investment into the city’s Housing Improvement Fund as mechanisms to turn STRs into a benefit to the communities they would be occupying.

Ordinance 27204 M.C.S. This ordinance (codified as §26-613 et seq.) established a licensing and enforcement regime, provided for a public registry of licensed STRs as well as provisions for datasharing with the listing platforms, and set fees and penalties for the program. The licensing provisions formally created three license types (accessory, temporary, and commercial) corresponding to concurrently created zoning land-use types, and provided safety and compliance standards by which DSP would evaluate applications for these licenses. To maintain a low barrier to entry into the permitting process, applicants were permitted to comply with these provisions by attestation, with DSP following up to verify compliance. Falsification or misrepresentation of any material information in the application process would result in the immediate revocation of the license.

Ordinance 27209 M.C.S. This zoning text amendment ordinance implemented the changes outlined in the city planning commission’s 2016 study. It defined the STR land use generally, as well as the specific STR subcategories (accessory, temporary, and commercial), and imposed standards and requirements for the three use types. Additionally, this ordinance amended the permitted use tables to designate where STRs would be permitted as by-right or conditional uses. Accessory STRs were permitted within any legal dwelling unit located within an owner-occupied single- or two-family dwelling (except for within the Vieux Carré). Temporary STRs would be permitted in any legal dwelling unit (except within the Vieux Carré) without consideration of owner occupancy but with a 90-night occupancy limitation. Commercial STRs would be permitted in virtually every commercial zoning district, including the Vieux Carré Entertainment District (Bourbon Street) but excluding the remainder of that neighborhood.

The standards can be broken into two primary categories (see table below). Regulatory compliance standards are black-and-white requirements for which the city can easily demonstrate noncompliance, while performance compliance standards are more subjective in nature and require a higher level of documentation to determine noncompliance.

Regulatory Compliance	Performance Compliance
<ul style="list-style-type: none"> • All short-term rentals require a license. • License placard to be prominently displayed in a manner visible from the public right-of-way. • License number to be posted on any rental listing. • Any rental listing must match the occupancy limitations of the approved license. • Any short-term rental has to have the outward appearance of a residential building. • Short-term rentals may not occupy any accessory structure, outdoor space, or recreational vehicle. 	<ul style="list-style-type: none"> • Only one party of guests is allowed in a short-term rental unit. • The number of guests may not exceed occupancy limitations stated on the license. • An in-town contact must be available to address any unruly guests or dangerous situations. • The rental shall not adversely affect the residential character of the neighborhood. • The rental shall not generate noise, vibration, odors, or other effects that unreasonably interfere with any person’s enjoyment of their residence.

Ordinance 27210 M.C.S. This ordinance imposed a \$1.00-per-night fee on STRs above the city’s standard tax structure directed to the Neighborhood Housing Improvement Fund, a limited-access fund that can be used only for community development under specific guidelines.

Ordinance 27218 M.C.S. This ordinance authorized the mayor to enter into a cooperative endeavor agreement with Airbnb, which agreed to collect and remit taxes on behalf of its users by including the required taxes and fees at the time of booking. This saved the city from creating tax accounts for every licensed property and requiring property owners to calculate and remit taxes individually. This was part of the negotiation process with the listing platform that would ease the regulatory burden on both the city and licensees—creating a “win” on both sides of the taxation transaction.

Safety & Permits Enforcement Process

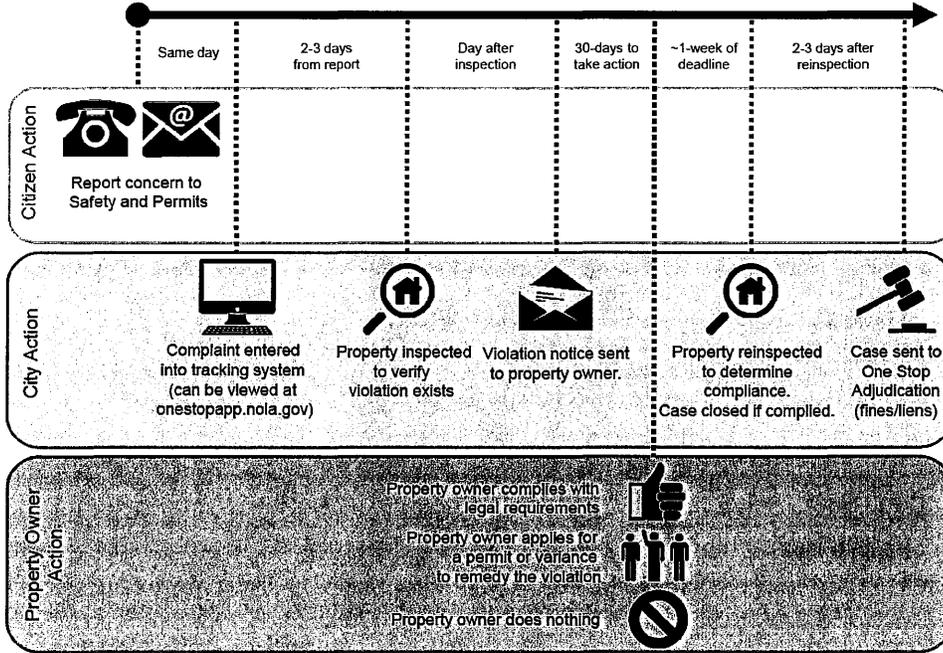


Figure 3. DSP's short-term rental enforcement process. Courtesy City of New Orleans Department of Safety and Permits.

Negotiations at this phase also took place with community leaders, city council members, and interest groups to create a structure that would be acceptable to the majority of stakeholders. Key points were appropriate annual limitations on temporary rentals, the mechanics and scope of data sharing, and the level of control platforms would have over encouraging compliance among their users.

Annual limitations on rental nights was one of the most public points of debate as the legislative process drew to a close. Type A (accessory) and Type C (commercial) licenses would have no limitations on annual rentals, but Type T (temporary) licenses would be subject to an annual cap on the number of nights the property could be rented out. STR advocates pushed for periods as long as 180 nights, while opponents, short of a ban, believed that the spirit of a "temporary" license could be satisfied with a cap of 30 nights per year (which was also the position of the commission). The city council ultimately decided to allow Type T rentals across the city with a maximum annual rental of 90 nights.

The remaining two points of negotiation, data sharing and platform assistance in overall compliance, were resolved as two sides of the same coin. The city would require data on rentals to enforce the 90-night cap on Type T licenses, and the listing platforms agreed that assistance from their side would boost user compliance with the new regulations and provide better data to track rentals, while the new standards would help ensure the safety of guests.

As part of the overall agreement, the platforms would voluntarily remove any unlicensed listings from their platform after a reasonable compliance period. The city would coordinate a pass-through registration program that would

allow applications to be filed through Airbnb's website, then uploaded into the city's permitting and licensing database. Additionally, Airbnb agreed to share certain anonymized data each month: a unique identifier for each listing, the number of nights rented in the last 30 days, and the total nights rented year-to-date. If additional information was required, the platform agreed to an administrative subpoena process, all of which was codified as Section 26-620 of the New Orleans City Code.

