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*Short Term
Rental
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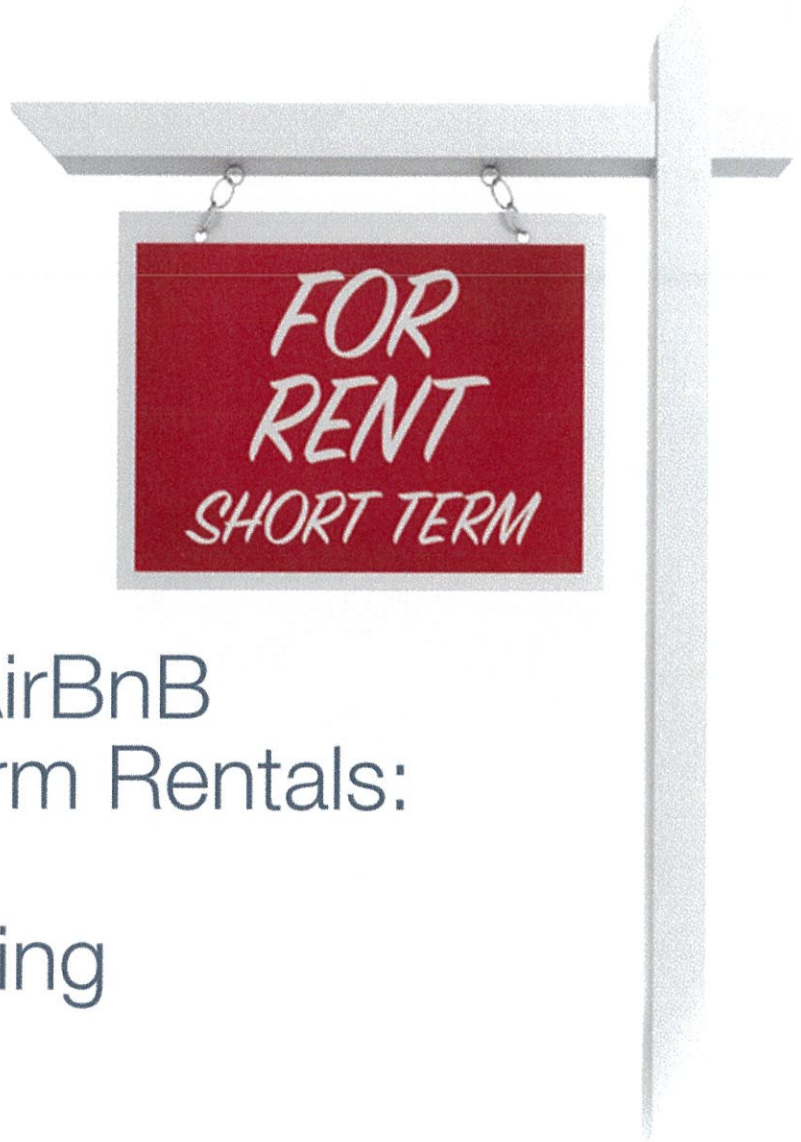
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The Rise of AirBnB and Short Term Rentals: Implications for Local Zoning Regulations

By Jason A. Klein

For the better part of a decade, municipalities across the country have seen an increase in the amount of short term rentals within their borders. Websites, such as Airbnb.com, provide travelers with the opportunity to find alternative vacation lodging and experience a community from within a neighborhood, instead of out of a hotel room. But travelers are not the only ones benefiting from the growth of short term rentals; income earned by “hosts” who make their property available for rent online is an attractive economic incentive.

Connecticut residents have shared in the benefits of the growth of this use. According to the *Hartford Business Journal*, over

64,000 travelers paid a visit to our state in 2016 via Airbnb alone, with hosts earning over \$11 million from their guests.¹

New Haven saw the highest number of guests, with 11,500 visitors. Hartford, which recently enacted zoning regulations specifically addressing short term rentals, welcomed 3,700 guests.² Communities in Fairfield County saw less traffic than their neighbors to the North, but still hosted a healthy number of visitors, with 1,000 travelers coming to Bridgeport, and 2,000 to Stamford.³ In addition, Connecticut collected a hotel tax of 15% from each of these transactions, and local restaurants and shops gained thousands

of potential new customers.

From a zoning and land use perspective, short term rentals are unique in that they possess both “residential” and “commercial” characteristics. Courts in other jurisdictions have been asked to determine whether short term rentals are one or the other. Regardless of definition, municipalities within Connecticut, and across the country, have enacted zoning controls to ensure the appropriate growth of this emerging use.

Residential or Commercial Use?

