

STRs IN ORO-MEDONTE

APRIL 2024 NEWSLETTER

LIFE AFTER ORO-MEDONTE'S OLT APPEAL

Short Term Rentals are STILL Not Permitted in Residential Zones

Given the recent court ruling, Oro-Medonte homeowners are probably wondering “Where are we now?” Well, we are back to where we were 4 years ago: short-term rentals (STRs) in residential zones were illegal then, and they are still illegal now. The Township needs to carry on with enforcing its zoning by-law.

The recent court ruling, which upheld the Ontario Land Tribunal (OLT) decision, dealt with the Township's 2020 zoning by-law amendment to define the meaning of a ‘commercial accommodation’, a term that was added to the zoning by-law in 2015. Both the OLT decision and the appeal court decision were limited in their scope and do not impact any of the zoning by-law provisions that were in place prior to 2015. It is abundantly clear that the zoning by-law in place prior to 2015 already prohibited STRs in residential zones, without any reference to either the 2015 or 2020 ‘commercial accommodation’ amendments. This has been the case since at least 1997. These provisions remain in place and are not affected by the decision.

A Brief History

Back in 2017, homeowners and some members of Council were not informed that short-term rentals were not permitted in residential zones. They were misled. They were told that ‘there wasn't much the Township could do.’ Since they were not ‘bed and breakfasts’ and they were not ‘rooming houses,’ STRs were a ‘grey area of the law.’ This was a complete misdirection. STRs are illegal because they are not listed as a permitted land use in residential zones in the zoning by-law that had been in place since at least 1997. If a land use is not specifically listed as a permitted use under the zoning by-law it is prohibited in that zone. So there was a lot the Township could have done to protect disrupted homeowners. **The Township could have prosecuted STR operators back in 2017 when problems were first reported.**

It was not until after homeowners obtained independent expert planning advice and presented it to the previous Council in late 2019, that the Township finally disclosed in June 2020 that short-term rentals were not permitted in residential zones. Rather than simply enforcing the existing zoning by-law that already prohibited STRs in residential zones, the previous Council passed a zoning by-law amendment that clarified the meaning of a ‘commercial accommodation.’ **Ordinarily, when a word or phrase needs to be**

interpreted in a zoning by-law, courts and tribunals turn to dictionaries.

Instead, the previous Council chose to pass a zoning by-law amendment that defined a 'commercial accommodation.' The amendment was appealed by some STR operators. The Divisional Court recently upheld the OLT ruling that quashed Township's attempt to clarify the meaning of 'commercial accommodation'.

The strategy pursued by the previous Council turned into a very costly, four-year long process that led to a dead end. After losing the OLT Appeal, the previous Council could have taken a quick exit and had the ruling reviewed using an internal OLT process that would have been very cost-effective. Instead, the previous Council chose to spend even more money on legal proceedings and immediately appealed the OLT decision to the Divisional Court, something that ended up taking another two years. All told, the previous Council wasted \$100's of thousands of dollars on legal fees defending an ammendment that was never needed. It also cost the residents' associations, led by the Good Neighbours Alliance, who supported the Township through this entire four-year process more than \$100,000.

Meanwhile, in the four years the court and tribunal actions were pending, the STR operators continued to make millions while some homeowners continued to suffer. **Prior to the election of the new Council in 2022, no STR operators were ever taken to court for violating the zoning by-law and shut down.**

Fortunately, after the new Council was elected in 2022, meaningful enforcement of the zoning by-law began. This approach is now bearing fruit and the number of STRs disrupting our residential neighbourhoods has declined dramatically.

There is a Silver Lining to the Current Divisional Court Decision

A careful reading of the judgment makes it clear that the Divisional Court decision does not affect the underlying Zoning By-law 97-95. **Contrary to misinformation currently being propagated, short-term rentals are STILL prohibited in residential zones.**

The Divisional Court ruling only considered the actions taken by the Township under the previous Council in its attempt to clarify the 2015 Amendment. In particular:

- It is clear that the Court never looked at or considered the provisions of the zoning by-law in place prior to 2015. The statements by the Divisional Court about the zoning by-law are fundamentally limited to the amendments made in 2020 and 2015.
- The Court could not therefore be expressing any view about the zoning by-law in effect

prior to 2015.

Any contention that the Divisional Court decided that the zoning by-law has always permitted STRs is incorrect. In fact:

- The Divisional Court only decided that the 2015 Amendment did not in and of itself prohibit STRs. It made no comment or conclusion about the provisions of the zoning by-law in place prior to 2015.
- As a result, based on the zoning by-law provisions in place prior to 2015, STRs continue to be prohibited in residential zones.

The court decision essentially removes any confusing arguments that there is an acceptable commercial use of a residential property other than those that are specifically listed in the zoning by-law as permitted land uses in residential zones. We fully expect that legal Counsel for the Township will agree with this conclusion.

Despite the court ruling, compared to other municipalities, Oro-Medonte still has one of the most robust zoning by-laws. The provisions of the zoning by-law in place prior to 2015 make it clear that providing temporary accommodation in a dwelling unit in a residential zone is not a permitted use. None of these provisions were considered by the Divisional Court and therefore, thankfully, they remain unaffected. The STR operators have not been given any ‘Get out of Jail’ cards.