Implementation and Enforcement of STR Regulations

On December 1, 2016, the New Orleans City Council adopted four ordinances to implement the new STR program. The ordinances provided for regulation and taxation of STRs, as well as other administrative functions that aided the process (see sidebar).

As a result of the legislative action, DSP created the Short Term Rental Administration to serve as the single point of contact for the public in the licensing and enforcement process. Without this administrative office, the authority of implementation and enforcement would have been spread across several administrative units within DSP.

Building Public Confidence

As the agency responsible for licensing and enforcement, DSP knew that public confidence from day one would be critical for success. To demonstrate the city's intention of complete transparency and full compliance, the website nola.gov/str was launched on December 2, 2016, with all available information on the program: the data available from the 2016 study, the subsequent ordinance adoption process, and approximate timelines for program benchmarks.

Issued Short-Term Rental Licenses	
License Number	17STR-04299
Address	4466 Spain St
License Type	Accessory STR
Current Status	Issued
Expired	No
Expiration Date	2019-05-15 00:00:00.000
Bedroom Limit	3
Guest Occupancy Limit	6
Link	Click Here
Contact Name	Lisa Perrilloux
Zoom to	33.12222222

Figure 4. The city's interactive short-term rental registry and map. Courtesy City of New Orleans Department of Safety and Permits.

Within days, staff updated this website with information distilled from the adopted ordinances, simplifying the requirements and creating tables to help users understand the zoning restrictions. There were four months from adoption to the April 1, 2017, effective date to create internal and external processes for something that had never been tried before. DSP would focus its attention on three areas during this period: development of a robust internal process, transparency in process and enforcement, and development of a strong enforcement presence.

Development of Internal Processes

Internal processes were the first focus. Database configuration started early in the legislative process, which then allowed DSP to focus on other areas of internal process standardization: the pass-through connection from the city's database to Airbnb, a comprehensive analysis of license application workflow, and development of the enforcement regime that would be implemented.

Ultimately, the pass-through process was not a panacea of compliance as many hoped. Staff required information for license processing beyond that needed by the listing platform, so separate correspondence with every applicant was still required, and every applicant had to return to the city's permitting and licensing portal (onestopapp.nola.gov) to pay for the license prior to issuance.

A license application workflow needed to be developed and standardized. The expectation of a same-day turnaround, paired with the need to streamline the process to the furthest extent possible for pass-through integration, led DSP to reimagine a number of internal processes and ways staff could be cross-trained to address peak workloads. Printed and digital forms had to balance information that the average applicant

would have available against whether the city was capturing all necessary data in the license review process.

This same level of creativity became necessary in developing enforcement protocols. The new regulations required a methodology for how staff would collect data, record violations, and build cases (Figure 3, p. 5). DSP could then use that standardization to set community expectations for enforcement action.

Transparency in Process and Enforcement

The commitment to providing all available information to the public in an easily digestible format remained the policy of DSP. A public-facing portal for its permitting and licensing database (onestopapp.nola.gov) that allows users to search for activity on a given property in real time was made easily searchable for STR license approvals or enforcement cases.

The ordinances took transparency one step farther in requiring publication of a list of all STR licenses, along with the property address, license holder name, and the contact information for the responsible party. This allows a neighbor to contact someone about a problem with a rental. To fulfill this requirement, DSP coordinated with the city's Office of Information Technology to develop an interactive STR registry and map. This tool allows users not only to search by name or property address, but also to see all license applications on a map of the city (Figure 4).

During this time, DSP leadership participated in numerous neighborhood meetings to outline the process, regulations, guidelines, and enforcement strategies. The focus was on implementing a program that would succeed and deliver on the promise that was made to the council and, more importantly, the community.

City of New Orleans
Department of Safety & Permits
Short Term Rental Administration

Field Warning

Location: _____
Date: _____ Time: _____

This notification is intended to inform the owner/operator of this premises of failure to comply with the City's Short Term Rental requirements. Legislation and information on Short Term Rentals in New Orleans is available at www.nola.gov/str.

This property has been reported as an operating short term rental, but our records indicate no application on file.

This property is registered as a licensed short term rental, but no license is posted.

This property is licensed as a Short Term Rental, but we have received a complaint of excessive:

- Noise
- Vibration
- Clutter
- Odors
- Other effects

Which unreasonably interferes with neighbors enjoyment of their residence.

This property is registered as a licensed short term rental and there have been reports of unpermitted commercial or social events that may result in license revocation.

This property has a license posted, but our records indicate that the license was issued for a different location/address.

This property has been reported as an operating short term rental, but is located in a portion of the French Quarter where Short Term Rentals are prohibited.

Please contact the Short Term Rental Administration at 504-658-7444 or shorttermrentals@nola.gov for additional information. A formal violation letter will also be mailed to the owner of record within the workable timeline of our administrative procedures.

City of New Orleans
Department of Safety & Permits
Short Term Rental Administration

Figure 5. Field warning tags to flag short-term rental noncompliance. Courtesy City of New Orleans Department of Safety and Permits.

Importance of a Strong Enforcement Presence

DSP needed to assure doubtful residents that enforcement would be both proactive and responsive. To that end, the agency took two new simple, cost-effective actions.

First, DSP developed “field warning” tags to post on STR properties where a violation was believed to have occurred (Figure 5). These were simple half-sheet forms with checkboxes for common violation types, allowing an inspector to post a notice to the property owner on the spot and document the posting via photograph. But most importantly, these documents are hot pink and unmistakable as a “scarlet letter” of STR noncompliance to show neighbors that inspectors were on the job.

The second action was to brand DSP’s vehicles as such. Prior to 2017, all DSP vehicles were tagged as city vehicles, but these markings did not indicate to which department the vehicle belonged. Residents wanted DSP to work into the evenings and late at night during major events to maintain compliance

with the STR performance standards provided in the city code. Based on these community concerns, vehicles were branded as “Department of Safety & Permits” to provide a level of visibility critical to maintaining the confidence of neighbors in the overall regulatory regime.

One last key element of the city’s STR regulations is based on a long-standing provision of the building code that authorizes termination of utility services if a property is found to be in violation of the zoning ordinance. To eliminate any potential challenge to the use of these provisions, the enabling legislation for the licensing regime explicitly states that discontinuance of electrical service is an appropriate penalty for violation of the licensing provisions (§26-618).

Within four months of program launch, the Short Term Rental Administration sought its first utility disconnect order against a property owner in the Vieux Carré who would not remove online listings or stop using the property as a STR. The city’s utility provider terminated electrical service to the dwelling, and from that point compliance was swift and the property was soon sold.

Status of STR Administration After Year One

The STR program in New Orleans celebrated its first anniversary on April 1, 2018, and DSP is proud of the success achieved in the implementation of the program.