Courts have reached varying conclusions when asked to determine whether or not a short term rental is a residential or com-

mercial use. Courts that have found short term rentals to be commercial uses have focused on the economic benefit realized by the property owner. In Kentucky, an appellant, who rented their property as a short term rental, argued that earning income from each rental, and paying a commercial tax, did not make the rental of his home a “business use.”⁴ The Kentucky Court of Appeals found these characteristics were indicative of a commercial use, rather than a residential use.⁵ The Kentucky Court of Appeals went on to state that it is not the conduct of the guests on a property, who may be using the lot in the same way a permanent resident or long term tenant would, that determines the use of the property; Instead, “it is the fact that the property is being held out for remuneration [by the property owner] in much the same manner as a hotel or motel,” that governs the classification of the use.⁶

Similarly, the Court of Appeals of San Antonio, TX found the payment of state and municipal hotel taxes by the Appellant persuasive in reaching its conclusion that the property, which was rented 31 times from June to October of 2014, was being used for commercial purposes.⁷

Other courts have not found these commercial traits determinative in classifying this use. For example, the Supreme Court of Washington State recently held that a property owner’s “receipt of rental income [from short term rental guests]... in no way detracts or changes the residential characteristics of the use by the tenant.”⁸ The Court went on to find that where “a vacation renter uses a home ‘for the purpose of eating, sleeping and other residential purposes,’ this use is residential, not commercial, no matter how short the rental duration.”⁹

Regulating Short Term Rentals

Whether one considers short term rentals residential or commercial, they continue to enjoy growing popularity. Rather than engage in the difficult task of prohibiting short term rentals within their borders, many municipalities have enacted zoning regulations to guide growth. Communities that have embraced short term rentals often do so understanding the economic opportunity it provides to residents and

taxpayers. The Hartford Planning and Zoning Commission recently amended the city’s zoning regulations to permit short term rentals, subject to conditions that aim to ensure compatibility with surrounding residences. Professor Sara Bronin, chair of the City’s Planning and Zoning Commission, said the commission recognized that many residents “deal with high maintenance costs and property taxes. While short-term tenants can help property owners pay for these costs, it is important that regulations address neighbors’ concerns, too.”

1. Permits

A threshold question to any set of short term rental regulations is whether a municipal permit is required to operate a short term rental, or if one may do so as of right. Many municipalities, including Hartford, require a host to obtain a zoning permit before operating a short term rental on their property.¹⁰ Nashville, TN, also requires that any property owner seeking to use their dwelling unit as a short term rental obtain a permit to do so.¹¹ On the other hand, individuals in Philadelphia, PA, who make their dwelling unit available as a short term rental for less than 91 days annually, may do so without a municipal permit or approval.¹² Similarly, those seeking to utilize a dwelling unit for short term rental purposes in Jersey City, NJ need not obtain a permit to do so, unless they are using more than five (5) separate dwelling units as short term rentals.¹³

2. Time Limitations

Tenant turnover is a common concern with regard to short term rentals. In response, some regulations limit the number of days a dwelling unit, or property, may be used for short term residential purposes. Hartford allows properties to be used as short term rentals for “no more than 21 cumulative days during any 6 month period, with no property being used for such temporary rental more than 3 times during any 6 month period.”¹⁴ Individuals may seek permission to operate a short term rental for a greater number of days, or a higher frequency, by obtaining special permit approval from the Planning and Zoning Commission.¹⁵ As a prerequisite to obtaining a special per-

mit approval, an applicant is required to notify neighboring property owners of the pending application, and the commission must hold a public hearing to provide both the applicant and the greater public an opportunity to be heard. Similarly, residents of dwelling units in Philadelphia may use their units as short term rentals for 91 – 180 days per year, upon obtaining a permit to do so.¹⁶

Estimates show that on average, a Connecticut dwelling unit listed on Airbnb is used as a short term rental 32 nights per year.¹⁷ Limiting the number of days a dwelling unit or property may be used as a short term rental arguably helps to ensure that the short term rental of a property remains an accessory, rather than primary use. Without such cap, zoning enforcement could be left to determine, on a case by case basis, whether or not the short term rental of a given dwelling unit or property is an accessory or primary use.

3. Density

Overcrowding of apartments or homes with short term rental tenants is another common concern associated with short term rentals. Municipalities have attempted to address this by implementing density controls limiting the number of guests in a short term rental at any given time. Hartford permits only “4 adults (in total) and minor children related to at least one of the adults by blood, marriage, adoption custodianship or guardianship” in a short term rental.¹⁸ Additionally, there must be a minimum of 70 square feet of usable floor area for one person, and an additional 50 square feet of usable floor area for each additional person (including children) in the unit being used for short term rental purposes.¹⁹ Nashville, TN also limits the number of guests permitted to stay in a short term rental, requiring that the number of transients not exceed “more than twice the number of sleeping rooms [in a dwelling unit] plus four.”²⁰ Under the Nashville regulations, short term rentals may only contain up to four sleeping rooms, which in turn, could accommodate up to 12 guests.²¹

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4. Accountability

Critics of short term rentals are quick to argue that short term tenants are more likely than permanent residents, or long term tenants, to engage in behavior that is disruptive to a neighborhood. Fortunately, municipalities can craft regulations providing direct accountability to the short term rental host, who has a financial (and perhaps, social) interest in ensuring that their guests do not create a nuisance.