Six Fundamental Facts that Remain Unchanged

The recent Divisional Court decision did not affect the following six fundamental facts:

1. The paramount duty of all municipalities as set out in the Provincial Planning Act¹ is to provide safe and healthy neighbourhoods. Selling our safety and our security in the name of generating revenue from STRs operating in residential neighbourhoods is irresponsible.
2. STR uses are fundamentally incompatible with residential uses. Proper land use planning separates conflicting land uses in order to minimize disruptions. STRs are permitted in commercial or mixed-use zones like the V1 Zone at Horseshoe Valley.
3. Homeowners were opposed to legitimizing STRs when the Township first attempted to license illegal STR uses in 2019. Despite intense and well-funded lobbying by a

¹ Planning Act, RSO 1990, c P.13 Sec. 2 “Provincial interest: The Minister, the council of a municipality, a local board, a planning board and the Tribunal, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as, h) the orderly development of safe and healthy communities; o) the protection of public health and safety;” RSO 1990, cP.13 | Planning Act | CanLII

small number of STR operators, this sentiment has not changed. Homeowners are still opposed to legalizing and licensing STRs.

4. Some STR operators would like to see our zoning by-law weakened and STRs permitted in residential zones. Creating any exceptions to the existing prohibition will make enforcement more difficult and more costly if enforcement is carried out at all.
5. No one, not even STR operators want to live next to an unsupervised hotel-like business that on any day could be disruptive. Whether an STR is disruptive or not does not depend on how the STR is owned or how frequently it is rented. It just depends on who shows up. Since most STR operators don't live in their STR, they have no means to control bad behavior or ensure conformance with Township by-laws such as parking, noise and fire. That leaves neighbours and the Township burdened with the impacts and the costs of the disruptive and unsafe behavior while the operators reap the profits.
6. STRs continue to be prohibited in residential zones. To date, enforcement measures taken by the current Council are already having the desired effect. Enforcement has resulted in a reduction in disruptive illegal STR activity. Homeowners have reported that calls for help to Municipal Law Enforcement and to the OPP have declined. Although some STR operators continue to flout the law, the number of disruptive STRs is much lower than it was in 2022. Back then there were more than 35 known disruptive STRs carrying on bad business across the Township.

Pathways Moving Forward

This is a critical time for Council following the Divisional Court decision. Although there are several possible options, here are three possible pathways:

1. **Appeal the Divisional Court Decision.** This path might overturn a bad precedent, but an appeal will cost a lot of money and time and achieve what goal? The commercial accommodation amendment was never needed, and the underlying zoning by-law is still in place and enforceable. Therefore this path is unnecessary and would be a further waste of time and money.
2. **Legalizing and Licensing STRs.** This regulatory approach has already been shown to be very costly and ineffective. To learn more about the ineffectiveness of licensing, see Gord Knox's Blue Mountains study at: **Planners Corner - Good Neighbours Oro-Medonte** (goodneighboursoromedonte.ca/planners-corner/). Further, if the zoning by-law is amended to permit STRs as in Tiny Township, expect some STR operators to sue the Township for interfering in their businesses. Such lawsuits are often designed to intimidate and force a cash-strapped municipality that can't afford costly litigation into negotiating and settling for what ends up being a restriction-free STR zoning/licensing by-law. From the homeowners' point of view, such a step would be strenuously opposed. That's because leaving neighbourhoods vulnerable to disruption while draining

the municipal coffers when there is no benefit to homeowners is unacceptable.

- 3. Continue with Enforcement.** It is our understanding that the Township has been carrying out enforcement where the consequences of court action will be a deterrent to all STR operators carrying on business illegally. Meaningful enforcement protects the safety and the security of neighbourhoods. **As noted above, enforcement is already having the desired effect** and at a low cost compared to the strategy adopted by the previous Council. **This pathway may well be the least costly option of all regulatory options.** Further, once convictions have been obtained, the risk of STR operators successfully claiming that their STR use is currently permitted and therefore they are not subject to any subsequent restrictions will be greatly reduced.

A Return to Safe and Enjoyable Neighbourhoods

As we await Council's response, we need to be mindful that the current Council has already achieved calm in our neighbourhoods that no one thought possible just a few short years ago. Council should be recognized for making many of our neighbourhoods safe and enjoyable again.

If recent efforts to derail the passing of the new Official Plan are any indication, members of Council are likely facing a barrage of misinformation emanating from a very small number of wealthy STR operators who want to keep their good times rolling and commercialize our neighbourhoods. **All Homeowners are just one zoning by-law amendment away from returning to the uncontrollable and disruptive behaviour of the past.** Therefore, this is not a time to be complacent. Homeowners must continue to be vigilant.

In case anyone has forgotten that past, here is a note that was recently received from a disrupted resident of a nearby township that has so far failed to help her.

"It never ends does it? We've just had our first really bad weekend of the year so far next door. Our home used to be a safe and enjoyable place to live. Nothing I can tell you is going to shock you but they were vomiting outside and pissing in full view of the neighbours and their kids during the afternoon. Outdoor karaoke went on all day and night. We don't have a bylaw officer on the weekend until the summer when they work one in every four. Police wouldn't come out."

Sadly, this note is an all too familiar story. It is one that we have lived and hopefully left behind in Oro-Medonte. No one wants to go back there. The overwhelming majority of homeowners do not want STRs permitted in residential zones. **Safe and healthy neighbourhoods isn't just a Planning Act requirement; it is what all homeowners expect and most importantly, need.**