In the first 12 months, the Short Term Rental Administration reviewed more than 8,000 applications and issued 4,477 licenses (Figure 6). This generated \$979,274 in permit fees, exceeding expectations and completely covering the administrative costs of the program. Based on the 2016 study’s estimate of 4,000–5,000 STRs operating in New Orleans and the number of licens-

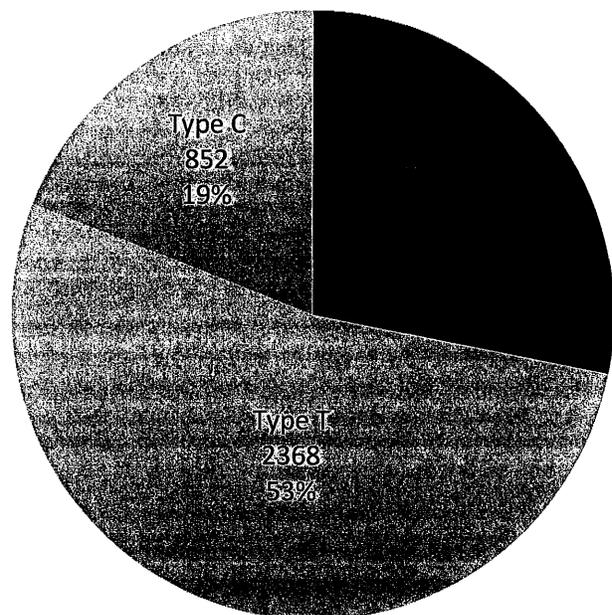


Figure 6. Breakdown of STR licenses by rental type. Courtesy City of New Orleans Department of Safety and Permits.

es issued during the first year of program implementation, DSP believes the compliance rate is in the high 90 percent range.

In terms of enforcement activities, DSP opened 1,719 violation cases between January 1, 2017, and April 1, 2018, from which 280 administrative hearings were held and \$268,538 in total fines assessed.

The mechanisms for identifying and enforcing rentals in prohibited zones and licensing requirements were successful, but challenges remained. Type T rentals made up the largest share of licenses issued, but also proved to be the most problematic from both a regulatory and neighborhood perspective. This became the single largest liability to the program.

Key to administering the Type T license was the ability of the city to monitor and enforce compliance on the 90-night annual rental cap provided in the adopted regulations. While the listing platforms initially represented that they would be supportive of the licensing program and provide the necessary information to DSP, both Airbnb and HomeAway subsequently declined to provide complete rental documentation based on their interpretation of the Stored Communications Act (see sidebar). As a result, while monthly reports could tell the enforcement team how many nights all STRs were rented, those

numbers were not tied to specific properties or listings to allow meaningful, consistent enforcement action.

Because of the problems caused by the Type T STRs, the public was not completely satisfied with the initial iteration of the STR program. While the city was proud of the overall success rate in terms of registration and enforcement effectiveness, the inability to effectively police the annual rental cap led to a public pushback against elected officials who were viewed as being nonresponsive to this inability.

Implemented and Proposed Changes to the Program

The city's municipal elections were held in the fall of 2017, and STRs featured prominently in city council campaigns. Of the three district councilmembers running for reelection, the only one reelected was the sole councilmember to vote against the STR regulations. The new city council came into office with a clear intention of revisiting the regulatory regime.

During the transition period, then-Councilmember LaToya Cantrell (now mayor) initiated two separate actions that would lay the foundation for updating the city's STR regulations. The first was the proposal and ultimate adoption of a zoning text amendment to require conditional use approval for some STRs

The Stored Communications Act and Its Effect on STR Enforcement

As planners negotiate the regulatory and enforcement balance of STR program development, the city or county legal team should be consulted in the early stages of the process about the Stored Communications Act (SCA), an element of the Electronic Communications Privacy Act of 1986 intended to ensure the privacy of electronic records created by a company about its customers. If communities are developing local regulations reliant on data sharing by hosting platforms, they must be aware of the SCA and ensure the proper provisions are in place to minimize its impact on STR enforcement efforts.

New Orleans's data-sharing provision within the new licensing regime required routine reporting of basic rental information to help the city monitor compliance with the 90-night rental limitation for Type T rentals. Key to the effectiveness of this agreement was the provision for issuance of administrative subpoenas to get specific user data based on potential violations identified based on the anonymized data being provided on a monthly basis. While the hosting platforms suggested the administrative subpoena provisions during regulatory negotiation, once these subpoena were issued they became less-than-willing partners in providing the necessary data to match anonymized data to specific properties or licenses.

Under the SCA, platforms have to provide any requested data subject to either a subpoena issued by a court or an administrative subpoena authorized by federal or state statute. In the case of New Orleans, the subpoena authority under which DSP requested this information was the city's home rule charter, which is enabled by the Louisiana Constitution. However, the hosting platforms deemed this insufficient to turn over

anything more than "basic subscriber information" as provided by the SCA and subsequent jurisprudence. (There is currently no legal consensus on how the SCA should be applied to listing platforms.)

The "basic subscriber information" provided illustrates how difficult Internet regulation can be, particularly for a local government. To fill in the gap between specific property and anonymized identification number, HomeAway and Airbnb provided the first and last name of the account holder and their user identification number, email address, and telephone number—but not the license number issued by the city associated with the listing or the property address. As a result, city staff needed to match names, email addresses, and telephone numbers with over 4,000 issued licenses. This highlighted one problem that DSP had not planned for: licenses issued to property owners but listings posted or managed by a third party.

In revisiting the 2016 regulatory structure, deficiency in data production was one of the primary concerns. Had the city been aware of the industry's use of the SCA as a shield against providing the information required to properly implement and enforce the proposed program, the regulations as initially adopted would have likely looked quite a bit different. This would have likely ranged from creating a licensee-reporting requirement to elimination of the Type T license entirely. What is certain is that the changes being evaluated by the city planning commission and the city council in 2018 are keeping the SCA in the forefront as they evaluate how best to modify the STR licensing regime to ensure compliance and enforceability.

in the city's historic urban core business districts. This change was made in response to the concerns of neighbors that structures containing apartments were being converted into "hotels" in otherwise neighborhood-scale commercial corridors. The second action directed the City Planning Commission to conduct a full study of the new STR regulatory regime.

When the new city council took office in May 2018, it wasted no time in delivering on the promises made to its constituents. At the second meeting of the new term, the council adopted Motion M-18-195: a partial moratorium on new STR licenses with a full prohibition on Type T STR licenses in the historic areas of the city, the central business district, and mixed use districts, and a prohibition of new Type C STR licenses on the first floor of mixed use buildings, though they would remain permitted on upper floors. This moratorium was scheduled to last nine months while the commission completed its study and the city's regulations were updated.

The commission completed its updated study in early October 2018 (New Orleans City Planning Commission 2018). While the study makes several recommendations, the most substantial is the elimination of the problematic Type T STRs. Type C STRs would carry on, but the Type A STRs would be redefined to cover nearly any owner-occupied property. A new third type of license, valid for special events only, would allow owners or rental tenants to rent out a permanently occupied dwelling unit for not more than 14 days per year. At the time of writing, the city council has not yet taken action on the report, but it is likely that that will do so within the next several months.

Lessons Learned

STRs are a planning challenge: they are residential units by design but can act like hotels in their impact on a community. A proliferation of these uses—particularly in tourism-heavy cities—can lead to significantly increased housing costs and begin to price out actual residents in favor of residents for-a-day. New Orleans's experience in studying and regulating STRs highlights several key considerations in dealing with this issue.