For example, Hartford requires that property owners of lots improved with one-unit dwellings, or lots within certain single family neighborhoods, remain on site during the duration of a short term rental occurring thereon.²² Similarly, in Philadelphia, only the “primary resident” of a dwelling unit may use their dwelling unit as short term rental for 91-180 days per year.²³ Only the owner of a dwelling unit, or a tenant who lives within the dwelling unit for at least half of the year and who has the dwelling unit owner’s permission to operate a short term rental qualify as a “primary resident” under the Philadelphia regulation.

Other Considerations

Compliance with local zoning regulations is just one of a number of concerns attorneys should have in mind if a client expresses an interest in using their property for a short term rental use. Landlords who are wary of allowing their tenants to make a dwelling unit available for short term rental use may want to consider amending their lease agreement to state that a tenant may only rent the premises as a short term rental with the landlord’s express permission to do so. Similarly, property owners and tenants alike should review their insurance policies to determine whether or not: (1) the owner is covered in the event a guest suffers an injury on the property or within the dwelling unit during their stay; and (2) that the tenant’s renters insurance coverage extends to guests or invitees who pay to occupy the dwelling unit as a short term rental.

Conclusion

Short term rentals bring more travelers to our communities, shoppers to our stores and diners to our restaurants. They bring guests to our towns and cities that might not otherwise come to Connecticut. And, they can make a difference in helping a homeowner or tenant stay in the place they call home. Municipalities should proactively address community-specific concerns to make sure local residents and business owners can enjoy the benefits of this growing industry without adversely impacting the character of the surrounding community. **CL**

Notes

1. Daddona, Patricia, “CT attracts 64,000 Airbnb guests, \$11M in income.” *The Hartford Business Journal*. February 28, 2017.
2. Bennett, Macaela J, “Airbnb Connecticut hosts raked in \$11 million last year.” *Greenwich Time*. March 22, 2017.
3. *Id.*
4. See *Adams v. Lakeside Place Homeowners Association, Inc.*, No. 09-CI-00537, 5 (August 8, 2014).
5. *Id.* at 9.
6. *Id.*
7. *Tarr v. Timberwood Park Owners Association, Inc.*, No. 04-16-00022-CV, 2016 WL 6775591 at *4 (November 16, 2016).
8. *Wilkinson v. Chiwawa Communities Association*, 180 Wash.2d 241, 253 (2014).
9. *Id.* (emphasis added).
10. City of Hartford Zoning Regulations, Sec. 3.5.E.(1).
11. Metro Government of Nashville and Davidson County, Tennessee Code of Ordinances Sec. 17.16.250.E.
12. Philadelphia, Pennsylvania Code of Ordinances Sec. 14-604.13.b.1.
13. Jersey City, New Jersey Code of Ordinances Sec. 345-60.Y1.b.
14. City of Hartford Zoning Regulations, Sec. 3.5.1.E.
15. City of Hartford Zoning Regulations, Sec. 3.5.1.E.(4).
16. Philadelphia, Pennsylvania Code of Ordinances Sec. 14-604.13.b.2.
17. Daddona, Patricia, “CT attracts 64,000 Airbnb guests, \$11M in income.” *The Hartford Business Journal*. February 28, 2017.
18. City of Hartford Zoning Regulations, Sec. 3.5.1.E.(2).
19. *Id.*
20. Metro Government of Nashville and Davidson County, Tennessee Code of Ordinances Sec. 6.28.030.K.
21. Metro Government of Nashville and Davidson County, Tennessee Code of Ordinances Sec. 17.04.060.
22. City of Hartford Zoning Regulations, Sec. 3.5.1.E.(2).
23. Philadelphia, Pennsylvania Code of Ordinances Sec. 14-604.13.b.2.

Pro Bono (Continued from page 28)

attorneys and the response has been overwhelmingly positive:

“This service is very helpful for those who could not afford an attorney. They really prepare you for courtroom.”

“I feel this service is a definite need for the public. I am very grateful to be able to have many questions answered. The attorney was patient, answered all questions, and was very informative. Thank you so very much for this service.”

The CBA and the Judicial Branch are grateful for the continued support and dedication of the volunteer attorneys and their sustained commitment to providing pro bono services to those in need. Plans to expand the program are currently underway. Anyone interested in volunteering for this program should contact Krista Hess at the Judicial Branch at Krista.Hess@jud.ct.gov or (860)263-2734, x3043.

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