Ensure that regulations are clear and enforceable. In developing the STR regulations, planning staff worked closely with DSP to ensure that enforcement was based on the information likely to be available. Compliance is easily provable for regulations such as requiring a license and requiring that license to be posted. Some STR regulations lie in more of a gray area, such as nuisance prohibitions, but with rigid enforcement standards and vigilant neighbors these have also proved enforceable.

Partner with listing platforms when possible. Partnerships can either be formal or informal, but platform buy-in helps ensure consistent communication on regulatory requirements and may aid in enforcement. The city's data-sharing agreement with Airbnb allowed DSP to coordinate actions to de-list unlicensed properties posting on that platform. While this was not a complete solution to illegal rentals, it greatly improved compliance rates throughout the city and helped stop rental listings in the Vieux Carré.

Recognize your limitations. Initially, residents and councilmembers pushed to regulate STR listing platforms in the same way that DSP regulates transportation network companies (TNCs). Where the city has the authority to regulate TNCs due to the long-standing regulation of vehicles-for-hire, that level of regulatory authority was not possible for dwellings, where state law prohibits local governments from regulating contractual transactions relative to real property. To address this lack of direct regulatory authority, the city negotiated data sharing to the extent possible and crafted regulations that could withstand legal scrutiny.

Coordinate STR policy making with policies surrounding affordable housing. While New Orleans began to take this approach by requiring contributions to the City's Neighborhood Housing Improvement Fund, there was no consistent strategy for the investment of those fees. A combination of this and the proliferation of Type T STRs had the effect of pricing out long-time residents and artificially inflating property values due to the expectation of return on investment.

Conclusion

During 2017, the City of New Orleans became a model for STR regulatory compliance across the nation. Thanks to data sharing and some regulatory assistance from Airbnb, DSP was able to successfully license nearly 5,000 short-term rentals. This represents a compliance rate above 90 percent in less than one year, while many peer cities struggle to reach a 20 percent compliance rate after one year.

While the city was proud of this achievement, it understood that the regulatory regime would need to be revisited after the first year to evaluate neighborhood impacts and overall compliance—and indeed, regulatory enforcement proved more difficult, especially for the Type T temporary STR licenses. The city hopes to resume enforcement of licensing standards in cooperation with listing platforms as this regulatory revision comes to a close.

Just as New Orleans is now revisiting the initial regulatory structure to respond to changing dynamics of the industry and public sentiments, planners will need to be prepared to continually address issues like STRs for years to come. There is no formula which can be applied across every jurisdiction to address the impacts of the use and the concerns of residents. Rather, it is our job to understand the implications of decision making, continually observe the effects of those decisions, and recommend change when necessary—recognizing that maybe we were wrong the first time.

Regulation of emerging technologies is not new to planners, and STRs will not be the last challenge of this sort we face as practitioners. Combining best practices and lessons learned in New Orleans can help communities across the country develop and implement regulatory structures that will adapt to emerging technologies and industries while also protecting residents and the stability of communities.

About the Author

Jared E. Munster, PHD, AICP, was the director of the Department of Safety and Permits for the City of New Orleans from No-

vember 2012 through June 2018 and worked closely with the City Planning Commission, City Council, and the Landrieu and Cantrell administrations in shaping the regulatory and enforcement processes of the New Orleans Short Term Rental Program. Munster holds an undergraduate degree in urban studies and planning, a master's degree in urban and regional planning, and a PhD in urban studies from the University of New Orleans. He is also a certified floodplain manager and is presently serving as the interim executive director of the Regional Transit Authority of New Orleans.

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Considering regulation of short-term rentals in light of the sharing economy: Part 1

Brad Neumann, Michigan State University Extension - December 22, 2015

Short-term rentals are sometimes perceived as nuisances in neighborhoods, but the emergence of the sharing economy suggests communities may want to offer something for everyone in terms of lodging experiences for visitors of all kinds.

A short-term rental is generally defined as a commercial use of a residential property for a period of less than 30 days. Short-term rentals are an important land use activity to address in communities that have a significant tourism economy. In Michigan, short-term rentals are typically thought of as vacation properties rented either during the endless beach days of summer or the snow-filled ski and snowmobiling winter days characteristic of northern latitudes. However, this conventional thinking is sometimes associated with neighborhood opposition to short-term rentals resulting from unruly tenants, late night parties, and parking problems.

Given the growth in the sharing economy in recent years, only thinking of short-term rentals as 'vacation rentals' is not a complete assessment of the topic. Increasingly, travelers of all kinds are looking for different lodging experiences other than the conventional hotel or motel. These days, short-term rentals are also used by business travelers, patients and family members staying for medical treatments, and the casual passerby.

Communities that want to offer something for everyone in terms of lodging experiences for visitors of all kinds will want to allow short-term rentals to some extent in the community. Beyond the lake properties or those with trail access nearby, housing in traditional neighborhoods close to downtown are also attractive locations for visitors to

stay. Short-term rentals near downtowns and traditional centers may offer a lodging option that is missing, as some hotel chains have located in more suburban locations on the outskirts.

With the sharing economy in mind, a community will need to decide if regulations related to short-term rentals will address renting individual rooms in owner-occupied homes through services such as Airbnb, FlipKey, and HomeAway, in addition to bed and breakfasts and renting entire homes or condominium apartments (e.g. 'vacation rentals').

Part two of this article explores the regulatory options for communities and offers some considerations related to definitions, process of approval, and review standards for short-term rentals.

Michigan State University Extension helps communities learn how to improve their social and economic appeal to create and retain jobs. Community leaders are given the tools they need to have a positive effect on their cities, villages, townships, counties and the whole state.

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Considering regulation of short-term rentals in light of the sharing economy: Part 2

Brad Neumann, [Michigan State University Extension](#) - December 22, 2015

Short-term rentals are sometimes perceived as nuisances in neighborhoods, but the emergence of the sharing economy suggests communities may want to offer something for everyone in terms of lodging experiences for visitors of all kinds.

[Part one](#) of this article introduced the idea of offering something for everyone when regulating short-term rentals in light of the [sharing economy](#). This article highlights regulatory options for communities and offers some considerations related to definitions, process of approval, and review standards for short-term rentals.

In Michigan, cities, villages, and townships have the authority to adopt regulations related to rentals either through the zoning ordinance or a separate police power ordinance. Counties with zoning have the ability to include such regulations in their zoning ordinance. Under a zoning ordinance however, property owners who had [legally](#) rented their homes prior to a zoning amendment would be grandfathered and would be allowed to continue their rentals as they did before the ordinance amendment (see [Understanding nonconformity: Are you 'grandfathered' in?](#)). Instead, rental regulations as a general police power ordinance are not required to allow the continuation of legal non-conforming uses. It is important to keep in mind that Michigan counties do not have police power authority and cannot adopt stand-alone ordinances on topics like short-term.

One of the tricks to regulating short-term rentals is to define them as a commercial use, so that they are treated similar to other lodging enterprises and different from residential uses. This approach reflects the Constitutional protection of equal treatment in which similarly situated individuals must be treated similarly. (The distinction of short-term rental

being commercial is reinforced by court rulings on the issue, and communities which have not carefully made that distinction have not fared as well in courts.) Then, a community would list short-term rentals as a special land use in the appropriate zoning districts based on public engagement on the topic as to where the special use is generally acceptable. The community would then hear individual requests for a special land use permit for a particular property in those zoning districts where it is listed as a special land use.

Another step for a community is to identify the standards that will apply when reviewing applications from property owners for the short-term rental of their property. Such standards should include discretionary and non-discretionary standards. A discretionary standard is something like “The use will be harmonious with the surrounding neighborhood.” This is a type of standard that a planning commission would need to discuss in an open meeting with opportunity for public comment. A non-discretionary standard on the other hand is something that is more black or white, for instance, “two off-street parking spaces shall be provided on site for each short-term rental unit.” This standard is either met in the pending application or it is not.

Considering the sharing economy, communities may find it beneficial to consider all types of short-term rentals, beyond just the conventional ‘vacation rental’ home and develop a single set of standards that apply to all of them. Such a set of standards could possibly include licensing, allowable length of stay, number of rooms that can be rented, separation requirements for same rental types, parking, guest register, display of fire escape routes and owner contact information, and so on.

Communities should keep in mind that a zoning ordinance that completely excludes an otherwise legal or legitimate land use is suspect. If a municipality’s ordinance is silent on the issue of short-term rentals, it typically means short-term rentals are not permitted anywhere. Zoning ordinances that are written in a permissive format state the permitted use within the district and necessarily imply the exclusion of any other use not listed. Communities that do not allow short-term rentals or do not address the topic should ask ‘what’s the legitimate government purpose of prohibiting short-term rentals?’ Prohibiting short-term rentals may be a legally risky approach, even if motivations for doing so are thoroughly documented in the ordinance and master plan. It is important to note that any amendment to a community’s zoning ordinance should be reviewed before adoption by the community’s corporate attorney who is experienced in municipal and land use law.

[Michigan State University Extension](#) helps communities learn how to improve their social and economic appeal to create and retain jobs. Community leaders are given the tools they need to have a positive effect on their cities, villages, townships, counties and the

Short Term Rental Ordinance Considerations

The topic of Short Term Rentals ("STR") is one being discussed in almost every community: big, small, local, regional, state, national and international. The growth of STRs in Michigan has been exponential. From 2016 to 2018 the number of listings on the Internet in Michigan has grown by more than 233%, and from 2017 to 2018 with no signs of slowing down. In Leelanau County they grew by another 49% from 2018 to 2019.

Each community has to decide if an STR Ordinance is right for them and if now is the right time to enact an ordinance. It is good to keep in mind, however, that communities have found it easier, and less contentious, to enact an ordinance *before* it becomes a local crisis.

Start with:

1. Articulate the regulatory goals

Why are you considering this?

- Impact on neighborhood/community character
- Noise, parking and other nuisances – party towns
- Preserving year-round housing options for local residents

2. Understand the marketplace

What activity is currently taking place?

- Renting entire houses, bedrooms, and what are people paying
- Weigh the local government's goals with that of neighborhoods, motels, realtors, B&Bs, Chamber of Commerce or EDC, and others

3. Enforcement considerations

Know that the more complex the regulations the higher the cost for enforcement

- Have to be able and willing to enforce
- Have to regulate equally and fairly

4. Regulation options

Local government can determine how many and by what method

- Each community has different goals
- Can be regulated as a police power ordinance or through the zoning ordinance
- May want to determine the maximum number of STRs allowed, or
 - Not have a limit on the number of STRs
 - Restrict to certain zoning districts
 - Allow a specific number in each zoning district or neighborhood
 - Separate by a specific distance (example: 200' distance between STRs)

More Information

www.hostcompliance.com

Host Compliance is a private firm that offers services in implementing and enforcing short-term rental ordinances. They do have a collection of worthwhile articles, webinars, and guides under their "Resources" tab on the website.

www.nar.realtor

For information supporting STRs search this National Association of Realtor website for a host of articles and blogs on the subject.

Definitions and Applicability

Close attention should be paid to defining the terms in the ordinance. Defining a short-term rental as a “commercial” strengthens the ability to have regulatory differences between a short-term rental and long-term residential uses.

You may want to exclude other types of temporary lodging types in your Zoning Ordinance from these regulations - such as Bed and Breakfasts. They have their own set of standards and requirements for a permit.

Make sure the definition of “dwelling” works with the Zoning Ordinance definition.

Most often STR Ordinances are police power ordinances because they are regulating an activity. Regulating them through the Zoning Ordinance is an option that would grandfather any existing STR activity.

As always consult your municipal attorney on all matters when considering a new ordinance.

Standards to Consider

Each community will have different needs. Consider which of the following apply to your community and whether there are the personnel available to monitor and enforce the standards:

- License or permit: issue the license/permit to property owner or to the property?
- How many permits per person: may want to limit the number of permits a single entity can obtain as a way to control the influence of outside investors.
- Type of structure:
 - could require that only permanent structures may be used (no tents, RVs, etc.).
 - may limit rentals to a single-family residence, or may include all dwelling units including apartment, duplexes, and condos.
 - decide if regulations apply when owner lives on site or if they apply to the renting of the entire dwelling unit with the owner absent.
- How many per parcel: may state that no more than one dwelling unit per parcel may be rented out or decide not to limit the number per parcel.
- How many per district: some communities limit the number of permits they issue, either by zoning district or community-wide.
- Minimum length of rental period: ordinance may require 7 days so that the house may be rented to only one party per week – regardless of whether the length of stay is one week or just a weekend.
- Maximum number of days that may be rented annually: may limit the number of overnights in a calendar year. This is an approach to allow for the cottage owner to get some extra income while discouraging absentee investors from buying up available housing stock.
- Local contact person required: may require owner or agent be available to respond to calls or come to the site within a certain time period (usually a response time of 45 minutes or one hour is required).
- Notify the neighbors:
 - may require that neighbors within a certain distance would be given notice that the home will be rented out, along with the name and contact information of local contact person.
 - will have to determine if applicant or township is responsible for notifying the neighbors.

- Maximum occupancy: may limit the number of people allowed to stay overnight. Factors used to determine maximum may include size of septic, number of bedrooms, or other input.
- Maximum number of people on site: this would include daytime visitors.
- No events: may prohibit events such as weddings, parties, or any group gatherings.
- Septic system:
 - could require a letter from the region's health department stating the maximum number of people that can be served by the septic system on site.
 - may also require that the system is kept in sound working order.
- Signage: good idea to follow the local sign ordinance.
- Post the standards:
 - may require the standards to be posted and made available to renters.
 - may include requirement that the rental's address be posted in case they need to call 911
- Maintain a log: may be required for administration purposes.
- Parking:
 - may require it to be off roadways. Could require it to not be in the yard/lawn.
 - may require a certain number of spaces that increases as maximum occupancy increases
- Pets: could allow, disallow, or leave the decision to STR operator.
- Fireworks: if allowed, cite the days and times they are allowed. If there is a local ordinance, refer to it.
- Noise: may have designated Quiet Hours.
- Campfires: may regulate where, when, frequency, and what can be burned.
- Trash: may require that it is kept in a closed receptacle to avoid problems with vermin. May require that operator provide trash services.
- Watercraft: may limit the number of (motorized) watercraft that can be brought to the site.
- Advertising: it is a good idea to state that any advertising a property for rental without a permit is a violation. This allows the ordinance to apply even to those who claim they haven't rented it out...yet.
- Violations:
 - consider it a violation to advertise for rental prior to getting a permit. This allows the ordinance to apply even to those who claim they haven't rented it out...yet.
 - could include that violations of other township ordinances such as campfires/fireworks/noise/animal control is a violation of the STR ordinance as well.
- Administration and Enforcement: determine who will administer the program and who the enforcement officer(s) will be. There are firms that can be hired to help with some enforcement duties. Consider sharing expenses with surrounding municipalities.
- Ordinance policy is needed: the policy will spell out the application, renewal and fee processes.
- Ordinance timing: consider that most STR operators already have bookings for the next summer when implementing the new ordinance.

Kathy Egan, Manager of Community Planning
kathy.egan@networksnorthwest.org
(231) 929-5057

HOUSE BILL NO. 4046

January 15, 2019, Introduced by Rep. Sheppard and referred to the Committee on Local Government and Municipal Finance.

A bill to amend 2006 PA 110, entitled
"Michigan zoning enabling act,"
(MCL 125.3101 to 125.3702) by adding section 206b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 206b. (1) For the purposes of zoning, all of the
2 following apply to the rental of a dwelling, including, but not
3 limited to, short-term rental:

4 (a) It is a residential use of property and a permitted use in
5 all residential zones.



1 (b) It is not subject to a special use or conditional use
2 permit or procedure different from those required for other
3 dwellings in the same zone.

4 (c) It is not a commercial use of property.

5 (2) This section does not prohibit regulation applied on a
6 consistent basis to rental and owner-occupied residences for noise,
7 advertising, traffic, or other conditions.

8 (3) As used in this section, "short-term rental" means the
9 rental of any single-family residence or 1-to-4-family house or
10 dwelling unit, or any unit or group of units in a condominium, for
11 terms of less than 28 days at a time.

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.



LIMIT ZONING REGULATION OF SHORT-TERM RENTALS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4046 (proposed substitute H-1)
Sponsor: Rep. Jason Sheppard
Committee: Local Government
Complete to 4-29-19

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4046 would amend the Michigan Zoning Enabling Act to create new zoning requirements specific to *short-term rentals*.

Short-term rental would mean the rental of any single-family residence or one-to-four-family house or dwelling unit, or any unit or group of units in a condominium, for terms of less than 28 days at a time.

Under the bill, for the purpose of zoning, all of the following would apply to the rental, including short-term rental, of a dwelling:

- It is a residential use of property and a permitted use in all residential zones.
- It is not subject to a special use or conditional use permit or procedure different from that required for other dwellings in the same zone.
- It is not a commercial use of property.

The bill further states that the above provisions would not prohibit any of the following if applied on a consistent basis to rental and owner-occupied residences:

- Regulation of noise, advertising, traffic, or other conditions, to prevent nuisances.
- Regulation of the number of individuals that may occupy a dwelling.
- Requirements for dwelling inspections and inspection fees.
- Taxes otherwise permitted by law.
- Requirements to notify a local unit of government of association or condominium regulations or other private agreements that may affect the use of a dwelling.

The bill would take effect 90 days after its enactment.

Proposed MCL 125.3206b

FISCAL IMPACT:

House Bill 4046 would have an indeterminate, but likely negligible, fiscal impact on local units of government that regulate short-term rentals. Local units of government regulating short-term rentals presumably either prohibit them or charge a permit or licensing fee to cover the costs of regulation. Unless a local unit of government was levying permit or

licensing fees in excess of actual regulatory costs, there would be no net fiscal impact for local units of government.

There would be no fiscal impact on state government.

Legislative Analyst: Nick Kelly
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

Considering regulation of short-term rentals in light of the sharing economy: Part 1

Brad Neumann, [Michigan State University Extension](#) - December 22, 2015

Short-term rentals are sometimes perceived as nuisances in neighborhoods, but the emergence of the sharing economy suggests communities may want to offer something for everyone in terms of lodging experiences for visitors of all kinds.

A short-term rental is generally defined as a commercial use of a residential property for a period of less than 30 days. Short-term rentals are an important land use activity to address in communities that have a significant tourism economy. In Michigan, short-term rentals are typically thought of as vacation properties rented either during the endless beach days of summer or the snow-filled ski and snowmobiling winter days characteristic of northern latitudes. However, this conventional thinking is sometimes associated with neighborhood opposition to short-term rentals resulting from unruly tenants, late night parties, and parking problems.

Given the growth in the [sharing economy](#) in recent years, only thinking of short-term rentals as 'vacation rentals' is not a complete assessment of the topic. Increasingly, travelers of all kinds are looking for different lodging experiences other than the conventional hotel or motel. These days, short-term rentals are also used by business travelers, patients and family members staying for medical treatments, and the casual passerby.

Communities that want to offer something for everyone in terms of lodging experiences for visitors of all kinds will want to allow short-term rentals to some extent in the community. Beyond the lake properties or those with trail access nearby, housing in traditional neighborhoods close to downtown are also attractive locations for visitors to

stay. Short-term rentals near downtowns and traditional centers may offer a lodging option that is missing, as some hotel chains have located in more suburban locations on the outskirts.

With the sharing economy in mind, a community will need to decide if regulations related to short-term rentals will address renting individual rooms in owner-occupied homes through services such as Airbnb, FlipKey, and HomeAway, in addition to bed and breakfasts and renting entire homes or condominium apartments (e.g. 'vacation rentals').

Part two of this article explores the regulatory options for communities and offers some considerations related to definitions, process of approval, and review standards for short-term rentals.

Michigan State University Extension helps communities learn how to improve their social and economic appeal to create and retain jobs. Community leaders are given the tools they need to have a positive effect on their cities, villages, townships, counties and the whole state.

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HOUSE BILL NO. 4554

May 02, 2019, Introduced by Rep. Lilly and referred to the Committee on Commerce and Tourism.

A bill relating to the promotion of convention business and tourism in this state; to provide for collection of certain data, promotion, and regulation of certain short-term rentals at certain short-term transient facilities; to create certain databases; to provide for collection of certain taxes and assessments on the owners of certain short-term transient facilities; to establish the functions and duties of certain state departments and employees; and to prescribe certain fines, penalties, and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the



1 "Michigan short-term rental promotion act".

2 Sec. 2. As used in this act:

3 (a) "Department" means the department of licensing and
4 regulatory affairs.

5 (b) "Director" means the director of the department.

6 (c) "Hosting platform" means a service through a digital
7 platform, third-party website, software, online-enabled
8 application, mobile phone application, or some other similar
9 electronic process that allows:

10 (i) An owner or owner agent to advertise, list, or offer the
11 short-term rental of short-term transient facilities under this
12 act.

13 (ii) An owner or owner agent to collect the payment of a short-
14 term rental of a short-term transient facility under this act.

15 (iii) A person to arrange, book, reserve, or rent a short-term
16 rental of a short-term transient facility under this act.

17 (d) "Owner" means the owner of a short-term transient facility
18 located within this state or, if the short-term transient facility
19 is operated or managed by an owner agent, then the owner agent of
20 that short-term transient facility, that provides short-term
21 rentals.

22 (e) "Owner agent" means a person who on behalf of an owner of
23 a short-term rental of a short-term transient facility, including,
24 but not limited to, a property manager, property management
25 company, or real estate agent that does 1 or more of the following:

26 (i) Manages the operation or upkeep of a short-term transient
27 facility offered for rent.

28 (ii) Books reservation at a short-term transient facility
29 offered for rent.



1 (f) "Room" means a room or other space provided for sleeping,
2 including the furnishings and other accessories in the room.

3 (g) "Short-term rental" means, except as otherwise provided in
4 this subdivision, a rental of a short-term transient facility of
5 not more than 30 consecutive days. A short-term rental does not
6 include the rental of a short-term transient facility if that
7 property is rented out for 14 days or less in a calendar year.

8 (h) "Short-term transient facility" means an apartment, house,
9 cottage, condominium, or other occupied property where 1 or more
10 rooms are rented by an owner through the use of advanced
11 reservations. A short-term transient facility does not include a
12 hotel or a motel.

13 (i) "Short-term transient facility database" means the short-
14 term transient facility database created in section 3.

15 (j) "Transient guest" means a person who occupies a room in a
16 short-term transient facility for less than 30 consecutive days
17 regardless of who pays the room charge for the room.

18 (k) "Use tax" means the tax imposed under the use tax act,
19 1937 PA 94, MCL 205.91 to 205.111.

20 Sec. 3. The department shall create and operate a short-term
21 transient facility database and that database shall be updated by
22 the department each year. The short-term transient facility
23 database shall also include all of the following:

24 (a) A description of the short-term transient facility.

25 (b) Number and type of rooms at the short-term transient
26 facility.

27 Sec. 4. (1) Each year the owner or the owner agent of a short-
28 term transient facility shall file with the department a
29 certificate that provides all of the following:



1 (a) Name and address of the owner of the short-term transient
2 facility.

3 (b) Address of the short-term transient facility.

4 (c) Number and types of rooms at the short-term transient
5 facility.

6 (d) Certification that the owner has \$1,000,000.00 or more
7 liability insurance on the short-term transient facility.

8 (e) Certification that all use taxes, local excise taxes, and
9 assessments levied, imposed, and assessed have been paid by the
10 owner or owner agent for the immediately preceding tax year.

11 (2) The director shall prescribe the forms necessary for the
12 administration of this act and may promulgate necessary rules under
13 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
14 to 24.328.

15 Sec. 5. An owner of a short-term transient facility shall
16 maintain liability insurance of \$1,000,000.00 or more on the short-
17 term transient facility for each short-term rental while it is
18 being offered for rent to transient guests unless such short-term
19 rental is offered through a hosting platform that maintains equal
20 or greater insurance coverage. Insurance coverage described in this
21 section must defend and indemnify the operator and any tenants or
22 owners in the short-term transient facility for bodily injury and
23 property damage arising from the short-term rental.

24 Sec. 6. An owner of a short-term transient facility shall not
25 operate that short-term transient facility if that owner fails to
26 pay any use tax, local excise tax, or assessment imposed by law,
27 when due, as determined by the department.

28 Sec. 7. An owner may elect to have an owner agent, hosting
29 platform, or other intermediary collect room charges, use taxes,



1 local excise taxes, and assessments described in this act through a
2 written agreement. The written agreement shall clearly provide each
3 party's responsibility to remit those use taxes, local excise
4 taxes, and assessments described in this act.

5 Sec. 8. An owner or owner agent who violates this act is
6 responsible for a civil fine and may be ordered by the department
7 to pay a civil fine of not more than \$15,000.00 for each violation.

8 Sec. 9. (1) Zoning of short-term transient facilities and
9 short-term rentals is subject to the Michigan zoning enabling act,
10 2006 PA 110, MCL 125.3101 to 125.3702.

11 (2) A local unit of government shall not have a zoning
12 ordinance or a zoning decision that has the effect of totally
13 prohibiting short-term rentals of short-term transient facilities
14 in compliance of section 207 of the Michigan zoning enabling act,
15 2006 PA 110, MCL 125.3207.

16 (3) The department shall create a workgroup of stakeholders
17 composed of representatives of local units of government,
18 representatives of the tourism industry, and representatives of
19 real estate professionals to assist the department in developing
20 best practices and model short-term rental zoning.



HOUSE BILL NO. 4563

May 02, 2019, Introduced by Reps. Tate and Lilly and referred to the Committee on Commerce and Tourism.

A bill to amend 2006 PA 110, entitled
"Michigan zoning enabling act,"
by amending sections 102 and 207 (MCL 125.3102 and 125.3207),
section 102 as amended by 2008 PA 12, and by adding section 206b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 102. As used in this act:

2 (a) "Agricultural land" means substantially undeveloped land
3 devoted to the production of plants and animals useful to humans,
4 including, but not limited to, forage and sod crops, grains, feed
5 crops, field crops, dairy products, poultry and poultry products,



1 livestock, herbs, flowers, seeds, grasses, nursery stock, fruits,
2 vegetables, Christmas trees, and other similar uses and activities.

3 (b) "Airport" means an airport licensed by the ~~Michigan~~
4 ~~department of state~~ transportation **department**, bureau of
5 aeronautics under section 86 of the aeronautics code of the state
6 of Michigan, 1945 PA 327, MCL 259.86.

7 (c) "Airport approach plan" and "airport layout plan" mean a
8 plan, or an amendment to a plan, filed with the zoning commission
9 under section 151 of the aeronautics code of the state of Michigan,
10 1945 PA 327, MCL 259.151.

11 (d) "Airport manager" means that term as defined in section 2
12 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL
13 259.2.

14 (e) "Airport zoning regulations" means airport zoning
15 regulations under the airport zoning act, 1950 (Ex Sess) PA 23, MCL
16 259.431 to 259.465, for an airport hazard area that lies in whole
17 or part in the area affected by a zoning ordinance under this act.

18 (f) "Conservation easement" means that term as defined in
19 section 2140 of the natural resources and environmental protection
20 act, 1994 PA 451, MCL 324.2140.

21 (g) "Coordinating zoning committee" means a coordinating
22 zoning committee as described under section 307.

23 (h) "Development rights" means the rights to develop land to
24 the maximum intensity of development authorized by law.

25 (i) "Development rights ordinance" means an ordinance, which
26 may comprise part of a zoning ordinance, adopted under section 507.

27 (j) "Family child care home" and "group child care home" mean
28 those terms as defined in section 1 of 1973 PA 116, MCL 722.111,
29 and only apply to the bona fide private residence of the operator



1 of the family or group child care home.

2 (k) "Greenway" means a contiguous or linear open space,
3 including habitats, wildlife corridors, and trails, that links
4 parks, nature reserves, cultural features, or historic sites with
5 each other, for recreation and conservation purposes.

6 (l) "Improvements" means those features and actions associated
7 with a project that are considered necessary by the body or
8 official granting zoning approval to protect natural resources or
9 the health, safety, and welfare of the residents of a local unit of
10 government and future users or inhabitants of the proposed project
11 or project area, including roadways, lighting, utilities,
12 sidewalks, screening, and drainage. Improvements do not include the
13 entire project that is the subject of zoning approval.

14 (m) "Intensity of development" means the height, bulk, area,
15 density, setback, use, and other similar characteristics of
16 development.

17 (n) "Legislative body" means the county board of commissioners
18 of a county, the board of trustees of a township, or the council or
19 other similar elected governing body of a city or village.

20 (o) "Local unit of government" means a county, township, city,
21 or village.

22 (p) "Other eligible land" means land that has a common
23 property line with agricultural land from which development rights
24 have been purchased and is not divided from that agricultural land
25 by a state or federal limited access highway.

26 (q) "Person" means an individual, partnership, corporation,
27 association, governmental entity, or other legal entity.

28 (r) "Population" means the population according to the most
29 recent federal decennial census or according to a special census



1 conducted under section 7 of the Glenn Steil state revenue sharing
2 act of 1971, 1971 PA 140, MCL 141.907, whichever is ~~the more~~
3 ~~recent.~~ **later.**

4 **(s) "Short-term rental" means that term as defined in the**
5 **Michigan short-term rental promotion act.**

6 **(t) ~~(s)~~**"Site plan" includes the documents and drawings
7 required by the zoning ordinance to ensure that a proposed land use
8 or activity is in compliance with local ordinances and state and
9 federal statutes.

10 **(u) ~~(t)~~**"State licensed residential facility" means a
11 structure constructed for residential purposes that is licensed by
12 the state under the adult foster care facility licensing act, 1979
13 PA 218, MCL 400.701 to 400.737, or 1973 PA 116, MCL 722.111 to
14 722.128, and provides residential services for 6 or fewer
15 individuals under 24-hour supervision or care.

16 **(v) ~~(u)~~**"Undeveloped state" means a natural state preserving
17 natural resources, natural features, scenic or wooded conditions,
18 agricultural use, open space, or a similar use or condition. Land
19 in an undeveloped state does not include a golf course but may
20 include a recreational trail, picnic area, children's play area,
21 greenway, or linear park. Land in an undeveloped state may be, but
22 is not required to be, dedicated to the use of the public.

23 **(w) ~~(v)~~**"Zoning commission" means a zoning commission as
24 described under section 301.

25 **(x) ~~(w)~~**"Zoning jurisdiction" means the area encompassed by
26 the legal boundaries of a city or village or the area encompassed
27 by the legal boundaries of a county or township outside the limits
28 of incorporated cities and villages. The zoning jurisdiction of a
29 county does not include the areas subject to a township zoning



1 ordinance.

2 **Sec. 206b. For the purposes of zoning, a short-term rental**
3 **that is rented out for 14 days or less in a calendar year is a**
4 **residential use of property and a permitted use in all residential**
5 **zones.**

6 Sec. 207. A zoning ordinance or zoning decision shall not have
7 the effect of totally prohibiting the establishment of a land use,
8 **including, but not limited to, a short-term rental,** within a local
9 unit of government in the presence of a demonstrated need for that
10 land use within either that local unit of government or the
11 surrounding area within ~~the~~**this** state, unless a location within
12 the local unit of government does not exist where the use may be
13 appropriately located or the use is unlawful.

14 Enacting section 1. This amendatory act does not take effect
15 unless Senate Bill No.____ or House Bill No.____ (request no.
16 01509'19) of the 100th Legislature is enacted into law.



The following definitions are included in Article 2 of Zoning Ordinance No. 200, and hold varying degree of relevance to short-term rental uses and the drafting of a short-term rental ordinance:

BOARDINGHOUSE -- A dwelling where lodging or meals or both are provided for compensation to three or more individuals.

CABIN - Any building, tent or similar structure which is maintained, offered or used for dwelling or sleeping quarters for transients, or for temporary residence, but shall not include what are commonly designated as hotels, lodges, houses or tourist homes.

DWELLING or DWELLING UNIT - Any building or portion thereof which is occupied in whole or in part as a home, residence, or sleeping place, either permanently or temporarily, by one or more families, but not including bed and breakfast, boarding or lodging houses, resorts, resort hotels, recreation farms, vacation lodges, motor inns, hotels, motels and other tourist lodging facilities.

DWELLING: APARTMENT - A building divided into separate living quarters, each having at a minimum, its own sleeping and living facilities. All apartments must conform to regulations applicable to dwelling units in this ordinance.

DWELLING: CONDOMINIUM - An apartment building or multiple unit single-family dwelling in which each tenant holds full title to his unit and joint ownership in the common grounds.

DWELLING, MULTI-FAMILY - A building, or portion thereof, containing three (3) or more dwellings.

DWELLING, PATIO HOUSE - A single family dwelling that is part of a two-family or multi-family dwelling development and that orients outdoor activities within rear or side yard patio areas.

DWELLING, SINGLE-FAMILY - A building, or portion thereof, containing one (1) dwelling.

DWELLING: TOWN HOUSE - A single-family attached dwelling with units sharing common side walls and usually situated in a straight line with each other.

DWELLING, TWO-FAMILY - A building, or portion thereof, containing two (2) dwellings.

FAMILY - An individual, a collective number of individuals related by blood, marriage, adoption, or legally established relationships such as guardianship or foster care, or a collective number of unrelated individuals whose relationship is of a permanent and distinct domestic character who reside in a single dwelling and live as a single housekeeping unit with single culinary facilities. A family, however, shall not include any society, club, fraternity, sorority, association, lodge, or group of individuals, whether related or not, whose association or living arrangement is temporary or resort seasonal in character or nature.

GUEST HOUSE - An detached structure or portion of an detached structure located on the same lot as a single-family dwelling that is used for sleeping and/or eating purposes by nonpaying friends, relatives, or acquaintances of the resident or owner of the single-family dwelling.

MOTEL OR MOTOR INN - A series of attached, semi-detached, or detached rental units containing bedroom, bathroom and closet space to provide lodging for thirty (30) days or less for a fee.

NON-RESIDENTIAL USE - Any use allowed in the current Cheboygan County Zoning Ordinance which does not provide for a dwelling and is not an industrial use.

RESIDENTIAL USE - Any use allowed in the current Cheboygan County Zoning Ordinance which provides for a dwelling.

ROOMING HOUSE - A building, or part of a building, other than a hotel, motel, or motor court, where sleeping facilities are provided and meals may be served regularly for remuneration.

SHORT TERM RENTALS - The rental or use of a building customarily used as a dwelling for a period of less than thirty (30) days by an individual, by one or more families, or by a group of individuals who are not the legal owners of the dwelling. A short term rental shall not be occupied by the owner of the building during the period of such rental or use.